

EXHIBIT D

CAVUCEGC

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

2
3 UNITED STATES OF AMERICA

3
4 v. 12 MJ 2842

4
5 PAUL CEGLIA,
5
6 Defendant.

6
7 -----x

7
8 New York, N.Y.
8 October 31, 2012
9 11:20 a.m.

10
11 Before:

11
12 HON. COLLEEN McMAHON
12
13 District Judge

13
14 APPEARANCES

14
15 PREET BHARARA
15 United States Attorney for the
16 Southern District of New York
16 BY: JANIS M. ECHENBERG
17 CHRISTOPHER D. FREY
17 Assistant United States Attorneys

18
18 DEFENDANT (Via Telephone)

19
19 FEDERAL DEFENDERS OF NEW YORK
20 Attorneys for Defendant

20 BY: DAVID E. PATTON
21 -and-
21 DANIEL GREENE (Via Telephone)

22
22 ALSO PRESENT
23 Douglas Veatch, Postal Inspector
23 AARON MANGO, Assistant United States Attorney (Via
24 Telephone)
24 Linda Lewis, Deputy Clerk (Via Telephone)

25
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1 (Case called)

2 MS. LEWIS: I am Linda Lewis.

3 In the courtroom is Assistant United States Attorney
4 Aaron Mango.

5 We have the defendant present with the marshals.

6 And we have Daniel Greene from the Federal Defenders
7 office here in Buffalo.

8 THE DEPUTY CLERK: In New York, if we can go back,
9 this is 12 Mag. 2842, United States of America v. Paul Ceglia.

10 MS. LEWIS: Are you calling the case?

11 THE DEPUTY CLERK: I am.

12 MS. LEWIS: Hold on. I am going to turn on the
13 recording device.

14 THE DEPUTY CLERK: Very good. We have a court
15 reporter here in the Southern District.

16 MS. LEWIS: Then we won't do anything here then.

17 THE COURT: Please do.

18 THE DEPUTY CLERK: Go ahead and do your recording.

19 THE COURT: We need belts and suspenders.

20 THE DEPUTY CLERK: Are we still with you?

21 You're still here?

22 Tell us when you are ready to proceed.

23 We can barely hear you now, if there is some way that
24 you folks could speak up.

25 MS. LEWIS: Can you hear me better now?

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1 THE DEPUTY CLERK: Very much so.

2 The appearances here in the Southern District of New
3 York?

4 MR. FREY: For the government, Christopher Frey and
5 Janis Echenberg.

6 MR. PATTON: And David Patton with Federal Defenders
7 for Mr. Ceglia.

8 THE COURT: Good morning.

9 It is Judge McMahon.

10 Mr. Ceglia, are you present?

11 THE DEFENDANT: I am.

12 THE COURT: Thank you, sir.

13 I am going to keep my voice up.

14 I am in a very dark room with a little light bulb over
15 me, and I have a bunch of lawyers who are gathered around the
16 desk under adverse circumstances, but we need to have this
17 hearing and we need to have it today, and I would appreciate it
18 if everyone would cooperate by keeping voices up and speaking
19 slowly and distinctly.

20 The first order of business, it seems to me -- at
21 least I am advised by the magistrate judge in Buffalo who has
22 been very helpful -- is that the defendant needs to be examined
23 for eligibility for counsel. I think I would rather dispense
24 with that and go on to the hearing, unless we have some other
25 issue because we have no other way to conduct this hearing

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1 except with Mr. Patton who is the head of the Federal Defenders
2 of New York. We have gone right to the top, gotten the top man
3 here to represent Mr. Ceglia.

4 MR. PATTON: That's good with us, your Honor. If
5 Mr. Ceglia, it turns out, can afford to hire counsel, we can
6 deal with that when he arrives in the district.

7 THE COURT: I think that would be appropriate, so
8 let's deal with the issue at hand. This is the government's
9 application under 18, United States Code, Section 3145(b). It
10 is an appeal from the magistrate judge's order in Buffalo
11 admitting the defendant to bail on conditions that I should put
12 on the record. It is, surrender of the defendant and his
13 family's United States and Irish passports and \$21,000 in cash
14 to be posted by unidentified family and friends.

15 I have in hand Magistrate Judge McCarthy's decision.
16 The decision went counter to the recommendation of the pretrial
17 services office in the Western District of New York, Pretrial
18 Services Officer Curtis Middlebrooks who ascertained after an
19 interview that there appeared to him no condition or
20 combination of conditions that could reasonably assure the
21 defendant's appearance in court. I have a copy of that report.

22 I will note that yesterday I was on a number of calls
23 with the key office heads in this district, including the head
24 of pretrial services who offered to try to find someone who
25 could do a background investigation, and I said that I would

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1 rely, for purposes of this hearing, on the one that was done in
2 Buffalo which, after all, is where the defendant was when he
3 was arrested. We would be in no condition to interview him or
4 to check anything out.

5 MR. GREENE: I'm sorry, your Honor, to interrupt.

6 This is Daniel Greene from the Federal Defenders up
7 here in Buffalo.

8 Mr. Ceglia is just having too much trouble hearing
9 what you said right now. I am not sure if there is any way --
10 he cannot make out enough words to follow what is happening.

11 THE COURT: I am happy to start again.

12 Can Mr. Ceglia hear me more clearly now?

13 MR. GREENE: Yes, your Honor.

14 THE COURT: Pardon?

15 MR. GREENE: Yes, your Honor.

16 THE COURT: Let me say this again.

17 I have before me Magistrate Judge McCarthy's order
18 admitting Mr. Ceglia to bail on the posting of \$21,000 in cash
19 by unidentified family and friends and the surrender of his and
20 his family's United States and Irish passports.

21 I have the pretrial services report which Magistrate
22 Judge McCarthy elected not to follow, prepared by Curtis
23 Middlebrooks of Pretrial Services in the Western District of
24 New York.

25 My own pretrial services office reached out to me

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1 yesterday, but it appears to me that this is a thorough and
2 complete report from pretrial. I am not sure what, under the
3 adverse conditions we find ourselves in, our pretrial services
4 could have obtained by way of information that Pretrial
5 Services Officer Middlebrooks did not obtain. So that is the
6 pretrial services report that will be used and relied on for
7 purposes of this hearing.

8 In addition to those two documents, Judge McCarthy's
9 decision and the pretrial services report, I have a letter
10 dated October 28, 2012 on the stationery of the United States
11 Attorney's office for the Southern District of New York. I had
12 not seen this letter on Sunday when we had an emergency hearing
13 for the sole purpose of extending the stay that Judge McCarthy
14 had entered on Friday of last week, but I have that letter now.
15 I have seen it for the first time this morning.

16 Is there anything else in writing that anyone proposes
17 to give me before we get started?

18 MS. ECHENBERG: No, your Honor.

19 MR. PATTON: No, your Honor.

20 THE COURT: All right. The procedure, Mr. Ceglia,
21 will be that I will hear from the government first. It is
22 their appeal. I will then hear from Mr. Patton on your behalf.

23 I am sorry. I forget the name of the Federal Defender
24 who was on the phone -- Mr. Greene who was on the phone on
25 Sunday. Mr. Greene, if there is going to be anything that you

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1 want to add, I will certainly be happy to hear you. You have
2 been most helpful.

3 So with that said, I will hear from the government
4 loudly and slowly.

5 MS. ECHENBERG: Thank you, your Honor.

6 Janis Echenberg for the government.

7 The government concurs with pretrial services'
8 determination that the defendant should be detained in this
9 case for the following reasons.

10 First, the defendant has a very strong incentive to
11 flee here. The case, the evidence against the defendant is
12 extremely strong. We outlined some of it in our letter, but it
13 includes --

14 THE COURT: I have seen the criminal complaint. I
15 should say that I have read the criminal complaint.

16 MS. ECHENBERG: The evidence against the defendant
17 includes documents on his own computer and various electronic
18 media showing the manipulation of a contract, the fabrication
19 of the contract and the emails that support his civil case.

20 In addition, there is evidence on his own computer of
21 the actual contract, a true contract between the CEO of
22 Facebook, Mark Zuckerberg, and the defendant. And the evidence
23 on his own computer shows that that contract existed at the
24 relevant time as a contract between Mr. Zuckerberg and Mr.
25 Ceglia for work wholly unrelated to Facebook which did not even

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1 exist at the time of the purported contract.

2 And then the evidence further shows manipulation of
3 what we believe to be a valid contract into this manufactured
4 contract about which Mr. Ceglia has brought his civil action.

5 The penalties in this case, the potential penalties
6 are very severe. Because of the extremely large intended loss
7 amount here, Mr. Ceglia's lawsuit is asking for 50 percent of
8 Mr. Zuckerberg's interest in Facebook. And so because of that
9 very large intended loss, well over 400 million, the guidelines
10 range applicable is 324 to 405 months.

11 And as we noted in our letter, Mr. Ceglia has spent a
12 significant amount of time in prison before as a youthful
13 offender, so he understands these penalties and, therefore, has
14 a very strong incentive to flee.

15 Mr. Ceglia has significant ties to Ireland and he has
16 virtually no ties to New York. He has been living in Ireland
17 since April of 2011. He has been there with his wife and his
18 two children. The only time that he has returned to New York
19 since then has been for two very short trips. In one of those
20 trips, he was ordered by his civil judge to return. He
21 returned for four days and then later he returned for two days.
22 His children are home schooled. He doesn't have any employment
23 that is based in New York. It appears that his only tie to New
24 York at this point is his civil lawsuit which, given the
25 criminal case and the posture of that case and the fact that he

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1 has been pursuing his civil lawsuit for over a year from
2 abroad, does not seem to be enough to keep him here when he has
3 these very strong incentives to flee.

4 The defendant, as you know, is both an Irish citizen
5 and a United States citizen, and we've spoken to customs and
6 border patrol. And we have also looked on their web site and
7 we have found that it is possible for someone with a driver's
8 license and a birth certificate to cross the border. And once
9 he is in Canada -- and I would note that he lives quite close
10 to the Canadian border -- once he is in Canada, he can go to
11 Canadian authorities in Canada --

12 THE COURT: I thought you meant Irish authorities.

13 MS. ECHENBERG: Excuse me.

14 -- Irish authorities in Canada, and he could get
15 travel documents to return to Ireland where he has been living.
16 So the fact that he has been ordered to turn in his American
17 and Irish passports really does not keep him from getting back
18 to Ireland.

19 We have also been in touch with Department of Justice
20 employees who work on the issues of extradition, specifically
21 from Ireland and we have been advised that it is very
22 difficult, extremely difficult to extradite an individual from
23 Ireland. So if he is to flee --

24 THE COURT: Does that mean that there is no
25 extradition treaty? What does that mean?

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1 MS. ECHENBERG: There is an extradition treaty, your
2 Honor, but it is very difficult, as I understand, to enforce.
3 We have got some very rough numbers from our senior trial
4 attorney who works on those issues, and we understand that
5 since the treaty has been enforced in 1984 --
6 THE COURT: Since it was signed in 1984?
7 MS. ECHENBERG: Since it was entered into force,
8 correct, 1984, there have been 29 requests for extradition,
9 only eight of them have been granted, only three in the last 10
10 years.
11 THE COURT: And do you happen to know for what crimes
12 the extraditions were granted?
13 MS. ECHENBERG: I do. I can run through all of those
14 if you would like.
15 THE COURT: I would.
16 MS. ECHENBERG: One extradition was granted in May of
17 2011. That was a threat and extortion case. And it then took
18 three years to extradite the person after that.
19 In August of 2008, extradition was granted for a sex
20 offense. It took two years to extradite that person.
21 In October of 2006, extradition was granted for a
22 vehicular homicide. It took over seven years for that
23 extradition to take place.
24 In December of 1996, extradition was granted for a
25 fraud case. It took two years for that extradition to take

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1 place.

2 In February of 1994, extradition was granted for
3 terrorism and customs violations. It took four and a half
4 years for that extradition to take place.

5 In October of 1999, extradition was granted for
6 conspiracy, homicide and robbery. It took four and a half
7 years for that extradition to take place.

8 And in March of 1985, extradition was granted for
9 fraud and theft, but I do not have any information on how long
10 that extradition took place.

11 I would also note that, within the last 10 years, 10
12 extradition requests have been denied.

13 So that is what we are basing our understanding of the
14 difficulty with extradition.

15 The defendant has the ability to flee, in addition to
16 being able to walk over the border. He reported to customs
17 when he came through just a few days ago. On October 24th, he
18 returned to the country.

19 We were alerted immediately when he returned and we
20 sought an arrest warrant as quickly as we could. And as soon
21 as agents could get to him, he was arrested. So we acted as
22 quickly as we could because we believed that he was a very
23 strong flight risk if he were to learn of our investigation.

24 When he crossed the border, he reported that he had
25 \$21,000 on him. He has also told pretrial services that he

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1 collected approximately 25,000 from family and friends and that
2 he could also come up with about 20,000 for bail.

3 I don't know if all of those numbers are the same or
4 those are different numbers, but in any event, he has at least
5 \$21,000 at his disposal in cash.

6 He also reported to pretrial services that he had
7 \$258,000 worth of property, several different properties, so he
8 has access both to cash and other assets.

9 This case is about the ability to manipulate
10 documents. There is evidence of document manipulation, both in
11 the actual facts of this case. And, also, in our forensic
12 review of his electronic media, our forensic examiner found
13 evidence of attempted creation of a New York State driver's
14 license and of a United States currency. So even without his
15 passport or his driver's license or his birth certificate or
16 any of the documents that would normally allow him to enter
17 Canada -- assuming he tried to do that legally -- he has the
18 proven ability to create identification documents.

19 I would also note that if some bail conditions are set
20 by your Honor and he is ordered to voluntarily appear in the
21 Southern District of New York, it is my understanding that
22 pretrial services does not have the ability to monitor him
23 during --

24 THE COURT: That was my next question.

25 MS. ECHENBERG: -- that movement. Electronic

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1 monitoring works within a person's home, and it is usually shut
2 off or they don't monitor when the person is going places that
3 they have been allowed to go. So we are talking about a six-
4 or seven-hour drive, when it is my understanding there would be
5 no ability to monitor him. So for all of those reasons,
6 because the risk of flight is extremely high here, the
7 government believes that detention is appropriate.

8 THE COURT: Mr. Patton.

9 MR. PATTON: Thank you, your Honor.

10 It is worth noting at the outset that the government
11 bears a heavy burden here on a case that doesn't involve any
12 danger to the community.

13 THE COURT: It depends on your definition of "danger."

14 MR. PATTON: The government has not moved for
15 detention based on danger. Based on the government's own
16 request for detention, there is no issue of danger.

17 MR. GREENE: If I could ask you to speak up so that we
18 could hear you better.

19 MR. PATTON: Sure. We just moved the phone.

20 The government relies heavily on the allegations in
21 the complaint. Those allegations are hotly contested. This is
22 an extraordinarily unusual case in which the government is
23 bringing charges based on allegations that claims being made in
24 a civil suit are false before the judge in that civil case has
25 made any rulings about the veracity of those claims.

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1 I understand from having spoken with Mr. Ceglia's
2 civil attorneys, this is a big battle of the experts. They
3 have got one of the top guys from the Secret Service, a former
4 Secret Service forensic analyst who says exactly the opposite
5 of everything the government is saying in these charges about
6 the emails and about the contract dispute and the forensics.

7 So I would greatly dispute the government's
8 characterization of the evidence in this case.

9 Secondly, the penalties that the government throws out
10 there, that the intended loss amount is half of Facebook's
11 value and therefore --

12 THE COURT: Which is a moving target.

13 MR. PATTON: Fair enough, and not moving in Facebook's
14 direction.

15 The claim that somehow Mr. Ceglia realistically is
16 facing these astronomical amounts of time in jail is just
17 crazy.

18 I suppose it is theoretically possible, but this Court
19 knows as well as anyone what typical fraud sentences are, and
20 on a case like this where there isn't actually a dime of actual
21 loss, that, to me, seems absurd. I can tell you that, were I
22 to stay on this case as Mr. Ceglia's attorney and I sat down
23 with him and talked to him about the risks and rewards on this
24 case and the pros and cons of him fleeing the United States --
25 fleeing the town where he has been born and raised and has

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1 lived virtually his entire life where his parents have lived
2 for the past 30 years, where his wife and children and all of
3 his other family reside, where his mother-in-law is dying
4 cancer -- to avoid these charges and live in perpetual exile in
5 Ireland, given what he is realistically facing on this case, he
6 would have to be out of his mind to do that. So the incentives
7 to flee just aren't there at all.

8 The idea that it is difficult to extradite somebody
9 from Ireland, to me, should carry very little weight. We are
10 not talking about Venezuela here. We have no statistics on
11 Ireland as compared to other countries. It is difficult to
12 extradite anyone from anywhere, and it is a lengthy process.
13 Two to three to four years doesn't sound to me like any
14 different extradition process that I know of. We just had a
15 case come in from the U.K. that took 10 years to extradite.

16 THE COURT: Kind of an extraordinary case, Mr. Patton.

17 MR. PATTON: Fair enough, but two to three years
18 doesn't sound extraordinary to me at all. So the fact that he
19 would he hole up in Ireland, given all that he has to lose
20 here -- he owns property here. Yes, the government has noted
21 what the rough assessment of those properties is, \$258,000.
22 They failed to mention that his equity on those is about
23 \$38,000. So he would be fleeing his primary business which is
24 property management of these relatively low-priced houses that
25 he rents out and manages, that he would leave that behind, that

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1 those would disappear to the bank, that he would leave his
2 parents holding the bag on a signature bond, which is what we
3 would ask for, that if your Honor is inclined to do anything to
4 change the bail conditions already set in this case, that
5 requiring a \$100,000 bond with his parents co-signing it, which
6 from my understanding, again, in talking to his civil
7 attorneys, \$100,000 would be probably their entire net worth,
8 that he would bankrupt his parents in the small hometown where
9 they have spent the past 30 years so that he could go spend the
10 rest of his life in hiding --

11 THE COURT: Do they own a home?

12 MR. PATTON: They do, your Honor. I don't know what
13 the equity on the home is, maybe Mr. Greene can help out, but
14 my understanding is they have owned a fairly moderate-priced
15 home for a very long time.

16 THE COURT: Mr. Greene, do you have any intelligence?

17 MR. GREENE: \$50,000, your Honor.

18 THE COURT: I missed that.

19 MR. GREENE: \$50,000.

20 They also own a second building in Wellsville that is
21 worth approximately \$60,000.

22 THE COURT: Do they own that free and clear?

23 MR. GREENE: In equity, there is \$60,000 in equity.

24 THE COURT: So \$50,000 equity in the parents' home and
25 \$60,000 in the second building in Wellsville?

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1 MR. GREENE: Yes.

2 THE COURT: Mr. Patton.

3 MR. GREENE: Your Honor, it is my understanding from
4 my client, they also have about \$100,000 in equity in other
5 property.

6 THE COURT: Go ahead, Mr. Patton.

7 MR. PATTON: So given that information, a \$100,000
8 personal recognizance bond is something that they could
9 satisfy, but not easily which means it is a heck of a lot of
10 incentive for him not to flee because it would essentially ruin
11 them.

12 The idea that it is worth it for him to flee this
13 case, more so than the hundreds of other defendants who come
14 through who have bail conditions set doesn't seem to me to be a
15 very forceful argument, and I think the Court should set those
16 conditions.

17 MS. ECHENBERG: May I respond?

18 THE COURT: Response from the government.

19 MS. ECHENBERG: Yes, your Honor.

20 One thing that I want to note that was in our letter,
21 but I just want to point it out, what makes this case different
22 than another defendant facing serious charges is that this
23 defendant was living in Ireland, and we believe he went to
24 Ireland to avoid a separate investigation. As we noted in our
25 letter, the defendant has said to the press in public reports

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1 that he went to Ireland --

2 THE COURT: Do you have copies of those?

3 MS. ECHENBERG: I do on my BlackBerry, your Honor. I
4 apologize. I don't have anything printed out but I could
5 certainly get something for the Court.

6 THE COURT: Do you have your BlackBerry?

7 MS. ECHENBERG: I could find it. I'm not sure how
8 quickly I could find it.

9 THE COURT: Odd how you think I would not be
10 interested.

11 MS. ECHENBERG: I apologize, your Honor. The article
12 I saw was from a local newspaper where the defendant stated
13 that he left for Ireland because he was being harassed from
14 Facebook's attorneys. It is my understanding that Facebook's
15 attorneys have hired private investigators to look into a
16 variety of things, including an alleged property scam in
17 Florida. And because that was being looked into, among other
18 reasons, the defendant left for Ireland. He said, he wanted to
19 avoid harassment, but we believe it is because he thought that
20 he was being investigated by law enforcement in Florida. So if
21 even an investigation could trigger him to leave, certainly a
22 prosecution could.

23 In addition, I do not believe the lawsuit in the civil
24 case is hotly contested. While Mr. Patton is correct that it
25 goes on, there has been an extended process on the motion to

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1 dismiss. My understanding is that Facebook will be responding
2 to Mr. Ceglia's --

3 THE COURT: Does the government have reason to believe
4 that the defense has not in fact hired an expert who is a
5 former Secret Service forensic computer person?

6 MS. ECHENBERG: They have, your Honor. And from what
7 I know about that person -- if I could just consult with my
8 co-counsel for one moment, I just want to make sure that I get
9 this right.

10 THE COURT: Sure.

11 MS. ECHENBERG: So this expert -- I believe we are
12 talking about the same person -- was involved in the Martha
13 Stewart case and was either -- was convicted of perjury in
14 connection with the Martha Stewart case.

15 THE COURT: The name of the expert?

16 MS. ECHENBERG: I'm sorry. It's been very difficult
17 to have access to anything.

18 THE COURT: A perjury conviction?

19 MS. ECHENBERG: We can send an email right now and we
20 can probably get that name by the end of this proceeding.

21 As I understand it, there were depositions in the
22 civil case in which that expert admitted or testified to doing
23 some of the same things with evidence that resulted in his
24 perjury conviction in the Martha Stewart case.

25 THE COURT: You mean there are depositions in the
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1 civil case?

2 MS. ECHENBERG: There are depositions in the civil
3 case just with respect to the motion to dismiss. There was
4 expedited discovery of the experts, just with respect to the
5 two Facebook motions to dismiss.

6 THE COURT: I say that is very odd because motions to
7 dismiss are addressed to the four corners of the complaint and
8 expert testimony is not admissible on such motions.

9 MS. ECHENBERG: That is my understanding of what is
10 happening in the civil case. There is expedited discovery
11 requiring Mr. Ceglia to turn over all of his electronic media
12 so that it can be reviewed. Experts reviewed that. They also
13 reviewed the alleged contract, took ink samples and that sort
14 of thing with an eye towards the motion to dismiss.

15 THE COURT: It sounds like a motion for summary
16 judgment to me, but OK.

17 MS. ECHENBERG: Excuse me. That is probably right. I
18 have forgotten my civil terminology.

19 So I don't think relying on that expert really gets us
20 very far. And the government has hired an independent expert
21 not related to any of these experts. We got a search warrant
22 for the electronic media. And our expert has reviewed it and
23 found what I have told your Honor.

24 In addition, we got emails from Harvard, including
25 emails from 2003 which are contemporaneous with some of the

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1 emails, the alleged emails that Mr. Ceglia relies on in his
2 complaint. Those emails just don't exist in the backup tape
3 from 2003. So there is no expert involved in that analysis.
4 That is just clear-cut evidence indicating that the emails in
5 the civil complaint are fabricated.

6 With regard to the \$400 million number, I agree with
7 your Honor that Facebook's value is a moving target --

8 THE COURT: With regard to the \$400 million, there is
9 no judge in the Southern District of New York that comes down
10 harder on fraud defendants than this one. This guy isn't
11 looking at 360 months. Mr. Patton is correct. He is also not
12 looking at short time, at least not if he were to be convicted
13 and I were to be his judge -- and I think there would be other
14 people who would feel the same way -- he is not looking at 90
15 days, but he is not looking at 360 months.

16 MS. ECHENBERG: And with respect to extradition, I
17 would just note that we were advised again by the senior trial
18 attorney who handles this that Ireland does stand out --

19 THE COURT: I will accept that there are issues with
20 extradition.

21 MS. ECHENBERG: So, again, the government requests
22 detention in this case.

23 THE COURT: I need more information. I need more
24 information. But I will tell you what. It appears to me from
25 reading the criminal complaint that the strength of the

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1 government's case is overwhelming. The government's forensic
2 analysis of the defendant's own computers, the evidence not
3 only of fraud in connection with this case but of other
4 fraudulent-style activities including the counterfeiting of
5 United States currency and the manufacture of a New York State
6 driver's license and the Harvard emails which I had
7 particularly noted when I read the criminal complaint -- or I
8 should say the lack of the Harvard emails which I had
9 particularly noted when I read the criminal complaint --
10 suggests to me that the government will have a strong case --
11 no case is impregnable, but the government will have a strong
12 case against the defendant for the manufacture of documents,
13 the fact that manufacture of documents in connection with a
14 lawsuit that the government alleges plausibly is designed to
15 extort.

16 Now, it is absolutely true that in 999 civil cases out
17 of a thousand, the civil case gets to run its course, but it is
18 not unprecedented for civil cases to be interrupted by
19 indictments. I have had several on my calendar over time.
20 Other judges have as well, and it is not automatic but it is
21 often the case that the civil action takes a backseat to the
22 criminal action when the same set of facts yields a criminal
23 complaint or an indictment, some sort of a criminal proceeding.

24 It has been suggested by the defense that the veracity
25 of the government's forensic evidence, at least insofar as it

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1 relates to the examination of the defendant's own computers, is
2 going to be hotly contested.

3 I would like to know the name of the expert who is
4 going to contest it. I would like to know his background.

5 MR. GREENE: Your Honor, I have that information.

6 THE COURT: I would like to know his background, and I
7 would like to know if he has indeed been convicted of perjury,
8 that is germane to me.

9 Mr. Greene.

10 MR. GREENE: The expert's name is Larry Stewart. He
11 was acquitted of the charge of perjury.

12 THE COURT: Larry Stewart, S-T-E-W-A-R-T?

13 MR. GREENE: Yes, your Honor.

14 THE COURT: Acquitted of the charge?

15 MS. ECHENBERG: Let me just make a clarifying point.

16 It is my understanding that Facebook, with their own
17 computer forensic expert, has analyzed Mr. Ceglia's computer.

18 The government independently has analyzed Mr. Ceglia's
19 commuter.

20 I don't believe that there has been any experts on the
21 side of Mr. Ceglia with regard to the computer. The experts
22 have been with regard to the contract itself, meaning the ink,
23 the print and the other issues with regard to the computer.

24 I apologize for not being clear on this before. I
25 don't think that there is any battle of the experts -- and

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1 certainly Mr. Greene can jump in if I am getting this wrong --
2 but I don't believe that there is any battle of the experts
3 with regard to the electronic media and what is one --

4 THE COURT: Mr. Greene, can you clarify that for me?

5 MR. GREENE: Yes. It is Mr. Neil Broom that is the
6 expert that addressed that issue.

7 THE COURT: Mr. Neil --

8 MR. GREENE: Broom, B-R-O-O-M.

9 THE COURT: Mr. Broom is the person who has opined on
10 Facebook's allegation that the contract is false, and you are
11 saying that there is another expert, this Larry Stewart person?

12 MR. GREENE: Yes.

13 THE COURT: And has he examined the computers?

14 MR. GREENE: He has worked on the computer.

15 Your Honor, Mr. Ceglia insists on addressing the Court
16 on this issue. I have advised him as to the issues as
17 presented, the fact that what he says may be used against him.
18 He insists on speaking to this issue.

19 THE COURT: I am sure you have advised him, and I will
20 advise you, Mr. Ceglia, that anything that you say to me is
21 being taken down by a court reporter in the presence of the
22 United States Attorney and can and will, if necessary, be used
23 against you.

24 THE DEFENDANT: I understand, your Honor.

25 Your Honor, I would just like, since I have some

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1 familiarity with this case over two years of litigating it in
2 the civil case, I know the details of these things very
3 specifically and I just wanted to address those.

4 The so-called images that they found on my personal
5 computer of the contract, they were evaluated by Neil Broom
6 quite in-depth and the computer itself was found to have
7 mal-ware and the remnants of what was very clearly hacking that
8 had taken place on the computer as well as the fact that even
9 Facebook's own experts admitted that the images that they found
10 were scanned in an order that was physically impossible, which
11 made it impossible for those images to have been naturally
12 created on that computer and that they had to have come from an
13 outside source.

14 We have quite a bit of evidence in the case to support
15 the fact that at that point in time Mark Zuckerberg was quite
16 an experienced hacker.

17 And we have rebutted each and every allegation outside
18 of this idea that there is something to do with a 100-dollar
19 bill and a driver's license which is the first mention of this
20 that I have ever heard of.

21 The experts that the government have, have not even
22 observed the original contract. I mean, they are accusing me
23 of this fraud and the original contract still sits in a safety
24 deposit box under a civil attorney's name.

25 So I seriously question what kind of forensic work

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1 could conceivably be done when we have hired not just Larry
2 Stewart, but the former head of the Secret Service's forensic
3 division and he has attested under oath that the contract is
4 authentic -- not just that it is consistent, but that it is
5 authentic.

6 They also produced a report by James Blanco who is
7 another world renown forensic expert. He also examined the
8 documents and very clearly also has stated that the document is
9 authentic. And this goes into great detail, but there have
10 been over 500 pages of expert reports submitted by world-class
11 experts to support the authenticity of the contracts. The fact
12 that the government, that the prosecution is attempting to
13 slight world renown experts for their benefit I think is wrong.
14 And Mr. Stewart is an incredibly well respected individual who
15 was wrongly accused of perjury and was acquitted on all of
16 those charges.

17 Thank you, your Honor.

18 THE COURT: Thank you, Mr. Ceglia.

19 THE DEFENDANT: Your Honor, if I could give you one
20 detail, give you an example of the other?

21 THE COURT: Mr. Ceglia, I don't think it is a good
22 idea for you to talk to me. I also can't stop you from talking
23 to me. I have warned you what the consequences might be, so
24 has Mr. Greene.

25 THE DEFENDANT: Thank you, your Honor.

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1 MR. GREENE: Mr. Ceglia has concluded speaking.
2 Your Honor, if I could also address a couple of
3 issues?

4 THE COURT: Thank you, Mr. Greene.

5 MR. GREENE: The youthful offender issue noted by the
6 government, Mr. Ceglia was not in prison for any amount of
7 time. He was put on supervision for five years. He was not
8 incarcerated.

9 Mr. Ceglia knows of no Florida property scheme as
10 raised by the government.

11 Also, the issue of the money that he has access to,
12 the \$25,000, the \$21,000 cash and the \$20,000 that he could
13 raise, that all refers to the same \$21,000 currently that would
14 be turned over under Judge McCarthy's old order.

15 Finally, as far as the electronic monitoring
16 possibility, Mr. Ceglia has a home in Wellsville and has a
17 landline. My understanding from probation, that as long as
18 there is a landline phone that electronic monitoring could be
19 connected to, that Mr. Ceglia would be a candidate for
20 electronic monitoring.

21 THE COURT: Unquestionably, Mr. Greene, he is a
22 candidate for electronic monitoring. The problem is the need
23 to transport him from time to time from Wellsville to New York
24 City.

25 MR. GREENE: That is just a matter of indicating to

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1 probation when that travel will take place and allow for it.

2 THE COURT: Yes, I know they allow for it. The
3 government is concerned that he won't come southeast, he will
4 go northwest.

5 MR. GREENE: I know that the driver's license issue
6 was brought up as far as admission into Canada. My experience,
7 and this is just based on being in Buffalo, that only a
8 passport-enhanced driver's license that can gain admission to
9 Canada for a U.S. citizen. Mr. Ceglia does not have such an
10 enhanced driver's license.

11 THE COURT: What is an enhanced driver's license?

12 MR. GREENE: I'm sorry?

13 THE COURT: What is an enhanced driver's license?

14 MR. GREENE: It is, essentially, a special driver's
15 license that the government or the office of the border patrol
16 can give to someone who has showed them a passport, given them
17 proof of citizenship in a way to make travel over the border --

18 THE COURT: It is like a trusted traveler thing at the
19 airport, something like one of those trusted travelers at the
20 airport?

21 MR. GREENE: I guess so, yes, your Honor.

22 THE COURT: Do you happen to know or does anyone
23 happen know if there is any difference with respect to the
24 presentation of Irish as opposed to American documents at the
25 Canadian border?

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1 MS. ECHENBERG: I don't know the answer to that
2 question, your Honor, but I do know that we checked the
3 Department of Homeland Security web site this morning and it
4 reflects that just a regular driver's license and birth
5 certificate are all that are needed, and that is consistent
6 with what customs and border patrol told us on Friday when we
7 inquired to them.

8 I would also note that the safety deposit box that the
9 defendant referred to, that safety deposit box was closed in
10 May of 2012.

11 MR. GREENE: I'm sorry. I didn't hear that last part.

12 MS. ECHENBERG: The safety deposit box where the
13 alleged contract had been housed by Mr. Ceglia and his
14 attorney, that safety deposit box was closed, according to the
15 bank, in May of 2012.

16 THE COURT: Well, I will tell you what I am inclined
17 to do, and it is always subject to review as more information
18 becomes available.

19 This is the sort of a case where a defendant would
20 ordinarily be admitted to bail. The bail is grossly
21 inadequate, grossly inadequate given the strength of the
22 government's case, the amount of the alleged fraud, the
23 significant penalties even if they be not 360 months -- the
24 significant penalties that the defendant is facing, the fact
25 that he apparently has provided inaccurate information to the

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1 probation department in connection with the preparation of the
2 report -- which I very much don't appreciate -- all of those
3 things augur for bail substantially in excess of \$21,000. I
4 see no moral suasion in that bail -- none whatsoever.

5 I am prepared to admit the defendant to bail with
6 substantial modifications.

7 I am prepared to admit him to bail on a \$250,000
8 recognizance bond signed by three substantially responsible
9 persons acceptable to the Court and secured with all of his
10 parents' real estate and with the equity in his own real
11 estate.

12 Additionally, electronic monitoring with strict
13 probation supervision and complete probation access to his
14 computers, to any computers used by the defendant at home or at
15 his place of business. I say "used by," "not owned by."

16 And I am not sure whether probation can come up with
17 appropriate filtration software to prohibit certain kinds of
18 activity. I don't know if this is the kind of case where that
19 is even possible. This is not like a kiddie porn case, but the
20 defendant stands accused of serious crimes for which the
21 government has substantial evidence of his use and misuse of
22 computers. I appreciate that there may be two sides to the
23 story, but the government's evidence is strong and I do not
24 discount it simply because the defendant has someone who is
25 willing to challenge the government's evidence.

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1 Electronic monitoring at the defendant's expense with
2 travel restricted to the Western District of New York within a
3 15-mile radius of the defendant's home.

4 Have we gotten to the Canadian border yet?

5 MR. GREENE: No, your Honor. That is well south of
6 Rochester.

7 THE COURT: That's what I thought.

8 And for trips to visit pretrial in, I assume,
9 Rochester -- I assume that's where he would be supervised,
10 given where Wellsville is located -- and to the Southern
11 District of New York for court appearances.

12 A border watch should, of course, be put out for the
13 defendant.

14 And all travel documents surrendered, whether of U.S.
15 or Irish provenance.

16 I am somewhat concerned about the aspect of the
17 magistrate judge's order that demanded the surrender of travel
18 documents for his wife and children. They don't stand accused
19 of anything. I am not sure why that was part of the order. I
20 am not sure if that was legal.

21 Can anybody enlighten me on this?

22 MR. PATTON: I have never heard of that as a condition
23 in this district, your Honor.

24 MR. GREENE: Your Honor, I believe that was at the
25 suggestion that, if Mr. Ceglia were to flee, he would flee with

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1 his family; they were also traveling with him through 2011 and
2 2012.

3 THE COURT: That I understand. I am prepared to let
4 that portion of the order stand until such time as somebody
5 representing Mr. Ceglia may wish to challenge the legality of
6 that part of order because it is totally unknown to me, but I
7 am going to guess that Judge McCarthy knew what he was doing
8 and I am prepared to let that portion of the order stand.

9 MR. PATTON: Judge, just for the record, I will object
10 to that condition.

11 THE COURT: Thank you, Mr. Patton. I am perfectly
12 willing to review it if you are ever able to get power and can
13 do some research, but I am adamant about the \$250,000 personal
14 recognizance bond, the co-signers and the real estate security
15 coming from his parents.

16 I want Mr. Ceglia -- sir, you need to understand
17 something about me. I have no compunction about taking
18 people's parents' homes away and heaving them homeless on the
19 street -- none whatsoever.

20 THE DEFENDANT: I understand, your Honor and I will
21 take every court date very seriously. I appreciate it.

22 MR. PATTON: Your Honor, on the co-signers, could I
23 ask, just so that we can expedite this process for them
24 upstate, that the co-signers be allowed to be his parents and
25 his wife, and then we can just designate those?

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1 MR. GREENE: Could that be repeated just louder,
2 please?

3 MR. PATTON: I am just making a request as to the
4 co-signers, that the three co-signers that we can just
5 designate them now as his parents and his wife.

6 THE COURT: As long as they are acceptable to the
7 government. Since the parents are going to have to put all of
8 their real estate up, I cannot see any particular reason why
9 the parents should not be co-signers. That will take care of
10 the rest of their assets.

11 It is not clear to me that his wife has any assets
12 that he does not.

13 MR. PATTON: I don't know that either, your Honor, but
14 she would certainly be on the hook if he were to flee.

15 MR. GREENE: Judge, she is co-owner of the property
16 with Mr. Ceglia.

17 THE COURT: I think it should be a third independent
18 person.

19 MS. ECHENBERG: Your Honor, I would just note that at
20 least the defendant's mother is also an Irish citizen, so there
21 is the possibility that the entire family could flee. They
22 have all spent a significant part of the last year --

23 THE COURT: As I said I am perfectly happy to bankrupt
24 them. I am perfectly happy to take their real estate and to
25 sell it, if that is what they choose, but I don't think that

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1 the defendant's wife should be the third co-signer. The
2 parents I will accept as co-signers, but the third person
3 should be an independent individual with some net worth. It
4 would expedite matters and we could call upon the good offices
5 of the folks in Western District to, in the first instance,
6 pass on the propriety of the co-signers and send their
7 recommendation down here, that would be helpful.

8 I am quite serious with the restriction in terms of
9 mileage on the electronic monitoring.

10 MS. ECHENBERG: Your Honor, I am not sure there is any
11 way to enforce that 15-mile radius. I believe if he has a
12 bracelet, it is tied to something in his home. If he leaves
13 his home, the bracelet alerts.

14 THE COURT: I understand that. I am restricting
15 travel to 15 miles.

16 MS. ECHENBERG: Even approved travel?

17 THE COURT: Approved travel.

18 MS. ECHENBERG: So he is in his home --

19 THE COURT: He is in his home. He is, in effect, a
20 prisoner in his home when he is on electronic monitoring. And
21 I am not willing to release him until the electronic monitoring
22 is set up and until we have full satisfaction of the financial
23 conditions. We do have to arrange for Mr. Ceglia to appear
24 down here. I don't know how long it will take for the
25 financial conditions to be satisfied.

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1 All of the other standard conditions of bail in the
2 Southern District of New York other than travel in the Southern
3 and Eastern Districts -- that is not a condition here -- the
4 only time he needs to be in the Southern District is when he is
5 here for court and he doesn't need to go to the Eastern
6 District to get to this courthouse from Wellsville, New York.

7 Mr. O'Neil, do we have a list of the other conditions?
8 We rarely impose bail.

9 MS. ECHENBERG: Your Honor, I think this is obvious,
10 but are you imposing strict pretrial services supervision?

11 THE COURT: Strict pretrial supervision. That means
12 frequent visits to and from your pretrial services officer.

13 And, Mr. Ceglia, let me explain how electronic
14 monitoring works.

15 You will have a bracelet, and you have to have in your
16 home a landline telephone that does not have call forwarding,
17 call waiting or any access to a modem, and that number will be
18 called from time to time by your pretrial services officer. If
19 you are not there to answer the telephone, a warrant for your
20 arrest will issue promptly.

21 THE DEFENDANT: OK, your Honor. Does that mean that
22 if my landline has call forwarding --

23 THE COURT: It means it is going to have to change.
24 It cannot have call waiting, call forwarding, caller ID. You
25 may have to set up a separate landline for this.

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1 THE DEFENDANT: Technically, the phone shouldn't be
2 used for anything but calling the officers?

3 THE COURT: It gets set up with pretrial services, but
4 the conditions are no call forwarding, no caller ID, no call
5 waiting and no modem, and that is true of every electronic
6 monitoring that we order in this district. That's so that
7 nobody one can look at the phone and know that it is the
8 pretrial service officer that is calling. No one can forward a
9 call so that you can be at another location. In other words,
10 the idea is, if you are not there to pick up the phone, you are
11 in trouble.

12 I need to find the rest of the standard conditions.

13 MS. ECHENBERG: I think that the only one that hasn't
14 been noted is no new travel applications.

15 THE COURT: No new applications anywhere on the planet
16 for new travel documents.

17 MS. ECHENBERG: I think that we have covered the other
18 standard conditions, your Honor.

19 THE COURT: I have no idea whether I will ultimately
20 be the judge in this case. I am here sitting in Part 1 on
21 review. It will get wheeled out eventually to someone.

22 MS. ECHENBERG: On that note, your Honor, I believe
23 that we need to set a preliminary hearing date because this was
24 an arrest on a complaint.

25 MR. GREENE: Your Honor, if I can notify the Court --

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1 THE COURT: I thought, according to Magistrate Judge
2 McCarthy, that the defendant waived preliminary hearing or just
3 the preliminary hearing before him? My question is, do we need
4 to wheel this case out today?

5 MS. ECHENBERG: It is on a complaint.

6 THE COURT: We do not.

7 MS. ECHENBERG: So we cannot wheel it out.

8 THE COURT: Then the hearing will be in magistrate's
9 court, right?

10 You will have to forgive my lack of familiarity with
11 magistrate's court.

12 MR. PATTON: Because I am not standing next to
13 Mr. Ceglia, I cannot have this conversation with him; perhaps
14 Mr. Greene can talk to him about whether or not he wants to
15 waive a preliminary hearing until the 30th day. That doesn't
16 mean that the preliminary hearing is waived altogether, but it
17 allows more time before --

18 THE COURT: And the 30th day from this complaint is
19 November --

20 MS. ECHENBERG: 29th, I believe.

21 THE COURT: You filed the complaint when?

22 MS. ECHENBERG: October 26th is when he was arrested.

23 THE COURT: 30 days would be November 25th, which is a
24 Sunday, so it would be November 26th.

25 Mr. Greene.

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1 MR. GREENE: Mr. Ceglia would waive his preliminary
2 hearing until November 26th.

3 THE COURT: Fine. Then I am going to set the
4 preliminary hearing for November 26th.

5 MS. ECHENBERG: Thank you, your Honor.

6 THE COURT: 11 a.m., magistrate's court.

7 MS. ECHENBERG: May I raise one logistical matter?

8 I think you had alluded to this, but given our court
9 is technically not open, it seems that actually creating the
10 bond and what needs to be done so that the defendant can meet
11 those conditions will need to be done elsewhere, and I don't
12 know if the Western District of New York can do that, or
13 perhaps we should talk to the courthouse in White Plains.

14 THE COURT: The courthouse in White Plains is open and
15 fully functional. If you need to do that here, I would urge
16 you to do that. If it can be done in the Western District,
17 fine. We can email up a transcript -- God bless our court
18 reporter for coming in today. We can mail up a transcript, but
19 if it has to be done here, White Plains is 20 miles to the
20 north -- easily accessible if you don't try to take the Bronx
21 River Parkway which is flooded between Virginia Avenue and the
22 spring, as it always is when it rains.

23 Anything else that we need to do today?

24 MS. ECHENBERG: No, your Honor.

25 MR. GREENE: Your Honor, Mr. Ceglia wanted to notify

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1 the Court and the government there that his parents might have
2 succeeded in making it to the hearing. They were outside of
3 the courthouse earlier today and wanted to be there also to
4 identify themselves as co-signers. And he also wanted to put
5 forward a third co-signer, a friend by the name of Merv
6 Freeman -- I'm sorry -- Lehman.

7 THE COURT: Spell the name.

8 MR. GREENE: L-E-H-M-A-N.

9 THE COURT: Mr. Lehman.

10 I don't want to sever this telephone connection, but
11 we have an Assistant United States Attorney in the room up
12 there in Buffalo, that my Assistants down here can talk to the
13 Assistant up there about what information needs to be procured.

14 And to expedite the process, I would love to call once
15 again upon the good offices of our friends in the Western
16 District of New York to run the necessary background checks.

17 You people have been remarkably helpful. Thank you
18 very much.

19 MR. PATTON: Just, Dan and Mr. Ceglia, to let you
20 know, your parents are not here in the courtroom.

21 THE DEFENDANT: OK. Thank you.

22 MS. ECHENBERG: Mr. Mango, perhaps we can speak if you
23 can stay on the line because I am just not sure we will get
24 another telephone connection and perhaps we can speak for a few
25 minutes after this conference ends.

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1 MR. MANGO: Sure. If you would like, you can call me
2 at my office.

3 MS. ECHENBERG: I am just not certain that we can get
4 another phone number. This 1-800 number seems to be the only
5 number that we were able to reach.

6 THE COURT: We are having tremendous phone
7 difficulties in lower Manhattan.

8 MR. MANGO: Sure.

9 THE COURT: It is really extraordinary. There has not
10 been anything quite like it except for 9/11, so we are dancing
11 as fast as we can, but I did not want to put Mr. Ceglia's
12 hearing off any longer.

13 OK, folks, you know where to reach me if you need me.
14 I am on duty for the rest of the week.

15 Thank you very much.

16 Especially thank you, Mr. Greene, for all of your
17 assistance and Mr. Patton or being here today.

18 MR. PATTON: Thank you, your Honor.

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