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

PAUL D. CEGLIA,  
Plaintiff,  
vs.  
MARK ELLIOT ZUCKERBERG,  
Individually, and FACEBOOK,  
INC.,  
Defendants.

\_\_\_\_\_ /

110 East Broward Blvd.  
Fort Lauderdale, Florida  
September 24, 2012  
9:00 a.m. - 11:45 a.m.

VIDEOTAPED DEPOSITION OF ERICH SPECKIN

Taken before SUZANNE VITALE, R.P.R., F.P.R.  
and Notary Public for the State of Florida at Large,  
pursuant to Notice of Taking Deposition filed in the  
above cause.

1 APPEARANCES:

2

3 On behalf of Plaintiff:

4 BOLAND LEGAL, LLC

1475 Warren Road

5 Unit 770724

Lakewood, Ohio 44107

6 BY: DEAN BOLAND, ESQ. (via telephone)

7

8 On behalf of Defendants:

9 GIBSON DUNN & CRUTCHER LLP

200 Park Avenue

10 New York, NY 10166-0913

BY: AMANDA M. AYCOCK, ESQ.

11 ALEXANDER H. SOUTHWELL, ESQ.

12

13 ALSO PRESENT: Paul Calcatara, Videographer

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I N D E X

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DEFENSE EXHIBITS

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<b>Exhibit 1</b>	<b>Resume</b>	<b>14</b>
<b>Exhibit 2</b>	<b>Three Pages/Handwritten</b>	<b>47</b>
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1 Thereupon, the following proceedings were had:

2 THE VIDEOGRAPHER: We're on the record.

3 The time is 8:59 a.m. Today's date is  
4 September 24, 2012. This is the beginning of  
5 Media Unit 1 in the deposition of Erich  
6 Speckin.

7 The style of the case is Paul D. Ceglia  
8 versus Mark Elliot Zuckerberg, individually,  
9 and Facebook, Inc. Case number is  
10 1:10-cv-00569-RJA.

11 The videographer is Paul Calcatara with  
12 Veritext. The court reporter is Suzanne Vitale  
13 with Veritext.

14 Counsel, please state their names for the  
15 video record.

16 MR. SOUTHWELL: Alexander Southwell on  
17 behalf of the defendants, and with me is Amanda  
18 Aycock, also for the defendants.

19 MR. BOLAND: Dean Boland on behalf of the  
20 plaintiffs, appearing by phone.

21 Thereupon:

22 ERICH SPECKIN  
23 a witness named in the notice heretofore filed,  
24 being of lawful age and having been first duly  
25 sworn, testified on his oath as follows:

1 DIRECT EXAMINATION

2 BY MR. SOUTHWELL:

3 Q. Good morning.

4 A. Good morning.

5 Q. Before we formally start, or before we get  
6 into the questions, I'm going to give you here a  
7 check for \$1,600, which is your fee for your  
8 appearance for the deposition today.

9 A. Correct. Thank you.

10 Q. There you go.

11 You've been deposed before; is that right?

12 A. I have.

13 Q. And you understand that I'm going to ask  
14 you questions and you try to answer fully. Wait  
15 until I finish asking the question, and I'll try to  
16 wait until you're finished answering before I ask  
17 the next one, okay?

18 A. Of course.

19 Q. The judge here has a couple of specific  
20 rules, specifically if you need clarification, a  
21 definition or an explanation of a question, you are  
22 to ask deposing counsel, me, rather than plaintiff's  
23 counsel.

24 Do you understand that?

25 A. Fair enough.

1           Q.    And you and plaintiff's counsel -- again,  
2           this is one of the judge's rules -- may not engage  
3           in any private conversation during the deposition or  
4           on a break except to determine whether to assert a  
5           privilege.

6                     Do you understand that?

7           A.    Fair enough.

8           Q.    Okay.  And obviously, if you need a break  
9           at any time, you know, please, just let me know.

10          A.    Just so you know, I usually try to take a  
11          break on the hour, even for two minutes, just to  
12          walk around and come back.

13          Q.    That's fine.  Often the videographer needs  
14          to change tapes around that time anyway, so that  
15          should work.

16                     Now, I know it's been a while since you've  
17          thought about this kind of work, in particular, and  
18          probably also about this case, so I just want to go  
19          back over your involvement in the case sort of very  
20          generally.

21                     At some point, you were approached about  
22          being retained and ultimately retained by the  
23          plaintiff in this litigation, right?

24          A.    By counsel for the plaintiff, that's  
25          correct.

1           Q.    And what do you remember about the  
2           circumstances that led to your retention and  
3           approximately when it occurred?

4           A.    It was sometime last year.  I believe I  
5           was first contacted in July, because I believe I was  
6           in Africa at the time, by Larry Stewart, called me  
7           and asked if I would be interested.

8                    He had been or was close to being retained  
9           by an attorney from San Diego, Jeff Lake, I believe  
10          was his name.  And also the proposed examination  
11          site I was told was in Chicago and would I be able  
12          to get some instruments from my Michigan office to  
13          the Chicago office where this examination was going  
14          to occur.  And I said we could do that.

15                   We covered what I would want to be paid in  
16          advance, on the phone, and I know he ran through a  
17          quick summary of what had happened in the case.

18                   I had heard about the case for some time  
19          and where things were.  I believe at that point,  
20          other experts were scheduled to sample the documents  
21          but had not yet, I believe.

22                   I think I was told the first person to do  
23          the testing of the ink, anyway, I know handwriting  
24          experts had already looked at it, but I believe it  
25          was Gerald LaPorte was going to be the first one,

1 and Albert Lyter was the second one, if I remember  
2 correctly. And I don't think at the time I talked  
3 to Larry Stewart either had sampled it.

4 From there, I didn't hear anything for a  
5 while, and I was contacted back by Larry Stewart  
6 saying they were going to go forward and retain me  
7 and to forward a retainer agreement and a quick  
8 summary of what I wanted to be paid and why, or a  
9 proforma invoice, something like that, to Jeff Lake,  
10 and he gave me his e-mail address.

11 I e-mailed it to Jeff Lake. And I don't  
12 believe I ever talked to Jeff, but I did get an  
13 e-mail back saying he would send a check and to go  
14 ahead and go.

15 I remember the time frames being tight  
16 because I was just returning from Africa, I believe,  
17 like a day or two before the examination in Chicago,  
18 so it was not an easy thing to schedule, plus I was  
19 in Africa with no e-mail.

20 Q. Right. And so did you then -- you then  
21 attended that inspection in Chicago?

22 A. Right. And I don't believe I had any more  
23 communication other than to please bring a VSC 2000  
24 and maybe a digital camera, I can't remember. And I  
25 was given the address in Chicago, and then I showed

1 up there.

2 If I remember right, it was July 25th of  
3 this last year, and that was when I had the first  
4 real talk with anyone, other than Mr. Stewart, in  
5 Chicago.

6 Q. At that inspection, that was the first  
7 time you had seen the documents in person?

8 A. Correct.

9 Q. And there were two documents that you  
10 inspected on that day; does that comport with your  
11 recollection?

12 A. Two documents, that's right.

13 Q. We'll get into the details. I'm just  
14 trying to get the overview.

15 And you did some nondestructive  
16 examination on that day and then also took samples;  
17 is that right?

18 A. That's right.

19 Q. And then, did you ever examine the  
20 documents again at any later time?

21 A. No, that was the only time I've ever been  
22 in the presence of the originals.

23 Q. And did you conduct -- you took the  
24 samples back to your lab, and did you conduct any  
25 chemical testing of those samples?

1           A.    Yes, there was chemical testing conducted.

2                    As I told you earlier today, I wasn't the  
3 one who did the testing, but I was the one who  
4 interpreted the plates and examined the original  
5 plates, which we have here today.

6           Q.    And that was TLC testing?

7           A.    Correct.

8           Q.    Any other chemical testing that was done  
9 at your direction?

10          A.    No, no other chemical testing by my office  
11 at all.

12          Q.    And were you intending to do ink dating  
13 testing at all?

14          A.    I believe that was the primary reason why  
15 I was retained at the time and that was my plan,  
16 until I saw the original document, to do ink dating  
17 testing, as well as the other tests that we did do,  
18 but that was the original plan.

19          Q.    And why didn't you?

20          A.    The degradation of the ink I didn't feel  
21 would allow for any conclusive opinions at all based  
22 on its condition, and the number of samples that we  
23 were able to take from areas that were more  
24 significant.

25                    There was really only one area, I believe,

1 where we were able to take quite a few samples that  
2 was of significance.

3 Q. Do you recall an agreement about the  
4 number of samples that would be permitted?

5 A. I recall an agreement and a disagreement  
6 as well. The agreement, of course, was first and  
7 then the disagreement.

8 The specifics, I don't remember, but I do  
9 know at the time I got there, there was a number  
10 that I could take from certain areas that were more  
11 in areas of more writing, less in areas of less  
12 writing, and then there was a request -- I don't  
13 remember if it was before or after I took my  
14 samples. I think it was both as to taking more  
15 samples from both sides.

16 I think I heard that it got resolved  
17 later, but it wasn't resolved that day, and I never  
18 formally heard, one way or the other, what happened.  
19 I didn't take any more samples, as you know.

20 Q. Right. And you have not prepared a report  
21 of any findings or opinions in this case?

22 A. I have not. That's correct.

23 Q. Do you know why you weren't asked to do  
24 that?

25 A. Well, the findings I don't believe were

1 all that significant one way or the other, first and  
2 foremost.

3 Secondly, I don't believe the client  
4 wanted to pay my time to write something that says  
5 what they already knew, that it wasn't significant.  
6 I don't know that for a fact, but that would be my  
7 most likely guess.

8 Q. Okay. Do you consider yourself still  
9 engaged as an expert in the case?

10 A. Of course. I still take their calls when  
11 they call, yes.

12 Q. Okay. In other words, you don't -- you  
13 don't take the position that you have withdrawn as  
14 an expert or anything like that; is that correct?

15 A. No, I've never -- I didn't know I could  
16 take that position, but I've never taken that  
17 position in the past, no.

18 Q. Fair enough. Fair enough.

19 So I want to just ask you a few questions  
20 about your background and credentials.

21 The entity for which you work is Speckin  
22 Forensic Laboratories; is that right?

23 A. It's called Speckin Forensics, LLC, a  
24 Florida limited liability company.

25 Q. I see. And are you president or what

1 exactly is your role or title?

2 A. For the LLC, the title is member/manager  
3 is the corporate role. As an employee, I would be  
4 considered a forensic chemist and a forensic  
5 document analyst.

6 Q. How does that relate to Speckin  
7 Laboratories, which I understand is a Michigan  
8 entity started by your father?

9 A. Let's see, that's a three-part question.  
10 Yes, it is the correct entity. Yes, it is Michigan.  
11 No, it was not started by my father. That's a long  
12 answer as to why it wasn't, though.

13 But that company basically dissolved when  
14 most of the operation -- or I shouldn't say that.  
15 When I moved to Florida, we formed a Florida limited  
16 liability company, so at the time this examination  
17 occurred, they may have both been going.

18 Q. I see.

19 A. I'm not for certain. But the Michigan one  
20 is closed now and the Florida one is the only one  
21 that's around.

22 Q. I see.

23 A. Although it's, to clients, seamless and  
24 there's really no difference, other than for  
25 accounting purposes.

1 Q. Got it.

2 Do you cover other forensic areas, in  
3 other words, does your company handle forensics in a  
4 variety of ways?

5 A. Yes.

6 Q. What generally do you cover?

7 A. The laboratory covers DNA, crime scene  
8 reconstruction, fingerprints, computer data  
9 recovery, trace evidence analysis, tire tracks and  
10 footwear, forensic pathology. I skipped over one.  
11 But that's generally a pretty good rundown of what  
12 they are.

13 (Thereupon, the referred-to document was  
14 marked by the court reporter for Identification as  
15 Defendants' Exhibit 1.)

16 BY MR. SOUTHWELL:

17 Q. I'm going to hand you a document which is  
18 marked Speckin Exhibit 1, which is a copy of your  
19 resume that we printed out from your website.

20 A. Okay.

21 Q. Does this look familiar to you?

22 A. Yes, of course.

23 Firearms is the last one that I missed, by  
24 the way.

25 Q. Got it. I see this is dated August 5,

1 2011.

2 Have there been general updates to your CV  
3 since it was posted on your site as of that date?

4 A. The last update was testimony in Alaska  
5 and that's on here, so this would be the most  
6 current.

7 Q. Is your laboratory in one particular  
8 physical location now or are there multiple  
9 laboratories?

10 A. There are multiple laboratories that do  
11 testing.

12 Q. I guess what I'm trying to understand is  
13 at the top of Speckin Exhibit 1, it says "Speckin  
14 Forensic Laboratories" and it's got the address in  
15 Michigan and also in Florida.

16 I'm just trying to understand what happens  
17 in each location.

18 A. So the Michigan location, which isn't at  
19 that address anymore, but the Michigan location does  
20 everything except ink testing, as of today.

21 They would be able to do TLC testing  
22 there, if they wanted to, and all the other areas;  
23 firearms, pathology, DNA and so on. That would all  
24 be done in Michigan.

25 The Florida location only does ink

1 testing, so we have the gas chromatograph here. We  
2 have the densitometer, TLC, the ink library and so  
3 on.

4 Both have document examination  
5 capabilities, microscopes and so on for handwriting  
6 and general document examination. Both have an ESDA  
7 for pressure testing, and both have infrared systems  
8 for similarities and difference in a nondestructive  
9 ink testing.

10 Q. Just briefly, through your background, you  
11 started at Purdue studying engineering and then you  
12 graduated from Michigan State with a degree in  
13 chemistry; is that right?

14 A. That's correct.

15 Q. And then following that, or I guess  
16 actually while you were at Michigan State, you were  
17 doing your residency with your father in questioned  
18 documents; is that right?

19 A. That's correct.

20 Q. And then after that, you worked with  
21 Brunelle?

22 A. Correct. The after part, there's a slight  
23 overlap that occurred with both, a few weeks with my  
24 father's training and I believe maybe two months or  
25 three months with college, working with Brunelle, so

1 it wasn't entirely after but it was pretty close to  
2 after.

3 Q. And I hear that name Dick Brunelle is sort  
4 of a big name in ink dating along with like Cantu;  
5 is that right?

6 A. I would say they're one, two, no matter  
7 who you ask, and different people would debate the  
8 order, perhaps.

9 Q. So one, two, in terms of prominence in the  
10 ink analysis field?

11 A. Clearly, in my opinion, and I would  
12 think -- I wouldn't say everyone's, but in a lot of  
13 people's opinions, yes.

14 Q. And they developed some dynamic ink dating  
15 methods; is that right?

16 A. Correct.

17 Q. Now, you characterize yourself as an ink  
18 dating specialist on your website; is that right?

19 A. That's right.

20 Q. And you've written several articles in  
21 academic journals on ink dating, right?

22 A. That's right.

23 Q. One of your most recent presentations  
24 discussed the dating of writing inks through  
25 phenoxyethanol using GCMS, right?

1           A.    That's correct, that's the most recent,  
2    yes.

3           Q.    And then, on the third page here of your  
4    resume, I note that you've testified in numerous  
5    courts at different levels; state, federal and  
6    international, right?

7           A.    That's right.

8           Q.    How many of your cases have involved ink  
9    dating of some sort, whether static or dynamic, in a  
10   rough sense?

11          A.    Well, I've testified -- a rough sense I  
12   could give you. It's better than a guess, but it's  
13   not an exact.

14                    I testified, I believe -- this is 281,  
15   280, something like that, and I would say that at  
16   least 80 to 85 percent would involve that, so  
17   80 percent of 280 is 204.

18          Q.    When you say would involve --

19          A.    224; 80 percent of 80 (sic) is 224.

20          Q.    So roughly that. And when you say would  
21   involve ink dating, can you be more precise about  
22   what you're covering when you're giving us those  
23   percentages, what would be covered in that category?

24          A.    Well, based on your question, you said  
25   static or dynamic, so, to me, static would be the

1 identification of an ink to determine who  
2 manufactured it and when it first came out or to  
3 identify it based on the components, for instance.  
4 If it contains copper at the origin it first came  
5 out, let's say, 1956 or later, or if it was a  
6 rollerball pen that didn't come out until '68, that  
7 sort of thing. That would be one way to date it, by  
8 a static approach.

9           The second is by a chemical date tag.  
10 I've had a few cases with chemical date tags, but  
11 not many of those have gone to trial.

12           And then the dynamic approach would be by  
13 dating either using the dye - the analysis of the  
14 dyes, which would be primarily the rate and percent  
15 of extraction, but also the dye ratio method,  
16 somewhere involved. And then the second approach  
17 would be using the volatile solvents, which is the  
18 2-PE or 2-phenoxy-ethanol.

19           Q. And between the dye ratio analysis and the  
20 solvent ratio, the solvent analysis you just  
21 mentioned, what would you say the breakdown of  
22 numbers of cases you've had in those two areas?

23           A. I'm not trying to phrase your questions  
24 for you, but I think you mean the analysis of the  
25 dyes, it's not dye ratio, because dye ratio is

1 one-third of the possible tests analyzing the dyes.  
2 I assume you mean just the dye analysis compared to  
3 solvent analysis.

4 Q. Exactly. Difference between dye analysis  
5 and solvent analysis.

6 A. Okay. I would say the breakdown is  
7 approximately three for the solvent analysis, four,  
8 if you count today, and the remainder 200 -- what  
9 did I say before, 244? 224. So the other 220 would  
10 be based on dyes. A shade over 1 percent.

11 Q. What are the approaches that you would use  
12 typically when you're analyzing the dyes, in other  
13 words, is there an established chemical approach  
14 that you use?

15 A. Yes, it's published on our website, the  
16 exact step-by-step procedure for what is done for  
17 the rate of extraction, percent of extraction and  
18 dye ratios, how the calculations are made and how  
19 conclusions are drawn. It's public information.

20 Q. Okay, and then what about when you analyze  
21 the solvents?

22 A. The solvents we only use at this point a  
23 threshold analysis of how much phenoxyethanol is  
24 present in an ink to determine if it could be done  
25 in the last year or not.

1           So we have a general cutoff that we've  
2 seen based on the method that we use. When I say  
3 "method," I mean like temperature and times and so  
4 on in the GC itself. And if it comes out with an  
5 amount greater than a cutoff, then it would be  
6 newer. If it comes out with an amount less than  
7 that, it's not conclusive one way or the other.

8           Now, there are certain things that can  
9 happen if you had a lot of different inks and  
10 they're all under the cutoff, you can draw bigger  
11 conclusions, and it's also possible to determine if  
12 a document has been subjected to heat and  
13 artificially aged by GC analysis, in my opinion.  
14 And I've had, I believe, one case that I've  
15 testified on and three cases where that's happened.

16           Q. And what's the threshold that you  
17 typically use?

18           A. The threshold for whether it's new or not?

19           Q. Yes.

20           A. Would be 1.6 parts per million.

21           Q. And you mentioned that there have been  
22 cases where heat has been applied and that's led to  
23 an aging of the ink. That's something that you've  
24 experienced in your practice?

25           A. If you apply -- right, if you apply

1 heat -- it's my opinion, and I believe other people,  
2 some people in the field share that opinion, that if  
3 you apply heat greater than what I would classify as  
4 human survivable conditions. For instance, like 60  
5 or 70 C or higher, you're going to drive off more  
6 phenoxyethanol than natural aging ever would, so you  
7 get a number that's zero or so close to zero, you  
8 can barely detect it.

9 That's going to be an instance where  
10 artificial aging is done to the document and you  
11 could show.

12 Heat is the only thing that I've seen to  
13 be an effective means that you would detect it  
14 through the volatile solvents.

15 Q. Now, let's just go back to when you were  
16 first contacted for the case. As you testified, you  
17 were actually in Africa, and Larry Stewart was the  
18 one that you recall contacting you.

19 Do you recall just -- I don't want to get  
20 into the substance, but specifically how the contact  
21 came; phone call, e-mail, et cetera?

22 A. There's no doubt it was by phone.

23 Q. Okay.

24 A. Whether he e-mailed my office and asked  
25 them to call him or he called my cell phone, you

1 know, I don't remember exactly how it went down. If  
2 I returned his call or he got me directly, I don't  
3 know.

4 Q. Uh-huh.

5 A. My memory is not that good.

6 Q. Did you then come -- do you recall then  
7 coming to speak at some point with Jeff Lake about  
8 being retained, the lawyer at the time?

9 A. As I said, to my recollection, I never had  
10 a conversation with Jeff Lake directly. All I had  
11 was one e-mail confirmation of, okay, I'll pay that  
12 much money, that amount of money.

13 And then I talked to him when the  
14 examination was completed in Chicago, when you and I  
15 parted ways last, and said, are you on the way? And  
16 he said something like I'm not going to be there  
17 until seven, and I said my flight is at 6:30, so  
18 I'll have to catch up with you some other time.

19 Then I believe I had a conversation with  
20 him two days later with the Edelson McGuire, I  
21 believe was the name of the firm we were at, with  
22 those people on the phone as well, probably two  
23 days, maybe three days later. And I believe that  
24 was the only real substantive conversation I ever  
25 had with Jeff Lake. I might have had one other one,

1 but I don't believe so.

2 Q. Okay. As I understand it, you were  
3 contacted in order to conduct this examination in  
4 Chicago and, although the timing was tight, you were  
5 able to do that and to bring the equipment there.  
6 And that was your first task with respect to this  
7 case, correct?

8 A. All those are correct, except I didn't  
9 bring the equipment. I was able to facilitate  
10 someone getting it there.

11 Q. Someone from your Michigan office brought  
12 the equipment -- well, I take it back.

13 You got the equipment there in some  
14 fashion?

15 A. That's correct. That's correct.

16 Q. And did you learn anything about the  
17 specific documents that you would be -- that you  
18 were examining? In other words, did you know  
19 anything about the specifics of them?

20 A. You mean before the envelope was opened,  
21 so to speak?

22 Q. Right.

23 A. I thought there was only going to be a  
24 two-page agreement. I don't believe I knew about  
25 this other StreetFax something document. I don't

1 really think that I knew that was going to be there.  
2 Maybe I was told, but I don't remember that.

3 There was a two-page agreement, and I  
4 believe I was told by -- I know I was told by Larry  
5 Stewart beforehand we were not going to process on  
6 the ESDA because in the last bit of time, there's  
7 been degradation to the document and other people  
8 had already processed it, so there really wasn't a  
9 need to keep processing it on the ESDA.

10 I had seen a copy of it already, so I knew  
11 in general what I would be seeing. I think I knew  
12 that it was ballpoint ink or I was told it was  
13 ballpoint ink in all locations.

14 I think that's all I knew before the  
15 envelope was opened.

16 Q. And your retention agreement -- you  
17 ultimately had a formal agreement that provided for  
18 your retention; is that right?

19 A. Yes, there was a retainer agreement with  
20 Jeff Lake.

21 Q. And who specifically was obligated to pay  
22 you?

23 A. I believe I was getting copied, but, from  
24 memory, I think it's Jeff Lake's PC, Lake APC or  
25 something like that. I don't remember.

1 Q. Do you recall what your fee arrangement  
2 was?

3 A. It was my standard hourly rate of \$400 per  
4 hour. And I believe I requested \$6,500 upfront.  
5 And I believe I told him that I would bill him one  
6 way travel from Michigan and the other way from  
7 Florida, because I was either coming from or going  
8 to -- I was going to Michigan because it was a  
9 couple of days before my birthday, so I was going to  
10 Michigan to celebrate, and I told him I would only  
11 charge him the travel time to Michigan then, but I  
12 charged him, I believe, travel time from Florida.

13 Q. Was there ever any suggestion that you'd  
14 work on a contingent basis?

15 A. I believe it was suggested, but it was not  
16 received by me at all.

17 Q. Do you recall who suggested it?

18 A. I heard it at one point early on, but I  
19 don't know who suggested it.

20 Q. But you didn't agree; is that right?

21 A. That would be at least a fair  
22 characterization, but probably an understatement.

23 Q. What do you mean?

24 A. I said there's no way I would ever do  
25 anything like that. I can't possibly be right or I

1     couldn't do that.  It's not even an option.  It's  
2     not worth discussion.

3             Q.     Okay.  Do you recall if that -- do you  
4     recall ever having a conversation with Paul Ceglia  
5     himself?

6             A.     I recall that I never have.  I know for a  
7     fact I've never talked to him.

8             Q.     How about Paul Argentieri?

9             A.     I have had contact with Paul, and I've  
10    had, my guess, maybe four or five calls with him in  
11    the last year.  Let's say four to seven, because  
12    sometimes he was on the line, but not the primary  
13    person talking as well.

14            Q.     Do you recall who it was who suggested the  
15    idea of working on a contingent basis?

16            A.     No, I don't remember.  I don't want to  
17    guess to make it sound like it was someone and it's  
18    the wrong person.  So I have to say I don't  
19    remember, but it was less than a five-second  
20    conversation, and it's never been brought up again  
21    by anyone.

22            Q.     Do you recall when it occurred?  In other  
23    words, did it occur in the initial discussions about  
24    what your fees would be on the arrangement, or did  
25    it occur at a later time after you were already

1 engaged and, perhaps, there was some problem with  
2 getting paid?

3 A. I believe the latter. It was after the  
4 invoice was sent for the remaining balance based on  
5 a trip to Chicago and the work that was done  
6 afterwards.

7 Again, I don't have the invoice in front  
8 of me. But round numbers, let's just say it was  
9 about \$15,000, and that's when it was suggested by  
10 someone, would I be willing to, something, and I  
11 said absolutely not.

12 I was eventually paid on the invoice.

13 Q. Okay. Do you recall at that time whether  
14 Jeff Lake was still in the case?

15 A. I don't know. The comings and goings of  
16 when people have come and gone, I really don't pay  
17 that much attention to. And sometimes it's months  
18 between the contacts, so I don't really know. I  
19 don't know if it was when he was involved or not.

20 Q. And so there was an invoice that for a  
21 while it was outstanding, but has now been paid; is  
22 that a fair characterization?

23 A. I believe there's still a small invoice  
24 that's outstanding, but the invoice that we were  
25 just talking about was paid in full at some point in

1 time, quite some time ago as well, but it was paid  
2 in full.

3 Q. Do you recall if that was ultimately  
4 paid -- well, strike that.

5 Did you ever have any dealings with the  
6 Milberg firm?

7 A. Dealings? That was the firm that paid me  
8 in dealings. I don't believe I ever talked to  
9 anyone from that firm, but I e-mailed someone,  
10 Sanford Dumain, I believe is the name on the  
11 invoice, so I had my secretary just redo the invoice  
12 with his name on it, the same invoice, and that was  
13 paid quickly by I think it's Milberg, LLP. I never  
14 heard from him at all or ever again.

15 Q. Are you aware that plaintiff has had at  
16 least nine law firms represent him in the case?

17 A. Do you want me to see if I can count the  
18 nine?

19 Q. I'm just asking if you're aware of that?

20 A. I didn't know the number was nine. I  
21 didn't fall off my chair at nine, but I didn't know  
22 it was nine.

23 Q. Fair enough. So with respect to Milberg,  
24 did you have any other interaction with him, other  
25 than what you just recited concerning the payment of

1 the invoice?

2 A. No, that's it; an e-mail, a check and  
3 never heard from him again.

4 Q. And so that firm was the one who paid the  
5 outstanding invoice or all that was paid, correct?

6 A. They just paid the one invoice that was  
7 the outstanding.

8 Now, I believe there was a little bit more  
9 than -- I said there was an invoice sent and that's  
10 what prompted that would you take a percentage sort  
11 of thing. And then there was a little bit of work  
12 that was done after that, maybe like one or two  
13 thousand, so the invoice that Milberg paid was the  
14 entire leftover balance of the one, plus a couple of  
15 dollars, whatever it was, I don't remember how much  
16 it was.

17 So they actually paid two previous  
18 invoices but basically one large one that we've been  
19 talking about, just to be clear, but it was only one  
20 check.

21 Q. Got it. And the conversations about the  
22 possibility of taking a contingency was based on the  
23 invoice having been sent and not being paid?

24 A. I can't say that for a fact because I  
25 wasn't the person who brought it up, but that is my

1 most likely guess, and it occurred between the time  
2 that the invoice was sent for the remainder of  
3 Chicago and the time I got the check from Milberg is  
4 when the conversation occurred.

5 Any more tightly than that, I really don't  
6 remember, but it was definitely between those two  
7 periods that it was brought up to me.

8 Q. Do you recall if the conversation was with  
9 the recipients of the invoice?

10 A. The conversation about a contingency?

11 Q. Yes.

12 A. I don't know. I don't remember who it  
13 was. I really don't.

14 Q. Do you recall the law firm DLA Piper?

15 A. I know them.

16 Q. Let me be more specific.

17 Do you recall them in terms of an  
18 involvement in this case?

19 A. I don't think so, no.

20 Q. Do you recall the law firm Lippes Mathias,  
21 based in Buffalo, in terms of their involvement in  
22 this case?

23 A. Never heard of them before.

24 Q. You did mention Edelson McGuire.

25 Did you have interactions with them, other

1 than obviously the examination in Chicago, and I  
2 think you said a couple of phone calls afterwards  
3 that included Mr. Argentieri?

4 A. Yes, I had -- those were part of the  
5 Edelson McGuire interface. I also had calls with --  
6 let me think here. I'm going to get the names as  
7 close as I can. You probably know them better than  
8 I. Rafey Alabanian, something like that.

9 Q. Balabanian?

10 A. Balabanian, okay, that sounds right. And  
11 Steve Teppler or Teplin.

12 Q. Teppler, yes.

13 He's down here in Florida?

14 A. Correct, he's in the Sarasota office, I  
15 believe. And there was one other person that was  
16 there, and I believe his dad also worked at the  
17 firm. I don't remember his name.

18 Q. Jay Edelson?

19 A. Maybe I'm confusing two different people.  
20 There's one other person from that firm, and I can't  
21 remember the name because that person didn't talk on  
22 the phone, but I do remember Rafey and Steve,  
23 talking to both of them the day of the examination,  
24 on my drive back to Michigan or my flight, I can't  
25 remember, to the airport or something like that, and

1 then the day of the conference call that everyone  
2 was on it, the conference call that everyone was on,  
3 including Mr. Argentieri, and then one call from  
4 Steve after that. It was very quickly after that  
5 conference call saying don't do any more work, we're  
6 not going to agree to pay for anything else.

7           They were either involved and then  
8 withdrew or not getting involved. I don't remember  
9 how it worked, but something to that degree and that  
10 was the only -- that was the last communication I  
11 ever had from that firm.

12           I believe I had a call from one of them on  
13 another case, several months later, but that was --  
14 all the communication I ever had about this case was  
15 over by the 1st of August.

16           Q.    And it was Steve Teppler you recall  
17 calling and saying we're not going to be involved in  
18 the case anymore, please don't work anymore because  
19 we're not going to pay you, essentially?

20           A.    Right. He may have sent me an e-mail that  
21 said call me and then when I called him, that's what  
22 he told me or he called and told me that, I can't  
23 remember, one of the two, but it was Steve.

24           Q.    Did you ever have any interaction with a  
25 lawyer named Peter Skivington?

1           A.    What firm was he with?

2           Q.    I think it's his own firm, his name.

3           A.    I don't think so. That name doesn't sound  
4 familiar.

5           Q.    How about a lawyer named Robert Calihan,  
6 do you recall interaction with that name?

7           A.    Yes. He was at a firm in New York, and he  
8 had a partner that came from Cravath, Swain and  
9 Moore that was with him.

10                   Does that sound right?

11           Q.    Could be. In this case?

12           A.    Korologos, are they at the same firm,  
13 Philip Korologos?

14           Q.    He used to be at Cravath, Swain and Moore,  
15 but he's now at Boise Schiller.

16           A.    Okay, so I'm confusing two different  
17 people then. I had a conversation with Calihan and  
18 a conversation with this other firm. I remember  
19 Korologos, because I had a case with him in 1996, so  
20 I knew the name when it came in. And there was  
21 another person in his office that I talked to as  
22 well and I thought it was Calihan, but apparently  
23 I'm confusing the two.

24                   So I did have a conversation with Calihan,  
25 and I did have a conversation with this Korologos

1 and somebody different as well.

2 Q. About this case?

3 A. Yes, it was about their potential  
4 involvement in the case.

5 Q. Got it.

6 Do you recall approximately when that was;  
7 was that after Edelson McGuire was out?

8 A. Definitely, and before Milberg was -- I  
9 hate to use the word "in" because I don't really  
10 know what people did, but involved, let's say.

11 Q. Fair enough. How about somebody named  
12 Jason Holmberg, did you ever speak with or interact  
13 with anybody named that name?

14 A. I don't think so. That one doesn't sound  
15 familiar.

16 Q. You said you've not spoken with or  
17 interacted with Paul Ceglia, the plaintiff himself,  
18 correct?

19 A. That's correct.

20 Q. Have you ever interacted with his parents,  
21 Carmine and Vera Ceglia?

22 A. No.

23 Q. His brother, Brendan Ceglia?

24 A. No.

25 Q. You testified earlier that you understood

1 that there were a number of other document examiners  
2 involved in the case. And, of course, you knew  
3 Larry Stewart because he's the one who contacted  
4 you.

5 Do you know about what other document  
6 examiners plaintiff had retained?

7 A. I know Jim Blanco is one name that I've  
8 heard. I think they also retained John Paul  
9 Osborne, Valerie Aginsky, and I think that's all.  
10 That's all I know of anyway.

11 Q. And both you and Dr. Aginsky use ink  
12 dating methods based on the analysis of  
13 phenoxyethanol, right?

14 A. Among other things for both of us, that is  
15 correct, that's one of them that we use, correct.

16 Q. Have you been involved with Mr. Stewart  
17 before in other cases -- strike that.

18 Do you know how it is that Mr. Stewart  
19 came to call you about this case?

20 A. You'd have to ask him. I assume because  
21 he thinks I'm good at what I do, but I wouldn't want  
22 to put words in his mouth, but I think that's why he  
23 called me.

24 Q. Have you been involved in other cases with  
25 him?

1 A. Yes, I have.

2 Q. Do you recall, were there any --

3 A. Oh, wait, can you define the term "with,"  
4 I guess?

5 Q. Cases where he has been involved, either  
6 on the same side or on the other side?

7 A. In either case, yes, I have.

8 Q. Are there any of those cases that stand  
9 out to you in terms of your interactions with  
10 Mr. Stewart?

11 A. Perhaps the most memorable is the Martha  
12 Stewart case.

13 Q. Tell me about your involvement with that.

14 A. I can't other than to say I examined the  
15 documents. He was present and he witnessed the  
16 examination as a representative of the United States  
17 Secret Service.

18 Q. Who were you representing?

19 A. I didn't represent anyone. I was retained  
20 by --

21 Q. Sorry.

22 A. -- lawyers for Peter Baconovic, the  
23 stockbroker.

24 Q. Did you ultimately testify in that case?

25 A. I did not.

1           Q.    What about other cases that you have been  
2 involved, let's say, with Mr. Stewart on the other  
3 side of you, any cases there that stand out?

4           A.    Well, just to take one step backwards, I  
5 don't recall -- the reason I asked the definition of  
6 with. I don't recall a case where we've been on the  
7 same side until this one.

8           Q.    Okay.

9           A.    There may have been one that I wasn't  
10 aware of, but this is the first one that I'm aware  
11 of, unless I'm forgetting something, but I don't  
12 think so.

13                    So all the other ones were one person was  
14 on one side, one person was on the opposite. I  
15 don't believe we've ever testified opposite one  
16 another in the case.

17                    I had a case out of San Diego. It was an  
18 employment dispute, and I cannot remember my  
19 client's name. I remember it was a document that  
20 had to do with reviews of the client by the company  
21 and it contained impressions of a draft that had  
22 been thrown away and then changed to make worse,  
23 more or less.

24                    And it was my opinion the document wasn't  
25 genuine because it contained a draft and it spanned

1 a large length of time and it couldn't possibly have  
2 been written sequentially.

3 He never testified on that case, but I  
4 believe he might have given a deposition or issued a  
5 report, but then the case disappeared and never went  
6 to trial.

7 Those are the only two that I can think  
8 of. I can't think of any other cases, but it seems  
9 like there's at least one or two more, but I can't  
10 think of one that ever came about.

11 Q. Now, what about Mr. Blanco, you've been  
12 involved with cases with him, either the same side  
13 or other side?

14 A. I have one case that I recall. It's  
15 actually my deposition tomorrow on it, where he was  
16 retained by -- let's see, there's two parties  
17 fighting. I don't know which one he is, the  
18 plaintiff or defense, but I got retained by the  
19 insurance company. It had to do with a beneficiary  
20 of a life insurance policy. Basically the insurance  
21 policy only wanted to pay once so they wanted to  
22 know was this change of beneficiary a genuine  
23 signature or not. And he had analyzed it for one of  
24 the two parties. I don't remember. I know we had  
25 the same opinion in the case though. But that's the

1 only other case I've been involved with with him,  
2 that I can think of.

3 But it seems like several years ago --  
4 when I say "several," I mean more than a dozen years  
5 ago -- we were involved in a case in California as  
6 well, but I don't really remember the details of it  
7 or anything. But I've seen his name a couple of  
8 times in cases, but that's the only one I really was  
9 involved with.

10 Q. Now, are you aware of whether in this case  
11 Mr. Stewart was tasked with oversight of the  
12 forensic document examination by plaintiff's  
13 experts?

14 A. Well, no plaintiff attorney has told me  
15 that, but I get that general picture from  
16 conversations and contact. I get that general idea.  
17 I don't know that I've ever been told that before,  
18 but that's the impression that I get.

19 Q. Did he -- what I'm trying to get at, I  
20 guess, is did he give you instruction as to exactly  
21 what to do, or did you do your analysis in your own  
22 professional judgment?

23 A. Let's politely say both of those are  
24 correct.

25 Q. Okay. What do you mean by that?

1           A.    I believe that he had some suggestions on  
2 things that he wanted to see get done, and based on  
3 what was put in front of me, I decided what was the  
4 correct thing to do and the sequence to go about it.

5           I believe that he agreed with everything I  
6 did and everything that I said, but it's a difficult  
7 question to answer without sounding like I did  
8 something different than he said, because the  
9 documents were in a different condition, I think,  
10 than either one of us expected at the time it came  
11 out of envelope as well.

12           So it's a little bit -- I know it's not on  
13 purpose, but it's a little bit of an unfair question  
14 where the answer sounds stilted, that's why I said  
15 politely that both of those are correct.

16           Q.    What was different about how the document  
17 came out that you specifically recall?

18           A.    Well, the paper was fairly yellowed and  
19 the ink was very faded in all areas. I mean, that  
20 was my initial visual observation that I was  
21 surprised/stunned when I saw it.

22           When I say "the paper," I just mean the  
23 two-page document. I don't believe the other  
24 document had anything -- of course, as I said, I  
25 didn't expect to see that, but it didn't strike me

1 as anything unusual about the other document in any  
2 respect.

3 Q. Do you recall the other document being a  
4 six-page document with specifications?

5 A. I don't remember how many pages, but I do  
6 remember it was the StreetFax specifications.

7 Is that right?

8 Q. Yes.

9 A. I didn't remember how many pages, but I do  
10 remember that.

11 Q. Do you recall it was more than two pages?

12 A. Yes, I know it was more than two.

13 Q. Do you recall -- so you were not told  
14 anything about -- strike that.

15 Your observations about the surprise  
16 related to the two-page document, whereas the  
17 specifications, the longer-paged document did not  
18 exhibit those same surprising characteristics; is  
19 that right?

20 A. Yes.

21 Q. And were you told anything about what the  
22 appearance of the documents would be prior to them  
23 being taken out of the envelope?

24 A. Yes.

25 When you say "documents," you mean just

1 the two-page document, because I don't believe, as I  
2 said earlier, I was told anything about the other  
3 one.

4 Q. Right.

5 A. One way or the other. I was told by Larry  
6 Stewart -- I mentioned this earlier -- that we  
7 weren't going to conduct ESDA testing because the  
8 document had been degraded by other tests and other  
9 people, but that was about all that I was told, I  
10 think.

11 As to how degraded or whatever term you  
12 would like to pick, I didn't realize it was to that  
13 extent, but I didn't really ask a lot of questions  
14 either.

15 Q. Now, have you read any of the expert  
16 reports in this case, either plaintiff's or  
17 defendants' experts?

18 A. I think I was only given one by  
19 Mr. LaPorte, and I would say I've read through it.  
20 To say I've read it would probably be an  
21 overstatement, but I clearly read through it to see  
22 what he had to say.

23 And specifically in the phenoxyethanol  
24 portions I was asked to read, and I did pay close  
25 attention to those, but I really didn't read all the

1 background in the whole report because I've seen it  
2 before in other reports.

3 Q. What about any of the other plaintiff's  
4 experts, did you review any of their reports?

5 A. Plaintiff is who retained me, correct?

6 Q. Correct.

7 A. So, no, I haven't seen anybody's report.  
8 If there are any, I don't know, but I haven't seen  
9 any.

10 Q. Did you speak with anyone to prepare for  
11 your deposition today?

12 A. Yes.

13 Q. Who is that?

14 A. I spoke with Mr. Boland and Mr. Argentieri  
15 on either Thursday or Friday, I can't remember which  
16 day, for probably -- it was the day I was moving so  
17 it would have been Thursday. The days are blending  
18 together, but I'm pretty sure it was Thursday, and  
19 it was two different occasions, one for about 18 to  
20 20 minutes and then I had to cut them off and handle  
21 something personal, and then I talked again in the  
22 evening for probably 40 minutes, I would say,  
23 35 minutes, something like that.

24 I think that's the only conversations. I  
25 did offer that I would be available yesterday, if it

1 was needed, and I didn't get a call.

2 Q. Okay. Now, I want to talk a little bit  
3 more detail about your examination in this case, and  
4 I want to, I guess, just understand a bit more how  
5 you keep track of the samples that you're taking.  
6 Let me just go over some basics.

7 When you take samples from paper, do you  
8 put them into vials?

9 A. Correct.

10 Q. And are the vials that you use glass or  
11 plastic?

12 A. Glass.

13 Q. Do they have some sort of lid?

14 A. They have a cover, a screw cap.

15 Q. That was going to be my question, okay.

16 Do you have a method as to how you  
17 separate samples into vials?

18 A. I'm not sure I understand the question. I  
19 take samples from a certain area and those would be  
20 placed in a vial on their own, so different vials  
21 would have typically samples taken from different  
22 areas, or it could be that I took triplicate samples  
23 of a certain area because I was going to run a  
24 triplicate and wanted three different vials.

25 It's possible I would put -- depending on

1 the case and where it was and when I was going to  
2 run it, it's possible I could put all the triplicate  
3 samples in one vial and then separate it in my  
4 office, too.

5 I wouldn't say that I have a method to  
6 that. It would be probably more on the madness  
7 side, but typically the method would be to separate  
8 areas for different testing procedures into  
9 different vials.

10 Q. And in addition to separating areas, would  
11 it be your practice to separate the type of samples  
12 you took, whether they were paper, toner, ink into  
13 different vials?

14 A. Of course, yes.

15 Q. And then to keep track of those separate  
16 vials, do you have a standard procedure for labeling  
17 them?

18 A. I do.

19 Q. And what is that, generally speaking?

20 A. I typically have handwritten notes of vial  
21 numbers, so on the left-hand side of the page, it  
22 would be numbered or lettered, depending on how many  
23 I take, and then in chicken scratch will be written  
24 where the sample came from, how many plugs, if it  
25 was ballpoint or non-ballpoint or paper.

1           And then the glass vial will be numbered  
2 accordingly with Number 1, 2, 1A, whatever the  
3 number happens to be.

4           Q.    And that's what you did in this case?

5           A.    I believe so.

6           MR. SOUTHWELL:  Let's mark this, if we  
7 can, as Speckin Exhibit 2.

8                   (Thereupon, the referred-to document was  
9 marked by the court reporter for Identification as  
10 Defendants' Exhibit 2.)

11 BY MR. SOUTHWELL:

12           Q.    This is three-page handwritten notes.  
13 We'll staple this so it stays together.  I'm handing  
14 you that, and if you can just flip through it and  
15 identify it, please?

16           A.    These are my handwritten notes from the  
17 day in Chicago, the day of the examination in  
18 Chicago.

19           Q.    I just want your help understanding this.  
20 Let's just stay on the first page.

21           A.    I'm just refreshing my memory for a second  
22 because I haven't looked at this for a while.  Can  
23 you just show me the copy -- sorry.  Can you just  
24 show me the copy of the StreetFax document, please?

25           Q.    I'll just hand you back this.

1 A. Is this it?

2 Q. Uh-huh.

3 A. It's six pages. I'm missing page 4.

4 Q. Just so the record is clear, you're  
5 looking at what we refer to in the cases as the  
6 StreetFax back-end technical specifications  
7 document. This is one out of your file. This looks  
8 to be a fax?

9 A. Yes, it was just a fax, but it's missing  
10 one page; is that right? It has initials on it or  
11 something; is that right? Can I just see that for a  
12 second? That's what I was looking for. This is  
13 mine?

14 MS. AYCOCK: That's mine.

15 BY MR. SOUTHWELL:

16 Q. It should be in there.

17 A. I know what's going on. No problem. It  
18 might have gotten moved up in the copy process.  
19 Here it is. I got it now. This will work for my  
20 purposes.

21 Sorry. What was your initial question or  
22 your original question then?

23 Q. Looking at the first page of Speckin  
24 Exhibit 2 --

25 A. Correct.

1 Q. -- if you can just help us to understand  
2 what this shows?

3 A. Okay. It's probably -- well, it doesn't  
4 matter.

5 So what this is is there's ink samples. I  
6 took ten vials of ink, four vials of paper. That's  
7 what it says on the top line. So page 1 of the  
8 work-for-hire contract is the next line and then it  
9 says Number 1.

10 Now, where it says the numbers, that is  
11 the sample that contained ink and where it has  
12 letters, that's a sample that contained paper.

13 Q. And these are your vial samples or vial  
14 numbers or labels, if you will, along the left side,  
15 1 to 10?

16 A. On the vial, it doesn't have the pound  
17 symbol, but it just has the number. So number 1  
18 says text, 10 plugs.

19 When you went back to -- just to go back  
20 to one quick thing, at the top of page 2, it has a  
21 couple of notations, four lines of notations, that's  
22 my understanding of what the agreement was. I wrote  
23 it down when I got there. So that was as to how  
24 many plugs could be taken from certain areas. So  
25 this is what I based off of.

1           Q.     Just -- I was going to ask you about that  
2     in a moment, but let's just stay on that since  
3     you're talking about it.

4                     This is the second page of Speckin 2.  
5     Your understanding that the agreement was that each  
6     side, or you specifically, as your side, plaintiff's  
7     side, can take four plugs from the initials, ten  
8     plugs from the signature, ten plugs from the  
9     handwriting sort of line, interlineation, as you  
10    sometimes refer to it?

11           A.     Correct.

12           Q.     And 20 plugs from the toner and 20 plugs  
13    from the paper on each page?

14           A.     Well, I didn't take the toner and paper.  
15    I just took a couple of paper blanks. I don't know  
16    if it was 20 of toner and 20 of paper or 20 total of  
17    toner and/or paper. I didn't really concern myself  
18    with that either way because it wasn't what I was  
19    taking. So I don't know what the agreement was,  
20    positive, but the first three were right.

21                     My understanding was that each side got to  
22    take that much. So either the experts could split  
23    it, or one expert could take them all. So I was  
24    told I could take them all for the ink and then to  
25    say how many I wanted for the paper blank. And then

1 my understanding is Larry Stewart took whatever was  
2 left for his paper blanks. I don't know how many he  
3 took. I didn't count them.

4 Q. Who was it that told you you can take all  
5 of the ink samples?

6 A. Larry Stewart, I'm pretty sure.

7 Q. So looking at the first page here of  
8 Speckin 2. So on the top, you got the ink samples  
9 and on the bottom you got paper blanks, and those  
10 are labeled A, B, C, D?

11 A. Correct.

12 Q. I'm interested in obviously just your  
13 memory of what the sampling was.

14 It looks to me like Vials 1 to 5 were from  
15 the first two pages of the work-for-hire contract  
16 and then 6 to 10 were from the specifications sheet,  
17 because if you look, that's where the text is and  
18 where the signatures are.

19 Does that comport with your memory?

20 A. That's right. That's why I asked to see  
21 the copy. When it says page 4 in the margin, and I  
22 didn't see any writing on what I had for page 4, I  
23 was a little confused, but now I understand that it  
24 was from page 4, just my copy was missing.

25 Q. There's a little line between 5 and 6?

1           A.    Meaning that's a different document,  
2 correct.

3           Q.    And on the right-hand side, it says ID,  
4 what does that mean?

5           A.    Ink identification. That was something  
6 that I had said let's do the ink identification --  
7 that was if we wanted to, that we could.

8                    I didn't believe we could do the ink  
9 identification on the work-for-hire documents after  
10 I had looked at it on the TLC plate.

11           Q.    And then the paper blanks, what is the  
12 purpose of taking paper blanks?

13           A.    I took paper blanks for two purposes.  
14 Number one is if I was going to do an ink  
15 identification, it's standard procedure, although,  
16 in my opinion, not required in most cases. But in  
17 this case, with the yellow on the document, I wanted  
18 to take a blank to make sure there were no  
19 interfering factors from the paper that would look  
20 as either dyes or fluorescent components to allow  
21 for a proper identification if I did it.

22                    It probably wasn't as significant from the  
23 StreetFax document because there really wasn't  
24 anything in the paper, but I took them, in large  
25 part, probably because everybody else did, and I

1 wasn't going to be able to go back. That was the  
2 other reason.

3 Q. And what is the notation in the upper left  
4 corner on page 1 of Speckin 2?

5 A. Black ballpoint. I believe that every  
6 ink, at least as best I can tell from what was  
7 there, was black ballpoint.

8 Q. Looking at the second page, so the top you  
9 said was your understanding of the agreement. I  
10 take it below there is a listing of what was already  
11 taken by defendants' experts and then what's below  
12 there, it says "and toner," can you describe what's  
13 listed there on the second page?

14 A. Well, I can tell you I don't know who took  
15 it, so when you say defendants' experts, that's my  
16 guess. I wasn't there so I can't tell you who took  
17 the samples. But this was the condition it was in  
18 when I got it. When I say "they," someone else took  
19 it.

20 Ten plugs from handwritten line on page 1,  
21 four from each initial, ten plugs of paper, ten  
22 squares of paper, which I assume that's two  
23 different people. They just took ten is my guess.

24 And toner, it says, page 2, PC 7 from the  
25 signature, three from the date, MZ 7 signature,

1 three from date.

2 I don't have the copy in front of me, but  
3 I assume it's right from around there where the  
4 paper blanks were taken from.

5 Q. And then what does it indicate below that?

6 A. Then the next line would be what my visual  
7 observations were when I first got to look at the  
8 document. It says, "Different font, page 1 and  
9 page 2, one set of staple holes."

10 You want me to keep reading?

11 Q. Yes, I want your reading of it to the  
12 extent that's how the interpretation is needed.

13 A. By the way, this was only the  
14 work-for-hire document. We get to the StreetFax  
15 findings on the next page.

16 So it says, different font, page 1 and  
17 page 2, one set of staples, one fold in paper,  
18 rebound marks match, two white areas at top of each  
19 page, yellow front, white back, back of page 2 on  
20 folded corner was yellowing, different font includes  
21 the capital S, the small J and the small A.

22 Then it goes to the StreetFax, page 6.  
23 This must have been where they took the samples  
24 from, five from the PC, five from the date, eight  
25 from MZ and two from the date.

1 Q. When you say two white, did you say arms  
2 or areas at top of each page?

3 A. Believe it or not, it says areas, and I  
4 said areas, I hope.

5 Q. Maybe I just heard it wrong.

6 What is that referring to?

7 A. I have a VSC printout showing it, but  
8 apparently I could see it even visually that I  
9 thought there were two whitened areas at the time,  
10 but I wasn't certain what it was until I put it  
11 under the VSC.

12 And I know you've seen these before, of  
13 course, but there are two areas at the top of each  
14 page, maybe around a quarter of an inch square to a  
15 half-inch square at the top of page 1 and the top of  
16 page 2 where there's a difference in the UV  
17 reflectance pattern or absorbance pattern.

18 Do you want me to keep reading where I  
19 was?

20 Q. Yes, give me one moment. We're on the  
21 third page of Speckin 2. I take it it says  
22 StreetFax, under that, those are the indications  
23 and, perhaps, where the samples had already been  
24 taken; is that right?

25 A. That's my understanding by a quick look,

1 yes.

2 Q. And then below this, is this the VSC  
3 results that you -- is this reflective of some VSC  
4 analysis that you did?

5 A. Correct. Under the first line across the  
6 entire page on page 3 says VSC 2000. Page 6, it  
7 says PC and MZ. PC says "NON" above it, and MZ says  
8 "LUM," meaning the PC was nonluminescent, the MZ was  
9 luminescent. So they're different at the end of the  
10 line. And it says it's different at, and these are  
11 the wavelengths, the excitation and the barrier  
12 filters were at.

13 Both luminescent, no difference with -- no  
14 difference with anything on page 2 of that. And  
15 then page 1 has the handwriting and the line were  
16 luminescent, but different than the PC and MZ  
17 initials. And then at the very bottom, it says ten  
18 vials of ink, which we talked about.

19 Q. Where you indicate the luminescent  
20 difference at P6, that refers to page 6?

21 A. Correct.

22 Q. That's referring to the specifications  
23 document?

24 A. Correct.

25 Q. And is all this analysis referring to the

1 specifications document?

2 A. No, page 1 is from the work-for-hire, the  
3 very bottom one.

4 Q. All right. Now, you mentioned that you  
5 did a VSC examination and you brought or you had  
6 brought a VSC 2000 machine; is that correct?

7 A. Correct. I facilitated someone else to  
8 bring it, but, yes.

9 Q. And what did you use the VSC for?

10 A. Well, the primary function was to detect  
11 similarities and differences in inks by the way they  
12 reflect and absorb infrared light. But I also used  
13 it in this case to look at the ultraviolet  
14 properties from the whitened areas of the top of  
15 each page.

16 Q. And if you notice something interesting  
17 when looking at the document, with either UV or  
18 infrared, the machine has the ability to capture an  
19 image of it, correct?

20 A. Correct, our images were stored digitally  
21 and printed out later in our office. We didn't  
22 connect to a printer there, obviously.

23 Q. Is that your practice, that if you see  
24 something of note, that you would capture an image  
25 of it?

1           A.     Correct.  Whether it was significant or  
2 not, I wouldn't know, but something that I  
3 thought -- normally, I wouldn't necessarily save the  
4 image, I would print the image if I were in my  
5 office.

6                     It's atypical to have the instrument out  
7 of the office, but in that instance, you would only  
8 be -- well, I'm not very computer savvy, so I would  
9 only be able to save it.  I wouldn't be able to hook  
10 it up to a printer to print it.

11                    THE WITNESS:  Can we take like a  
12 two-minute break now?

13                    MR. SOUTHWELL:  Sure.

14                    THE VIDEOGRAPHER:  Going off the video  
15 record.  This is the end of Media Unit 1.  The  
16 time is 10:03 a.m.

17                    (Short break.)

18                    THE VIDEOGRAPHER:  Back on the video  
19 record.  This is the beginning of Media Unit 2.  
20 The time is 10:14 a.m.

21                    MR. SOUTHWELL:  Mr. Boland, you're there,  
22 right?

23                    MR. BOLAND:  Yes, I'm here.

24 BY MR. SOUTHWELL:

25                    Q.     Now, Mr. Speckin, before the break, we

1 were talking about your VSC examination. And that  
2 was conducted, as you testified, in the offices of  
3 Edelson McGuire, right?

4 Do you remember what the room was like, I  
5 mean, what type of room it was?

6 A. It was in their office, yes, and, let's  
7 see, it was a corner conference room so it had  
8 windows on two sides, somewhat of a glass door kind  
9 of opaque on one side that would be the entrance to  
10 the room and then it had one normal wall.

11 Q. Was yours the only VSC machine there?

12 A. Yes.

13 Q. In relation to your other examinations,  
14 when did you do the VSC exam; in other words, was it  
15 at the beginning, middle, close to the end, do you  
16 recall?

17 A. Well, I believe I was the second one to  
18 look at the document when it came out of the  
19 envelope so maybe - I'm kind of guessing. I think  
20 there is a video record that shows it, but I'm kind  
21 of guessing two hours into the examination, maybe an  
22 hour and a half into the examination before I used  
23 the VSC maybe, something like that.

24 It was somewhat towards the beginning of  
25 my own because I saw those white spots and wanted to

1 see what the ultraviolet showed. So I think, if I  
2 remember right, that was the first thing that I did.

3 Actually, I can tell you what time I did  
4 it because it's on the images that were saved.

5 Q. We'll get to that.

6 A. 11:14, so I think an hour and a half is a  
7 pretty good guess.

8 Q. And that was -- just in term of the  
9 overall sequencing, if you will, you said you were  
10 not the first one to examine it, Mr. Stewart first  
11 examined it?

12 A. He first visually looked at it. I don't  
13 know if he used the infrared first. I don't  
14 remember.

15 Q. Then you did a visual examination and then  
16 the VSC examination before you did any sampling,  
17 correct?

18 A. Correct. I did a visual examination and  
19 recorded notes that we read, and then I did the VSC  
20 and recorded some more notes that we read.

21 Q. Do you remember whether you were sitting  
22 or standing when you used the VSC?

23 A. I don't know.

24 Q. Do you remember what Mr. Stewart was doing  
25 while you were doing the VSC examination?

1           A.    I think looking over my shoulder, but I'm  
2 not -- I don't know that I remember positively, but  
3 I think that's what he was doing.

4           Q.    Did he ever use your VSC machine himself?

5           A.    I mean, these are all going from memory  
6 from a year ago. It would seem pretty innocuous to  
7 me at the time what he was doing. I'm answering as  
8 best I can. As I said, I think there is a videotape  
9 that shows what everybody was doing or at least I  
10 hope there is, but I think he used it himself as  
11 well.

12                   And I think he used it after me, because  
13 he called me over and said to look at something on  
14 the screen, if I remember correctly. So I think it  
15 was after.

16           Q.    Okay. I'm just looking for your best  
17 recollection here.

18                   Let me now show you what is marked for  
19 identification Speckin Exhibit 3. It's five pages  
20 of your VSC imagery, I believe.

21                   (Thereupon, the referred-to document was  
22 marked by the court reporter for Identification as  
23 Defendants' Exhibit 3.)

24                   THE WITNESS:   Okay.

25                   BY MR. SOUTHWELL:

1 Q. Look through that and identify that,  
2 please.

3 A. These are five pages of images that were  
4 captured using the VSC 2000.

5 Q. You captured these?

6 A. Yes, all five of these I did. And almost  
7 every one of them -- actually, every one of them is  
8 an ultraviolet image.

9 Q. And these images were taken in accordance  
10 with your standard procedures for using VSC?

11 A. Well, I would say -- as I answered  
12 earlier, I would say it's a standard procedure but  
13 not my standard or not my normal procedure because I  
14 would normally print instead of save the image and  
15 then go back and print, but there's nothing wrong  
16 with it. It can be used all the time. It's just  
17 not what I normally do because the instrument was  
18 out of the office as opposed to in the office.

19 Q. These imagery, these are true and accurate  
20 representations of what you observed using the VSC?

21 A. Absolutely.

22 Q. And do you recall providing to defendants  
23 at some point earlier in the case these images that  
24 had been labeled VSC Printout 1 through 5?

25 A. I recall several different rodeos with

1 providing them. I don't know that I ever gave them  
2 to you or your team direct, but I believe that you  
3 got them through Jeff Lake at one point, that I sent  
4 them to, or it's my understanding that you did, and  
5 then maybe later through Mr. Boland as well. And  
6 then someone was supposed to come and image from our  
7 system and no-call/no-showed on us until the last  
8 second, which was irritating, but that was the only  
9 other time.

10 Q. I understand.

11 And those images that you provided, do you  
12 recall if they were labeled "printout"? And the  
13 reason I'm asking is I'm just trying to understand  
14 the significance, if any, of labeling them printout.

15 A. I wasn't the one who put them on disc from  
16 my office. I can't say -- I'm aware of the  
17 nomenclature because that's what was requested. I  
18 don't know if my office put it on the disc that was  
19 given to Jeff Lake or if Jeff Lake put them on when  
20 he produced them, so I can't tell you.

21 I wasn't the one who did it, but my office  
22 very well could have been the one who used that  
23 nomenclature, but I don't know. I don't know.

24 Q. And as you said, the VSC imagery is  
25 ultraviolet and then the times and dates of the

1 imagery and the other aspects of the adjustments are  
2 all indicated at the bottom; is that right?

3 A. Correct. The time, of course, is on  
4 Eastern Standard Time, where the instrument was  
5 from, and we were in Central Time in Chicago. I  
6 think we started at nine and this would have been  
7 captured at 10:15. That's why I said an hour and a  
8 half was a pretty good guess.

9 Q. And as you said, some of the images show,  
10 quite clearly, such as the third page, the whiteness  
11 of the areas that we referred to as tabs?

12 A. Correct. The second page -- I don't know  
13 why the first page was captured. It doesn't really  
14 show much.

15 The second page shows -- you want me to  
16 just go through them?

17 Q. No, it's not necessary. If you can look  
18 at the third page and just confirm these are the  
19 white sort of tabs that you were referring to as  
20 sort of -- that you saw using the UV?

21 A. Right, the white areas that I put in my  
22 notes, right.

23 Q. And you indicated that you - your notes  
24 indicate that you thought you saw whiter areas or  
25 something like this even before using UV; is that

1 right?

2 A. I thought I saw something with my naked  
3 eye which is why I put it my notes. But in  
4 fairness, there were samples taken from those three  
5 areas or four areas, so it kind of drew my eye to it  
6 anyway, like why the heck did they all take from the  
7 same area. So I was already looking for it. I'm  
8 not going to say it would just jump out of the page,  
9 but I did see something visually, yes.

10 Q. Fair enough. So in a normal course of an  
11 inspection, did it stand out to you that there would  
12 be these plugs taken from seemingly the top edge of  
13 the paper which, perhaps, is not a normal place?

14 A. Well, as I said, when I read through my  
15 notes, there were some square plugs and some round  
16 plugs, so I assumed it was two different experts who  
17 did that from paper blanks.

18 And then when I saw that each one had  
19 taken from a very small area at the top in four  
20 different places and both took from the same place,  
21 that definitely stood out to me, knowing there must  
22 be something that's going on here.

23 So whether that was why I was - my eye was  
24 drawn there and I did see something or whether I  
25 later confirmed it with UV, I don't know, but

1 clearly I suspected the UV was going to show  
2 something.

3 Q. Now, in the course of -- well, in doing  
4 your examination, were you aware, prior to capturing  
5 this imagery, that there - that others had observed  
6 differently fluorescing areas at the top of the  
7 document?

8 A. Well, I figured it out very quickly when  
9 it actually dawned on me. Whether it was visually  
10 or whether it was under the ultraviolet, I can't  
11 recall exactly, but I knew that other people saw it  
12 before me, of course.

13 Is that what you're asking?

14 Q. I guess what I'm trying to get at is, did  
15 you know because you saw the samples having been  
16 taken or did you know because you had been informed  
17 that that had been seen by others?

18 A. I've never been informed, so it was only  
19 because of what I saw between the combination of  
20 where the samples were taken and what I saw under  
21 the ultraviolet. I would say I suspected it  
22 visually, but I knew when I saw the ultraviolet.

23 Q. Fair enough. So Mr. Stewart did not tell  
24 you that there were these spaces at the top of the  
25 document that had different UV fluorescence?

1           A.    Well, he may have told me afterwards, but  
2 when he did, it wasn't news to me anymore.

3           Q.    He didn't tell you before you saw it?

4           A.    No, I don't think he knew, but maybe he  
5 did. I didn't know that he knew. He sure didn't  
6 say anything to me before, no.

7           Q.    Just so it's clear, all of the information  
8 that you had about the documents leading up to the  
9 examination or at the examination, you got from  
10 Mr. Stewart, in other words, there was no other  
11 source of information that you had about these  
12 documents; is that right?

13          A.    Well, I saw copies, so whatever I could  
14 glean from the copy myself, but that's correct. I  
15 didn't speak with anyone, other than Mr. Stewart,  
16 until the day I was in Chicago. So every piece  
17 would have come from him or what I could gather  
18 myself by looking at a copy of just the two-page  
19 work-for-hire. I don't believe I saw the StreetFax  
20 at that point. Well, I can tell you if I did or  
21 not.

22                   Well, I believe I may have seen the  
23 StreetFax because the fax is dated 7/23 from Paul  
24 Argentieri to me, but I'm not sure that he actually  
25 faxed it to me, so maybe I did, maybe I didn't see

1 the StreetFax, I don't know.

2 Q. Is that your fax number?

3 A. No, 607, that's Boston. It's definitely  
4 not mine. It's not any of my offices.

5 Q. Do you recall getting the specification  
6 document faxed to you ahead of time?

7 A. No, I don't recall it. I'm saying it's  
8 possible, but I don't think this was sent to me. I  
9 think I got it from someone else that it had been  
10 faxed to. I'm pretty sure I didn't have it, but I  
11 can't be certain.

12 Q. Just so that I understand, you did get a  
13 copy of the two-page work-for-hire document ahead of  
14 time.

15 Do you recall or do you know what that  
16 copy was? Was that e-mailed to you? Do you know if  
17 it was a copy attached to the complaint? Do you  
18 have any information where that copy came from?

19 A. That's two parts. I'm sure it was  
20 e-mailed to me because I was on the road.

21 As to the information I had about where  
22 the copy came from, no, I don't know. I may have  
23 been told, but I don't remember what I would have  
24 been told, one way or the other.

25 At that moment, in July of last year, I

1 didn't realize or had not been made aware or was not  
2 paying attention to the fact that it might be  
3 significant, based on the condition of the document,  
4 where and when the copy was made. It was all news  
5 to me when the envelope was opened, so I may have  
6 been told. I just didn't pay attention because I  
7 didn't know I needed to.

8 Q. So leading up to the examination that you  
9 yourself, conducted when you saw the physical  
10 document, you had been given an electronic copy and  
11 you had spoken to Mr. Stewart about the examination;  
12 is that right?

13 A. That's correct. As well as I told you  
14 about the communications with Jeff Lake that were  
15 pretty much one directional, other than a  
16 confirmation that it would be paid.

17 Q. As to information about the document, its  
18 condition or anything like that, whatever  
19 information you had at the time of the examination  
20 would have come from Mr. Stewart or your own  
21 examination with the electronic copy you were sent,  
22 correct?

23 A. Correct. Although examination would just  
24 be a visual, like I just looked at them. It wasn't  
25 much detail to it, but that's correct. That would

1 be the only basis for knowing anything.

2 Q. I want to just ask a couple of follow-ups  
3 on the sampling you did.

4 You talked about using glass vials with, I  
5 think, a screw top?

6 A. Correct.

7 Q. What other equipment do you typically  
8 bring to take samples?

9 A. Well, typically you would have a backer,  
10 which is a self-healing cutting board, tweezers and  
11 the needle that would take the sample. I usually  
12 bring two in case one breaks.

13 Q. Is a needle also referred to a hole punch?

14 A. You can use that term as well. I used to  
15 use an actual hypodermic needle. So that's why I  
16 still use the term needle. I think everyone  
17 actually probably uses the same punch,  
18 manufactured -- it's a Uni-Core punch or one very  
19 similar to it anyway.

20 Q. I've heard a lot of document examiners use  
21 a .5-millimeter punch to take the ink samples. Is  
22 that what you used?

23 A. That's what I used. That's what I was  
24 told was to be used, and that's what I always use.  
25 Sometimes people use something larger if they're

1 only allowed a certain number of samples to kind of  
2 circumvent.

3 I shouldn't said that. I don't know why  
4 they would do it, but they change to a larger one  
5 when only a limited number are allowed.

6 I think in my entire career -- I started  
7 out using a 20-gauge hypodermic needle, and I've  
8 gone to the .5, and I've never used anything  
9 different than that.

10 Q. Who told you that's what you were to use?

11 A. Larry Stewart was the only information.  
12 It may have been the other way. I may have said  
13 this is what I use and he said, yeah, that's what  
14 you're supposed to use.

15 He may have said you can only use this. I  
16 don't remember. I believe I showed it to you before  
17 I did it as well, saying this is what I'm going to  
18 use, is that okay, as well, just to make sure.

19 Q. Do you have any other equipment, do you  
20 use cloth gloves, for example?

21 A. I did in this case, but that would be a  
22 non -- your question is what do I typically use.  
23 That wouldn't be typical because it's only in cases  
24 where fingerprints are an issue that I would use  
25 gloves like that. I wouldn't say that would be the

1 typical case for me.

2 Q. Did somebody -- did Mr. Stewart tell you  
3 that fingerprints might be an issue in this case?

4 A. Yes, I'm pretty sure that's who told me,  
5 yes, it would have been Mr. Stewart.

6 Q. When you take --

7 A. He said they could be an issue. I don't  
8 believe he said they would or are or whatever.

9 Q. When you take samples, do you have any  
10 particular habit or procedure in the sense that -- I  
11 know some document examiner would take paper samples  
12 in a straight line on the bottom or they may take it  
13 in a square or diamond formation.

14 Do you have a particular habit, formula or  
15 procedure?

16 A. I never thought about that one. I don't  
17 know if I have a habit. I'd have to look. It's  
18 nothing that ever mattered to me, but I may have  
19 one. I don't know. I don't know the answer to  
20 that.

21 Q. Okay. And we talked before about the  
22 agreements that you were aware of in terms of the  
23 number of samples and that would govern what each  
24 side would take and then each side would divide  
25 amongst themselves how they were to arrange it?

1           A.     That was my understanding.

2           Q.     And as you testified, you took all of the  
3 ink samples permitted by your side, plus some paper  
4 blanks, and then Mr. Stewart took everything else,  
5 which would be the remaining paper samples and toner  
6 samples, correct?

7           A.     As of the July 25, 2011 status, that was  
8 what I took. I've heard rumblings that there were  
9 more samples taken. I have no idea what happened  
10 after that or who got what. I didn't get any of  
11 them, I can tell you that.

12          Q.     You didn't take any additional samples at  
13 some later time of these documents?

14          A.     No. Just to clear up one thing on the  
15 fax, it's totally coincidental. It was 2010 this  
16 fax was dated, so it clearly didn't come from me.

17          Q.     You're referring to the specifications  
18 document?

19          A.     Right. So it was just a total coincidence  
20 that it was two days before the exam. I don't think  
21 I saw it before.

22          Q.     I'm going to now show you what is marked  
23 as Speckin Exhibit 5.

24

25

1           (Thereupon, the referred-to document was  
2 marked by the court reporter for Identification as  
3 Defendants' Exhibit 5.)

4 BY MR. SOUTHWELL:

5           Q.    Can you identify that first?

6           A.    Yes, these are the notes taken by Patty  
7 Giebink, G-I-E-B-I-N-K, from my office, with the  
8 samples that I gave to her that I took in Chicago to  
9 test.

10           The left-hand side are her initials, the  
11 date she did it, 7/27, the client's name, which is  
12 cut off, but is Lake, and the case, the internal  
13 case number, which is 159-11. The 1 is cut off.

14           Q.    These are the notes of her analysis that  
15 you asked her to do of the ink samples?

16           A.    It's the notes of what she -- number one,  
17 what I told her, when she got the samples, what I  
18 told her I wanted to have done and then what she  
19 did, what solvent she used, where they were spotted  
20 on the plate, the order, that sort of thing.

21           Then the bottom third is what she saw when  
22 she looked at the plate.

23           Q.    This refers to TLC analysis of the ink  
24 sample, right?

25           A.    That's correct -- well, and paper.

1 There's three paper samples as well.

2 Q. What does this tell us about the number of  
3 samples that were used for the TLC analysis, if  
4 anything?

5 A. It says four plugs were used from Vials 2,  
6 3, 7 and 8, B and C, and three samples or three  
7 plugs were used from Vials 1, 4, 5, 6, 9 and 10.

8 Q. So were there ink samples left after this  
9 analysis?

10 A. Yes.

11 Q. And where are those ink samples today?

12 A. They may still be in my office, but  
13 they're probably discarded after a year, so I don't  
14 believe that we would still have them now. We  
15 typically don't retain them for over a year because  
16 they generally don't have any value.

17 Q. After a year, they don't have any value?

18 A. After a year of sitting out of the  
19 document in a vial, any value would be very  
20 minimized.

21 It's possible you can have comparison  
22 value, does this match this or is this a different  
23 ink than this. But to do ink dating either by  
24 solvents or dyes after sitting in a vial for a year,  
25 I would think would be very questionable.

1 I'd rather take new samples so we  
2 generally don't keep them over a year.

3 Q. And this was -- did you provide all of the  
4 vials to Ms. Giebink at your Michigan lab?

5 A. Yes, all the vials are kept together. I  
6 didn't take some and leave some. They're all in one  
7 place.

8 Q. How did you get from Chicago to your lab?

9 A. As I said earlier, I don't remember if I  
10 flew or if I drove. I have a feeling that I rode  
11 back with the instruments because of the flight  
12 times, but I'm not really sure. I don't know if I  
13 flew out or drove back. I can't remember.

14 Q. But you personally delivered all the vials  
15 to the lab in Michigan?

16 A. Yes. And it says that at the top of the  
17 page.

18 Q. And you gave her all of them. She then  
19 tested what she tested, as indicated here, and  
20 whatever remained would have remained at the  
21 Michigan lab; is that right?

22 A. Correct. I don't believe they would  
23 have -- well, they're not in the case, so they  
24 didn't come to Florida. If they're not discarded,  
25 then they are still in Michigan.

1 Q. And those ink samples were never provided  
2 to Mr. Stewart; is that right?

3 A. That's right, they were not.

4 Q. What do you understand about your standard  
5 office procedure in terms of the destruction of  
6 those, in other words, you said typically after a  
7 year, they would be destroyed, what is the procedure  
8 with respect to that?

9 A. Well, after a year, we can get rid of  
10 them. Whether we do at 366 or 367 days, or not, is  
11 probably a different issue.

12 I don't know if we have them or not still,  
13 but we do tell clients we can get rid of them after  
14 a year so we don't have to save things forever. But  
15 whether we actually police it up at the actual  
16 one-year mark, I don't know.

17 I mean, we don't, but we're well past a  
18 year, and Patty's last day was last Friday, so if  
19 they got cleaned up when she left, I don't know the  
20 answer.

21 Q. Got it. Let me now show you Speckin  
22 Exhibit 4 and have you identify that, please.

23 (Thereupon, the referred-to document was  
24 marked by the court reporter for Identification as  
25 Defendants' Exhibit 4.)

1           THE WITNESS: This is Patty's e-mail to me  
2           from July 28th, which would be the next  
3           morning, which basically -- I believe it says  
4           the same thing as her notes in the bottom  
5           third. It's just typed out.

6 BY MR. SOUTHWELL:

7           Q.    Okay. Give me just a moment.

8           A.    Sure.

9           Q.    Let's look at Speckin 5, the notes from  
10          Patty as compared to Speckin 2, your inventory. I  
11          just want to make sure that we've tied this  
12          together.

13          A.    You said 5 compared to 2?

14          Q.    Yes. When she indicates the samples, that  
15          is referring to the vial number, as you've indicated  
16          on your log?

17          A.    Correct.

18          Q.    So for example, Samples 2 and 3, it  
19          indicates that she used four plugs or I guess that  
20          was the instruction to use four plugs and that's all  
21          that was in Vials 2 and 3; is that right?

22          A.    Correct.

23          Q.    And then, for example, Vial 4 has ten  
24          plugs, and she was instructed to use three of those?

25          A.    Right.

1 Q. So that would indicate how many plugs  
2 might have been remaining after her analysis,  
3 recognizing that they would still be with you if  
4 they still existed?

5 A. That was two questions.

6 A. Yes, simple subtraction would tell you how  
7 many is left is what you're asking?

8 Q. Yes.

9 A. That's correct.

10 Q. And those would be the samples that would  
11 still be in the lab in Michigan unless they have  
12 been discarded, correct?

13 A. That's right.

14 Q. Now, to be clear, in terms of the chemical  
15 testing, was there any GCMS testing done?

16 A. By me?

17 Q. By you.

18 A. No. Of these samples, no, no.

19 Q. Have you done any GCMS testing in this  
20 case?

21 A. Yes.

22 Q. What was that in relation to?

23 A. To test ESDA toner to see if there was  
24 2-phenoxy-ethanol present in the toner used for ESDA  
25 analysis.

1 Q. Based on toner samples taken in this case?

2 A. No, the toner that's use for the ESDA  
3 itself, the powder to see if there was  
4 2-phenoxy-ethanol in the powder.

5 Q. And what did you find?

6 A. There is not.

7 Q. So the toner that is used in -- the toner  
8 powder that is used in ESDA analysis, you were  
9 testing through GCMS analysis whether that included  
10 2-phenoxy-ethanol, and you concluded that it did  
11 not?

12 A. All true, except for I was not the one who  
13 did the testing. Patty did that analysis as well,  
14 but I did conclude it was not there from the data,  
15 as well as she did. And everything else was correct  
16 in your statement.

17 Q. Any other chemical analysis that you've  
18 done in this case?

19 A. Yes, there was also chemical testing done  
20 on inks from our library using different  
21 temperatures of 70, 80 or 70, 90, something like  
22 that, and 100 degrees Celsius to determine its  
23 affect on the reproducibility in the disappearance  
24 of 2-phenoxy-ethanol, and I believe it was tested on  
25 several inks.

1 Q. You mentioned you had an ink library?

2 A. I do.

3 Q. Do you have a rough sense of how many  
4 samples you have in that ink library?

5 A. You'd have to define samples. The library  
6 has different components. It has ink identification  
7 which would be historical number of samples of how  
8 many different inks. And then we have a library  
9 that we use for research on ink dating. We have  
10 some that we use for the dyes which go back to about  
11 1989 and are written every couple of months, and  
12 then we have some that we use for the GC that are  
13 done every month that go back to around 2009 when  
14 we -- 2008 when we first started doing GC analysis,  
15 testing GC analysis, I should say.

16 Q. Are you aware of whether your ink library  
17 is more extensive than Mr. Stewart's?

18 A. I don't have firsthand knowledge, but I  
19 suspect it's far more extensive than anyone has,  
20 almost certain, other than the secret service.

21 Q. What about a toner library, do you have a  
22 library of toners, for instance, black toners?

23 A. We do.

24 Q. Now, in terms of -- let me actually back  
25 up one second. Give me a moment.

1 I'm just trying to streamline things.

2 A. Hey, it's your questions. Take your time.

3 Q. Now, you mentioned that -- you testified  
4 that you looked at both what we call the  
5 work-for-hire documents and the specifications  
6 document.

7 Do you understand that it is the  
8 work-for-hire document that Mr. Ceglia sued upon?

9 A. I figured that part out on my own, yes.

10 Q. That's the one of the two documents --  
11 well, that's the only one of the two documents that  
12 says anything about Facebook, right?

13 A. Well, I didn't read the other one. I  
14 believe you, but I don't know firsthand, but I  
15 believe you.

16 Q. Fair enough.

17 And you understand, do you not, that  
18 Mr. Ceglia has filed this lawsuit in 2010 claiming  
19 an 84 percent ownership interest in Facebook based  
20 on that purported contract, the work-for-hire  
21 document, with Mr. Zuckerberg?

22 A. I figured it all out except for the  
23 84 percent is news to me. I didn't know that even  
24 until this day.

25 Q. And do you understand that it's the

1 defendants' position, the position of Mr. Zuckerberg  
2 and Facebook, that Paul Ceglia's purported contract,  
3 the work-for-hire document, is a recently created  
4 forgery fabricated for the purposes of bringing the  
5 lawsuit?

6 A. I figured that position out on my own as  
7 well, yes.

8 Q. Are you aware that Facebook and Mark  
9 Zuckerberg have moved to dismiss the case as a fraud  
10 on the federal court?

11 A. I think I heard that a while ago, that  
12 there was a motion for that. I didn't know the  
13 exact terminology, but there was a motion to dismiss  
14 I heard maybe around a year ago, about the time I  
15 was in Chicago, I think, or right about that time is  
16 when I first heard of it.

17 Q. Have you read the motion?

18 A. No, I don't think so.

19 Q. When you were doing - focusing on your  
20 examination on July 25th, when you did your visual  
21 examination, did you have any other instrument to  
22 assist in your visual examination such as a  
23 microscope, a hand lens, anything like that?

24 A. I believe there was a microscope there. I  
25 don't recall if I used it or not, though. I don't

1 recall using it, but, again, the video would tell  
2 you if I did, but I don't recall.

3 Q. And you testified that you conducted a VSC  
4 examination and, at a minimum, you used UV light.

5 Did you also do the examination with  
6 infrared?

7 A. Of course.

8 Q. Did you do the examination with  
9 transmitted light?

10 A. I believe I used the transmitted function  
11 just to look at the texture of the paper, but that  
12 was probably about it.

13 Q. And in terms of the ink analysis  
14 assessment that you did, the TLC analysis related to  
15 essentially the identification of different inks  
16 among the samples, is that --

17 A. No.

18 Q. How would you describe what the TLC  
19 analysis exposed?

20 A. Well, the TLC analysis had two prongs.  
21 The first was do an ink comparison to see which inks  
22 were the same and which inks were different, and  
23 that's what was done.

24 I also saved enough to do an ink  
25 identification on Vials 1, 4, 5, 6, 9 and 10. And

1 that's why those only used three plugs, so that  
2 seven would be left, three for a low resolution and  
3 four for high resolution at a later point, if done.

4 The other ones four plugs were used, as  
5 you know, I only had four. There really wasn't any  
6 point in only running three and leaving one in the  
7 vial, so that's why four were run there, even though  
8 I only needed three. Because the one plug wouldn't  
9 have been helpful for any analysis anyway.

10 So I did not do an ink identification  
11 later, but I saved the requisite number of plugs to  
12 do it and still did the comparison first.

13 Q. I see. You did not do the ink  
14 identification because, as you testified before, the  
15 ink had been degraded or deteriorated and you didn't  
16 think it would be productive to analyze, is that --  
17 how would you describe it?

18 A. That's correct for Samples 1, 4, 5.  
19 Sample 6, 9 and 10, which came from the StreetFax  
20 document, really weren't -- nobody was really  
21 interested in what ink it was or when it first came  
22 out.

23 So those were just, from a practical  
24 standpoint, not run. But, 1, 4 and 5, I said it's  
25 not going to be likely we'll ever be able to

1 identify the ink so no one wanted to go forward and  
2 pay the money to try.

3 Q. And was there a discussion about how much  
4 money it would cost to try that and then also to  
5 write a report? Was there --

6 A. There was as to how much it would take to  
7 do the identification. I don't believe I ever was  
8 asked what it would cost to write a report.

9 To my knowledge, it was never a  
10 consideration by anyone to write a report. But on  
11 what the additional testing would cost, there was  
12 discussion, yes.

13 Q. And did you convey that to somebody on the  
14 plaintiff's team, whether it be Mr. Stewart or one  
15 of the attorneys?

16 A. I conveyed it, I believe, to the Edelson  
17 McGuire people. I don't know if they were ever on  
18 the plaintiff's team, to use your terminology, I  
19 don't know. The coming and goings with people, I'm  
20 not familiar with.

21 Q. Fair enough. As you understand it, there  
22 was a decision not to do that - do that additional  
23 testing because of your assessment that it was  
24 unlikely to be able to identify the ink and the  
25 cost?

1           A.    I can't answer the "because" part.  There  
2   was a decision not to do it.  You'd have to ask the  
3   people that made the decision why and if multiple  
4   people have done it since, there might be different  
5   reasons.  I don't know.  Clearly it was decided not  
6   to do it, yes.

7           MR. SOUTHWELL:  Let's take just a quick  
8   break and let me see if I can wrap up.

9           THE WITNESS:  Sure.

10          THE VIDEOGRAPHER:  Going off the video  
11   record.  The time is 10:52 a.m.

12          (Short break.)

13          THE VIDEOGRAPHER:  Back on the video  
14   record.  The time is 11:06 a.m.

15          THE WITNESS:  You there, Dean?

16          MR. BOLAND:  Yes, I'm here.

17   BY MR. SOUTHWELL:

18          Q.    Now, Mr. Speckin, going back to the  
19   sampling that you did, as you sit here today, do you  
20   have a recollection of -- do you have a recollection  
21   or any records that would indicate precisely where  
22   the samples were that you took?

23          A.    Just my notes.

24          Q.    And that tells you the general location,  
25   i.e., this signature, that signature, but do you

1 have anything that tells you like precisely where,  
2 for example, on the interlineation you took samples?

3 A. I don't have it with me. There was a set  
4 of copies that was made before I sampled, and you  
5 can compare the two. I don't have it here, but it  
6 does exist.

7 Q. So if one were to take the copy from  
8 before you sampled, you're aware there was a copy?

9 A. I asked for one to be made, and it was  
10 held by Edelson McGuire and also by Paul Argentieri  
11 when we were there.

12 Q. Do you recall also marking with a red pen  
13 the places on a mockup - on a copy of the original  
14 document where you would take the samples?

15 A. Yeah, I think you asked me to do it and  
16 gave me the pen, as a matter of fact.

17 Does that sound right?

18 Q. Yes.

19 A. I remember that.

20 Q. I'm asking if you remember.

21 A. I do now, but yes, I do remember now.

22 Q. And then, of course, there would be the  
23 image after you took samples that would then show  
24 where the samples had been taken.

25 So I guess what I'm asking, as you said,

1 cumulatively those three things would tell us where  
2 you actually took the samples from, correct?

3 A. Well, the red pen, I think, was an  
4 approximation of where I intended to take the  
5 samples, so it wouldn't give you the exact location.  
6 Although, as you know, I try to be as close as I  
7 could to that where I took them.

8 Q. Recognizing that the red pen would only be  
9 an indication of where you intended to, but there  
10 would be the before and then there would be the  
11 after, which would show where the actual samples had  
12 been taken.

13 A. Those would be the definitively, comparing  
14 the before and after.

15 Q. And other than what you testified to here  
16 today, do you have any other opinions about this  
17 case that you are - that you have?

18 A. Well, I'm really only prepared to offer  
19 any professional opinions, so I'd be happy to give  
20 you those. My personal opinions would be irrelevant  
21 for today's purposes, I think.

22 Q. What I'm trying to get at is, do you have  
23 other professional opinions that you have or are  
24 planning to offer, other than what we've talked  
25 about today?

1           A.    Well, I wasn't planning to offer any, but  
2 the opinions that I have -- yes, I have a few more.

3           Q.    What topics do those relate to?

4           A.    It would relate just to the report of  
5 Mr. LaPorte. I think we covered all the other --  
6 well, no, there's two topics we haven't cover that I  
7 expected that we would have.

8                    One is the report of Mr. LaPorte, and the  
9 second is what the TLC plate showed. I figured you  
10 would ask me that. I'm happy to tell you what I  
11 think of the TLC plate and what it tells me, but you  
12 didn't ask me.

13          Q.    Explain -- without getting into what your  
14 opinion is, explain to me what you mean by what the  
15 TLC plate shows. You're referring to the analysis  
16 that Ms. Giebink did?

17          A.    Right. Which samples are the same, which  
18 samples are different, that sort of thing.

19          Q.    I see. And as I understand it, she spells  
20 out her conclusions and you agreed with those  
21 conclusions; is that right?

22          A.    That's right. I don't mean it  
23 condescendingly, but I didn't know if you understood  
24 or got the gist of what was there and I expected you  
25 would have asked me more. I do have an opinion of

1 that, and I gave you the global opinion, so you may  
2 not need anymore, but I expected to get a few more  
3 questions on that.

4 Q. Fair enough.

5 Is there anything else in your answers  
6 that you have -- is there anything in your answers  
7 that you provided here today that you have since  
8 recalled as incorrect?

9 A. Just the fax, whether I may have gotten it  
10 beforehand, but now I cleared that up. I think  
11 that's the only thing.

12 Q. Do you recall anything further that you  
13 feel like you have to supplement any of your  
14 previous answers?

15 A. I don't feel like I need to supplement  
16 anything. I was just answering your questions as  
17 best I could, and I think I did.

18 MR. SOUTHWELL: Fair enough. No further  
19 questions at this time.

20 CROSS-EXAMINATION

21 BY MR. BOLAND:

22 Q. Mr. Speckin, this is Dean Boland. Can you  
23 still hear me well through the phone here?

24 A. Yes, we can.

25 Q. Okay, good.

1           Mr. Southwell asked you questions about PE  
2 testing, and I wanted to ask you about that.

3           How long have you been involved in doing  
4 testing involving PE for ink dating?

5           A.    My first probably real research into PE  
6 started around 2008 or 2009, although I did look at  
7 some volatile components in the 1995 time frame. I  
8 didn't really do a whole lot with it then.

9           Q.    And who are some of the other experts in  
10 the field who also conduct PE testing similar to  
11 what you do?

12          A.    I hate to characterize using the term  
13 "similar" because there's disagreements, but the use  
14 of gas chromatography and mass spectrometry to  
15 detect 2-phenoxy-ethanol and draw conclusions from  
16 that would be used by Mr. LaPorte, Dr. Aginsky and  
17 Albert Lyter, as well as myself, and other people in  
18 my office that have worked doing the testing. And I  
19 know there are people internationally that do it as  
20 well for government laboratories, but I believe  
21 those are the only people I encounter on a routine  
22 basis.

23          Q.    Is there any of those experts that you  
24 just mentioned by name that perform this test  
25 precisely the same way you do it?

1 A. Precisely? Not to my knowledge.

2 Q. Are you aware of Mr. LaPorte's testing  
3 methodology?

4 A. Yes.

5 Q. How are you aware of that?

6 A. I've observed him perform the analysis in  
7 the past or portions of the analysis in the past.

8 Q. When was that?

9 A. I'm going to say it was around September  
10 of last year -- roughly a year ago. It was right  
11 after the hurricane went through Washington, D.C.,  
12 so I think --

13 Q. What are some of the differences -- sorry.  
14 Go ahead.

15 A. I think it was like the first or middle of  
16 September, something like that.

17 Q. What are some of the differences that you  
18 observed in his methodology compared to yours?

19 MR. SOUTHWELL: Mr. Boland, I object to  
20 this line of inquiry. It's beyond the scope of  
21 the deposition. If you had wanted Mr. Speckin  
22 to put in a report about PE testing, you could  
23 have had him do that. And this is not --

24 MR. BOLAND: Your objection is noted. I'm  
25 asking him the questions.

1 BY MR. BOLAND:

2 Q. What is the differences you noted when you  
3 observed LaPorte's method and yours?

4 A. Well, the case that I actually observed,  
5 he only did the initial analysis to determine if  
6 there was enough PE present to see if he could go to  
7 the next step. And, in that case, he said -- he  
8 uses the terminology "quantity not sufficient." So  
9 I only observed his initial examination to determine  
10 the approximate levels of PE, in which I had  
11 concluded there was no detectable level of any  
12 significance and he determined that it was a  
13 quantity not sufficient for detection, using a later  
14 method. So roughly we had the same opinion, I  
15 think, that there was hardly any would be the  
16 conclusion.

17 And that was the end of his testing in  
18 that case that I observed.

19 Q. Mr. Southwell asked you about reviewing  
20 reports in this case and you testified about  
21 reviewing or at least reading Mr. LaPorte's report.

22 Do you recall those questions?

23 A. I recall. I said I read the section on  
24 2-PE, but I didn't read -- I sure didn't read all  
25 the attachments, but I did read the PE portion. And

1 the beginning I've seen on many reports from him,  
2 and it looked pretty close to the same, so I didn't  
3 read it again.

4 Q. And what was your opinion of what you read  
5 of that section of his report?

6 MR. SOUTHWELL: Note my objection again  
7 and reserve the right to strike this as beyond  
8 the scope and based on other objections.

9 MR. BOLAND: It's clearly not beyond the  
10 scope. First of all, you deposed this witness.  
11 And this witness, you asked him if he reviewed  
12 a report and I'm asking what his opinion is of  
13 that review, so it's clearly within the scope.  
14 Your objection is obviously on the record.

15 MR. SOUTHWELL: Right.

16 BY MR. BOLAND:

17 Q. Your opinion of the portion of the report  
18 that you reviewed?

19 A. Well, I only had his report. I didn't  
20 have the underlying data. But from what I see in  
21 his report, the data would reflect that the document  
22 should be just a few months old, brand-new. And  
23 that's what he's concluded in other cases that I've  
24 seen where he gets data like that.

25 But my understanding of the fact pattern

1 is it doesn't fit that the document would be  
2 brand-new because copies had been produced earlier  
3 and other experts had examined it earlier, so it  
4 doesn't -- I mean, it doesn't appear to be factually  
5 possible, although I don't have enough of the  
6 background facts to say that's positively true. It  
7 appeared that way to me.

8           And in other reports I've seen him  
9 conclude that, that data or differences that large  
10 would mean that it was brand-new or like less than  
11 six months old, and he didn't write that in this  
12 report. He only said something like it would mean  
13 the last two years.

14           Q. Have you opposed him in other cases in  
15 this area of PE testing?

16           A. I don't believe -- I don't like the term  
17 "opposed." I mean, we've had different opinions in  
18 cases. I don't like the term "opposed" because,  
19 frankly, I don't really care what someone else's  
20 opinion is.

21           The basis for the disagreement is what's  
22 more important. But on this exact method, I don't  
23 believe we've had different opinions where we've  
24 both done testing.

25           The only case that I'm aware of that we

1 had different opinions was just the opinion from  
2 what the low level of phenoxyethanol meant in the  
3 case I referenced earlier, but not where he used  
4 this heating method like he did in this case. I  
5 don't believe that we've had cases where we were on  
6 opposite sides.

7 I can't think of one anyway.

8 Q. Have you done any experimentation with  
9 this heating method that he used in this case?

10 A. As best I can tell, the method that he  
11 used, yes. I don't have his underlying data so I  
12 can't tell you positively. But this heating method  
13 is something that we've researched since late 2008,  
14 early 2009 in my office.

15 Q. Why have you been researching it?

16 A. Well, if it's as great and as definitive  
17 as everyone says, it would be nice to use in  
18 casework, but I haven't been able to get the  
19 reproducibility that I would want to see to  
20 implement it in casework, so we have not yet using  
21 phenoxyethanol at this point for using heat, for  
22 using heat to detect the amount of difference.  
23 That's what we have not used.

24 Q. And what do you mean by reproducibility,  
25 what is the problem you're having with

1 reproducibility using the method that LaPorte used  
2 here?

3 MR. SOUTHWELL: Object to form.

4 THE WITNESS: Well, number one, there's so  
5 many variables with the ink, with different  
6 kinds of ink and how they would react to heat.

7 Number two, the age. It was obvious,  
8 everyone agrees that heat will drive  
9 phenoxyethanol out of an ink when it's heated.  
10 There is no doubt that that will happen. It's  
11 the opinion that, based on the differences from  
12 a heated and unheated sample, what you can  
13 conclude about its age that would be the  
14 difference. And there are so many variables  
15 with the amount of ink -- sorry -- the amount  
16 of phenoxyethanol that initially goes into an  
17 ink and the amount of sample that will be  
18 removed -- sorry -- the amount of PE that will  
19 be removed from the sample, we've had  
20 difficulty.

21 But perhaps the most significant issue can  
22 be it's a mass-dependent technique. In other  
23 words, you're using different samples or  
24 different plugs in each vial, whether it be the  
25 unheated vial or the heated vial, so subtle

1 differences in reproducibility issues can also  
2 be created by the mass-dependence issue. And  
3 those are all hurdles we've had a difficult  
4 time or we have not been able to resolve at  
5 this point.

6 We have tried several approaches to the  
7 mass dependence situation and have not been  
8 able to resolve that yet either.

9 BY MR. BOLAND:

10 Q. Is there any literature where any expert  
11 has claimed to have resolved this reproducibility  
12 problem with this heating?

13 A. Well, there's literature that says that  
14 the technique works well with data that shows it,  
15 but -- and that would be by Aginsky in 1996. But  
16 when he was cross-examined on the article, he  
17 acknowledged that there was a mass-dependence issue.  
18 But he doesn't use the word "problem."

19 So I would say, yes, there is literature  
20 that says it's not an issue, but I would disagree  
21 that -- clearly, it can be resolved if you have  
22 enough sample, enough runs and have a way to resolve  
23 it. But with limited samples, especially a small  
24 number of plugs, it can be a more difficult or is a  
25 more difficult problem to resolve and account for.

1           There are cases where you might have a  
2 hundred plugs and you can run it six times. That  
3 would be obviously easier to see the reproducibility  
4 there.

5           Q.    Do you know why some people, like LaPorte,  
6 still use this method, even though there is a  
7 reproducibility problem?

8           MR. SOUTHWELL: Object to form. You're  
9 not being specific about what method. Calls  
10 for speculation that Mr. Speckin knows the  
11 method that Mr. LaPorte used.

12          MR. BOLAND: He can answer whatever he  
13 answers.

14 BY MR. BOLAND:

15          Q.    Do you know why people still use this  
16 method that you're describing, even though it has  
17 reproducibility problems that you've identified?

18          A.    Well, no one has told me. You'd have to  
19 ask the people that use it and for their reasons  
20 why. I'm not really prepared to answer why someone  
21 else would use it. That would be a question for  
22 them.

23                I don't know why, no. It's not really --  
24 it wouldn't be my place to answer why they don't,  
25 other than I have no idea.

1           Q.     And which PE method did Mr. LaPorte use in  
2 the report you reviewed from this case? There was a  
3 couple that you mentioned in response from questions  
4 from Mr. Southwell, and I just want to identify was  
5 it an extraction method or solvent ratio method,  
6 what did he do?

7           A.     Let me put the report in front of me and  
8 get his exact terminology that he says in his  
9 report.

10                   First of all, he lists a lot of different  
11 things that he does. I really -- I did read through  
12 several of them, but I really only concerned myself  
13 with Point Number 6, which was on page 15 through 16  
14 of his report.

15                   I don't know that he uses a specific  
16 nomenclature for this. I don't see it in his  
17 report, other than it appears he did a two-step  
18 process. Number one was to determine whether the PE  
19 was in abundance enough to do the second phase,  
20 which is what I had just talked about in the  
21 previous case.

22                   In the previous case, I observed him, he  
23 said there wasn't enough, which was, you know, not  
24 over this threshold. I think he uses it, it must be  
25 over a threshold of either five or ten thousand in

1 his report, he says this one was 20,000, so it's  
2 clearly over.

3 Then he uses what I think most people  
4 refer to as a solvent-loss technique, in other words  
5 how much of the PE is driven out by heat, by  
6 comparing an unheated sample to a heated sample.

7 Q. Are you aware of this method before today,  
8 you've heard of this method of driving it off with  
9 heat?

10 A. Yes, the use of accelerated aging to  
11 artificially induce age in substances is very  
12 common. It was first said to be used in inks using  
13 the analysis of dyes in 1979 by Tony Cantu in a  
14 technical note in the Journal of Forensic Sciences.  
15 And it's an ASTM standard, I think, for around some  
16 80-some different components, including like paint  
17 and rubber and things like that, bumpers, plastics,  
18 that sort of thing.

19 Q. And in this report, you noticed that he  
20 claims to have driven off an average of about what,  
21 62 percent of the PE in his testing of the sample?

22 A. I think he says that 64 percent is the  
23 average for the ink in the interlineation, which I  
24 think is the writing on page 1 that we've been  
25 referring to. He says two tests, 66 and 62, with an

1 average of 64.

2 Q. What is your opinion of his conclusion  
3 from that data that the ink is anywhere from  
4 24 months old to newer?

5 MR. SOUTHWELL: Just note our continuing  
6 objection.

7 THE WITNESS: First, as I said, it's my  
8 opinion, if it were reliable and based on what  
9 everyone else says, ignoring whatever issues  
10 may have occurred, but if it were reliable, it  
11 would mean it was less than six months old or  
12 perhaps even newer than that, which my  
13 understanding of the facts is it couldn't be.  
14 That's the first interpretation.

15 And he words reports that way, that with  
16 differences that big, it's less than six months  
17 old, but he doesn't put it in this report.

18 I also don't believe that PE is going to  
19 be reliable out to two years in detectable  
20 amounts that you can draw opinions from. I  
21 think the cutoff is probably closer to a year,  
22 unless you knew specifically what ink it was  
23 and that it definitely goes out that far.

24 So I wouldn't conclude the two years. I  
25 would say only within a year would it be that

1           reliable.

2                   MR. BOLAND: I have no questions left.

3           Thank you.

4                               REDIRECT EXAMINATION

5 BY MR. SOUTHWELL:

6           Q.     Couple of follow-ups.

7                   You said that you reviewed Mr. LaPorte's  
8 report, and specifically pages 15 and 16, right, or  
9 you said you read through it but that's where you  
10 really focused?

11           A.     Correct. I read the other five  
12 examinations and the indentations, especially  
13 because I didn't get to run the ESDA so I did read  
14 Point 7 as well, but the comments or the thoughts I  
15 had were mostly on paragraph 6 or Point 6.

16           Q.     And I think you said that you did not  
17 review any of his exhibits to the report, right?

18           A.     I think he had a couple of GC exhibits  
19 that I looked at, but it really wasn't all of his  
20 underlying data that I would like to see to comment  
21 fully.

22           Q.     And you mentioned a few times that this  
23 idea didn't meet with your understanding of the  
24 facts. And it's your understanding of the facts of  
25 the case from Mr. Stewart?

1           A.    Well, my understanding of the facts as of  
2   today would have come from a combination of  
3   Mr. Stewart, Mr. Boland, Mr. Argentieri, Mr. Lake  
4   and that would -- maybe some of the Edelson people,  
5   but probably not. I don't think they really  
6   contributed much to my knowledge of the facts. But  
7   perhaps a little bit that day in July.

8                    But that's the summary of where all my  
9   facts would have come from other than what I gleaned  
10  on my own, perhaps a little bit of common sense, but  
11  mostly from documents I had been provided.

12           Q.    And Mr. Boland was asking some questions  
13  about Mr. LaPorte's method.

14                    Do you know specifically what he did in  
15  his process of testing the PE?

16           A.    Well, I know what he wrote here, but I  
17  didn't get to observe him so, no, I don't. That's  
18  kind of the point.

19           Q.    I mean, do you --

20           A.    Mr. LaPorte is a big proponent of watching  
21  the other person do it, because you never know, and  
22  yet I didn't -- no one got to watch him, so it's  
23  hard to say what he really did. That's the problem.

24                    Plus, as I said, I don't have his  
25  underlying data which I just have a little bit of it

1 and what he has in the report, but I don't actually  
2 have the GC printouts and what was what.

3 I don't know, other than what he's got  
4 here in these two pages and I think there's two  
5 attachments to the report.

6 Q. And you said a couple of times that such a  
7 finding -- well, you said -- strike that.

8 You testified that Mr. LaPorte in other  
9 cases has identified documents less than six months  
10 old.

11 Can you identify any case specifically  
12 where he has identified a document as less than six  
13 months old based on a PE test?

14 A. Sure, it was the Aequitas case involving  
15 Larry Anderson and -- out of Delaware.

16 Q. And was his conclusion about the age of  
17 the document based -- well, have you read that  
18 report?

19 A. Yes, I was the one that got it, yes.

20 Q. You were on the other side of that report.  
21 In other words, you were on the other side of the  
22 case representing the other party?

23 A. I would say I was on the other side of the  
24 case. I wasn't representing him. I was the expert  
25 retained by the other side, that's right.

1 Q. You were retained by the other side on  
2 that case.

3 Do you recall from that report that there  
4 was - that the conclusion about the age of the  
5 document was based both on chemical test and a  
6 number of other specific facts that were not in  
7 dispute in that case about the sequence of the  
8 documents and the sequence of the writing?

9 A. I remember that there was - that was a  
10 part of the basis for the conclusion, but not for  
11 that it was done six months later. It was based on  
12 the large difference in PE, in my understanding of  
13 the report.

14 I mean, it speaks for itself. I don't  
15 have the report in front of me. The report is  
16 obvious. I have only that information about that  
17 report. And your understanding of the English  
18 language, I assume, is better than mine, but at  
19 least pretty close, and the report would read  
20 itself. I'm not asserting anything additional into  
21 that.

22 Q. So your testimony about Mr. LaPorte making  
23 a conclusion about six months and PE testing is  
24 based only on that report in that case, right,  
25 nothing else?

1           A.     That's right.     That's the only case I've  
2     ever seen him do that, and I was shocked when I read  
3     it, but, yes.

4           Q.     If, in fact, that report, as you said, we  
5     can look at the actual report, I read it, as did  
6     you.

7                     If that report, in fact, says that the  
8     six-month determination is based on a combination of  
9     the PE test and other facts in the case, such as the  
10    sequence of the writing, then what it says in that  
11    report would be determinative on whether Mr. LaPorte  
12    is concluding the document is less than six months  
13    based only on PE test or based on PE tests plus  
14    other facts, would you agree with that?

15          A.     It was a really long question.     But to  
16    determine what the basis is, I would say you have to  
17    read the report and you have to hear what he has to  
18    say and you want to see if that jives with or is in  
19    line with the underlying data and whether it makes  
20    sense or not.

21                    It's not because I read the report and  
22    know more about English than you do that we would  
23    say it means something else, because it's clearly  
24    not the case.

25          Q.     Let me try it one more time to try to be a

1 little clearer in my question.

2 If that report says I conclude it's less  
3 than six months old, and I do that based on -- just  
4 hypothetically speaking -- four things, PE testing  
5 and three other factual things that have to do with  
6 the sequence of the writing, would you agree with me  
7 that that conclusion about six months old would be  
8 based on those four things that are spelled out in  
9 the report?

10 A. No. I would say you'd have to look at the  
11 underlying data and the reasons for those other  
12 three things to see if it is a real reason. It  
13 could be, but just because they're listed doesn't  
14 mean those reasons support the less than six months  
15 idea. They could very well and those might be the  
16 basis and not the other. But you'd have to look at  
17 it to see if it makes sense that those details would  
18 support less than six months or just that it wasn't  
19 done at a certain time.

20 I don't know and I'm not going to comment  
21 because I don't remember the three things or however  
22 many there were.

23 Q. Just to be clear, I'm not actually asking  
24 for your assessment of the underlying merits. I'm  
25 trying to get at your understanding of what you

1 testified about what Mr. LaPorte, in fact, has said.

2 So if what Mr. LaPorte said in that report  
3 is, I conclude less than six months based on PE  
4 testing plus three other items, just hypothetically  
5 speaking, then would it be correct that his  
6 conclusion about the age would be based on PE  
7 testing, plus those other items, if that's what it  
8 said in the report?

9 A. No. I'm saying you'd have to look at  
10 those other items to see if it really supports less  
11 than six months. It might just mean -- for  
12 instance, this is a totally unrelated case. Just  
13 say I have a medical record and I say I conclude  
14 this entry was written in the last year and it's  
15 based on the fact the ink is less than a year old  
16 and it doesn't match the surrounding ink in that  
17 entry. Those are both factors as to why it was  
18 added less than a year ago.

19 Well, the second part really only allows  
20 me to say it was added later because it wasn't the  
21 same ink as everything else and the dating allows me  
22 to say it was done less than a year ago, but I  
23 already knew it was not when they said.

24 So you can have a list of reasons why for  
25 a global conclusion, but whether -- so what I'm

1 getting at is whether those other three points  
2 support less than six months or just not  
3 contemporaneously, I don't know. It could very well  
4 be, but I sure can't sit here and tell you it is.  
5 And I also can tell you just because Mr. LaPorte  
6 says it is, doesn't mean that it is.

7 But people who are reasonably intelligent  
8 can look at those reasons and see if it is or not.  
9 Not just me, but other people can do that as well.  
10 And it would be up to someone else to decide what  
11 that means, not for me to sit here and tell you what  
12 it means.

13 I could do that if I knew all the facts  
14 and had it in front of me, but I'm not any better at  
15 it than anyone else, is what I'm saying. I don't  
16 know, though.

17 Q. And I'm not asking specifically about  
18 whether you agree with Mr. LaPorte's conclusions or  
19 not.

20 I'm asking about the testimony that you  
21 gave here where you've identified Mr. LaPorte as  
22 having given an opinion about a document being less  
23 than six months old based on PE testing.

24 And my question to you is: If that report  
25 that you're relying upon, the Aequitas case?

1           A.    Aequitas, I think.

2           Q.    If that report, in fact, focused on and  
3 used as support for that conclusion PE testing plus  
4 other factors, I understand you would want to  
5 evaluate those other factors.

6                    But wouldn't it be fair to say that  
7 Mr. LaPorte's opinion would be based on however many  
8 factors are spelled out in his report?

9           A.    Well, they all went into the global  
10 opinion, but it's not just six months is the only  
11 opinion. So, yeah, I would think it's fair to say  
12 that other factors would factor into the opinion, of  
13 course.

14                   But whether they specifically relate to  
15 the six-month portion of the opinion is what I don't  
16 know.

17           Q.    Right, okay.

18           A.    That's what I'm trying to say.

19           Q.    I understand now. So assume that those  
20 other factors suggest that a document is less than  
21 six months old and that PE testing leads to a  
22 conclusion that the document is less than two years  
23 old, and that together leads to a conclusion that  
24 the document is less than six months old. If you  
25 assumed that that's what is spelled out in the

1 report, then it would be fair to say that  
2 Mr. LaPorte's conclusion, taking those assumptions  
3 about six months, would be based on PE testing plus  
4 those other factors that showed the document was  
5 less than six months old.

6 A. Sure. Agreed.

7 Q. And the report itself would give us the  
8 answer to this, right?

9 A. No. The facts for the report would give  
10 you the answer. Just because someone wrote it, no,  
11 that's what I'm trying to say. Just because the  
12 person being cross-examined on it says, no, this is  
13 the real reason, doesn't make it so. You'd have to  
14 look at the real reasons and see if that does  
15 support it, is what I'm trying to say.

16 But the report itself speaks for the  
17 bases. You look at the bases and see if they match.  
18 If, hypothetically, as you said, they all go in  
19 different peg holes, then, yes, I agree with your  
20 statement. But if they don't, it would show,  
21 perhaps, something different. I don't know. It's  
22 not for me to decide.

23 Q. I think we're hung up on the semantics.  
24 All I was asking about was your assessment of that  
25 report. I understand that you might want to

1 question or believe that there should be some  
2 evaluation of the other factors --

3 A. Well, I don't want to question. I'm  
4 saying there should be. If you're asking what does  
5 it mean, I'm saying I wouldn't strictly just read  
6 the report. I'd look at the factors and see, is  
7 what I'm trying to say.

8 Q. You would read the report, you would see  
9 what other factors there are that are cited there in  
10 support of the idea that the document is less than  
11 six months old and you would need to evaluate those.

12 A. And I would also ask him his reasoning, to  
13 be fair. I wouldn't just read the report and look  
14 at it and say, oh, he must have meant this. I would  
15 want to hear what he had to say about it, if it's a  
16 big issue, because he wrote it. I mean, it's only  
17 fair.

18 Q. Right, I understand.

19 MR. SOUTHWELL: Nothing further.

20 RE-CROSS-EXAMINATION

21 BY MR. BOLAND:

22 Q. I have one question.

23 Do you have a copy of that report from  
24 that case you were just discussing with  
25 Mr. Southwell from Delaware or wherever it was?

1           A.    I don't have it in front of me, but I have  
2 it, yes.

3           Q.    I'm talking about Mr. LaPorte's report  
4 from that case that you're referring to; do you have  
5 a copy of that?

6           A.    I do, but not in front of me. I didn't  
7 bring it with me here today, but, I mean, yeah,  
8 obviously I have one.

9           MR. BOLAND: All right, I would just ask  
10 that the court reporter make a note that we're  
11 going to request that that be attached as an  
12 exhibit to your deposition. And if you can  
13 provide that to me, and I will send it to the  
14 court reporter for that purpose.

15          THE WITNESS: You want me to provide the  
16 report to you?

17          MR. BOLAND: Yes, provide me a copy of  
18 Mr. LaPorte's report that you were just  
19 questioned about by Mr. Southwell, because you  
20 don't have it today, and I'll get it to the  
21 court reporter to attach as an exhibit to this  
22 deposition.

23          MR. SOUTHWELL: Mr. Boland, I object.  
24 It's not going to be properly authenticated.  
25 Either he has it and it can be marked or he

1 doesn't. I mean, he doesn't have it. Look,  
2 it's in the record. You've used it in other  
3 depositions, so I don't see what the big deal  
4 is about it being as part of Mr. Speckin's  
5 depos.

6 I think it's improper to try to send some  
7 document afterwards to the court reporter to  
8 ask that it be included.

9 MR. BOLAND: I'll have Mr. Speckin send us  
10 a letter attesting to the fact that this is a  
11 true and accurate copy of the report that he  
12 referred to in his deposition. And if you want  
13 to dispute his veracity, you're welcome to.

14 THE WITNESS: Why don't I just give it to  
15 the court reporter directly. She lives right  
16 here.

17 MR. BOLAND: Fine, give it to her  
18 directly. That will be perfect.

19 MR. SOUTHWELL: I don't agree with that  
20 being perfect. It is a document that exists in  
21 another litigation. Mr. Boland has provided it  
22 to us.

23 Look, your deposition is your deposition.  
24 If Mr. Boland wants to ask you to execute a  
25 declaration to put that in, then he can ask you

1 to do that. I don't think it's proper to have  
2 it separately going to the court reporter after  
3 the deposition is done.

4 Mr. Boland, you've got it, you've used it  
5 before, so I'm not really sure what, you know,  
6 the point of all of this is.

7 THE WITNESS: I don't care. I just want  
8 to go home.

9 MR. BOLAND: Theoretically, we can just  
10 pause the deposition and have Mr. Speckin spend  
11 several hours finding the report, making  
12 everyone sit around and he can bring it back to  
13 the table and give it to us or he can just hand  
14 it to her, whatever you want to do.

15 MR. SOUTHWELL: If we were planning to get  
16 into it, you could have been prepared to have  
17 it here.

18 MR. BOLAND: I wasn't planning to get into  
19 it. You got into it.

20 MR. SOUTHWELL: All right. Fine. I think  
21 the deposition is done. I think that you  
22 should do whatever you want to do with this  
23 report. It's been used before in the case, and  
24 whatever you want to do, just make sure you  
25 make a record of it and we'll take whatever

1 appropriate steps we think appropriate.

2 MR. BOLAND: I already expressed that.  
3 Mr. Speckin will give a copy to the court  
4 reporter, and I'm asking that they attach it as  
5 an exhibit. That's all. Nothing improper  
6 about it at all.

7 MR. SOUTHWELL: We don't know what it is.  
8 He has not identified it. I think it should  
9 come with some identification, and I don't  
10 think it should be an exhibit to this  
11 deposition.

12 MR. BOLAND: I agree. You don't want him  
13 sending a random document. He can compose a  
14 letter that says this is the document I was  
15 referring to in my deposition, get the date and  
16 time of the deposition, and we'll all know  
17 exactly what it is.

18 MR. SOUTHWELL: Fine, if he wants to send  
19 that to all of us, I'm fine with that.

20 MR. BOLAND: No, to the court reporter and  
21 we'll all get that as part of getting his  
22 deposition.

23 MR. SOUTHWELL: Well, I don't agree with  
24 that. I think he can send it to you and me and  
25 we can have a record of it. I don't think he

1 should be sending it to the court reporter to  
2 have it, after the deposition is done, be added  
3 to the record.

4 MR. BOLAND: Mr. Speckin, I don't know  
5 where you're at. Are you guys in your offices  
6 or in the court reporter's offices?

7 THE WITNESS: We're in my office. But the  
8 file is in my house that has this report in it.  
9 So it's probably, I would guess, 2 miles from  
10 here or maybe a little bit less.

11 MR. BOLAND: Why don't we take a break and  
12 he can bring the report back and authenticate  
13 it. It sounds like it's a quick trip. Solves  
14 the problem.

15 THE WITNESS: You're serious?

16 MR. BOLAND: You said 2 miles or did you  
17 say two hours? I thought you said 2 miles.

18 THE WITNESS: I said 2 miles.

19 MR. BOLAND: Is there a time factor  
20 involved? I know you just recently were  
21 transferring things to two houses. Maybe it  
22 will be a hassle to find out.

23 MR. SOUTHWELL: I think Mr. Speckin was  
24 hoping to make a flight this afternoon.

25 MR. BOLAND: Oh, very well. I don't want

1 to hold anyone else up either. I don't want to  
2 hold the court reporter up. I'll ask that you  
3 send it to the court reporter and we'll go from  
4 there. Ask to have it attached as an exhibit  
5 and we'll go from there.

6 MR. SOUTHWELL: Okay.

7 THE WITNESS: You guys can argue later. I  
8 really just want to go home and catch this  
9 flight, if that's all right with you guys. You  
10 can argue all day. It doesn't matter to me.

11 MR. BOLAND: That's fine.

12 MR. SOUTHWELL: Why don't we have him  
13 provide it to us. If you want to send it to  
14 the court reporter, you can make your record  
15 and I can make my record and we can deal with  
16 that without bothering Mr. Speckin with that.

17 MR. BOLAND: That sounds like continuing  
18 the argument. I stated what I want done and  
19 we'll go from there and if you have an  
20 objection, you have an objection, that's fine.

21 MR. SOUTHWELL: Okay. Well, I do have an  
22 objection.

23 MR. BOLAND: Very well.

24 THE WITNESS: And?

25 MR. BOLAND: I have no further questions.

1 MR. SOUTHWELL: Okay, me either.

2 THE VIDEOGRAPHER: The time is 11:45 a.m.  
3 This concludes the deposition. Going off the  
4 video record.

5 THE WITNESS: Read and sign, please.

6 (Adjourned at 11:45 a.m.)

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ACKNOWLEDGMENT OF DEPONENT

I have read the foregoing transcript of my deposition and except for any corrections or changes noted on the errata sheet, I hereby subscribe to the transcript as an accurate record of the statements made by me.

\_\_\_\_\_

ERICH SPECKIN

SUBSCRIBED AND SWORN before and to me  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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NOTARY PUBLIC

My Commission expires:





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CERTIFICATE OF OATH

STATE OF FLORIDA )  
COUNTY OF BROWARD )

I, the undersigned authority, certify  
that ERICH SPECKIN personally appeared before me  
and was duly sworn.

WITNESS my hand and official seal this  
25th day of September, 2012.

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SUZANNE VITALE, R.P.R., F.P.R.  
Notary Public, State of Florida  
My Commission No. DD179981  
Expires: 5/24/2011

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CERTIFICATE

STATE OF FLORIDA )  
COUNTY OF BROWARD )

I, SUZANNE VITALE, R.P.R., F.P.R. do hereby certify that I was authorized to and did stenographically report the foregoing deposition of ERICH SPECKIN; that a review of the transcript was requested; and that the transcript is a true record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 25th day of September, 2012.

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SUZANNE VITALE, R.P.R., F.P.R.  
My Commission No. DD179981  
Expires: 5/24/2011

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