

# Alexander H. Southwell

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Alexander H. Southwell is a partner in Gibson, Dunn & Crutcher's New York office. His practice focuses in two main areas: first, white-collar criminal and regulatory enforcement defense, internal investigations, compliance monitoring, and complex civil litigation; and, second, information technology and data privacy-related investigations, counseling, and litigation. Mr. Southwell is Co-Chair of the Firm's Information Technology and Data Privacy practice group and is also a member of the White Collar Defense and Investigations, Crisis Management, Securities Enforcement, and Litigation practice groups. Prior to joining the Firm, Mr. Southwell served as an Assistant United States Attorney in the United States Attorney's Office for the Southern District of New York.

Mr. Southwell is an experienced trial and appellate attorney and regularly represents corporate executives and individuals in connection with white-collar criminal investigations and prosecutions by federal and state prosecutors as well as related civil investigations by a wide range of regulators. Mr. Southwell also regularly represents companies and boards in these types of matters and has significant experience in conducting internal corporate investigations and compliance monitoring. Substantively, his areas of expertise include securities and accounting fraud, economic sanctions violations, money laundering and Bank Secrecy Act violations, tax fraud, the False Claims Act and contracting fraud, healthcare fraud and compliance, the Computer Fraud and Abuse Act, the Foreign Corrupt Practices Act, the Economic Espionage Act, and public corruption, among others. Additionally, Mr. Southwell counsels a variety of clients on privacy, information technology, data breach, theft of trade secrets and intellectual property, computer fraud, national security, and network and data security issues, including handling investigations, enforcement defense, and litigation.

#### Recent significant engagements include:

- Represents Facebook and Mark Zuckerberg in a high-profile breach of contract action brought by Paul Ceglia in Federal Court in Buffalo, New York alleging an ownership interest in Facebook. Successfully obtained expedited discovery against Plaintiff, developing evidence of spoliation of evidence and fraud concerning Plaintiff's lawsuit, which was used to move to dismiss the case.
- Represents a leading financial institution in a significant

#### PRACTICES

Litigation  
 Appellate and Constitutional Law  
 Crisis Management  
 Electronic Discovery and Information Law  
 Information Technology and Data Privacy  
 Intellectual Property  
 Law Firm Defense  
 Securities Enforcement  
 Securities Litigation  
 White Collar Defense and Investigations

#### EDUCATION

New York University  
*1997 Juris Doctor*  
 Princeton University  
*1993 Bachelor of Arts*

#### ADMISSIONS

New York Bar

#### RECENT PUBLICATIONS

NIST Debuts Cybersecurity Framework  
 2013 Trade Secrets Litigation Round-Up  
 The Cybersecurity Framework Risk management process ... and pathway

Partner

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internal investigation and defense of civil fraud investigation under the False Claims Act and FIREAA related to mortgage-related government insurance program.

- Represents the Port Authority of New York and New Jersey in litigation in the Southern District of New York brought by two local Automobile Associations challenging recent Port Authority toll increases on statutory and constitutional grounds.
- Represented a business executive facing criminal securities fraud charges brought by the United States Attorney's Office for the Eastern District of New York related to executive's alleged role in a microcap pump-and-dump scheme.
- Represents a leading global financial institution in investigation by New York Department of Financial Services related to economic sanctions requirements and state banking laws.
- Represented Chevron Corporation defending against environmental claims emanating from Ecuador, in which the plaintiffs allege billions of dollars in damages, including in civil RICO proceedings in the Southern District of New York and related matters.
- Represented a major retailer in an internal investigation and defense of grand jury investigation and OSHA investigation related to workplace fatality.
- Represents an executive search firm in response to sophisticated cyber-attack including Advanced Persistent Threat intrusion and extensive exfiltration of sensitive databases. Counseled client on investigation of intrusion, including supervising digital forensics investigation and data security improvements, handled referral of incident to law enforcement and coordinated breach notification compliance, as well as public relations and SEC disclosure strategy.
- Represents international bank in Department of Justice investigation of foreign corrupt practices related to Middle Eastern activities by bank client.
- Represents a public reinsurance company in an internal investigation related to allegations of collusion and price-fixing.
- Represented a private equity principal and fund in the public corruption "pay to play" investigation being conducted by the New York Attorney General's Office and the Securities and Exchange Commission.
- Represents a major educational non-profit institution in a significant investigation by the New York Attorney General's Office concerning the institution's governance.
- Represented Board Audit Committee of health insurance provider in internal investigation related to allegations of poor internal and audit controls.
- Represents one of the nation's largest secular healthcare systems in response to data breach involving lost laptop with extensive database of research participants. Counseled client on investigation of incident, including supervising digital forensics investigation and data security improvements, coordinated breach notification compliance under HIPPA and state law, public relations

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strategy, and law enforcement interaction.

- Represented Moneygram in proceedings seeking to recover losses from funds forfeited in related criminal bank fraud prosecution. Successfully obtained substantial recovery through forfeiture litigation.
- Assisted Gibson Dunn partner who served as Independent Monitor for a medical device company pursuant to a Deferred Prosecution Agreement with the United States Attorney's Office in New Jersey, including revising healthcare compliance policies and training and ensuring compliance with the Anti-Kickback Statute and other relevant healthcare laws, regulations, and corporate policies.
- Represented a bank in a securities fraud investigation by the New York Attorney General's Office, the Securities and Exchange Commission and Department of Justice, and achieved a declination of prosecution.
- Represented a dermatologist who is the target of a criminal healthcare fraud investigation being conducted by the Federal Bureau of Investigation and the Southern District of New York United States Attorney's Office.
- Represented a former executive at an accounting firm in connection with a tax shelter-related investigation by the Southern District of New York United States Attorney's Office.
- Represented a home health aide provider who was under criminal Indictment on healthcare-related larceny charges brought by the New York Attorney General's Office.
- Represented Facebook in an investigation into its privacy and safety policies and procedures by the New York Attorney General's Office, which resulted in a groundbreaking settlement that has been hailed as a model of compliance.

Prior to joining the Firm, Mr. Southwell served as an Assistant United States Attorney in the United States Attorney's Office for the Southern District of New York from 2001 through 2007. As a member of that office's Securities and Commodities Fraud Task Force for three years, Mr. Southwell investigated and prosecuted a wide range of cases under the federal securities laws, including accounting fraud, insider trading, fraudulent offering of securities, market manipulation, and hedge fund improprieties. Mr. Southwell also focused on investigating and prosecuting computer hacking and intrusion cases and intellectual property offenses, as well as other high-technology offenses. Additionally, Mr. Southwell prosecuted a range of cases including wire and mail frauds, insurance fraud, public corruption, Foreign Corrupt Practice Act violations, bank secrecy act violations, identity theft, firearms crimes, tax offenses, child exploitation, and immigration crimes. As a federal prosecutor, Mr. Southwell tried a dozen felony cases and handled over a dozen appeals before the Second Circuit Court of Appeals.

Mr. Southwell has been honored by *Benchmark Litigation* 2014 as a future star and by *Best Lawyers'* 2014.

Mr. Southwell is also an Adjunct Professor of Law at Fordham University School of Law where he teaches a

seminar on cyber-crimes, covering computer misuse crimes, intellectual property offenses, the Fourth Amendment in cyber-space, computer evidence at trial, data breach and privacy issues, and information security, among other areas.

Mr. Southwell earned his undergraduate degree, *magna cum laude*, from Princeton University and his Juris Doctor, *magna cum laude*, from New York University School of Law. Following law school, Mr. Southwell was a Law Clerk for the Honorable Naomi Reice Buchwald of the United States District Court for the Southern District of New York.

Mr. Southwell also serves on the Firmwide Diversity Committee and is active with the Federal Bar Council and the Association of the Bar of the City of New York, serving on the Association's Professional Responsibility Committee and previously serving on the Committee on Information Technology Law and the Government Ethics Committee.

Please click below for detailed profiles on specific areas of Mr. Southwell's practice.

[White Collar and Securities Fraud Profile](#)

[Information Technology and Data Privacy Profile](#)

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Alexander H. Southwell is a partner in Gibson, Dunn & Crutcher's New York office and is Co-Chair of the Firm's Information Technology and Data Privacy practice group. His practice focuses on counseling a variety of clients on privacy, information technology, data breach, theft of trade secrets and intellectual property, computer fraud, national security, and network and data security issues, including handling investigations, enforcement defense, and litigation. In particular, Mr. Southwell regularly advises companies victimized by cyber-crimes and counsels on issues under the Computer Fraud and Abuse Act, the Economic Espionage Act, the Electronic Communications Privacy Act, and related federal and state statutes. Mr. Southwell additionally handles a range of white-collar criminal and regulatory enforcement defense, internal investigation, compliance, and complex civil litigation matters. An experienced trial and appellate attorney, prior to joining the firm, Mr. Southwell served as an Assistant United States Attorney in the United States Attorney's Office for the Southern District of New York.

### Recent significant engagements in the Information Technology and Data Privacy area include:

- Represents an executive search firm in response to sophisticated cyber-attack including Advanced Persistent Threat intrusion and extensive exfiltration of sensitive databases. Counseled client on investigation of intrusion, including supervising digital forensics investigation and data security improvements, handled referral of incident to law enforcement and coordinated breach notification compliance, as well as public relations and SEC disclosure strategy.
- Represents one of the nation's largest secular healthcare systems in response to data breach involving lost laptop with extensive database of research participants. Counseled client on investigation of incident, including supervising digital forensics investigation and data security improvements, coordinated breach notification compliance under

HIPPA and state law, public relations strategy, and law enforcement interaction.

- Represented major hardware provider in response to reports of a security vulnerability in hardware firmware that security researchers reported could result in a widespread attack on computer networks using hardware. Successfully obtained a commitment from the academic security researchers to modify anticipated conference presentation where researchers had been planning on releasing research and tools resulting from their reverse engineering of firmware at a computer hacker's conference.
- Represented Register.com in civil litigation brought by a search engine customer concerning the domain hijacking of the customer's domain in a cyber-attack and in the related internal investigation. Successfully obtained dismissal of the majority of the novel causes of action.
- Represents Facebook and Mark Zuckerberg in a high-profile breach of contract action brought by an individual in Federal Court in Buffalo, New York alleging an ownership interest in Facebook. Successfully obtained expedited discovery against Plaintiff, developing evidence of spoliation of evidence and fraud concerning Plaintiff's lawsuit, which was used to move to dismiss the case.
- Represents a prominent US-based on-line company in its interactions with the United States Department of Justice related to automated attacks on the company's web site, which resulted in the indictment and conviction of the attackers.
- Counsels leading hospitality and resort company on privacy and email marketing issues related to corporate transaction and in updating worldwide privacy policies and practices.
- Counseling a leading retailer on implementation of a loyalty program and other state and federal privacy law issues related to their collection and use of customer data.
- Represented a former high-ranking executive under criminal investigation for theft of trade secrets in violation of the Economic Espionage Act and unauthorized computer access by the Southern District of New York United States Attorney's Office.
- Represented Accuity in a putative class action for alleged violations of the Fair Credit Reporting Act related to reporting individuals apparently matching those on the Office of Foreign Asset Control's list of foreigners against whom economic sanctions have been imposed. Successfully obtained dismissal with prejudice prior to the start of discovery.
- Represented Facebook in an investigation into its privacy and safety policies and procedures by the New York Attorney General's Office, which resulted in a groundbreaking settlement that has been hailed as a model of compliance.



- Counseled a Fortune 50 company concerning its corporate information security policies.
- Represents a leading provider of integrated technology solutions for satellite communications-interfaced systems concerning anonymous postings to an online bulletin board intended to damage the company's stock price.
- Represented a company related to a criminal referral of two former employees who illegally accessed the company's computer systems and stole trade secrets. As a result of the representation, the Southern District of New York United States Attorney's Office brought criminal charges against the two former employees.
- Counseling a leading social network related to response to law enforcement requests for user data.
- Represents directory assistance and enhanced information service provider with a prominent "daily deals" business on various privacy related issues.
- Counsel numerous non-profit organizations on issues related to privacy policies, social media policies, compliance with the Children's Online Privacy Protection Act, network security issues, and email and text marketing and interactions.
- Counseled a leading resort company concerning its corporate information security and social media policies, as well as network security and data breach incident response plan.
- Represented a number of individuals in criminal investigations and civil litigation for role in internet gambling operations.
- Represented an on-line retailer in responding to a data breach and coordinating with law enforcement concerning the security incident.
- Counseled the leading provider of data solutions to financial institutions concerning the applicability of the Fair Credit Reporting Act to a business line in connection with the sale of the provider.
- Conducted privacy due diligence and counseling for a number of complex corporate transactions.
- Counseled a number of prominent individuals concerning online reputation management and identity theft.
- Assisted a national trucking company with the removal of anonymous attacks on their business posted to a blog.
- Represents social networking site in criminal investigation related to application marketing.

- Conducted an investigation for a financial institution related to anonymous e-mail attacks directed at a top executive.
- Assists the leading non-profit digital library, on a pro bono basis, related to compliance with federal child exploitation law and law enforcement interactions.
- Counseled a leading hospitality company concerning government inquiry related to computer network and related data security breach.
- Counseled an electro-mechanical components manufacturer related to a criminal referral of a trade secret theft of engineering drawings and schematics.
- Assisted a corporate executive in removing unwanted internet content concerning him.
- Represented a prominent independent school in New York, in a pro bono basis, related to cyber-safety issues for students, faculty, and administration.

Prior to joining the firm, Mr. Southwell served as an Assistant United States Attorney in the United States Attorney's Office for the Southern District of New York from 2001 through 2007. As a member of that office's CHIPs unit, Mr. Southwell investigated and prosecuted computer hacking and intrusion cases, intellectual property offenses – including matters arising under the DMCA, the Economic Espionage Act and the criminal copyright and trade secret statutes – as well as other high-technology offenses. Additionally, Mr. Southwell served as one of the District's resident technical advisors and legal counselors to prosecutors and agents on electronic search and seizures and technology issues and worked on outreach, training and prevention with law enforcement and the digital community. Mr. Southwell also focused on investigating and prosecuting cases under the federal securities laws, including accounting fraud, insider trading, fraudulent offering of securities and market manipulation. In addition, Mr. Southwell prosecuted a wide range of cases including wire and mail frauds, insurance fraud, public corruption, Foreign Corrupt Practices Act violations, bank secrecy act violations, identity theft, firearms crimes, tax offenses, child exploitation, and immigration crimes. As a federal prosecutor, Mr. Southwell tried a dozen felony cases and handled over a dozen appeals before the Second Circuit Court of Appeals.

#### Significant government investigations and prosecutions included:

- Investigated and successfully prosecuted computer hacker for unlawful distribution of trade secrets under the Economic Espionage Act for his possession and sale of a stolen copy of the source code for Microsoft Windows products with a significant reported decision interpreting the Act and with media coverage including in New York Times and on-line media.
- Investigated and successfully prosecuted a number of individuals on criminal copyright charges for manufacture and sale of pirated computer software, including one who trafficked in over \$1 million worth of counterfeit software and who was sentenced to



over three years' imprisonment.

- Investigated and prosecuted individual who ran a sophisticated Internet image distribution system dedicated to the dissemination of child pornography, including successfully trying the nation's first jury trial of a child pornography "F-Server" case and successfully petitioning for mandamus during trial with extensive media coverage including in New York Times.
- Investigated and successfully prosecuted former IT consultant who hacked into client's computer systems in retaliation for fee dispute.
- Investigated a number of cyber-extortion attacks in the financial services industry, usually involving foreign nationals.
- Successfully prosecuted a voice and drama teacher for children for attempting to entice a minor to engage in sexual activity over the Internet and traveling from New Jersey to New York to engage in sexual acts with a minor.
- Investigated telecommunications companies and individuals related to allegations of unlawful call routing with extensive media coverage including in Wall Street Journal, Washington Post, and New York Times.

Mr. Southwell is also an Adjunct Professor of Law at Fordham University School of Law where he teaches a seminar on cyber-crimes, covering computer misuse crimes, intellectual property offenses, the Fourth Amendment in cyber-space, computer evidence at trial, data breach and privacy issues, and information security, among other areas.

Mr. Southwell earned his undergraduate degree, *magna cum laude*, from Princeton University and his Juris Doctor, *magna cum laude*, from New York University School of Law. Following law school, Mr. Southwell was a Law Clerk for the Honorable Naomi Reice Buchwald of the United States District Court for the Southern District of New York.

Mr. Southwell is also a member of the firm's Electronic Discovery and Information Law, Intellectual Property, White Collar Defense and Investigations, Crisis Management, Litigation, and Appellate and Constitutional Law Practice Groups. Mr. Southwell also serves on Gibson Dunn's Firmwide Diversity Committee and is active with the Federal Bar Council and the Association of the Bar of the City of New York, serving on the Association's Professional Responsibility Committee and previously serving on the Committee on Information Technology Law and the Government Ethics Committee. Mr. Southwell was selected to serve on a special committee of the Association of the Bar of the City of New York addressing new media in the courtroom, which focuses on the effect of new media on lawyers' responsibilities in trying cases, juror behavior, and fair trial/free press issues. In addition, Mr. Southwell serves on the Board of Advisors of the Center on Law and Information Policy at Fordham Law School, one of the nation's leading academic centers contributing to the development of the law and policy in the area of information

technology, and is a member of the New York Chapter of InfraGard, a partnership between the FBI and the private sector dedicated to sharing information and intelligence to prevent hostile acts against the United States' cyber and physical infrastructure.

Mr. Southwell is a nationally recognized expert on data and information security, digital privacy, and related areas. He regularly publishes articles and is asked to speak on the areas of his expertise. He is also regularly sought out for comment by national and international media on these areas.

#### Recent articles, lectures, and presentations include:

- Speaker, "Financial Institutions in the Crosshairs: The False Claims Act and FIRREA," Gibson Dunn webinar, October 2013.
- Presenter, "Recent Legal Developments in Marketing, Pricing, and Brand Protection," client presentation, September 2013.
- Speaker, "Social Media: The Legal Landscape and Developments," client presentation, August 2013.
- Presenter, "Antitrust and Privacy/Data Security," client presentation, June 2013.
- Speaker on Cyber-Security, Audit Committee Roundtable of Orange County, April 2013.
- Presenter, "Privacy and Digital Marketing," client presentation, April 2013.
- Speaker on Federal Statutes at Brooklyn Law School Trade Secrets Institute Symposium, "Keeping Your Secrets Safe," April 2013.
- Presenter, "The Omni-Channel Experience: Challenges, Strategies, and Risks," Acquity Group and Gibson Dunn webinar, March 2013.
- Speaker, "Creating a Culture of Compliance: Best Practices for Structuring and Implementing Internal Audits and Seamlessly Responding to a Government Inquiry," ACI National Forum on Fraud and Abuse in the Sale and Marketing of Drugs, March 2013.
- Co-author, "2012 Trade Secrets Litigation Round-Up," BNA's *Patent, Trademark & Copyright Journal*, January 2013.
- Speaker, "Fashion Law – the Global Challenge," PLI webcast, December 2012.
- Presenter, "Acqui-hires: Key Issues and Considerations," client webinar, December 2012.

- Speaker, “Online Security,” Federal Judicial Center and Center on Law and Information Policy’s Internet Technology Basics for Judges program, May 2012.
- Moderator, “The Ethics of Big Data Collection and Use,” Center on Law and Information Policy’s Sixth Law and Information Society Symposium on “Big Data, Big Issues,” March 2012.
- Presenter, “Data Breaches, Hacks and Vulnerabilities: Leading Strategies for Responding to a Data Breach,” Gibson Dunn webcast, February 2012.
- Co-author, “2011 Trade Secrets Litigation Round-Up,” *BNA’s Patent, Trademark & Copyright Journal*, January 2012.
- Co-author, “SEC issues interpretive guidance on cybersecurity disclosures under U.S. securities laws,” *Lexology*, October 2011.
- Presenter, “Current Issues and Challenges Related to Social Media in the Entertainment Industry,” client presentation, September 2011.
- Presenter, “Key Issues in E-Commerce M&A,” Thomson Reuters webcast, September 2011.
- “Current Social Media Issues and Challenges,” client presentation, June 2011.
- Presenter, “Key Issues in E-Commerce M&A,” Gibson Dunn webcast, June 2011.
- Speaker, “Comprehensive National Cybersecurity Initiative,” Gibson Dunn presentation, March 2011.
- Panelist, “Critical Social Media Issues for Retail Companies,” Gibson Dunn webcast, January 2011.
- Presenter, “Practitioner’s Guide to Social Media,” Corporate Executive Board General Counsel Roundtable and Compliance and Ethics Leadership Council webcast, December 2010.
- Speaker, “Annual Review of Key Legal Developments: Trademarks, Copyright, and Trade Secrets,” ABA’s Fourth Annual National Institute on Criminal Enforcement of Intellectual Property Rights, November 2010.
- Panelist, “The Evolution of Cybercrime and How to Combat It,” The Coalition Against Domain Name Abuse’s Online Brand Abuse and Internet Governance Forum, October 2010.
- Presenter, “Cyber Crimes: Phishing, Pharming and Beyond,” Lorman Educational Services webcast, September 2010.

- Presenter, “Recent Developments in Privacy and Data Security,” Education Finance Council/National Council of Higher Education Loan Programs 2010 Student Loan Finance and Legal Meeting, August 2010.
- Speaker, “Legal Responses to Current Cyber Security Threats,” International Conference on Cyber Security hosted by the FBI and Fordham University, August 2010.
- Speaker, “Healthcare Privacy and Information Security,” Association for Healthcare Risk Management of New York Annual Conference, June 2010.
- Panelist, “Incident Response,” Cyber and Intellectual Property Crime Symposium, hosted by the U.S. Attorney’s Office for the District of New Jersey and Rutgers School of Law-Newark, June 2010.
- Guest Lecturer, “Advanced Persistent Threats and the Criminal Enforcement of Cyber Security,” for Cyber Security and Applications seminar at Fordham University Graduate School of Arts and Sciences, May 2010.
- Panelist, “Hot Topics in Cybercrime: Investigating and Responding To Source Code Thefts and Anonymous Attacks,” ABA’s 24th Annual National Institute on White Collar Crime, February 2010.
- Speaker, “Litigation Issues Under the Economic Espionage Act,” ABA’s Third Annual National Institute on Criminal Enforcement of Intellectual Property Rights, October 2009.
- Panelist, “Cyberspace–The Black Hole Where Ethics, Strategy, and Technology Collide,” NACDL & Fordham Law School’s 2009 White Collar Seminar on Defending the White Collar Case, October 2009.
- Speaker, “Privacy in Litigation,” PLI’s Tenth Annual Institute on Privacy and Data Security, June 2009.
- Author, “A Sword of a Shield? The New Administration’s Approach to Cybercrime and Cybercrime Fighting,” *The Champion*, May 2009.
- Speaker, “Data Security 101: An Ounce of Prevention is Worth a Pound of Cure,” LegalTech New York, February 2009.
- Panelist, “Legal and Technical Policy Issues in Cyber Security,” International Conference on Cyber Security hosted by the FBI and Fordham University’s Department of Computer and Information Services, January 2009.
- “Data Security Breaches: Preparing for and Addressing the Enterprise-Threatening Risks” presentation to client, September 2008.

- Author, “Data Breaches: Expect A Rise in Litigation,” New York Law Journal: Investigations & Computer Forensics, May 2008.
- “Update on Federal and State Data Privacy Laws” presentation to Gibson, Dunn & Crutcher LLP Intellectual Property Institute, December 2007.
- “Trends in Cyber-crime and Information Security Enforcement” presentation to John Jay College of Criminal Justice Center for Cybercrime Studies, December 2007.
- Speaker at New York University Journal of Legislation and Public Policy Symposium, “Leviathan’s Network: Municipal Wireless and Civil Liberties,” November 2007.
- “Internal Investigations: The Role of In-House Counsel” presentation to client, July 2007.
- Panelist, “Protecting Borders in the Information Age – Balancing Data, Privacy, and National Security in North America,” Fordham Law School Center on Law and Information Policy/The Americas Society/North American Consortium on Legal Education Workshop, April 2007.
- Speaker, International Data Protection and Binding Corporate Rules Invitational Workshop, Fordham Law School Center on Law and Information Policy, November 2006.
- “Cyber-crimes” presentation to Criminal Prosecution clinic, New York University School of Law, March 2005.
- “Anatomy of an F-Server Case: Investigation and Prosecution Case Study, United States v. Pabon-Cruz” presentation to Investigation and Prosecution of Advanced Child Exploitation Cases Seminar, U.S. Department of Justice, National Advocacy Center, March 2004.

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### Recent significant engagements in the white-collar, securities enforcement, and litigation areas include:

- Represents Facebook and Mark Zuckerberg in a high-profile breach of contract action brought by Paul Ceglia in Federal Court in Buffalo, New York alleging an ownership interest in Facebook. Successfully obtained expedited discovery against Plaintiff, developing evidence of spoliation of evidence and fraud concerning Plaintiff's lawsuit, which was used to move to dismiss the case.



- Represents a leading financial institution in a significant internal investigation and defense of civil fraud investigation under the False Claims Act and FIREAA related to mortgage-related government insurance program.
- Represented a business executive facing criminal securities fraud charges brought by the United States Attorney's Office for the Eastern District of New York related to executive's alleged role in a microcap pump-and-dump scheme.
- Represents a leading global financial institution in investigation by New York Department of Financial Services related to economic sanctions requirements and state banking laws.
- Represented Chevron Corporation defending against environmental claims emanating from Ecuador, in which the plaintiffs allege billions of dollars in damages, including in civil RICO proceedings in the Southern District of New York and related matters.
- Represented a major retailer in an internal investigation and defense of grand jury investigation and OSHA investigation related to workplace incident.
- Represents a public reinsurance company in an internal investigation related to allegations of collusion and price-fixing.
- Represents a high-level bank executive in an investigation concerning the bank's compliance with economic sanctions requirements being conducted by the Department of Justice, New York County District Attorney's Office, and the Board of Governors of the Federal Reserve System.
- Represents international bank in Department of Justice investigation of foreign corrupt practices related to Middle Eastern activities by bank client.
- Represents a major educational non-profit institution in a significant investigation by the New York Attorney General's Office concerning the institution's governance.
- Assisted Gibson Dunn partner who served as Independent Monitor for a medical device company pursuant to a Deferred Prosecution Agreement with the United States Attorney's Office in New Jersey, including revising healthcare compliance policies and training and ensuring compliance with the Anti-Kickback Statute and other relevant healthcare laws, regulations, and corporate policies.
- Represented a private equity principal and fund in the public corruption "pay to play" investigation being conducted by the New York Attorney General's Office and the Securities and Exchange Commission.
- Represents a dermatologist who is the target of a criminal healthcare fraud investigation being conducted by the Federal Bureau of Investigation and the Southern District of New York United States Attorney's Office.

- Represented a former executive at an accounting firm in connection with a tax shelter-related investigation by the Southern District of New York United States Attorney's Office.
- Represented Board Audit Committee of health insurance provider in internal investigation related to allegations of poor internal and audit controls.
- Represented Moneygram in proceedings seeking to recover losses from funds forfeited in related criminal bank fraud prosecution. Successfully obtained substantial recovery through forfeiture litigation.
- Represented a home health aide provider who was under criminal Indictment on healthcare-related larceny charges brought by the New York Attorney General's Office.
- Represented the leading publisher and distributor of consumer guides in a tax-related internal investigation.
- Represents a prominent US-based on-line company in its interactions with the New Jersey United States Attorney's Office related to automated attacks on the company's web site.
- Represented Facebook in an investigation into its privacy and safety policies and procedures by the New York Attorney General's Office, which resulted in a groundbreaking settlement that has been hailed as a model of compliance.
- Represented a bank in a securities fraud investigation by the New York Attorney General's Office, the Securities and Exchange Commission and Department of Justice, and achieved a declination of prosecution.
- Represented a company related to a criminal referral of two former employees who illegally accessed the company's computer systems and stole trade secrets. As a result of the representation, the Southern District of New York United States Attorney's Office brought criminal charges against the two former employees.
- Represents JPMorgan Chase in a civil "mass action" in New York State court related to the bank's mortgage origination practices. Successfully obtained dismissal prior to the start of discovery.
- Represents the Port Authority of New York and New Jersey in litigation in the Southern District of New York brought by two local Automobile Associations challenging recent Port Authority toll increases on statutory and constitutional grounds.
- Represents a finance executive at a project management and construction company in a government contracting and fraud investigations being conducted by the Department of Justice and New York County District Attorney's Office.

- Obtained dismissal of a \$100 million breach of contract case against Warner Music Group Chairman Edgar Bronfman, Jr. The dismissal was affirmed by the New York Court of Appeals in an important precedent affirming the application of the Statute of Frauds to oral contract claims.

## Government Experience

Prior to joining the Firm, Mr. Southwell served as an Assistant United States Attorney in the United States Attorney's Office for the Southern District of New York from 2001 through 2007. As a member of that office's Securities and Commodities Fraud Task Force for three years, Mr. Southwell investigated and prosecuted a wide range of cases under the federal securities laws, including accounting fraud, insider trading, fraudulent offering of securities, market manipulation, and hedge fund improprieties. Mr. Southwell also focused on investigating and prosecuting computer hacking and intrusion cases and intellectual property offenses, as well as other high-technology offenses. Additionally, Mr. Southwell prosecuted a range of cases including wire and mail frauds, insurance fraud, public corruption, Foreign Corrupt Practice Act violations, bank secrecy act violations, identity theft, firearms crimes, tax offenses, child exploitation, and immigration and document fraud crimes. As a federal prosecutor, Mr. Southwell tried a dozen felony cases and handled over a dozen appeals before the Second Circuit Court of Appeals.

## Significant government investigations and prosecutions included:

- Investigated and successfully prosecuted former CEO and Chairman of Board of Directors, President and COO, CFO, and other executives in \$260 million accounting fraud at Impath, Inc., a medical diagnostics company formerly traded on NASDAQ, including three-week trial.
- Investigated and successfully prosecuted chairman and administrator, as well as other executives, of the Badische Banque et Internationale Trust, a fraudulent \$65 billion European financial institution, including three-week trial.
- Investigated and successfully prosecuted securities attorney and others in "pump-and-dump" scheme involving small cap stocks traded on the Over-the-Counter Bulletin Board, including two-week trial.
- Investigated hedge fund managers and executives for \$36 million diversion of assets and undisclosed self-dealing.
- Investigated an investment bank and its foreign affiliates related to alleged Foreign Corrupt Practice Act violations.
- Investigated and successfully prosecuted former CEO, CFO, and others involved with airline dealer in \$4 million fraud involving purported partnership interests in private aircraft.

- Investigated and successfully prosecuted former renowned market forecaster and commodities trader for “Ponzi” scheme resulting in over \$700 million in losses from commodities transactions.
- Investigated a number of top corporate executives of NYSE-listed banks and bank holding companies for accounting fraud concerning mortgage-related securities.
- Investigated an investment bank and its employees related to the pricing of certain Collateralized Debt Obligations, Collateralized Mortgage Obligations, and similar securities.
- Investigated and prosecuted individual who ran a sophisticated Internet image distribution system dedicated to the dissemination of child pornography, including successfully trying the nation’s first jury trial of a child pornography “F-Server” case and successfully petitioning for mandamus during trial.
- Investigated and successfully prosecuted owner of medical clinic on healthcare fraud and conspiracy charges for his role in complex insurance billing scheme.
- Investigated and successfully prosecuted a number of individuals involved in the fraudulent issuance of over 900 driver’s licenses from Washington, D.C., for illegal aliens by bribing a city employee.
- Investigated and successfully prosecuted a number of individuals involved in \$5 million fraud related to bogus Lloyd’s of London insurance policies.
- Investigated financial institution and individuals related to alleged bank secrecy act violations.

Mr. Southwell is also an Adjunct Professor of Law at Fordham University School of Law where he teaches a seminar on cyber-crimes, covering computer misuse crimes, intellectual property offenses, the Fourth Amendment in cyber-space, computer evidence at trial, data breach and privacy issues, and information security, among other areas.

Mr. Southwell earned his undergraduate degree, *magna cum laude*, from Princeton University and his Juris Doctor, *magna cum laude*, from New York University School of Law. Following law school, Mr. Southwell was a Law Clerk for the Honorable Naomi Reice Buchwald of the United States District Court for the Southern District of New York.

Mr. Southwell is a member of the Firm’s White Collar Defense and Investigations, Crisis Management, Securities Enforcement, Electronic Discovery and Information Law, Intellectual Property, Litigation, and Appellate and Constitutional Law practice groups and is Co-Chair of the Firm’s Information Technology and Data Privacy practice group. Mr. Southwell also serves on the Firmwide Diversity Committee and is active with the Federal Bar Council and the Association of the Bar of the City of New York, serving on the

Association's Professional Responsibility Committee and previously serving on the Committee on Information Technology Law and the Government Ethics Committee. Mr. Southwell was selected to serve on a special committee of the Association of the Bar of the City of New York addressing new media in the courtroom, which focuses on the effect of new media on lawyers' responsibilities in trying cases, juror behavior, and fair trial/free press issues.

Mr. Southwell is a nationally recognized expert on white collar crime issues, as well as data and information security, digital privacy, and related areas. He regularly publishes articles and is asked to speak on the areas of his expertise. He is also regularly sought out for comment by national and international media on these areas.

# Press Releases

Home > Firm News > Former Assistant United States Attorney...

## Former Assistant United States Attorney Alexander Southwell Joins Gibson Dunn's New York Office

July 24, 2007

Gibson, Dunn & Crutcher LLP is pleased to announce that Alexander H. Southwell has joined the firm's New York office as of counsel. Mr. Southwell previously served as an Assistant U.S. Attorney with the U.S. Attorney's Office in the Southern District of New York. He is a member of the firm's White Collar Defense and Investigations, Crisis Management, Litigation, Securities Litigation and Intellectual Property Practice Groups.

Gibson Dunn continues to increase its White Collar strength. Mr. Southwell joins a number of former Assistant U.S. Attorneys at Gibson Dunn, including Jarrett Arp, Robert Blume, Robert Bonner (U.S. Attorney, Cent. Dist. of Calif.), David Burns, David Debold, Lee Dunst, Miguel Estrada, Michael Farhang, Douglas Fuchs, Nicola Hanna, Peter Jaffe, Randy Mastro, Marcellus McRae, Orin Snyder, John Sturc, Maurice Suh, Jim Walden, Joseph Warin, Gregory Whitehair, and Debra Wong Yang (U.S. Attorney, Cent. Dist. of Calif.).

Mr. Southwell served from 2001 through 2007 as an Assistant U.S. Attorney with the U.S. Attorney's Office in the Southern District of New York. As a federal prosecutor and member of the Securities and Commodities Fraud Task Force for three years, Mr. Southwell investigated and prosecuted a wide range of cases under the federal securities laws, including accounting fraud, insider trading, fraudulent offering of securities, market manipulation, and hedge fund improprieties.

Mr. Southwell also focused on investigating and prosecuting computer hacking and intrusion cases and intellectual property offenses, as well as other high-technology offenses. Additionally, Mr. Southwell prosecuted a range of cases including wire and mail frauds, insurance fraud, public corruption, bank secrecy act violations, identity theft, firearms crimes, tax offenses, child exploitation, and immigration crimes. As a federal prosecutor, Mr. Southwell tried a dozen felony cases and handled over a dozen appeals before the Second Circuit Court of Appeals.

Mr. Southwell is also an Adjunct Professor of Law at Fordham University School of Law where he teaches a seminar on cyber-crimes, covering computer misuse crimes, intellectual property offenses, the Fourth Amendment in cyber-space, computer evidence at trial, data breach and privacy issues, and information security, among other areas.

Mr. Southwell earned his undergraduate degree, magna cum laude, from Princeton University and his law degree, magna cum laude, from New York University School of Law. Following law school, Mr. Southwell served as a Law Clerk for the Honorable Naomi Reice Buchwald of the United States District Court for the Southern District of New York.

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## 409 F.Supp.2d 253 (2005)

UNITED STATES of America,

v.

William P. GENOVESE, Jr., a/k/a "illwill," a/k/a "xillwillx@yahoo.com," Defendant.

No. 05 CR.04(WHP).

United States District Court, S.D. New York.

June 21, 2005.

254 \*254 Alexander Southwell, Thomas G.A. Brown, Assistant United States Attorneys, Office of the United States Attorney for the Southern District of New York, New York, NY, for the Government.

Sean Hecker, The Legal Aid Society, Federal Defender Division, New York, NY, for the defendant.

**MEMORANDUM AND ORDER**

PAULEY, District Judge.

By Indictment dated January 3, 2005, the Government charged the defendant, William P. Genovese, Jr., with one count of unlawfully downloading and selling a trade secret in violation of 18 U.S.C. § 1832(a)(2). Genovese moves to dismiss the Indictment pursuant to Rule 12(b)(3)(B) of the Federal Rules of Criminal Procedure. Genovese contends that the statute criminalizing trade secret theft is facially overbroad in violation of the First Amendment and unconstitutionally vague as applied to him. For the reasons set forth below, Genovese's motion to dismiss the Indictment is denied.

**BACKGROUND**

In February 2004, portions of Microsoft Corporation's source code for two of its computer operating systems, Windows NT 4.0 and Windows 2000, appeared on the Internet.<sup>[1]</sup> (Complaint, dated Nov. 4, 2004 ("Compl.") ¶¶ 3-4; Declaration of Sean Hecker, dated Mar. 16, 2005 ("Hecker Decl.") ¶¶ 3-4.)

255 \*255 The Indictment charges Genovese with downloading, copying, selling and attempting to sell Microsoft source code without authorization. (Indictment ¶ 1.) Specifically, the Government contends that on February 12, 2004, Genovese posted a message on his website offering the code for sale: "win2000 source code jacked . . . and illmob.org got a copy of it . . . im sure if you look hard you can find it or if you wanna buy it ill give you a password to my ftp."<sup>[2]</sup> (Government's Memorandum in Opposition to Motion to Dismiss ("Govt.Mem.") at 4.) According to the Complaint, an investigator retained by Microsoft responded to the message later that month by sending Genovese an email that offered twenty dollars for the code. (Compl.¶ 6.) After Genovese accepted the offer, the investigator transferred twenty dollars to Genovese through an online payment service. (Compl.¶ 6.) Genovese then provided access to the source code through his FTP server. (Compl.¶ 6.) Microsoft alerted the FBI. (Compl.¶ 7.) In July 2004, an undercover Government agent contacted Genovese and purchased the Microsoft source code. (Compl.¶¶ 7-8.) Genovese was arrested and charged with violating 18 U.S.C. § 1832(a)(2).

**DISCUSSION**

Section 1832 was enacted as part of the Economic Espionage Act of 1996, Pub.L. No. 104-294, 110 Stat. 3488 (the "EEA"). In relevant part, the statute applies to anyone who,

with intent to convert a trade secret, that is related to or included in a product that is produced for or placed in interstate or foreign commerce, to the economic benefit of anyone other than the owner thereof, and intending or knowing that the offense will, injure any owner of that trade secret, knowingly . . . without authorization copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates, or conveys such information.

18 U.S.C. § 1832(a)(2). "Trade secret," in turn, is defined to encompass

all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if (A) the owner thereof has taken reasonable measures to keep such information secret; and (B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public.

18 U.S.C. § 1839(3). The statute carries a ten-year maximum term of imprisonment. 18 U.S.C. § 1832(a).

#### A. Standard on a Motion to Dismiss the Indictment

The allegations of an indictment are accepted as true on a motion to dismiss. See United States v. Nat'l Dairy Prods. Corp., 372 U.S. 29, 33 n. 2, 83 S.Ct. 594, 9 L.Ed.2d 561 (1963); Boyce Motor Lines, Inc. v. United States, 342 U.S. 337, 343 n. 16, 72 S.Ct. 329, 96 L.Ed. 367 (1952); United States v. Goldberg, 756 F.2d 949, 950 (2d Cir.1985). "Contrary  
256 \*256 assertions of fact by the defendant[] will not be considered." Goldberg, 756 F.2d at 950 (citing United States v. Von Barta, 635 F.2d 999, 1002 (2d Cir.1980)).

#### B. Overbreadth in Violation of the First Amendment

**Genovese** argues that Section 1832 violates the First Amendment because it restricts protected speech and sweeps more broadly than necessary. A statute is unconstitutionally overbroad if there exists "a substantial risk that application of the provision will lead to the suppression of speech." Nat'l Endowment for the Arts v. Finley, 524 U.S. 569, 580, 118 S.Ct. 2168, 141 L.Ed.2d 500 (1998); see Virginia v. Hicks, 539 U.S. 113, 118, 123 S.Ct. 2191, 156 L.Ed.2d 148 (2003); accord Lerman v. Bd. of Elections in New York, 232 F.3d 135, 144 (2d Cir.2000). "When a litigant challenges a statute on its face as overly broad, the prudential limitations against third party standing are relaxed, and the litigant may assert the rights of individuals whose interests might be affected by the statute but who are not before the court." Lerman, 232 F.3d at 144; see Broadrick v. Oklahoma, 413 U.S. 601, 610, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973).

While the First Amendment protects the formulation of source code and other types of trade secrets encompassed by the EEA, see Universal City Studios, Inc. v. Corley, 273 F.3d 429, 445-46 (2d Cir.2001), the statute criminalizes their unauthorized copying, duplicating, downloading and uploading. 18 U.S.C. § 1832(a)(2). Moreover, the EEA limits its reach to such conduct that is done "with intent to convert a trade secret . . . to the economic benefit of anyone other than the owner thereof." 18 U.S.C. § 1832(a)(2). Such conduct is not protected speech. See United States v. Thompson, 76 F.3d 442, 452 (2d Cir.1996) ("A prohibition against corrupt acts `is clearly limited to . . . constitutionally unprotected and purportedly illicit activity.'" (quoting United States v. Jeter, 775 F.2d 670, 679 (6th Cir.1985))). Because Section 1832 is specifically targeted toward illegal activity and does not reach protected speech, the statute is not unconstitutionally overbroad. See Thompson, 76 F.3d at 452. Accordingly, **Genovese's** First Amendment challenge fails.

#### C. Void for Vagueness

The void-for-vagueness doctrine requires that a statute define the criminal offense with sufficient precision "that ordinary people can understand what conduct is prohibited." Kolender v. Lawson, 461 U.S. 352, 357, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983); accord United States v. Ansaldo, 372 F.3d 118, 122-23 (2d Cir.2004); United States v. Rahman, 189 F.3d 88, 116 (2d Cir.1999). Courts must also "consider whether the law provides explicit standards for those who apply it." Chatin v. Coombe, 186 F.3d 82, 87 (2d Cir.1999); see Kolender, 461 U.S. at 357, 103 S.Ct. 1855. "[V]agueness

challenges to statutes which do not involve First Amendment freedoms must be examined in the light of the facts of the case at hand." **United States v. Mazurie**, 419 U.S. 544, 550, 95 S.Ct. 710, 42 L.Ed.2d 706 (1975); accord **United States v. Rybicki**, 354 F.3d 124, 129 (2d Cir.2003).

A statute need not define the offense with "mathematical certainty." **Grayned v. City of Rockford**, 408 U.S. 104, 110, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972). "[S]ome inherent vagueness" is inevitable and thus permissible. **Rose v. Locke**, 423 U.S. 48, 49-50, 96 S.Ct. 243, 46 L.Ed.2d 185 (1975). Nonetheless, the statute must provide "relatively clear guidelines as to prohibited conduct." **Posters 'N' Things, Ltd. v. United States**, 511 U.S. 513, 525, 114 S.Ct. 1747, 128 L.Ed.2d 539 (1994). \*257 "The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed." **United States v. Harriss**, 347 U.S. 612, 617, 74 S.Ct. 808, 98 L.Ed. 989 (1954).

**Genovese** does not contend that Section 1832(a)(2) imprecisely describes the prohibited act (*i.e.*, that an individual is guilty if he "copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates, or conveys" a trade secret). Rather, he maintains that Section 1839(3)'s definition of "trade secret" is unconstitutionally vague as applied to the facts of this case and does not afford due process. Specifically, **Genovese** argues that having found the source code on the Internet after it had been released to the general public by a third-party, he could not have known that it was "not . . . generally known to . . . the public" and that Microsoft had taken "reasonable measures" to safeguard it.

#### 1. "Not . . . generally known to . . . the public"

**Genovese** maintains that "he had every reason to believe the code had become publicly available" when he found it on the Internet. (Defendant's Memorandum in Support of Motion to Dismiss ("Def Mem.") at 12.) However, a trade secret does not lose its protection under the EEA if it is temporarily, accidentally or illicitly released to the public, provided it does not become "generally known" or "readily ascertainable through proper means." 18 U.S.C. § 1839(3)(B).

**Genovese** merges these two standards and, in so doing, elevates the standard for trade secret status to one of absolute secrecy. This formulation impermissibly writes the critical modifier "generally" out of the statutory definition and attempts to inject a vagueness otherwise absent from the facts of this case.

Indeed, a reasonable inference from **Genovese's** website posting is that he knew that the source code derived independent value because it was not "generally known." The Government alleges that he described the code as "jacked" and indicated that others would have to "look hard" to find it elsewhere.<sup>[3]</sup> (Govt. Mem. at 4.) As such, **Genovese** was on notice that Microsoft had not publicly released the code and recognized its public scarcity. Moreover, because **Genovese** offered the code for sale and successfully sold it, he was on notice that it derived value from its relative obscurity, notwithstanding that it was available from other sources. See **United States v. Hsu**, 40 F.Supp.2d 623, 630-31 (E.D.Pa.1999) (rejecting a similar challenge to the definition of "trade secret" where the evidence showed that the defendant "knew (or at a minimum believed) that the . . . information he was seeking to acquire was not 'generally known to' or 'readily ascertainable' through proper means by, the public").

258 A statute may also be unconstitutionally vague if it "authorize[s] and even encourage[s] arbitrary and discriminatory \*258 enforcement." **City of Chicago v. Morales**, 527 U.S. 41, 56, 119 S.Ct. 1849, 144 L.Ed.2d 67 (1999); see **Kolender**, 461 U.S. at 357, 103 S.Ct. 1855. In this regard, **Genovese** argues that the statute provided no guidance to law enforcement officials to determine whether the source code constituted a trade secret. However, just as **Genovese's** announcement and conduct reflect his belief that the "jacked" source code was valuable because it was not generally known, it provided the FBI reason to believe that **Genovese** was trafficking in Microsoft's trade secret.

#### 2. "Reasonable measures"

With respect to the "reasonable measures" element of the EEA's "trade secret" definition, **Genovese** contends that he "was in no position to make a determination about whether Microsoft took any measures to protect the secrecy of its source code, let alone whether those measures were 'reasonable.'" (Def. Mem. at 17.)

Once again, **Genovese's** website posting belies any claim that he was a casual Internet browser who happened upon the source code without knowledge of its owner or the manner in which the code entered the public domain. As discussed above, the posting reveals that **Genovese** knew that a third-party had "jacked" the source code from Microsoft. Having acknowledged both that the source code was proprietary to Microsoft and that someone else penetrated whatever safeguards Microsoft enlisted to protect it, **Genovese** cannot now argue that the statute was insufficient to put him on notice that the source code constituted a trade secret under the EEA. For Section 1839(3)'s "trade secret" definition to survive a vague-as-applied challenge, a "defendant need not have been aware of the particular security measures taken by" the trade secret's owner, as long as the "defendant knew the information was proprietary." United States v. Krumrei, 258 F.3d 535, 539 (6th Cir.2001) (noting that the defendant "was aware that he was selling confidential information to which he had no claim"); see also Hsu, 40 F.Supp.2d at 628 (defendant was told that "the taxol technology in question was proprietary"). In this case, one can infer that **Genovese** knew not only that the source code was proprietary, but that any protective measures by Microsoft had been circumvented. At a later stage in this proceeding, **Genovese** may choose to argue to this Court or to a jury that Microsoft's measures were not "reasonable," or that **Genovese** could not have known what, if any, measures Microsoft maintained. For purposes of his vagueness challenge, however, **Genovese's** knowledge that the source code belonged to Microsoft and that others had stolen it was sufficient for him to "reasonably understand" that the conduct alleged in the Indictment was proscribed by Section 1832(a)(2). Harriss, 347 U.S. at 617, 74 S.Ct. 808.

As such, Section 1839(3) defines "trade secret" with "sufficient definiteness" so that an ordinary person in **Genovese's** position could understand that trafficking in the Windows source code was prohibited by law. Kolender, 461 U.S. at 357, 103 S.Ct. 1855. As applied to the facts of this case, the statute is not so vague that it violates the defendant's due process.

## CONCLUSION

For the foregoing reasons, **Genovese's** motion to dismiss the Indictment is denied.

[1] "Source code" is the "human-readable code in which software developers write programs." (Compl. ¶ 4(a).) An "operating system" is "the software that controls the allocation and usage of hardware resources such as memory, central processing unit (CPU) time, disk space, and peripheral devices." (Compl. ¶ 4(b).)

[2] "FTP" stands for "File Transfer Protocol." Using an FTP server, computer users may upload and download files over the Internet. (Compl. ¶ 5 n. 1.)

[3] This Court presumes that **Genovese** used the term "jacked" as an abbreviated form of "hijacked," in the way that "jacked" is employed in hyphenated phrases such as "car-jacked" that have entered the English lexicon. See <http://www.urbandictionary.com> (June 20, 2005). Accordingly, this Court interprets "jacked" to mean "stolen" or "misappropriated." See, e.g., GameSpot, [http://www.gamespot.com/news/2004/10/20/news\\_6111057.html](http://www.gamespot.com/news/2004/10/20/news_6111057.html) (June 20, 2005) ("Grand Theft Auto: San Andreas jacked — Less than a week before its release, the wildly anticipated crime game has itself been stolen and republished on the Internet.")

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**U.S. District Court  
Southern District of New York (Foley Square)  
CRIMINAL DOCKET FOR CASE #: 1:05-cr-00004-WHP-1**

Case title: USA v. Genovese  
Magistrate judge case number: 1:04-mj-02115

Date Filed: 01/04/2005  
Date Terminated: 02/02/2006

---

Assigned to: Judge William H. Pauley, III

**Defendant (1)**

**William P. Genovese, Jr.**  
*TERMINATED: 02/02/2006*  
*also known as*  
*"illwill,"*  
*TERMINATED: 02/02/2006*  
*also known as*  
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*TERMINATED: 02/02/2006*

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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**  
*Designation: Public Defender or  
Community Defender Appointment*

**Pending Counts**

THEFT OF TRADE SECRETS  
(UNLAWFUL DISTRIBUTION OF  
TRADE SECRETS)  
(1)

**Disposition**

24 months imprisonment. 3 years  
supervised release with supervision.  
\$100.00 special assessment.

**Highest Offense Level (Opening)**

Felony

**Terminated Counts**

None

**Disposition**

**Highest Offense Level (Terminated)**

None

**Complaints**

18:1832: UNLAWFUL DISTRIBUTION  
OF TRADE SECRETS.

**Disposition**

---

**Plaintiff****USA**

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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
11/04/2004	1	COMPLAINT as to William P. Genovese Jr. (1) in violation of 18 U.S.C. 1832.(Signed by Judge Henry B. Pitman ) (gq, ) [1:04-mj-02115] (Entered: 11/10/2004)
11/04/2004	2	Arrest Warrant Issued as to William P. Genovese, Jr.(Signed by Judge Henry B. Pitman on 11/4/2004.) (gq, ) [1:04-mj-02115] (Entered: 11/10/2004)
11/09/2004		Arrest of William P. Genovese, Jr. (gq, ) [1:04-mj-02115] (Entered: 11/10/2004)
11/09/2004	3	CJA 23 Financial Affidavit by William P. Genovese Jr. Approved for appointment of counsel. (Signed by Judge Kevin Nathaniel Fox ) (gq, ) [1:04-mj-02115] (Entered: 11/10/2004)
11/09/2004	4	ORDER APPOINTING FEDERAL PUBLIC DEFENDER as to William P. Genovese Jr.. Sean Hecker for William P. Genovese appointed. (Signed by Judge Kevin Nathaniel Fox on 11/9/2004)(gq, ) [1:04-mj-02115] (Entered: 11/10/2004)
11/09/2004	5	NOTICE OF ATTORNEY APPEARANCE: Sean Hecker appearing for William P. Genovese Jr. (gq, ) [1:04-mj-02115] (Entered: 11/10/2004)
11/09/2004		Minute Entry for proceedings held before Judge Kevin Nathaniel Fox :Initial Appearance as to William P. Genovese Jr. held on 11/9/2004. Deft appears with Legal Aid atty Sean Hecker. AUSA Alexander Southwell present for the gov't. Agreed bail package: \$50,000 PRB. 2 FRP who must execute the PRB on or before C.O.B. 11/15/2004. Travel restricted to SDNY, EDNY, District of Connecticut. Surrender travel documents (& no new applications). Regular pretrial supervision.. Preliminary Examination set for 12/9/2004 10:00 AM before Judge Unassigned. (gq, ) [1:04-mj-02115] (Entered: 11/10/2004)

11/09/2004	<a href="#">6</a>	PRB APPEARANCE Bond Entered as to William P. Genovese Jr. in amount of \$ 50,000. Co-signed by 2 financially responsible person's who must execute the PRB on or before C.O.B. 11/13/2004. Travel restricted to SDNY, EDNY, District of Connecticut. Surrender travel documents (& no new applications). Regular pretrial supervision. Deft shall be released on 11/9/2004. (gq, ) [1:04-mj-02115] (Entered: 11/10/2004)
11/09/2004	<a href="#">7</a>	ADVICE OF PENALTIES AND SANCTIONS as to William P. Genovese Jr. (gq, ) [1:04-mj-02115] (Entered: 11/10/2004)
12/09/2004	<a href="#">8</a>	ORDER TO CONTINUE IN THE INTEREST OF JUSTICE as to William P. Genovese Jr.. Time excluded from 12/9/04 until 1/10/05. . (Signed by Judge Douglas F. Eaton on 12/9/04)(kwi, ) [1:04-mj-02115] (Entered: 12/09/2004)
01/03/2005	<a href="#">9</a>	INDICTMENT FILED as to William P. Genovese, Jr (1) count(s) 1. (jm, ) (Entered: 01/04/2005)
01/03/2005		Case Designated ECF as to William P. Genovese, Jr.(jm, ) (Entered: 01/04/2005)
01/04/2005	<a href="#">10</a>	NOTICE of Rule 12.4 Disclosure as to William P. Genovese, Jr (Southwell, Alexander) (Entered: 01/04/2005)
01/05/2005		Minute Entry for proceedings held before Judge William H. Pauley III:Arrestment as to William P. Genovese Jr. (1) Count 1 held on 1/5/2005. Defendant present with atty Sean Hector, AUSA present Alexander H. Southwell and Thomas G.A. Brown, Court reporter present Samuel Mauro, defendant waive reading of indictment and plead not guilty. Government shall produce discovery by 1/19/05, next PTC set for 2/11/05 at 2:00pm., SPT excluded from 1/5/05 to 2/11/05 under 18 USC 3161(h)(8)(A), bail continued. (jw, ) (Entered: 01/11/2005)
01/05/2005		Minute Entry for proceedings held before Judge William H. Pauley III: Plea entered by William P. Genovese Jr. (1) Count 1 Not Guilty. (jw, ) (Entered: 01/11/2005)
01/05/2005		Minute Entry for proceedings held before Judge William H. Pauley III:Pretrial Conference as to William P. Genovese, Jr held on 1/5/2005, as to William P. Genovese, Jr; Discovery due by 1/19/2005. Pretrial Conference set for 2/11/2005 02:00 PM before Judge William H. Pauley III. (jw, ) (Entered: 01/11/2005)
02/10/2005		Minute Entry for proceedings held before Judge William H. Pauley III:Pretrial Conference as to William P. Genovese, Jr. held on 2/10/2005. Defendant present with attorney Sean Hector. AUSA present Alexander H. Southwell. Court Reporter present Michelle Buckley. Pretrial motion schedule set: Defendant shall file pretrial motions by 3/4/05. Government's opposition due by 3/25/05. Reply due by 4/1/05. Oral argument set for 4/22/05 at 3:30 p.m. SPT excluded from 2/10/05 to 4/22/05 under 18 U.S.C. section 3161(h)(8)(A). Bail continued. (ph, ) (Entered: 03/07/2005)
02/10/2005		Set/Reset Deadlines/Hearings as to William P. Genovese, Jr: Motions due by 3/4/2005. Replies due by 4/1/2005. Responses due by 3/25/2005 Oral Argument set for 4/22/2005 03:30 PM before Judge William H. Pauley III.(ph, ) (Entered: 03/07/2005)
03/02/2005	<a href="#">11</a>	ENDORSED LETTER as to William P. Genovese, Jr addressed to Judge Pauley from Sean Hecker dated 3/1/05 re: Reschedule Briefing., as to William P. Genovese, Jr; Motions due by 3/18/2005. Replies due by 4/15/2005. Responses due by 4/8/2005. Judge Memo-endorsed...Application granted. SO ORDERED. (Signed by Judge William H. Pauley III on 3/2/05)(jw, ) (Entered: 03/09/2005)

03/16/2005	<a href="#">12</a>	MOTION to Dismiss <i>the Indictment</i> . Document filed by William P. Genovese, Jr. Return Date set for 4/22/2005 03:30 PM. (Hecker, Sean) (Entered: 03/16/2005)
03/16/2005	<a href="#">13</a>	DECLARATION of Sean Hecker in Support as to William P. Genovese, Jr re: <a href="#">12</a> MOTION to Dismiss <i>the Indictment</i> .. (Hecker, Sean) (Entered: 03/16/2005)
03/16/2005	<a href="#">14</a>	MEMORANDUM in Support by William P. Genovese, Jr re <a href="#">12</a> MOTION to Dismiss <i>the Indictment</i> .. (Hecker, Sean) (Entered: 03/16/2005)
04/09/2005	<a href="#">15</a>	ENDORSED LETTER as to William P. Genovese, Jr addressed to Judge Pauley from AUSA Alexander H. Southwell dated 3/30/05 re: requesting a one-week adjournment in the deadline for the government's response to defendant's motion to dismiss. Accordingly, the government requests a one-week adournment until 4/15/05 to file its opposition. That would move the defendant's reply, if any, to 4/22/05. Judge memo-endorsed: Application granted. SO ORDERED. (Signed by Judge William H. Pauley III on 4/9/05)(ph, ) (Entered: 04/12/2005)
04/09/2005		Set/Reset Deadlines/Hearings as to William P. Genovese, Jr: Replies due by 4/22/2005. Responses, if any, due by 4/15/2005. (ph, ) (Entered: 04/12/2005)
04/17/2005	<a href="#">16</a>	MEMORANDUM in Opposition by USA as to William P. Genovese, Jr re <a href="#">12</a> MOTION to Dismiss <i>the Indictment</i> .. (Southwell, Alexander) (Entered: 04/17/2005)
04/20/2005	<a href="#">17</a>	STIPULATED PROTECTIVE ORDER as to William P. Genovese, Jr. to preserve the confidentiality of the Trade Secrets and Non-Public information in this case. (Signed by Judge William H. Pauley III on 4/20/05)(ph, ) (Entered: 04/21/2005)
04/21/2005	<a href="#">18</a>	REPLY MEMORANDUM OF LAW in Support as to William P. Genovese, Jr re: <a href="#">12</a> MOTION to Dismiss <i>the Indictment</i> .. (Hecker, Sean) (Entered: 04/21/2005)
04/22/2005		Minute Entry for proceedings held before Judge William H. Pauley III:Oral Argument as to William P. Genovese, Jr held on 4/22/2005 re: <a href="#">12</a> MOTION to Dismiss the Indictment filed by William P. Genovese, Jr. Defendant's present with atty Sean Hector, AUSA present Alexander H. Southwell, Court Reporter present Joanne Marconi, Conference scheduled for 6/21/05 at 2:00pm. SPT excluded from 4/22/05 to 6/21/05 under 18 USC 3161(h)(8)(A), bail continued. (jw, ) (Entered: 05/02/2005)
05/23/2005	19	TRANSCRIPT of Proceedings as to William P. Genovese, Jr held on 04/22/05 before Judge William H. Pauley III. (es, ) (Entered: 05/23/2005)
06/20/2005		Minute Entry for proceedings held before Judge William H. Pauley III:Pretrial Conference as to William P. Genovese, Jr held on 6/20/2005 Deft. pres. w/atty Sean Hector & AUSA Alexander H. Southwell.Schedule set and time excluded. Bail cont'd. (Court Reporter Connie Kuhl) (pr, ) (Entered: 08/19/2005)
06/20/2005		ORAL ORDER as to William P. Genovese, Jr, Trial set for 10/11/2005 10:00 AM before Judge William H. Pauley III. Final Pretrial Conference set for 10/3/2005 11:30 AM before Judge William H. Pauley III. Joint req. for Voir Dire due 9/30/2005.(pr, ) (Entered: 08/19/2005)
06/20/2005		ORAL ORDER as to William P. Genovese, Jr Time excluded from 6/20/05 until 10/1/05..(pr, ) (Entered: 08/19/2005)
06/21/2005	<a href="#">21</a>	MEMORANDUM AND ORDER denying <a href="#">12</a> Motion to Dismiss THE Indictment as to William P. Genovese Jr. (1)(Signed by Judge William H. Pauley III on 6/21/05) (jw, ) (Entered: 06/22/2005)

08/29/2005	<a href="#">22</a>	CONSENT TO PROCEED BEFORE US MAGISTRATE JUDGE ON A FELONY PLEA ALLOCUTION by William P. Genovese, Jr. (kwi, ) (Entered: 09/01/2005)
08/29/2005		Minute Entry for proceedings held before Judge Michael H. Dolinger :Change of Plea Hearing as to William P. Genovese, Jr held on 8/29/2005. (kwi, ) (Entered: 09/01/2005)
08/29/2005		Change of Not Guilty Plea to Guilty Plea as to William P. Genovese Jr. (1) Count 1. (kwi, ) (Entered: 09/01/2005)
08/29/2005		Minute Entry for proceedings held before Judge Michael H. Dolinger : Plea entered by William P. Genovese Jr. (1) Guilty as to Count 1. AUSA Alexander Southwell present. Defendant William Genovese present with attorney Sean Hecker. Consent to Proceed before Mag. Filed. Defendant bail continued. Defendant plead GUILTY to indictment. (kwi, ) (Entered: 09/01/2005)
09/08/2005	23	TRANSCRIPT of Proceedings as to William P. Genovese, Jr held on August 29, 2005, 3:15 p.m. before Judge Michael H. Dolinger. (dt, ) (Entered: 09/08/2005)
09/09/2005	<a href="#">24</a>	ORDER as to William P. Genovese, Jr. WHEREAS, with the deft's consent, his guilty plea allocution was taken before a U.S.M.J. on 8/29/05;... It is hereby ORDERED that the deft's guilty plea is accepted. (Signed by Judge William H. Pauley III on 9/9/05)(bw, ) (Entered: 09/12/2005)
12/06/2005	<a href="#">25</a>	ENDORSED LETTER as to William P. Genovese, Jr addressed to Judge Pauley from Sean Hecker dated 11/30/05 re: Adjournment of sentence.Sentence 1/5/06 @ 12:30 PM. Defense sentencing submissions due 12/16/05, govt. submission due 12/29/05, any reply will be filed prior to sentencing.So ordered (Signed by Judge William H. Pauley III on 12/1/05)(pr, ) (Entered: 12/07/2005)
12/06/2005		As to William P. Genovese, Jr. Defense sentencing submission due 12/16/2005. Government submission due 12/29/2005. Any reply will be filed prior to sentencing. Sentencing set for 1/5/2006 12:30 PM before Judge William H. Pauley III.. (Signed by Judge William H. Pauley III on 12/1/05)(pr, ) (Entered: 12/07/2005)
01/27/2006		Minute Entry for proceedings held before Judge William H. Pauley III:Sentencing held on 1/27/2006 for William P. Genovese Jr. (1) Count 1. (pr, ) (Entered: 02/02/2006)
01/30/2006	<a href="#">27</a>	NOTICE OF APPEAL by William P. Genovese, Jr from <a href="#">26</a> Judgment,. Copies of Notice of Appeal mailed to Attorney(s) of Record: U.S. Attorneys and Court Reporters. (dt, ) Additional attachment(s) added on 2/2/2006 (dt, ). (Entered: 02/02/2006)
01/30/2006		Appeal Remark as to William P. Genovese, Jr re: <a href="#">27</a> Notice of Appeal - Final Judgment, Filed by Federal Defenders. (dt, ) (Entered: 02/02/2006)
02/02/2006	<a href="#">26</a>	JUDGMENT as to William P. Genovese, Jr. (1), Count(s) 1, 24 months imprisonment. 3 years supervised release with supervision. \$100.00 special assessment.Deflt. shall surrender for service of sentence at the institution designated by the BOP before 2 PM on 3/14/06. (Signed by Judge William H. Pauley III on 2/1/06)(pr, ) Modified on 2/2/2006 (pr, ). (Entered: 02/02/2006)
02/02/2006		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to William P. Genovese, Jr to US Court of Appeals re: <a href="#">27</a> Notice of Appeal - Final Judgment. (dt, ) (Entered: 02/02/2006)

02/02/2006	<a href="#">28</a>	ORDER OF FORFEITURE as to William P. Genovese, Jr... [See Order]... The Clerk of the Court shall forward four certified copies of this Order to A.U.S.A. Alexander Southwell, One St. Andrew's Plaza, New York, N.Y. 10007. (Signed by Judge William H. Pauley III on 1/27/06); The Clerk's Office has mailed four certified copies of this Order to AUSA Alexander Southwell, certified mail # 7002-0860-0005-5325-3329 on 2/2/06. (bw, ) (Entered: 02/02/2006)
02/02/2006		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files as to William P. Genovese, Jr re: <a href="#">21</a> Order on Motion to Dismiss, <a href="#">11</a> Endorsed Letter, Set Deadlines/Hearings,,, <a href="#">9</a> Indictment, <a href="#">12</a> MOTION to Dismiss <i>the Indictment.</i> , <a href="#">15</a> Endorsed Letter,,, <a href="#">27</a> Notice of Appeal - Final Judgment, <a href="#">22</a> Consent to Proceed on Felony Plea Allocation, <a href="#">16</a> Memorandum in Opposition to Motion, <a href="#">18</a> Reply Memorandum of Law in Support of Motion, <a href="#">17</a> Order, <a href="#">25</a> Endorsed Letter,, <a href="#">13</a> Declaration in Support of Motion, <a href="#">24</a> Order,, <a href="#">28</a> Order for Forfeiture of Property,, <a href="#">26</a> Judgment,, <a href="#">10</a> Notice (Other), <a href="#">14</a> Memorandum in Support of Motion were transmitted to the U.S. Court of Appeals. (nd, ) (Entered: 02/02/2006)
02/02/2006		Judgment entered in money judgment book as #06,0254 as to William P. Genovese, Jr in the amount of \$ 100.00, re: <a href="#">26</a> Judgment. (dt, ) (Entered: 02/08/2006)
02/15/2006	30	SENTENCING MEMORANDUM by USA as to William P. Genovese, Jr. (jw, ) (Entered: 02/16/2006)
02/17/2006		USCA SCHEDULING ORDER as to William P. Genovese, Jr related to <a href="#">27</a> Notice of Appeal - Final Judgment filed by William P. Genovese, Jr. USCA Case Number 06-0570-cr. Roseann B. MacKechnie, Clerk USCA. Certified: 2/14/06. Appeal Record due by 3/6/2006. (tp, ) (Entered: 02/21/2006)
02/28/2006	31	TRANSCRIPT of Proceedings as to William P. Genovese, Jr held on 01/27/06 before Judge William H. Pauley III. (es, ) (Entered: 02/28/2006)
03/06/2006	32	First Supplemental ROA Sent to USCA (Index). Notice that the Supplemental Index to the record on Appeal as to William P. Genovese, Jr re: <a href="#">27</a> Notice of Appeal - Final Judgment USCA Case Number 06-0570-cr, 3 Copies of the index, Certified Supplemental Clerk Certificate and Certified Docket Sheet were transmitted to the U.S. Court of Appeals. (nd, ) (Entered: 03/06/2006)
06/22/2006	34	PRELIMINARY ORDER OF FORFEITURE/FINAL AS TO THE DEFT WILLIAM P. GENOVESE'S INTEREST IN PROPERTY as to William P. Genovese, Jr. Now, Therefore, It is ORDERED, ADJUDGED and DECREED that: All of the deft's right, title and interest in the Subject Property is forfeited to the US for disposition in accordance with the law, subject to the provisions of 21 USC 853(n), which is incorporated by reference in 18 USC 1834(b). Pursuant to 21 USC 853(n)(1), the US Marshal forthwith shall publish at least once for three successive weeks, in a newspaper of general circulation, notice of this order, notice of the Marshal's intent to dispose of the Subject Property in such manner as the US may direct, and notice that any person, other than the deft, having or claiming a legal interest in the Subject Property must file a petition with the Court within thirty days of the final publication of notice or of receipt of actual notice, whichever is earlier. Upon adjudication of all third-party interests, this Court will enter a final order of forfeiture pursuant to 21 USC 853(n)(7) and Fed.R.Crim.P. 32.2(c)(2), in which all interests will be addressed. (Signed by Judge William H. Pauley III on 6/15/06)(jw, ) (Entered: 06/28/2006)



06/26/2006	<a href="#">33</a>	ORDER DIRECTING FORFEITURE OF PROPERTY as to William P. Genovese, Jr. Now, Therefore, It is ORDERED, ADJUDGED and DECREED that: All of the deft's right, title and interest in the Subject Property is forfeited to the US for disposition in accordance with the law, subject to the provisions of 21 USC 853(n), which is incorporated by reference in 18 USC 1834(b). Pursuant to 21 USC 853(n)(1), the US Marshal forthwith shall publish at least once for three successive weeks, in a newspaper of general circulation, notice of this order, notice of the Marshal's intent to dispose of the Subject Property in such manner as the US may direct, and notice that any person, other than the deft, having or claiming a legal interest in the Subject Property must file a petition with the Court within thirty days of the final publication of notice or of receipt of actual notice, whichever is earlier. Upon adjudication of all third-party interests, this Court will enter a final order of forfeiture pursuant to 21 USC 853(n)(7) and Fed.R.Crim.P. 32.2(c)(2), in which all interests will be addressed. (Signed by Judge William H. Pauley III on 6/15/06)(jw, ) (Entered: 06/26/2006)
09/15/2006	<a href="#">35</a>	MOTION for Service by Publication. Document filed by USA as to William P. Genovese, Jr. (Korologos, Lisa) (Entered: 09/15/2006)
05/29/2007	<a href="#">36</a>	FINAL ORDER OF FORFEITURE as to William P. Genovese, Jr....[See Order]... Now, therefore, it is ORDERED, ADJUDGED and DECREED that: 1. Pursuant to 21 USC Section 853(n)(7) the U.S.A. shall and is hereby deemed to have clear title to: [See Order]; (collectively referred to as the "Forfeited Property"). 2. The U.S. Marshals Service shall take possession of the forfeited property and dispose of the same according to law, in accordance with 21 USC Section 853(h). The Clerk is hereby directed to send four certified copies of this Order to AUSA Lisa Korologos, U.S. Attorney's Office, One St. Andrews Plaza, NY, NY 10007. (Signed by Judge William H. Pauley III on 5/1/07); The Clerk's Office has forwarded four certified copies of this Order to AUSA Lisa Korologos by inter-office mail on 5/30/07.(bw) (Entered: 05/30/2007)
04/03/2009	<a href="#">37</a>	MANDATE of USCA (certified copy) as to William P. Genovese, Jr re: <a href="#">27</a> Notice of Appeal - Final Judgment, USCA Case Number 06-0570-cr. Ordered, Adjudged and Decreed that the judgment of the District Court is AFFIRMED except to the extent that the written judgment is amended in the manner described in the order. Catherine O'Hagan Wolfe, Clerk USCA. Issued As Mandate: 3/17/2009. (nd) (Entered: 04/03/2009)
04/03/2009		Transmission of USCA Mandate/Order to the District Judge re: <a href="#">37</a> USCA Mandate - Final Judgment Appeal,. (nd) (Entered: 04/03/2009)
01/21/2010	<a href="#">38</a>	ORDER as to William P. Genovese, Jr. This Court received the attached application from the defendant. The Government is directed to respond by February 5, 2010. SO ORDERED. (Signed by Judge William H. Pauley, III on 1/20/2010)(jw) (Entered: 01/22/2010)
03/02/2010	<a href="#">39</a>	NOTICE OF ATTORNEY APPEARANCE Chi T. Steve Kwok appearing for USA. (Kwok, Chi) (Entered: 03/02/2010)
07/09/2010	40	Supervised Release Jurisdiction Transferred Out to the U.S.D.C. District of Connecticut as to William P. Genovese, Jr. (ja) (Entered: 07/09/2010)
07/09/2010		TRANSFER OUT SUPERVISED RELEASE DOCUMENTS SENT as to William P. Genovese, Jr to the U.S.D.C. District of Connecticut. The following documents were mailed: Copy of the Transfer of Jurisdiction Form, certified copy of the indictment,

		judgment, docket sheet, and letter of acknowledgment. Mailed via Federal Express AIRBILL # 8705 1084 3887 on 7/9/2010. (ja) (Entered: 07/09/2010)
04/14/2011	41	MOTION for Disclosure of Gencks material and to quash the stipulation in re the disclosure 18 U.S.C. section 3500 material. Document filed by William P. Genovese, Jr. (dnd) (Entered: 04/14/2011)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
04/16/2014 17:22:11			
<b>PACER Login:</b>		<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	1:05-cr-00004-WHP
<b>Billable Pages:</b>	6	<b>Cost:</b>	0.60





Dated: New York, New York  
September 21, 2010

Respectfully submitted,

GIBSON, DUNN & CRUTCHER, LLP

/s/ Alexander H. Southwell  
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**U.S. DISTRICT COURT**  
**U.S. District Court, Western District of New York (Buffalo)**  
**CIVIL DOCKET FOR CASE #: 1:10-cv-00569-RJA-LGF**

Ceglia v. Zuckerberg et al  
Assigned to: Hon. Richard J. Arcara  
Referred to: Hon. Leslie G. Foschio  
Related Case: [1:13-cv-00256-RJA](#)  
Cause: 28:1441 Notice of Removal

Date Filed: 07/09/2010  
Date Terminated: 03/26/2014  
Jury Demand: Plaintiff  
Nature of Suit: 190 Contract: Other  
Jurisdiction: Diversity

**Plaintiff**

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*an individual*

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V.

**Defendant**

**Mark Elliot Zuckerberg**  
*an individual*

represented by **Alexander H. Southwell**  
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**Defendant****Facebook, Inc.**

*formerly known as TheFaceBook, Inc., a  
Delaware corporation*

represented by **Alexander H. Southwell**  
(See above for address)  
*LEAD ATTORNEY*  
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**Lisa T. Simpson**

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**Michael B. Powers**  
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**Sean C. McPhee**  
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*TERMINATED: 03/30/2011*

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**Movant**

**Sanford P. Dumain**

represented by **Sanford P. Dumain**  
 (See above for address)  
*TERMINATED: 06/05/2012*

**Movant**

**James Charles Kopp**

represented by **James Charles Kopp**  
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<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
07/09/2010	<a href="#"><u>1</u></a>	NOTICE OF REMOVAL by Mark Elliot Zuckerberg, Facebook, Inc. from Supreme Court State of New York Allegany County, case number 38798. (Filing fee \$350.00 receipt number 019047), filed by Mark Elliot Zuckerberg, Facebook, Inc.. (Attachments: #(1) OSC, # <a href="#"><u>2</u></a> Summons, #(3) Verified Complaint, #(4) Notice to State Court, #(5) Certification.) (DLC) (Entered: 07/09/2010)
07/09/2010	<a href="#"><u>2</u></a>	AUTOMATIC REFERRAL to Mediation. (DLC) (Entered: 07/09/2010)
07/09/2010		<b><u>NOTICE OF LOCAL RULE 83.2 REQUIREMENT: An attorney who does not maintain an office in this District may appear in an action, and, as appropriate, such attorney shall apply for admission <i>pro hac vice</i> pursuant to Local Rule of Civil Procedure 83.2. Such Attorney, whether or not admitted to practice in this District, shall obtain local counsel unless such requirement is waived by the Court. An Application to proceed without local counsel must be made in writing within <u>30 days</u> of the attorney's initial filing and shall be granted for good cause shown and in the discretion of the Court. (DLC) (Entered: 07/09/2010)</u></b>
07/09/2010		Remark - Attorney contacted to file a Pro Hac Vice motion. (DLC) (Entered: 07/09/2010)
07/09/2010		Attorney Admission fee paid for: Lisa T. Simpson on Certificate of Good Standing \$200.00, receipt number 019045. (DLC) (Entered: 07/09/2010)

07/09/2010	<a href="#">3</a>	Corporate Disclosure Statement by Facebook, Inc.. (Simpson, Lisa) (Entered: 07/09/2010)
07/09/2010	<a href="#">4</a>	MOTION to Vacate <i>/Dissolve Temporary Restraining Order</i> by Mark Elliot Zuckerberg, Facebook, Inc..(Simpson, Lisa) (Entered: 07/09/2010)
07/09/2010	<a href="#">5</a>	MEMORANDUM IN SUPPORT re <a href="#">4</a> MOTION to Vacate <i>/Dissolve Temporary Restraining Order</i> by Mark Elliot Zuckerberg, Facebook, Inc.. (Simpson, Lisa) (Entered: 07/09/2010)
07/09/2010	<a href="#">6</a>	DECLARATION signed by Lisa T. Simpson re <a href="#">4</a> MOTION to Vacate <i>/Dissolve Temporary Restraining Order</i> filed by Mark Elliot Zuckerberg, Facebook, Inc.. (Attachments: # <a href="#">1</a> Exhibit A - Summons and Complaint, # <a href="#">2</a> Exhibit B - Order to Show Cause)(Simpson, Lisa) (Entered: 07/09/2010)
07/12/2010		E-Filing Notification: No proof of service. Action required: File proof of service Re: <a href="#">5</a> MEMORANDUM IN SUPPOR, <a href="#">4</a> MOTION to Vacate, <a href="#">3</a> Corporate Disclosure Statement, and <a href="#">6</a> DECLARATION signed by Lisa T. Simpson. (DLC) (Entered: 07/12/2010)
07/12/2010	<a href="#">7</a>	CERTIFICATE OF SERVICE by Mark Elliot Zuckerberg, Facebook, Inc. re <a href="#">6</a> Declaration, <a href="#">5</a> Memorandum in Support, <a href="#">3</a> Corporate Disclosure Statement, <a href="#">4</a> MOTION to Vacate <i>/Dissolve Temporary Restraining Order</i> (Robertson, Daniel) (Entered: 07/12/2010)
07/14/2010	<a href="#">8</a>	<b>TEXT ORDER.</b> Oral Argument as to <a href="#">4</a> Motion to Vacate/Dissolve Temporary Restraining Order filed by defendants is scheduled for 7/20/2010 at 11:00 AM before Hon. Richard J. Arcara. Response papers are to be filed by 7/16/2010. Counsel for defendants shall notify counsel for plaintiff of this Order as follows: 1) Inform counsel for plaintiff of this Order immediately by telephone or electronic mail; and 2) Serve a copy of this Order by 5:00 PM today via overnight express courier with delivery and signature confirmation. SO ORDERED. Issued by Hon. Richard J. Arcara on July 14, 2010. (DJD) (Entered: 07/14/2010)
07/14/2010	<a href="#">9</a>	CERTIFICATE OF SERVICE by Mark Elliot Zuckerberg, Facebook, Inc. re <a href="#">8</a> Order, Set/Reset Motion and R&R Deadlines/Hearings,,,, (Robertson, Daniel) (Entered: 07/14/2010)
07/15/2010	<a href="#">10</a>	NOTICE of Appearance by Michael B. Powers on behalf of Mark Elliot Zuckerberg, Facebook, Inc. (Powers, Michael) (Entered: 07/15/2010)
07/15/2010	<a href="#">11</a>	NOTICE of Appearance by Sean C. McPhee on behalf of Mark Elliot Zuckerberg, Facebook, Inc. (McPhee, Sean) (Entered: 07/15/2010)
07/15/2010	<a href="#">12</a>	MOTION to Expedite <i>Hearing on Motion to Dissolve TRO</i> by Mark Elliot Zuckerberg, Facebook, Inc..(Powers, Michael) (Entered: 07/15/2010)
07/15/2010	<a href="#">13</a>	AFFIDAVIT in Support re <a href="#">12</a> MOTION to Expedite <i>Hearing on Motion to Dissolve TRO</i> filed by Mark Elliot Zuckerberg, Facebook, Inc.. (Powers, Michael) (Entered: 07/15/2010)
07/15/2010	<a href="#">14</a>	MEMORANDUM in Support re <a href="#">12</a> MOTION to Expedite <i>Hearing on Motion to Dissolve TRO</i> filed by Mark Elliot Zuckerberg, Facebook, Inc.. (Powers, Michael) (Entered: 07/15/2010)

03/25/2014	<a href="#">673</a>	TEXT ORDER: upon the appeal by plaintiff Paul D. Ceglia <a href="#">355</a> of the April 4, 2012 scheduling order, Text Order 348 , the Court finds the scheduling order as modified 471 neither clearly erroneous nor contrary to law, and the appeal is denied. Issued by Hon. Richard J. Arcara on March 25, 2014. (WJG) (Entered: 03/25/2014)
03/25/2014	<a href="#">674</a>	-CLERK TO FOLLOW UP-ORDER - Adopting Magistrate Judge Leslie G. Foschio's Report and Recommendation as filed on March 26, 2013. Pursuant to the attached Order, defendants' Motion to Dismiss <a href="#">318</a> is granted, and the defendants' Motion for Judgment on the Pleadings <a href="#">320</a> is denied as moot. The Clerk of Court shall enter judgment for defendants and terminate the case. Signed by Hon. Richard J. Arcara on 3/25/14. (LAS) (Entered: 03/25/2014)
03/26/2014	<a href="#">675</a>	JUDGMENT in favor of Facebook, Inc., Mark Elliot Zuckerberg against Paul D. Ceglia. Signed by the Clerk of the Court on 3/26/2014. (DLC) (Entered: 03/26/2014)
04/10/2014	<a href="#">676</a>	Sealed Document. (Attachments: #(1) Continued Docs, #(2) Continued Docs, #(3) Continued Docs, #(4) Continued Docs, #(5) Continued Docs.) (DLC) (Entered: 04/10/2014)

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