1

2   UNITED STATES DISTRICT COURT

3   WESTERN DISTRICT OF NEW YORK

4   No. 1:10-cv-00569-RJA

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     PAUL D. CEGLIA,

6

                     Plaintiff,

7

                vs.

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     MARK ELLIOT ZUCKERBERG,

9   Individually, and

     FACEBOOK, INC.,

10

                     Defendants.

11   -----------------------------x

12

13

14   July 18, 2012

15   10:09 a.m.

16

17   Videotaped deposition of BRYAN J.

18   ROSE, held at the offices of Gibson, Dunn

19   & Crutcher LLP, 200 Park Avenue, New York,

20   New York, pursuant to notice, before Cary

21   N. Bigelow, Court Reporter, a Notary Public

22   of the State of New York.

23

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

3

4   BOLAND LEGAL, LLC

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9   BY: DEAN BOLAND, ESQ.

10

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15   BY: ALEXANDER H. SOUTHWELL, ESQ.

16   THOMAS H. DUPREE JR., ESQ.

17   MATTHEW BENJAMIN, ESQ.

18   AMANDA AYCOCK, ESQ.

19

20

21 ALSO PRESENT:

22   VILAN TRUB, Videographer

23

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2   MR. SOUTHWELL: This is Alexander

3   Southwell for the defendants along with

4   Matthew Benjamin and Tom Dupree and Amanda

5   Aycock.

6   MR. BOLAND: I'm Dean Boland for the

7   plaintiff, Paul Ceglia.

8   MR. ROSE: And I am Bryan Rose from

9   Stroz Friedberg.

10   THE VIDEOGRAPHER: This is tape 1.

11   (The witness was sworn in.)

12   MR. SOUTHWELL: Mr. Boland, before we

13   begin, I just want to put on the record our

14   objection to this videographer. We reserve

15   the right to object to the admissibility of

16   this videotaped deposition. The

17   videographer is not a certified legal

18   videographer, he doesn't appear, as I asked

19   him previously, to have any familiarity or

20   training in the Federal Rules of Civil

21   Procedure, the Federal Rules of Evidence,

22   the New York C.P.L.R., he has not used the

23   required statutory language to begin a video

24   deposition and he clearly is not following

25   any of the best practices set out by the

1

2   videographer associations, so obviously it's

3   your choice in what you want to do, but we

4   reserve the right to object to the

5   admissibility of this video deposition.

6   I don't know if you have something else

7   in mind with respect to the videoing of the

8   deposition, like are you planning to post

9   them on YouTube like you've done in other

10   cases.

11   MR. BOLAND: I just have plans for him

12   to videotape it, that's all; that's it so

13   far.

14   MR. SOUTHWELL: So you are not planning

15   to post that on YouTube?

16   MR. BOLAND: Not today.

17   MR. SOUTHWELL: Tomorrow?

18   MR. BOLAND: I have no plans for

19   tomorrow to post anything on YouTube.

20   MR. SOUTHWELL: At any point in the

21   future?

22   MR. BOLAND: I have no current plans to

23   post anything on YouTube.

24   MR. SOUTHWELL: Or otherwise make them

25   publicly available?

1

2   MR. BOLAND: I have no plans to do

3 that, no.

4   MR. SOUTHWELL: Okay.

5   MR. BOLAND: Can you just mark that

6 Exhibit 1, please, using a copy of this as

7 the report.

8   Or do you have one?

9   MR. SOUTHWELL: We have got our copy,

10 but we will hold on to it right now.

11   MR. BOLAND: I will also probably end

12 up using some of these exhibits tomorrow

13 again, I'll just use the same ones instead

14 of duplicating them all over again, giving

15 us multiple copies of the same thing.

16   MR. SOUTHWELL: Just to be clear, you

17 are using the filed version?

18   MR. BOLAND: I believe so. It has the

19 file stamp at the top. I don't have another

20 version.

21   MR. SOUTHWELL: Well, you have the

22 unredacted version which was provided to

23 you.

24   MR. BOLAND: Oh, yes, correct. No, I'm

25 just using the filed version.

1

2   (Exhibit 1, Stroz Friedberg report

3   dated March 26, 2012, marked for

4   identification, as of this date.)

5 B R Y A N   J.   R O S E, called as a witness,

6   having been duly sworn by a Notary Public,

7   was examined and testified as follows:

8 EXAMINATION BY

9 MR. BOLAND:

10   Q.   Good morning, Mr. Rose.

11   A.   Good morning.

12   Q.   Before we get started here, did you

13 have a conversation with any of the defense

14 counsel before your testimony today in

15 preparation for your testimony today?

16   A.   I did.

17   Q.   And when was that conversation, the

18 most recent one?

19   A.   The most recent one, we had a brief

20 conversation this morning and then we had a

21 meeting yesterday.

22   Q.   And in that conversation did defense

23 counsel alert you to some of the unique rules

24 that the judge in this case has for people

25 sitting for deposition?

1   B. Rose

2   A.   What rules are you referring to?

3   Q.   Well, let me just go over them.

4   The judge in this case has indicated

5   that anyone being deposed, if they are confused

6   about a question, should direct a request for

7   clarification to the person asking the question,

8   not the lawyers for, you know, the side that you

9   are on.

10   A.   Okay.

11   Q.   And that also, when we take breaks

12   during the deposition that the witness being

13   deposed can't have any conversations with the

14   lawyers from their side of the case about the

15   deposition.

16   A.   I was made aware of that rule, yes.

17   Q.   Those are the rules I'm talking about.

18   A.   Yes.

19   Q.   So I'm going to assume when I ask you

20   questions today that if you answer that question

21   you understood what I was asking, and if you

22   don't understand it -- well, is that a fair

23   approach?

24   A.   That's a fair approach, and if I don't

25   understand your question I will ask for

1   B. Rose

2   clarification.

3   Q.   Very good.

4   Can you look at what's been handed to

5   you and marked as Rose Exhibit 1 and just

6   identify that for the record.

7   A.   This looks like a filed redacted copy

8   of Stroz Friedberg's report dated March 26, 2012.

9   Q.   And you signed that report?

10   A.   I did.

11   Q.   And one other person signed the report

12   as well?

13   A.   That's correct, Mike McGowan from Stroz

14   Friedberg also signed the report.

15   Q.   And is all of the information you

16   relied on in preparing that report listed in the

17   report?

18   A.   Yes.

19   Q.   And is your CV that's listed in the

20   report current as of today or are there some new

21   additions that might be on a current version?

22   A.   There would be some additional, at

23   least one additional speaking engagement, I

24   believe, but generally it's current.

25   Q.   Is there any other training that you've

1   B. Rose

2   received since that CV was produced as part of

3   Exhibit 1 there?

4   A.   No.

5   Q.   In your preparation for today's

6   deposition were you provided transcripts of any

7   other witnesses' depositions in this case?

8   A.   No.

9   Q.   Did you discuss the testimony of

10   Mr. Broom with the defense counsel?

11   A.   No.

12   Q.   Did you discuss the testimony of

13   Mr. Grant with defense counsel?

14   A.   No.

15   Q.   Can you tell the Court how you were

16   paid for your work in preparing Exhibit 1?

17   A.   Stroz Friedberg is compensated on an

18   hourly basis.

19   Q.   And do you know what that rate was that

20   was charged to defense counsel for the

21   preparation of that report?

22   A.   The rate would vary depending on the

23   person working on the report, so my current

24   billable rate is 650 an hour; Eric Friedberg, who

25   contributed to the report, would be, I believe,

1   B. Rose

2   950 an hour, and then Mike McGowan and Jason

3   Novak, who are two of our digital forensic

4   examiners who contributed significantly to the

5   report, would be -- I'm not sure of their exact

6   current rates, but they'd be somewhere in the

7   range of 400 to 500 dollars an hour.

8   Q.   And do you know the total that was paid

9   to Stroz Friedberg by the defendants for the

10   production, for all the work involved in the

11   production of that report?

12   A.   I do not.

13   Q.   Do you know who at Stroz Friedberg

14   would have the answer to that question?

15   A.   I think the -- I'm not sure anyone

16   would have the answer to that question

17   immediately at hand, you could certainly

18   reconstruct it from a look at the invoices.

19   Q.   And when was the last time you read

20   Exhibit 1, the report that you produced in this

21   case?

22   A.   Last night.

23   Q.   Did you read the entire report last

24   night?

25   A.   I did.

1   B. Rose

2   Q.   And do you agree with all the

3   conclusions in the report as of that last reading?

4   A.   I do.

5   Q.   And can you describe for the Court --

6   let me ask you this question: Were you involved

7   in every page of that, the preparation of every

8   page of that report or just portions?

9   You mentioned there were several people

10 involved.

11   Did you have a division of labor in

12 producing that report?

13   A.   It was a collaborative drafting

14 exercise so, you know, at some point in the

15 process I would have, yes, would have read,

16 reviewed and contributed to every section of the

17 report.

18   Q.   So are there any portions of the report

19 that you would feel uncomfortable answering

20 questions about based on that division of labor

21 that you had?

22   A.   No.

23   Q.   Okay.

24   Is there any section of the report that

25 you would identify yourself as sort of the

1   B. Rose

2   primary investigator for?

3   A.   No.

4   Q.   Did anyone -- there were two people

5   whose CVs are included with the report; right?

6   A.   I believe there are four CVs included

7   in the report.

8   Q.   You're right.

9   There's two people who didn't sign the

10   report, but their CVs are attached to the report?

11   A.   That's correct.

12   Q.   And how would you describe the work

13   they did in preparing the report, the folks who

14   didn't sign it, the two of them?

15   A.   Eric Friedberg is the co-president of

16   Stroz Friedberg, he was involved in overall

17   supervision and certainly read drafts of the

18   report and contributed editorial comments and

19   provided overall supervision.

20   Jason Novak, whose CV was also attached,

21   was one of the forensic examiners and he would

22   have assisted in the actual analysis of the

23   Ceglia media.

24   Q.   So did Mr. Friedberg actually do any

25   analysis, get behind a computer and operate

1   B. Rose

2   software to do analysis?

3   A.   No, neither Mr. Friedberg nor myself

4   would have done any actual analysis.

5   Q.   So what role did you do, then, if you

6   didn't do actual analysis?

7   A.   So I am responsible for supervising the

8   work of Mike McGowan and Jason Novak, discussing

9   overall strategy with them, reviewing the results

10 of their work and drafting the report.

11   Q.   And you and Mr. McGowan signed the

12 report?

13   A.   Correct.

14   Q.   And the other two, Mr. Friedberg and

15 Mr. Novak, did not?

16   A.   Correct.

17   Q.   What's the reason that Mr. Novak, who

18 did some analysis in this case, did not sign the

19 report?

20   A.   The decision was made that two

21 signatories were sufficient, so it was determined

22 that I would sign the report along with

23 Mr. McGowan.

24   Q.   Is that the practice of Stroz Friedberg

25 to have individuals who do analysis in cases not

1   B. Rose

2   sign reports?

3   A.   I don't think that's the practice of

4   Stroz Friedberg. It's certainly possible that

5   when issuing a report not every person who

6   contributed to the report would be a signatory.

7   Q.   Now, you are not a certified document

8   examiner, paper document, I'm talking about?

9   A.   I am not.

10   Q.   Did you review the paper contract in

11 this case, the two-page paper contract?

12   A.   I've seen it.

13   Q.   How do you mean seen it, an actual --

14   A.   I have seen copies, I don't think I've

15 seen the original.

16   Q.   Did that factor in any part of your

17 analysis or your conclusions in the report,

18 Exhibit 1?

19   A.   No.

20   Q.   Now, would you agree with me that the

21 existence of that paper contract, which you've

22 seen copies of, proves that the StreetFax

23 contract that's talked about in your report is

24 not genuine?

25   MR. SOUTHWELL: I am just going to

1   B. Rose

2   object to the form.

3   Can you specify what you mean by the

4   paper contract, try to be a little more

5   specific about what you are referring to?

6   MR. BOLAND: Sure.

7   Q.   Are you aware that a two-page document

8   is being offered by my client as an authentic --

9   a two-page paper document is being offered as an

10   authentic contract between him and Mark

11   Zuckerberg?

12   A.   I am.

13   Q.   And are you aware that that two-page

14   paper document was evaluated by a bunch of paper

15   document experts in about July of 2011?

16   MR. SOUTHWELL: You mean the original

17   of it?

18   MR. BOLAND: Yes.

19   Q.   The two-page document was evaluated

20   in July 2011.

21   A.   I'm aware that there was paper analysis

22   done in the case.

23   Q.   Okay.

24   So when I'm referring to what I am

25   calling the Facebook contract I'm talking about

1   B. Rose

2   that two-page paper document that Mr. Ceglia has

3   attached a copy of to an amended complaint and

4   his claim obviously rests on that being an

5   authentic contract between him and Mr. Zuckerberg,

6   okay, that's what I am talking about.

7   A.   Okay.

8   MR. SOUTHWELL: Just to be clear, I

9   don't think this witness has seen the actual

10   original document that's been proffered, so

11   you may want to be clear in your questions.

12   MR. BOLAND: Fair enough.

13   Q.   So you haven't seen the original --

14   A.   I have not.

15   Q.   -- but you've seen copies of that

16   document?

17   A.   Yes.

18   Q.   Fair enough.

19   But you're aware that the original

20   exists?

21   A.   I have not seen it. I understand some

22   analysis has been done of it, so I have no reason

23   to think it doesn't exist, yes.

24   Q.   Did you read any other expert reports

25   in this case that the plaintiffs have submitted?

1   B. Rose

2   A.   I read some of the paper analysis but

3   not the entire report.

4   Q.   Which report are you referring to?

5   A.   I don't recall.

6   Q.   Would you agree with me the existence

7   of that two-page paper contract, the one we just

8   referred to, which you read some analysis of,

9   proves that the StreetFax contract that you

10 identified in Exhibit 1 can't be genuine?

11   A.   I would not agree with that. I

12 wouldn't begin to speculate on the paper analysis.

13   Q.   Well, assume for a second a

14 hypothetical for me. Assume that somewhere down

15 the line, tomorrow or the next day, the two-page

16 paper contract that we're talking about is

17 determined by the Court in this case or a jury to

18 be an authentic contract between Mark Zuckerberg

19 and Paul Ceglia, let's assume that.

20   Would you agree with me, then, if

21 that's determined to be an authentic contract

22 between those two parties, that the StreetFax

23 contract as you identified in Exhibit 1 has to be

24 not genuine?

25   MR. SOUTHWELL: Object to the form.

1   B. Rose

2   Q.   Would you agree with that?

3   A.   Mr. Boland, my expertise is in digital

4   forensics. I think clearly based on the digital

5   forensics we've conducted that the StreetFax

6   contract is the genuine contract in this case and

7   the Work For Hire contract offered by your client

8   is a fraud. Beyond that, you know, I wouldn't

9   speculate on what the paper analysis itself

10   would show.

11   Q.   All right. Well, let's try this

12   hypothetical.

13   Let's say that Mark Zuckerberg is

14   deposed in this case at some point and concedes

15   that the two-page written contract that we're

16   talking about, the Facebook contract, is

17   authentic.

18   Would you then agree that the StreetFax

19   contract that's in your report must not be

20   genuine?

21   MR. SOUTHWELL: Object to the form.

22   A.   I would think if Mr. Zuckerberg in a

23   deposition testified that the Work For Hire

24   contract was an authentic contract, I would think

25   that would mean that the Work For Hire contract

1   B. Rose

2   was an authentic contract.

3   Beyond that I think that's what it

4   means, exactly what you say it means, which is

5   that if Mr. Zuckerberg says that that is an

6   authentic contract then that is an authentic

7   contract. I don't necessarily think that would

8   affect my analysis of the StreetFax contract

9   itself as found on the digital forensics side.

10   Q.   Well, let's talk about that.

11   You know there's a conclusion in your

12   report, Exhibit 1, that the StreetFax contract is

13   the authentic contract between the parties;

14   correct?

15   A.   Correct.

16   Q.   How did you arrive at -- let me back

17   up.

18   You are not an expert in digital image

19   analysis; correct? You are not certified or

20   qualified as an expert to analyze digital images

21   to determine if there are authentic or not?

22   A.   What is digital image analysis, what do

23   you mean by that?

24   Q.   I mean any electronic file that is in a

25   digital format like TIFF, JPEG, GIF, have you

1   B. Rose

2   ever been qualified in court to give an opinion

3   as to whether an image of that format is in fact

4   authentic or altered or a copy or an original,

5   things like this?

6   A.   No.

7   Q.   Do you have any training, classes

8   you've gone to, about how to evaluate digital

9   images to determine if they've been altered?

10   A.   No.

11   Q.   So it would be fair to say, then, that

12   the StreetFax contract as you identify it in

13   Exhibit 1 is comprised of two TIFF images?

14   A.   Correct.

15   Q.   It's not paper we're talking about;

16   right?

17   A.   That's correct, it's an electronic file.

18   Q.   And your analysis didn't find any paper

19   predecessor to that, those TIFF images; correct?

20   A.   We were dealing with electronic media,

21   so, yes, that's correct.

22   Q.   Okay.

23   And a TIFF image is a digital image,

24   you would agree with me?

25   A.   Correct.

1   B. Rose

2   Q.   As opposed to a Word document, which is

3 not really typically called by folks in your

4 industry as a digital image?

5   A.   That's correct.

6   Q.   Okay.

7   So let's talk about that digital image

8 that is the two TIFF images.

9   Who found those two TIFF images, by

10 the way?

11   MR. SOUTHWELL: Can you just clarify

12   what you mean by found?

13   MR. BOLAND: Well, I will ask him if he

14   doesn't understand.

15   MR. SOUTHWELL: Object to the form.

16   MR. BOLAND: Okay.

17   Q.   Who was the person who first said to

18 anyone on your team there are two TIFF images

19 which appear to be a contract between the parties

20 that I've just located on some media? Someone

21 must have first said that.

22   A.   I was informed of the discovery of the

23 TIFF images by Mike McGowan.

24   Q.   Do you know if he is the one who

25 discovered them?

1   B. Rose

2   A.   I believe he was.

3   Q.   Okay.

4   Is he a digital image expert in the way

5   we defined it earlier in your testimony, do you

6   know?

7   A.   I don't know.

8   Q.   How long has he worked for Stroz

9   Friedberg?

10   A.   Mike McGowan has worked -- he's been

11   there before I got there, I would say he's worked

12   there approximately 10 years.

13   Q.   How long have you worked there?

14   A.   In November it will be seven years.

15   Q.   And you don't know if he is a digital

16   image expert, as you sit here today?

17   A.   He's a digital forensic expert.

18   I mean, in terms of digital image

19   expert, Mike has been qualified in many courts to

20   offer testimony on the authenticity of electronic

21   documents, including image files, so whether he's

22   a document image expert, I think that term you're

23   using a little loosely, I'm not sure exactly what

24   that means in that context.

25   Q.   Do you know if either one of these two

1   B. Rose

2   TIFF images that we're talking about that

3   comprise the StreetFax contract are original

4   images or copies?

5   A.   I don't understand that question.

6   Q.   Do you use a digital camera personally?

7   A.   Yes, occasionally.

8   Q.   Okay.

9   When you capture a picture with your

10   digital camera, I'm calling that an original, you

11   just hit the shutter button and the picture is

12   captured, it's on the card in the camera, that's

13   an original, okay, that's the definition I'm

14   using.

15   A.   Okay.

16   Q.   Have you ever captured digital images

17   like that and put them on a computer?

18   A.   Yes.

19   Q.   Now, once they're on a computer, for

20   example, pictures can have problems like red eye.

21   Are you familiar with that?

22   A.   Yes.

23   Q.   And are you aware that there's photo-

24   editing tools which allow you to correct red eye

25   in images?

1   B. Rose

2   A.   Yes.

3   Q.   What I'm calling an original would be

4   the picture as you captured it and would you

5   agree with me that if you went in and fixed a

6   red-eye defect in that image that's no longer an

7   original, it's been altered?

8   A.   You've changed it, yes.

9   Q.   You've changed it, right, not

10 significantly, but you've changed it.

11   So what I'm asking you about is these

12 TIFF images that are the StreetFax contract, is

13 it your opinion that those are originals or have

14 they -- were they altered before they landed

15 where they were found on the media where you

16 found them?

17   A.   I think what we know from the digital

18 forensics is that they were created on the hard

19 drive and then e-mailed out within minutes, so I

20 think from the time they were created on the

21 computer there would not have been time to alter

22 them before sending them out.

23   Q.   Fair enough.

24   How about before -- when you say

25 created on a hard drive, it's true that files can

1   B. Rose

2 be created on a hard drive in many ways; right?

3   A.   True.

4   Q.   They can come from a floppy disk years

5 ago; correct?

6   A.   Sure.

7   Q.   They can be copied off of a CD?

8   A.   They can be, yes.

9   Q.   Copied off of a USB device?

10   A.   Correct.

11   Q.   Copied from another hard drive to that

12 hard drive?

13   A.   Correct.

14   Q.   They could be downloaded from the

15 Internet?

16   A.   Correct.

17   Q.   How did those TIFF files get created on

18 that hard drive? Your report doesn't say.

19   Which one of those methods was the

20 method that created them on that hard drive?

21   A.   They appear to be scans that we believe

22 were then copied to the hard drive, but that's

23 the extent of what we can determine from the

24 digital forensic evidence that's available.

25   Q.   So you don't know if they were copied

1   B. Rose

2   from any of those various methods I just went

3   through in the previous question?

4   A.   There is no digital forensic evidence

5   as to where they were copied from.

6   Q.   So I understand your answer that when

7   they landed on the hard drive, from that point to

8   when you say they were e-mailed there wasn't

9   enough time really to alter them, I understand

10   what you're saying there.

11   That's your testimony; correct?

12   A.   Correct.

13   Q.   I'm asking you, before they landed on

14   that hard drive were they altered prior to that

15   time?

16   A.   I wouldn't be able to speculate on

17   that.

18   Q.   Do you know?

19   A.   I don't know one way or the other.

20   Q.   Now, did you read Mr. Broom's report,

21   the forensic expert for the plaintiffs?

22   A.   Some time ago, yes.

23   Q.   Do you recall a section of his report

24   where he talked about the physical size of the

25   two TIFF images that you found?

1   B. Rose

2   A.   I do not.

3   Q.   Do you know what the physical size is

4   of those two TIFF images?

5   A.   I do not.

6   Q.   You did mention in your report that the

7   resolution of those images was poor, you'd agree

8   with me?

9   A.   I would, yes.

10   Q.   And can you go to the page -- I'm going

11 to find it in a moment -- of your report where

12 you actually have a graphic of the TIFF images

13 printed in there?

14   I'm going to go look for the page

15 number, I'm going to make it quick, but if you

16 can just leaf through I think it will stand out.

17   It's page 90 of 102 I think is where I

18 am --

19   A.   You are referring to the top-level

20 numbering?

21   Q.   Yes, I am. That's a little confusing

22 for all of this, you're right.

23   Yes, page 90 of 102, it's the first

24 page of Exhibit H.

25   Do you see that document?

1   B. Rose

2   A.   I do.

3   Q.   Okay.

4   Does that appear to be or -- what is

5   it? Can you describe for the Court what that is

6   that you put into your report?

7   A.   That appears to be the StreetFax

8   contract discovered on the Ceglia media.

9   Q.   Is that both pages or just one page?

10   A.   It's just the first page.

11   Q.   And can you read that first page of

12   that contract, please.

13   A.   I can't based on this, no.

14   Q.   Why can't you read it?

15   A.   It's a low-quality resolution and it's

16   too small.

17   Q.   Can you read any words on that contract

18   based on the size that it appeared on the media

19   where you found it?

20   MR. SOUTHWELL: Objection. There's no

21   evidence that that's the size that he found

22   it. In fact, my version of that has it much

23   larger, so I'm not sure the version you've

24   handed the witness, it's very small and I am

25   not sure if that's a production issue in

1   B. Rose

2   terms of the copying.

3   MR. BOLAND: I can ask him.

4   Q.   When you produced your report for

5   filing is the size that you are looking at on

6   page 90 of 102, was that the size that document

7   was produced in the report?

8   A.   I did not produce this exhibit, so I

9   don't know.

10   Q.   But you reviewed the report before it

11   was filed?

12   A.   I did.

13   Q.   Do you remember the size of that

14   exhibit?

15   A.   I don't.

16   Q.   Do you have any reason to doubt that

17   that's the size of the exhibit as you produced it

18   in the report that was filed?

19   A.   I don't know one way or the other,

20   Mr. Boland.

21   Q.   Very well.

22   Can you read -- and the size that that

23   is, which I understand Mr. Southwell is disputing

24   whether that's actually the size it was when it

25   was filed, I understand that, but the size that

1   B. Rose

2   that actually appears there, is that legible, is

3   any part of that legible?

4   A.   Parts of it.

5   Q.   So can you read the parts and describe

6   where you're reading from for the Court?

7   A.   I can read the title, which says

8   StreetFax; I can read section 1, which says

9   general provisions; I can read certain headings

10   such as payment terms; that's essentially what's

11   legible based on this copy which you've handed me.

12   Q.   And is page 2 of the TIFF -- do you

13   recall if page 2 of these two TIFF images was

14   placed into the report that you filed as an

15   exhibit itself?

16   A.   I do not recall.

17   Q.   And there's no other electronic

18   evidence that you reviewed, or is there

19   electronic evidence you reviewed before issuing

20   this report that is not listed in the report?

21   A.   No.

22   Q.   Is there any electronic evidence that

23   you reviewed -- you know, let me back up that

24   previous question. I used the phrase that you

25   reviewed.

 1   B. Rose

 2   Let me ask you, if you know, is there

 3   any other electronic evidence that any of the

 4   four people involved in this report reviewed

 5   before issuing the report but it's not listed in

 6   the report?

 7   MR. SOUTHWELL: Objection to form.

 8   I'm not sure what the --

 9   Q.   Let me break it down.

10   A.   Sure.

11   Q.   You supervised the people who

12   contributed to this report; correct?

13   A.   Correct.

14   Q.   Okay.

15   So that's Mr. Novak and Mr. McGowan,

16   you supervised them?

17   A.   Correct.

18   Q.   And I'm asking you if you know whether

19   those two individuals or you reviewed or analyzed

20   electronic evidence before you issued this report

21   but didn't list that evidence that you analyzed

22   in the report.

23   MR. SOUTHWELL: Are you talking about

24   any electronic evidence in the world?

25   MR. BOLAND: Related to this case.

1   B. Rose

2   MR. SOUTHWELL: Related to the report?

3   MR. BOLAND: Related to this case.

4   Q.   Did you analyze any electronic evidence

5   related to this case before you issued the report

6   but didn't list that evidence that you reviewed

7   in the report?

8   A.   Yes.

9   Q.   Could you list what that is now,

10 please?

11   A.   So we reviewed copies of Mark

12 Zuckerberg's Harvard e-mail, which I don't

13 believe is covered in the report; we also --

14 there was also a review conducted of certain

15 assets belonging to Mark Zuckerberg.

16   Q.   Can you describe those, please.

17   A.   They were various computers and other

18 hard drives that belonged to a computer or

19 computers that Mr. Zuckerberg had used

20 historically.

21   Q.   When did he use those various other --

22 do you have a better description of those various

23 other? How many computers are we talking about

24 in that last answer you gave?

25   A.   I don't know exactly. It was, I would

1   B. Rose

2   say, somewhere in the neighborhood of 15 to 20,

3   roughly.

4   Q.   Who would know the exact answer of how

5   many computers of Mark Zuckerberg's that he

6   historically used that your team analyzed before

7   issuing the report?

8   A.   Well, I would think it's possible Mike

9   McGowan would know the exact number from his

10   recollection, but as to who could tell you based

11   on recall, we certainly have an inventory of

12   those assets.

13   Q.   You do have an inventory?

14   A.   Yes, I do.

15   MR. BOLAND: Mr. Southwell, I will ask

16   you to produce that inventory of those

17   assets that were reviewed.

18   MR. SOUTHWELL: And your basis for that

19   request is what?

20   MR. BOLAND: It's part of the work he

21   did and --

22   MR. SOUTHWELL: It's not related to the

23   Court-ordered expedited discovery in the

24   report.

25   Q.   Let's talk about those computers you

1   B. Rose

2   evaluated.

3   Why did you evaluate those 15 to 20

4   computers?

5   A.   To look for evidence of the

6   authenticity or inauthenticity of the Work For

7   Hire contract.

8   Q.   And do you know who did the analysis of

9   those 15 or 20 computers on your team?

10   A.   I do not.

11   Q.   And are there notes or any

12   documentation of what was found during the

13   analysis of those 15 or 20 computers?

14   A.   There was nothing found.

15   Q.   That's not my question.

16   Are there notes or documents of what

17   was found, what they --

18   A.   Notes and documents of what was found?

19   Your question is what was found. I'm

20   telling you nothing was found.

21   In terms of whether there are notes or

22   documents about the analysis itself, I don't know

23   one way or the other.

24   Q.   Would there typically be notes when a

25   computer expert evaluates a piece of media as to

1   B. Rose

2   how they approach that evaluation, for example,

3   search terms they might have used?

4   A.   Typically.

5   Q.   And software tools they might have used

6   to carve out data, would an analyst in your

7   company typically list the steps they went

8   through analyzing a piece of media?

9   A.   Typically.

10   Q.   And do you know if those records were

11   kept related to these 15 or 20 computers?

12   A.   I don't know one way or the other.

13   Q.   And why was the result -- were the

14   results of the analysis, specifically those 15 or

15   20 computers, not discussed in this report?

16   A.   This report is based on the expedited

17   discovery ordered by the Court which covered the

18   Ceglia media and various other information

19   contained pursuant to subpoenas such as the

20   e-mails from Sidley & Austin, that's the focus of

21   this report is expedited discovery, so we limited

22   our report to that.

23   The assets themselves were not part of

24   that, were not part of that, were not part of

25   that expedited discovery, so they are not

1   B. Rose

2   included in the report.

3   Q.   Why did you bother to evaluate them if

4   they are not part of expedited discovery?

5   A.   We evaluated them well before expedited

6   discovery even started.

7   Q.   Why?

8   A.   Why?

9   Again, because we're looking for

10   evidence of the authenticity or inauthenticity

11   of the contract.

12   Q.   And would you agree with me that the

13   Court-ordered expedited discovery is limited to

14   determining the authenticity or inauthenticity of

15   the contract?

16   A.   I think the expedited discovery's very

17   clear that we are no evaluate the authenticity or

18   inauthenticity of the contract based on our

19   analysis of the Ceglia media.

20   Q.   I'm just asking you do you agree that

21   the court order, multiple court orders have

22   focused on determining the authenticity or the

23   inauthenticity of the contract.

24   A.   Yes.

25   Q.   Okay.

1   B. Rose

2   And you just stated that's one of the

3   things, the reasons why you looked at these 15 or

4   20 computers; correct?

5   A.   I mean, that -- I think that underlies

6   all of the work in this case, I mean, that is the

7   central issue.

8   Q.   And approximately what time did that --

9   what date did that analysis of those 15 or 20

10   computers take place?

11   A.   I don't know. That was before my

12   involvement in the case.

13   Q.   But you supervised the team members who

14   do it?

15   A.   I did not supervise that portion, no.

16   Q.   Who supervised that portion?

17   A.   I don't know.

18   Q.   And that analysis that we're talking

19   about, was that done on original media or

20   forensic copies of original media?

21   A.   It would have been done -- I don't know

22   the answer to that question, I would speculate.

23   Q.   Would it be practice of Stroz Friedberg

24   typically to not do analysis on original media

25   but to make a forensic image or forensic copy

1   B. Rose

2   first and analyze that?

3   A.   In most circumstances you would prefer

4   to work off a copy, yes, that's correct.

5   Q.   And do you know if that was the

6   circumstance for these 15 or 20 computers?

7   A.   I've already said I don't.

8   Q.   Do you know if -- okay.

9   Do you know where those 15 or 20

10   computers, whether they are originals or forensic

11   images, where they are at today?

12   A.   I do not.

13   Q.   Could they be in your locked, secured

14   facility at your offices? Is that possible?

15   A.   I do not believe we've maintained

16   copies of those, no.

17   Q.   Did you discuss the results of that

18   evaluation or analysis with defense counsel?

19   A.   We did.

20   Q.   And when was that discussion?

21   A.   I don't know.

22   Q.   Do you know who was present for that

23   discussion?

24   A.   I don't know. There was one discussion

25   and no, I don't know who was present.

1   B. Rose

2   Q.   But you were there?

3   A.   Was I personally there?

4   Q.   Or on the phone, whichever.

5   A.   I don't recall being there, no.

6   Q.   And you don't know who from Stroz

7   Friedberg was there?

8   MR. SOUTHWELL: Objection, asked and

9   answered.

10   A.   I don't.

11   Q.   Do you know which defense counsel were

12   there?

13   A.   I don't.

14   Q.   Okay.

15   Were any reports given to the

16   defendants regarding media that was analyzed but

17   is not listed in the report?

18   MR. SOUTHWELL: Objection.

19   What are you asking? I just want to

20   make sure you are not getting into

21   privileged areas.

22   Q.   Did you provide a report?

23   I'm not asking what the report says.

24   Did you provide a report to the

25   defendants regarding the analysis of those 15 or

1   B. Rose

2   20 computers?

3   MR. SOUTHWELL: Can you just specify

4   what you mean by report?

5   Q.   Anything from an e-mail to a formal

6   report like as in Exhibit 1, any communication

7   whatsoever regarding the results of that

8   analysis, did you report that to the defendants?

9   A.   I don't know.

10   Q.   Would there be records at the office

11   that would reflect that if it happened?

12   A.   Yes.

13   Q.   And who would be the person at Stroz

14   Friedberg who would know where those records are?

15   A.   It would be whoever made the report.

16   Q.   Now, is there any other electronic

17   evidence that you or your team reviewed after

18   issuing the report that's Exhibit 1?

19   A.   Related to this case?

20   Q.   Yes.

21   A.   No.

22   Q.   Did you or anyone -- well, first of

23   all, people from Stroz Friedberg have written

24   various articles in professional publications

25   about computer forensics; fair to say?

1   B. Rose

2   A.   That's fair to say, yes.

3   Q.   Have you written articles that have

4   been published in computer forensics publications?

5   A.   No.

6   Q.   Okay.

7   Would you agree with this general

8   statement that it's important for a computer

9   forensics expert to review all the available

10 evidence before producing a report?

11   A.   I would agree that it's important for a

12 digital forensic expert to have examined all of

13 the relevant data and certainly, you know, you

14 are sometimes dealing with accessibility issues

15 here, so I think there are times when, you know,

16 I don't know what available means, there are

17 certainly things which might, you know, if you

18 move mountains, be available, but are not

19 certainly worth it in every case, but as a

20 general matter all of the reasonably accessible

21 data should be reviewed.

22   Q.   And early on in -- well, I don't know

23 if it was early on, I shouldn't say that, but

24 your team at least twice either obtained or

25 received copies of Mr. Zuckerberg's Harvard

1   B. Rose

2   e-mail account; fair to say?

3   A.   We have at various times either

4   collected or received copies of Mr. Zuckerberg's

5   Harvard e-mail account, yes.

6   Q.   And the record reflects at least two

7   times that occurred; true?

8   A.   Yes.

9   Q.   Are there more than two?

10   A.   I believe that we received three

11   separate deliveries, so -- and let me just go

12   through them so I can be clear.

13   We collected Mr. Zuckerberg's Harvard

14   e-mail on April 15th of 2011. We also received a

15   copy of Mr. Zuckerberg's e-mail from Harvard that

16   was made in or that was from October of 2010, I

17   believe that was the second delivery received,

18   and then we received a third delivery from

19   Harvard which included a November 2003 copy of

20   his data, a February 12, 2012 copy of his data,

21   and an additional copy of the October 2010 data,

22   and by additional copy I mean it's a duplicate.

23   Q.   And you're aware that the defendants

24   had a duty under expedited discovery to produce

25   e-mails from Mark Zuckerberg's Harvard e-mail

 1   B. Rose

 2   account; correct?

 3   MR. SOUTHWELL: Objection.

 4   A.   I don't know what their obligations

 5   were.

 6   Q.   Were you or your team involved in

 7   helping the defendants produce a set of

 8   Mr. Zuckerberg's e-mails as part of expedited

 9   discovery?

10   A.   Yes.

11   Q.   And do you know from which one of these

12   three separate deliveries that production came?

13   A.   I do not.

14   Q.   Now, Stroz Friedberg, you or no one

15   from your team analyzed the backup copies of

16   Harvard's e-mail servers; is that true?

17   A.   What do you mean by analyze their

18   backup copies?

19   Q.   Let me ask you a question.

20   Do most large organizations like a

21   university maintain backup copies of e-mail,

22   their e-mail servers, is that --

23   A.   Most large institutions make backup

24   copies for disaster recovery purposes. Whether

25   they maintain them or not or how long they

1   B. Rose

2 maintain them varies greatly from organization to

3 organization.

4   Q.   Do you know if Harvard in 2003-2004

5 made backup copies of their e-mail server?

6   A.   I believe they did, yes.

7   Q.   Did you obtain a forensic image of any

8 backup copies of Mr. Zuckerberg's e-mail account

9 from 2003 or 2004?

10   MR. SOUTHWELL: Object to the form,

11   just being clear about what backup copies of

12   Mr. Zuckerberg's e-mail account means.

13   Q.   I just asked you and you confirmed that

14 Harvard made backup copies of their e-mail server

15 in 2003 and 2004; correct?

16   A.   I said I believe they did.

17   Q.   Do you have any reason to believe that

18 that excluded Mr. Zuckerberg's e-mail account?

19   A.   No.

20   Q.   I'm asking about those backup copies.

21   Do you know if those were on tape or on

22 disc or what form those backups were in?

23   A.   I don't know whether they would retain

24 them from then.

25   Q.   Did you ask Harvard about whether they

1   B. Rose

2   had backup copies from 2003 and 2004 that were

3   accessible?

4   A.   We asked Harvard to identify all

5   historical copies of Mr. Zuckerberg's e-mail,

6   whether that's on a backup or anywhere else.

7   Q.   Did they produce forensic copies from a

8   backup source to you?

9   A.   Yes. I've just delineated, I think,

10   the copies they produced for us, so we collected

11   the April 15, 2011 e-mail, they produced data

12   from October 2010, February 2012, and November

13   2003; they said that and they indicated that

14   after a thorough search that was all the copies

15   of this historical e-mail they could identify.

16   Q.   Let me just clarify that for my

17   understanding.

18   The first collection -- I'll use your

19   term -- of April 15, 2011, was that from their

20   actual e-mail server or --

21   A.   Correct.

22   Q.   So it was not from a backup copy?

23   A.   That's correct.

24   Q.   The copy that they -- that you received

25   from them which was you received in October 2010,

1   B. Rose

2 was that from their server or from a backup?

3   A.   I don't know the source of that.

4   Q.   Very well.

5   And then the third delivery from

6 Harvard, was that from their actual server, their

7 live server is the term I'm going to use, their

8 live server, e-mail server, or from a backup

9 copy?

10   A.   Well, from November 2003 it would

11 necessarily not be from their live server, and

12 this is a copy of the e-mail box as it existed in

13 November 2003.

14   Q.   So from a backup you would assume?

15   A.   I don't know whether it was a backup,

16 whether they made a copy for some other reason.

17 I know they had a historical copy of his e-mail,

18 I don't know why it was made or from what the

19 source of it was.

20   Obviously, once you get past the

21 collection of a server on April 15th everything

22 else they provide us historically is a historical

23 copy, I don't know the source.

24   Q.   Now, since we are on that topic, those,

25 at least between two of those copies, you

1   B. Rose

2   offered -- well, you've offered many declarations

3   in this case about different topics?

4   A.   Correct.

5   Q.   And one of them, if you recall, that

6   you offered a declaration about was some

7   differences that arose between the October 2010

8   e-mail collection and the April 2011.

9   Do you recall that declaration?

10   A.   I do.

11   Q.   And correct me if I'm wrong, but there

12   were two main explanations you provided in that

13   declaration as to why what appeared to be missing

14   e-mails actually weren't missing e-mails at all.

15   Do you remember providing explanation

16   for that?

17   MR. SOUTHWELL: Object to the form.

18   Q.   Do you remember providing an

19   explanation for that?

20   A.   I do.

21   Q.   And you indicated in that declaration

22   that the cause of that apparent deleted e-mails,

23   which wasn't deleted e-mails at all, were minor

24   formatting differences; do you remember saying

25   that?

1   B. Rose

2   A.   Do you have a copy of the declaration?

3   Q.   Hold on a second. I may have a copy

4   here.

5   You know what, I don't have it handy,

6   Mr. Rose, so if your memory doesn't serve you, we

7   will go from there.

8   A.   I do remember there being minor

9   formatting differences which were part of the

10   discrepancy.

11   Q.   And do you recall using the term, and

12   in addition to minor formatting differences

13   technical issues arose, if you remember using

14   that in your declaration?

15   A.   I don't recall that specific language.

16   Q.   And is it your opinion that some --

17   that Stroz Friedberg somehow was engaged in some

18   fraud which caused the minor formatting

19   differences in those e-mails?

20   A.   Absolutely not.

21   What caused the differences was for

22   some in the collection process, as I recall,

23   there were two issues, one, some minor formatting

24   inconsistencies, for instance, and not even

25   apparent on the surface of the document, if you

1   B. Rose
2   look at it, for instance, it's an extra white
3   space in the subject line, when we compare the
4   two e-mails they were identical except for that
5   minor formatting difference.
6   I believe the technical issue was one
7   e-mail that got split into two different e-mails,
8   so of course it doesn't dedupe out, but I can't
9   imagine how you could equate that to fraud.
10   Q.   How did those minor formatting
11   differences occur?
12   A.   I don't know.
13   Q.   Was it done manually by anyone at Stroz
14   Friedberg?
15   A.   No.
16   Q.   Was it done even in an automated
17   fashion, intentionally by someone at Stroz
18   Friedberg inserting those formatting differences?
19   A.   Why would anyone at Stroz Friedberg
20   insert formatting differences into an e-mail?
21   Q.   Well, the rules here are that I get to
22   ask the questions.
23   Was it done automatically by someone at
24   Stroz Friedberg intentionally trying to create
25   formatting differences?

1   B. Rose

2   A.   Absolutely not.

3   Q.   So those formatting differences do not

4   indicate fraud by Stroz Friedberg; fair to say?

5   A.   Mr. Boland, that's an outrageous

6   accusation, that anyone at Stroz Friedberg would

7   insert a white space in an e-mail so that it

8   would not dedupe out against a prior collection

9   of e-mail.

10   Q.   I'm just asking you if you agree with

11   the statement it's not fair to accuse Stroz

12   Friedberg of committing fraud because minor

13   formatting differences appear in these e-mails.

14   Is that fair to say?

15   A.   I think Stroz Friedberg would have

16   absolutely no motivation to insert an extra white

17   space into a subject line.

18   Q.   Well, my question is not about

19   motivation, my question is, is it fair to say

20   that it is not proof of Stroz Friedberg

21   committing fraud because minor formatting

22   differences occurred in these e-mails.

23   A.   I think given the circumstances you're

24   considering, which is that Stroz Friedberg is

25   engaged in a process of collecting e-mail and

1   B. Rose

2   deduping out against a prior set, so having an

3   aggregate set of data for review, if you're

4   talking about those circumstances, the idea that

5   an extra white space would be inserted so that

6   those documents in fact don't dedupe out, the

7   only effect of that being that there are

8   additional documents which Gibson, Dunn or Stroz

9   Friedberg then has to review, the idea that that,

10 there's any motivation for fraud there, the idea,

11 given those circumstances, that that would be

12 fraudulent conduct, is outrageous.

13   Q.   So is the answer to my question yes,

14 that it is not evidence -- I'll ask it again.

15 It's not -- because the paragraph you just gave

16 me did not answer the question, sir.

17   Would you agree with me that it is not

18 evidence of fraud by Stroz Friedberg merely

19 because in your possession somehow, we don't know

20 how, minor formatting differences appeared in

21 these e-mails?

22   MR. SOUTHWELL: Objection, asked and

23   answered, he answered the question.

24   A.   What I'm saying is given the

25 circumstances it's clearly not fraud.

1   B. Rose

2   Q.   Did you or anyone on your team review

3   any electronic evidence related to any prior

4   cases that Mr. Zuckerberg has been involved in as

5   a defendant or as a party?

6   A.   Again, we reviewed the assets,

7   Mr. Zuckerberg's assets, I believe those did

8   include some forensic images that have been made

9   in prior litigations.

10   Q.   And what prior litigation were those

11 images involved in?

12   A.   I don't recall.

13   Q.   Are you familiar with the case against

14 Mr. Zuckerberg involving an organization called

15 ConnectU?

16   A.   I recognize the name, yes.

17   Q.   Are you familiar with litigation

18 involving two twins from Harvard named the

19 Winklevoss twins?

20   A.   I am familiar with it, yes.

21   Q.   Do you know if you or anyone on your

22 team reviewed evidence from the ConnectU

23 Winklevoss case?

24   A.   It is my recollection that some of the

25 assets were related to the ConnectU case.

1   B. Rose

2   Q.   Do you know if you reviewed all of the

3 electronic assets related to the ConnectU case?

4   A.   I don't.

5   Q.   Did you ask to see all those assets?

6   A.   We asked to see all of the historical

7 Mark Zuckerberg assets.

8   Q.   And who did you ask that question to?

9   A.   Well, I mean, we were in consultation

10 with Gibson, Dunn and attorneys from McManis

11 Faulkner, Mr. Zuckerberg's personal attorneys.

12   Q.   Did you or anyone from your team review

13 any electronic evidence from a case involving

14 Eduardo Saverin?

15   A.   I don't know.

16   Q.   Does that name ring a bell?

17   A.   It does.

18   Q.   Are you aware that he and

19 Mr. Zuckerberg were involved in litigation years

20 ago regarding Facebook?

21   A.   I've seen "The Social Network," but

22 beyond that --

23   Q.   Did you ask to see any evidence from

24 that case, any electronic evidence from that

25 case?

1   B. Rose

2   A.   We didn't have discussions about

3 electronic assets for specific cases. What we

4 were provided was our understanding was the

5 existing historical assets for Mr. Zuckerberg.

6   Q.   You know who Orin Snyder is; right?

7   A.   I do.

8   Q.   Have you met with him before?

9   A.   I have.

10   Q.   Pardon me?

11   A.   I have, yes.

12   Q.   Have you met with him about this, in

13 preparation for your deposition today?

14   A.   No.

15   Q.   Would you agree with the statement that

16 Mr. Snyder made about this issue of the minor

17 formatting differences we were talking about with

18 the Harvard e-mails, can you tell me if you agree

19 with this statement?

20   MR. SOUTHWELL: Can you just be clear

21   what you are referring to?

22   MR. BOLAND: A statement from

23   Mr. Snyder December 13, 2011, during the

24   oral argument we had that day.

25   Q.   Mr. Snyder said "It's possible the

1   B. Rose

2   differences in storage format or the conversion

3   process can create minor format discrepancies

4   between two copies of the same e-mail."

5   Do you agree with that statement?

6   A.   Can I read that, do you mind?

7   Q.   Sure. Page 163 of that, and I started

8   reading "It's possible."

9   Do you see where I am pointing there,

10   line 17?

11   MR. SOUTHWELL: Can we see the page

12   before? This relates to the issue you are

13   asking about?

14   MR. BOLAND: It does, I'll represent to

15   you that it does.

16   You can see the page before, that's

17   fine. It relates to an argument -- well, I

18   will let the witness read that.

19   Q.   Just tell me if you agree with that

20   statement he makes about minor formatting

21   differences.

22   A.   I mean, as a general matter, I would

23   agree with that.

24   Q.   Very well.

25   So the accidental or unintentional

1   B. Rose

2   insertion of a formatting difference into a

3   document, you would agree with me, is not by

4   itself proof of fraud?

5   A.   Accidental -- so accidental and

6   unintentional insertion?

7   Q.   Correct.

8   A.   I would say since fraud involves

9   intent, I would say by definition that would not

10   be fraud.

11   Q.   And we just went over that such

12   formatting differences can be caused

13   unintentionally as Stroz Friedberg unintentionally

14   caused them somehow?

15   MR. SOUTHWELL: Objection to the form.

16   What are you referring to as such

17   formatting differences?

18   Q.   Formatting differences between the sets

19   of Harvard e-mails that we talked about were

20   caused unintentionally; right?

21   A.   If you are doing forensic collection

22   and you're collecting e-mail, it is possible in

23   the conversion process or based on storage

24   formats for there to be formatting differences

25   introduced.

1   B. Rose

2   Q.   Now, is that the only way in the whole

3   world of computers is just forensics where these

4   formatting differences can occur?

5   A.   I don't understand that question.

6   Q.   People trading files on CDs or

7   e-mailing files to each other, can formatting

8   differences occur in that process?

9   A.   Can you be specific? That seems very

10 hypothetical.

11   Q.   You have a Microsoft Word document and

12 you send it to me and I open it in Microsoft

13 Word, can formatting differences occur depending

14 on how you have Microsoft Word set and how I have

15 it set on my computer?

16   A.   I think in general that should not

17 occur.

18   Q.   My question is not whether it should

19 not occur.

20   Does that occur for people, do they

21 get --

22   A.   I am not aware of that occurring.

23   Q.   You have never received a document that

24 somehow the formatting got altered from what the

25 recipient created?

1   B. Rose

2   MR. SOUTHWELL: Objection to form.

3   Q.   Has that ever happened?

4   A.   I don't know, Mr. Boland.

5   Q.   Fair enough.

6   Can you look at Exhibit 1, page 24, we

7   are in the upper -- I think we are in the upper

8   corner still of those page numbers.

9   A.   Okay.

10   Q.   So fair to say this page is generally

11 some discussion about the Sidley Austin server

12 and there's some header information in the middle

13 of the page; correct?

14   A.   I would say it's a discussion of the

15 StreetFax e-mails found at Sidley & Austin and

16 particularly the Internet header information

17 appended to those e-mails.

18   Q.   And your report notes in footnote 9 --

19 I mean, there's a whole paragraph there, but

20 there is a note there that the server --

21   MR. BOLAND: Scratch that.

22   Q.   Right at the bottom, the last sentence

23 of that footnote, the time zone setting was

24 incorrectly set to Eastern time.

25   Do you see that sentence, the last half

1   B. Rose

2   of the last sentence of footnote 9?

3   A.   I do see that sentence.

4   Q.   And that's referring to the Sidley

5   Austin e-mail server; correct?

6   A.   It is referring to one of the

7   intermediary Sidley & Austin e-mail servers,

8   specifically Mail 02.

9   Q.   Did your computer forensic analysis

10   reveal any fraud regarding Sidley Austin and

11   e-mails?

12   A.   No.

13   Q.   And did your forensic analysis reveal

14   any fraud by Mr. Zuckerberg in relation to

15   e-mails from his Harvard e-mail account?

16   A.   No.

17   Q.   Now, on that same page, the time stamps

18   regarding the sent items from Mr. Ceglia's

19   parents' computer, this Kole e-mail, and the

20   received time of that e-mail on the Sidley Austin

21   server, this is my calculation, but they differ

22   by more than 144 seconds; is that a fair bit of

23   math?

24   MR. SOUTHWELL: What are you referring

25   to? I'm sorry.

1   B. Rose

2   Q.   The time stamps on the sent item from

3   Mr. Ceglia's parents' computer of the Kole e-mail

4   and the time it was received by Sidley Austin,

5   they differ by about a little over two minutes.

6   A.   There are two e-mails, so can we

7   clarify which one we're talking about?

8   Q.   Let's start with the first one.

9   A.   Okay.

10   MR. SOUTHWELL: By the first one, are

11   you referring to page 24 of the report?

12   A.   Or page 23.

13   Q.   Let's look at where you have detailed

14   when those e-mails were sent.

15   Do you see on page -- yes, go back to

16   page 23 under the number 1.

17   There's an e-mail sent at 10:37 a.m.

18   Do you see that reference?

19   A.   Yes.

20   Q.   So there were two StreetFax e-mails

21   that you talk about being sent here on this page?

22   A.   Yes.

23   Q.   The first one sent at 10:37 a.m.

24   Eastern Standard Time.

25   A.   Yes.

1   B. Rose

2   Q.   And then you talk about it being

3   received on the top of page 24, it's received by

4   the Sidley Austin server at 9:38 Central time.

5   A.   Correct.

6   Q.   That's a difference of a minute,

7   roughly, or a little under a minute; is that fair

8   to say?

9   A.   That is a difference of 51 seconds.

10   Q.   And in the second e-mail is in the

11 middle of page 24, it's sent at 10:39; right?

12   A.   Correct.

13   Q.   And it's received, at the bottom of 24

14 it's received by the Sidley Austin server at 9:41.

15   A.   Correct.

16   Q.   So that's a little more than a minute,

17 a minute and a half, roughly; correct?

18   A.   Let me just do the math.

19   Yeah, that's roughly correct.

20   Q.   Now, on the computer where the Kole

21 e-mail was found your report identifies it as

22 part of the Ceglia media; fair to say?

23   A.   Right.

24   Q.   And do you know who was the actual

25 owner and user of that computer? Was it Paul

1   B. Rose

2   Ceglia?

3   A.   I don't know.

4   Q.   Do you know if he ever used that

5   computer?

6   A.   I don't know one way or the other.

7   Q.   And these e-mails, these two TIFF

8   images that were sent by these two e-mails, you

9   would agree with the notion that from a computer

10   forensic standpoint you can't -- no one can say

11   whose butt was actually in the seat at that

12   computer?

13   A.   So -- and let me maybe amend my last

14   answer a little bit.

15   From a forensic standpoint it is

16   difficult from the forensics to tell who's

17   actually sitting in the seat, so what you have to

18   look for is other contextual evidence.

19   So given the fact that what we have in

20   this case is two e-mails from a computer

21   belonging to -- used by someone at the Ceglias',

22   assuming that, you have one of the e-mails that's

23   signed by Paul that sets forth a phone number

24   that is sent to his attorney at Sidley & Austin,

25   Jim Kole.

1   B. Rose

2   From those circumstances I would say

3   that, yes, at least for the purpose of sending

4   those StreetFax e-mails, Mr. Ceglia, Paul Ceglia

5   specifically, did use that computer.

6   Q.   Now, in sending that e-mail -- so it's

7   your position that the forensic evidence -- and

8   if I'm using the wrong word correct me -- proves

9   that Paul Ceglia was sitting at the computer that

10   sent those e-mails?

11   A.   I think the forensic evidence is yes,

12   that Mr. -- that the evidence, the forensic

13   evidence and I would say the other evidence, for

14   instance, I don't know whether I would

15   characterize the fact that Paul signed the e-mail

16   as forensic evidence, but it's certainly evidence

17   obtained in a forensic analysis, yes. I would

18   say that it shows that Paul Ceglia sent those

19   e-mails to Mr. Kole.

20   Q.   Now, when you say the word "signed the

21   e-mail" you're talking about his name was typed

22   at the bottom of the e-mail?

23   A.   Correct.

24   Q.   Not a handwritten signature?

25   A.   Correct.

1   B. Rose

2   Q.   And not even a scanned image of a

3   handwritten signature?

4   A.   That's correct.

5   Q.   And anyone can type those four letters

6   that are his name; right?

7   A.   Anyone could, yes.

8   Q.   Isn't it true that a person could be

9   sitting at the computer, as you are positing

10   here, and send that e-mail; true?

11   A.   Could you repeat that?

12   Q.   As you said, a person, one of the ways

13   this e-mail could have been sent is Paul Ceglia

14   sitting at the computer typing?

15   A.   Correct.

16   Q.   It could also have been sent by another

17   person sitting at the computer typing everything

18   that was in that e-mail; true?

19   A.   Hypothetically true. I don't think in

20   the case the evidence supports that, no.

21   Q.   And are there ways -- there are ways

22   for people to get, for example, GoToMyPC is a

23   program you are familiar with, a service you are

24   familiar with?

25   A.   Yes.

1   B. Rose

2   Q.   So a person could be in one state and

3   use GoToMyPC and get remote access to their

4   computer; right?

5   A.   You can get remote access, yes.

6   Q.   And using that remote access you can

7   operate that computer as if you're sitting in

8   front of it; true?

9   A.   If you -- yes, that's true.

10   Q.   Including you can send an e-mail from

11   the e-mail program on that computer while you are

12   in another state?

13   A.   Correct.

14   Q.   Did your forensic evidence indicate

15   whether remote access to this computer by

16   GoToMyPC happened with Mr. Ceglia?

17   A.   I think remote access is unlikely given

18   the fact that the scanned documents were copied

19   to the actual physical hard drive, so I think

20   what we are looking at is physical access to the

21   machine, that would be our conclusion from the

22   forensics.

23   Q.   Well, let's talk about that.

24   You testified just earlier that there's

25   a variety of ways that those TIFF images could

1   B. Rose

2   have been created on that hard drive.

3   Do you remember testifying about that?

4   MR. SOUTHWELL: Objection,

5   mischaracterizes the testimony.

6   Q.   Do you remember testifying that there

7   are a variety of ways that those TIFF images

8   could have been created on to that hard drive?

9   A.   I believe your question was a general

10 question about the way in which documents can in

11 fact be created on hard drive, if I'm recalling

12 that correctly.

13   Q.   Well, let me clarify that, then.

14   You agree with me that there's multiple

15 ways that a file in a general sense can be

16 created on a hard drive; right?

17   A.   Correct.

18   Q.   And I asked you this before, they can

19 be copied from a CD?

20   You have to --

21   A.   Yes.

22   Q.   Floppy disk in the old days?

23   A.   Yes.

24   Q.   USB drive?

25   A.   Yes.

1   B. Rose

2   Q.   Another hard drive?

3   A.   Yes.

4   Q.   And the Internet?

5   A.   Yes.

6   Q.   Which one of those ways -- I asked you

7   before, I'm pretty clear on this, but I will do

8   it again.

9   Which one of those ways was the way

10   these two TIFF images got on to that hard drive

11   where you found them?

12   A.   I don't know.

13   Q.   You don't know.

14   So that necessarily means, then, it's

15   correct that a person, Paul Ceglia or whoever

16   using GoToMyPC, for example, can remotely access

17   this computer where you found these TIFF images

18   and put them there; true?

19   A.   I don't know specifically how

20   GoToMeeting operates. I mean, for instance,

21   there are remote access clients where I can go on

22   and get documents, for instance, on a desktop,

23   but I can't actually save things to my physical

24   hard drive, so I think it would depend on how

25   that actually operated.

1   B. Rose

2   Q.   Do you know if -- and just to correct

3 you, I think you just misspoke, I'm not talking

4 about GoToMeeting, I'm talking about GoToMyPC.

5   A.   Oh, I'm sorry, yes.

6   Q.   Do you know if GoToMyPC does or does

7 not have that function?

8   A.   I don't.

9   Q.   If the product like GoToMyPC allows

10 remote access and has that function allowing you

11 to save files to that remotely accessed computer,

12 that's one way Mr. Ceglia or whoever could have

13 put those TIFF images on that computer; would you

14 agree with me?

15   A.   It's possible that's a way Mr. Ceglia

16 could have saved those to that computer, yes.

17   Q.   Is GoToMyPC the only way to get remote

18 access to a computer?

19   A.   No.

20   Q.   What are the other ways, if you could

21 list them, please?

22   A.   I couldn't list all of them.

23   Q.   List as many as you can, if you would.

24   A.   I mean, there are various clients like

25 that that allow remote access, there is, you

1   B. Rose

2   know, VPN access to a computer, there -- you

3   know, there are certainly other ways, I mean,

4   there are really innumerable ways to gain remote

5   access.

6   Q.   Now, the ways you just went through,

7   VPN and other clients like that, those aren't

8   hacking tools, are they?

9   A.   They're not, they're generally software

10   actually installed on the computer.

11   Q.   In your experience as a computer

12   forensics expert, you know that individuals

13   around the world have the ability to remotely

14   access other people's computers without their

15   authorization?

16   A.   There are people who do that. I mean,

17   obviously that would require -- you know, that

18   would require the installation of some kind of

19   software, you know, malware program, depending on

20   how you want to characterize it, that would allow

21   for both that remote access and also the kind of

22   control over the computer itself that you would

23   need to perform those functions, but assuming

24   that that software, malware is installed on the

25   computer, sure, that's a possibility.

1   B. Rose

2   Q.   And your report doesn't discuss any

3   malware on any of the media?

4   A.   No.

5   Frankly, I regard the malware

6   explanation as completely implausible in this

7   case.

8   Q.   Well, my question is your report

9   doesn't indicate -- well, let me ask you that

10   question.

11   Before you produced that report did you

12   scan any of the media for malware?

13   A.   We did not.

14   Q.   Is that standard practice for your firm

15   to not scan media for malware?

16   A.   That is not a standard practice, no.

17   Q.   Have you had a chance to read

18   plaintiff's expert's report in this case?

19   A.   I have.

20   MR. SOUTHWELL: Can you just clarify

21   which one?

22   MR. BOLAND: I'm sorry, Mr. Broom.

23   Q.   And you are aware, then, from reviewing

24   that, that he did scan the media in this case for

25   malware?

```
 1                         B. Rose
 2        A.     I am aware of that, yes.
 3        Q.     Are you aware that he found malware?
 4        A.     I am.
 5        Q.     And he found something called a rootkit
 6   as well?
 7        A.     I don't --
 8               MR. SOUTHWELL:  Objection to the
 9        specifics of what was found or where.
10        A.     I don't recall that specifically, no.
11        Q.     You don't recall that from reading his
12   report?
13        A.     No.
14        Q.     But generally you recall he found
15   malware?
16        A.     Correct.
17        Q.     What types of malware would allow
18   someone to have remote access to a computer, if
19   you know?
20        A.     I wouldn't even know how to answer that
21   question, I mean, there are all kinds of
22   variations of malware that would permit remote
23   access.
24        Q.     Can you list a few of them?
25        A.     No.
```

1   B. Rose

2   Q.   Do you know any of them that allow that?

3   A.   I mean, there are kinds, but again,

4   you'd be talking about specific pieces of

5   malware, right, so there are literally tens of

6   thousands of these things cataloged, so I think

7   any analysis of malware would have to start with

8   what is -- not a general analysis, but what is

9   the specific malware found on the computer and

10   what capabilities does that malware provide, so,

11   for instance, you know, what is notably lacking

12   from Mr. Broom's report is any analysis of how

13   any of the malware he actually found would, A,

14   existed in 2003 and, B, would have provided the

15   kind of control over the computer that you would

16   need for remote access to be an explanation for

17   this.

18   Q.   Which ones -- did you or your team

19   evaluate the malware in Mr. Broom's report to

20   determine if it existed in 2004?

21   A.   We researched that malware to both

22   determine whether any of those pieces of malware

23   existed in 2003 and had the capabilities that

24   would provide the kind of remote access necessary.

25   Q.   And what was your evaluation?

1   B. Rose

2   A.   That none of those pieces of malware

3   would have provided the ability to do that.

4   Q.   Now, do people, hackers, in general,

5   who gain remote access to a computer, sometimes

6   they leave evidence behind of that intrusion;

7   fair to say?

8   A.   Yes.

9   Q.   Are there occasions where they do not

10 leave evidence behind that can be detected of

11 that intrusion?

12   A.   It's hypothetically possible. I mean,

13 generally what you would see is either evidence

14 of the access or evidence of the cleanup, but

15 it's certainly possible to have as part of the

16 malware essentially a cleanup of the malware on

17 the machine.

18   Q.   And you don't know, from your

19 evaluation of Paul Ceglia's parents' computer

20 where the Kole e-mail was found, what malware was

21 on that computer in 2004?

22   MR. SOUTHWELL: Object to the form.

23   Q.   True?

24   A.   No.

25   Q.   You don't know if there was any malware

1   B. Rose

2   on that computer in 2004?

3   A.   I do not.

4   Q.   And you don't know if it was littered

5   with hundreds of types of malware in 2004?

6   A.   I don't know anything about the state

7   of the computer in 2004.

8   Q.   And do you think it's a reasonable

9   conclusion that if a computer in 2011 has the

10   list of malware on it that you saw on Mr. Broom's

11   report that that makes it more likely that that

12   computer had malware on it sometime prior to 2011?

13   A.   I would not agree with that, no.

14   Q.   Do you know when all that malware

15   landed on that computer?

16   A.   I do not.

17   Q.   Do you know if any of that malware had

18   earlier versions that were in existence in 2004?

19   A.   I'm not sure I understand the question.

20   Q.   Well, you know Microsoft Word --

21   A.   Sure.

22   Q.   -- it's got some version number for the

23   current version of today, let's call it the 2012

24   version, and eight years ago it had a prior

25   version, maybe called Microsoft 2003.

1   B. Rose

2   You are aware that Microsoft works that

3   way?

4   A.   Sure.

5   Q.   So I'm asking about the malware that's

6   currently on the computer that Mr. Broom found,

7   do you have any evidence of what prior versions

8   of that malware existed before?

9   A.   I guess that I don't really understand

10   the premise of the question in the sense that,

11   you know, people who produce malware generally

12   don't version like Microsoft Word does. They'll

13   create, I guess, what I would consider new

14   malware and maybe it's just a matter of semantics,

15   but, you know, certainly it is possible for, you

16   know, pieces of malware to, you know, once

17   malware, for instance, is discovered and shut

18   down and picked up by the virus scans, they may

19   adapt that and create a new piece of malware, you

20   know, that's a variation off that.

21   Q.   Now, in your report there's -- let me

22   find the page -- you talk about a sent items DBX

23   file in various places in the report; do you

24   recall that?

25   One of them is -- I just found the

1   B. Rose

2   first one just for purposes of the question, it's

3   referred to on page 15, you talk about the sent

4   items DBX file?

5   A.   Yes.

6   Q.   And it's other places in the report as

7   well, you would agree?

8   A.   Yes.

9   Q.   Can you look at page 16 of 102 of your

10   report.

11   A.   Are you referring to the top line

12   numbers?

13   Q.   Top line numbers, yeah.

14   A.   Yes.

15   Q.   Now, you have a graphic there of the

16   sent items folder of Vera Ceglia's e-mail

17   account; true?

18   MR. SOUTHWELL: Object to the form.

19   A.   In terms of what do you mean by Vera

20   Ceglia's e-mail account?

21   Q.   Well, the e-mail associated with --

22   what was the e-mail associated with this account?

23   A.   The user name that resolves when you

24   send an e-mail is Vera Ceglia.

25   Q.   Any reason to believe that that is not

1   B. Rose

2   Vera Ceglia's e-mail account?

3   A.   Well, I believe the account is

4   registered to Carmine Ceglia.

5   Q.   So whose account did your forensic

6   analysis determine that that was, Vera's or

7   Carmine's, or did they both use it?

8   A.   I think our forensic analysis showed

9   and, again, forensics and the information we

10   obtained during the analysis showed the account

11   was registered to Carmine Ceglia, that the user

12   name that resolves is Vera Ceglia and that in the

13   case, at least in the case of the two StreetFax

14   e-mails, the account was used by Paul Ceglia.

15   Q.   So you mention -- you list there five

16   sent items, three of them are blacked out.

17   Do you see that?

18   A.   That's correct.

19   Q.   Did it seem unusual to you that on

20   average only one e-mail was sent per year that

21   that account or that that DBX file existed from

22   Outlook?

23   MR. SOUTHWELL: Objection.

24   A.   I don't think you can -- I mean, I

25   think that's a faulty premise. You certainly

1   B. Rose

2   can't conclude from the fact that only five

3   e-mails are here that that's the extent of the

4   sent e-mails.

5   Q.   Where would other sent e-mails be?

6   A.   They could have been deleted.

7   Q.   Did your forensic analysis find

8   evidence that sent e-mail items were deleted?

9   A.   No.

10   Q.   So where are they, the rest of the ones

11   that -- other than those five that were sent in

12   five years, what evidence do you have?

13   A.   I don't know whether they exist.

14   I'm saying that based on an analysis

15   of the current contents of a mailbox you can't

16   conclude that that is a complete historical

17   record of everything that was sent, nor to the

18   extent e-mails were deleted over time are you

19   necessarily going to be able to recover evidence

20   of those deleted e-mails, so what I'm saying is

21   what this is evidence of is what resided in this

22   mailbox at a particular historical point in time.

23   Q.   Now, would that statement, those series

24   of statements you just gave also apply to Mark

25   Zuckerberg's Harvard e-mail account?

1   B. Rose

2   A.   Could you be specific about which

3   statements you want me to apply to his e-mail

4   account?

5   Q.   Let's break them down.

6   A.   Sure.

7   Q.   It's true that it's your opinion based

8   on page 24 there that that's not necessarily all

9   of the sent items, all of the items that were

10   ever sent from that e-mail account?

11   A.   Again, it is a snapshot, a historical

12   record of a particular point in time.

13   Q.   So it would be true, then, that the

14   items that you found in the equivalent sent items

15   folder of Mark Zuckerberg's Harvard e-mail

16   account, not necessarily all of the e-mails he

17   ever sent?

18   A.   I think that's true of everyone's

19   e-mail, yes.

20   Q.   And there could be e-mails that were

21   deleted that you were not able to recover, that

22   he had sent but then got deleted?

23   A.   There could have been e-mails deleted

24   either through user action or through system

25   processes that we were not able to recover,

1   B. Rose

2   that's correct.

3   Q.   Did you ask Mr. Zuckerberg if he

4   deleted any e-mails from his Harvard e-mail

5   account?

6   A.   I have not spoken to Mr. Zuckerberg.

7   Q.   Why didn't you ask him that?

8   MR. SOUTHWELL: Objection. He just

9   said he didn't speak to him.

10   A.   I have never spoken to Mr. Zuckerberg.

11   Q.   I understand you've never spoken to him.

12   Why didn't you speak to him and ask him

13   whether he deleted e-mail from his account?

14   A.   Again, I'm doing a forensic analysis.

15   You know, to the extent that others -- the

16   strategy about whether interview Mr. Zuckerberg

17   is beyond what we were charged to do in the

18   expedited discovery. I was asked to do a

19   forensic analysis of the Ceglia media.

20   Q.   Is it of no value to your forensic

21   analysis to know how somebody who's a user of a

22   computer tells, that actually states how they

23   used it, that's not relevant to your analysis?

24   A.   I don't think that would have been

25   relevant to our report, no.

1   B. Rose

2   Q.   I'm saying is it relevant to your

3   analysis to know how Mark Zuckerberg used his

4   e-mail account.

5   A.   To our expedited discovery analysis

6   or --

7   Q.   Is it relevant to you at all?

8   A.   Look, again, you know, the Harvard

9   e-mail was not included here, it was not part of

10 the expedited discovery, so to the extent we are

11 talking about my report, and that's what I

12 thought we were here talking about is Stroz

13 Friedberg's report, talking to Mr. Zuckerberg

14 about his practices with e-mail would not be

15 relevant.

16   In understanding, you know, the Harvard

17 e-mail, right, our analysis of that was limited

18 to trying to collect it all and provide it in a

19 format that could be reviewed and looking for the

20 existence of the purported e-mails and various

21 correspondence with StreetFax employees, that

22 was our analysis and that was what we were

23 limited to.

24   What we were charged with, knowing

25 Mr. Zuckerberg's historical practices, would not

1   B. Rose

2   have been relevant. Whether that's relevant to

3   the broader case and whether that's an analysis

4   that should be done, I mean, that's really a

5   strategic question that I would leave to the

6   attorneys.

7   THE VIDEOGRAPHER: I need a card

8   change.

9   MR. BOLAND: All right. We will go off

10   the record for a moment so he can change the

11   card.

12   Q.   Do you want to take a 10-minute break

13   so you can run to the bathroom or whatever?

14   A.   Sure.

15   (Recess taken.)

16   (Rose Exhibit 2, declaration of Neil

17   Broom, marked for identification, as of this

18   date.)

19   MR. BOLAND: Could we start the video

20   back up again?

21   THE VIDEOGRAPHER: Recording tape 2.

22   MR. BOLAND: We are back on the record.

23   BY MR. BOLAND:

24   Q.   Mr. Rose, we just had about a 10 or so

25   minute break.

1   B. Rose

2   Did you chat with defense counsel about

3   the deposition during the break?

4   A.   I did not.

5   Q.   I'm going to back up to a topic briefly

6   and then we will move ahead to ask you a couple

7   more questions.

8   The 15 or 20 computers that

9   Mr. Zuckerberg had used historically and you

10 indicated members of your firm had analyzed;

11 true?

12   A.   Correct.

13   Q.   And who at Stroz Friedberg actually

14 obtained that evidence?

15   A.   I do not know.

16   Q.   Where did they physically go

17 geographically to get that evidence?

18   MR. SOUTHWELL: Objection. He just

19   said he doesn't know.

20   MR. BOLAND: I asked him who obtained

21   it, he doesn't know.

22   Q.   Where --

23   MR. SOUTHWELL: He previously testified

24   he doesn't know about this, so --

25   Q.   Where was that evidence located?

1   B. Rose

2   A.   I believe generically it was in

3   California.

4   Q.   Who supervised that collection of that

5   evidence?

6   A.   I don't know.

7   Q.   And who did the actual work and

8   analyzing those 15 or 20 computers?

9   A.   I don't know.

10   Q.   If you could look at what's been marked

11   Rose Exhibit 2 and tell me if you've seen that

12   before.

13   A.   I have.

14   Q.   And that in fact for the record, for

15   the Court, is Mr. Neil Broom's report, the

16   plaintiff's computer forensics expert; true?

17   A.   That's my understanding, yes.

18   Q.   Could you go to page 21, again, in the

19   upper right-hand corner page numbers in the

20   report.

21   MR. SOUTHWELL: Can we pause for just a

22   second? Our computer is not connected to

23   the Livenote.

24   THE COURT REPORTER: Do you want to go

25   off the record?

1   B. Rose

2   MR. BOLAND: We can go off the record,

3   that's fine, sure.

4   (Discussion off the record.)

5 BY MR. BOLAND:

6   Q.   So we are back on the record.

7   If you could just look at page 21 of

8 Mr. Broom's report.

9   Are you on that page?

10   A.   Yes, referenced by the top-line number,

11 I believe they are the same.

12   Q.   Do you see in the second full paragraph

13 Mr. Broom discusses the dimensions of the scanned

14 documents that would have been needed to create

15 the TIFF images attached to the Kole e-mail? Do

16 you see that description of the size?

17   A.   I see a description of the dimensions

18 of the scanned documents, yes.

19   Q.   Right.

20   The dimension dimensions he calculated

21 are 2.4 by 3.2 inches in size; correct?

22   A.   That's what he states.

23   Q.   Do you have any different opinion on

24 what size of a document would be needed to be

25 scanned to generate the size of the dimensions

1   B. Rose

2   for the TIFF images that you found? Do you

3   disagree with his calculation of that size?

4   A.   Would you repeat that question?

5   Q.   Do you disagree with his calculation of

6   2.4 by 3.2 inches in that paragraph?

7   MR. SOUTHWELL: Are you talking

8   about -- object to the form. Are you

9   talking about his calculation of the TIFF

10   file?

11   MR. BOLAND: Yes.

12   A.   As I understand it, that's the

13   dimensions he calculated for the TIFF images.

14   Q.   That's the dimensions he has -- well,

15   I'm just asking you if you disagree with that

16   calculation in that paragraph.

17   Take your time to read that paragraph

18   and tell me if you disagree with the calculation

19   that he has there.

20   A.   I think that paragraph is ambiguous as

21   to what scanned documents means. I don't know

22   whether he is referring to the scanned images

23   themselves as they appear on the computer or

24   whether he is referring to the dimensions of the

25   pieces of paper that were scanned at some point

1   B. Rose

2   to create the TIFF images.

3   Q.   Well, in that paragraph -- well, let's

4   back up.

5   The TIFF images as they appear on your

6   report, or Exhibit 1 that I have shown you, let's

7   put it that way, Exhibit 1, are much smaller than

8   an 8-1/2-by-11 piece of paper; true?

9   We looked at them earlier.

10   MR. SOUTHWELL: Objection. You didn't

11   look at the one that was filed. You are

12   looking at your printout. The one that's

13   filed is not that small.

14   Q.   I'm talking about Exhibit 1 that I

15   showed you.

16   MR. SOUTHWELL: That's your printout of

17   Exhibit 1, that's not what it looked like

18   when it was filed.

19   MR. BOLAND: Fair enough.

20   Q.   I am saying, on Exhibit 1, the size of

21   that image --

22   MR. SOUTHWELL: You're on Mr. Boland's

23   printout of Exhibit 1 --

24   MR. BOLAND: I am not deposing you,

25   Alex, I'm just asking him to look at the

1   B. Rose

2   exhibit.

3   MR. SOUTHWELL: You seem to be implying

4   that the actual exhibit in the record was

5   small.

6   MR. BOLAND: Whatever I'm implying,

7   though, you can't coach the witness.

8   MR. SOUTHWELL: I'm just trying to get

9   a clear record about you're talking about.

10   MR. BOLAND: And I am making very

11   clear.

12   Q.   Exhibit 1, which we looked at before,

13 has an image in it of page 1 of the TIFF?

14   A.   Correct.

15   Q.   And the image in that exhibit -- that's

16 all I'm talking about, is that Exhibit 1 -- makes

17 that image is much smaller than an 8-1/2-by-11

18 piece of paper.

19   A.   The image in the printed copy you've

20 handed me that we've looked at in Exhibit 1 is

21 smaller than 8-1/2 by 11, correct.

22   Q.   And the physical -- did you do a

23 measurement or did anyone from Stroz Friedberg

24 measure the dimensions of the TIFF images that

25 you found?

1   B. Rose

2   A.   Not that I know of.

3   Q.   Do you have any reason to disagree with

4   Mr. Broom's calculation that the dimensions of

5   those TIFF images are what he puts in paragraph 2?

6   A.   I don't have any information to

7   evaluate that calculation.

8   Q.   And then in paragraph 4 of that same

9   page Mr. Broom again calculates that the

10 resulting dimensions of the TIFF file are about

11 30 percent the size of a regular piece of paper.

12   Do you see where he says that?

13   A.   Are you referring to the fourth

14 paragraph?

15   Q.   Yes, fourth full paragraph.

16   A.   Let me read it.

17   Q.   Sure.

18   A.   Okay, I've read it.

19   What's your question, again?

20   Q.   Do you have any reason to disagree with

21 his calculation there that the physical

22 dimensions of the TIFF images you found or your

23 team found are about 30 percent the size of a

24 regular piece of paper?

25   A.   Well, as I understand it, what he's

1   B. Rose

2   saying is he took an 8-1/2-by-11-inch piece of

3   paper, he then put it on a copier, copied it at

4   30 percent the size of the original and then

5   scanned that with the scan area set to 2.4 by 3.2

6   inches and the resulting files were 945 kilobytes

7   and 123 kilobytes.

8   Q.   Did you look at the metadata related to

9   the TIFF images attached to the Kole e-mail?

10   A.   Yes.

11   Q.   And isn't it true that that metadata

12   includes the dimensions of the image?

13   A.   I don't specifically recall, but it

14   could.

15   Q.   And do you have any reason to dispute

16   Mr. Broom's reading of that metadata that he,

17   from where he derived those dimensions?

18   A.   Again, I don't have any information in

19   my possession right now that I could evaluate his

20   conclusions one way or the other.

21   Q.   And you -- the version of this report

22   that was actually -- I'm sorry, looking at

23   Exhibit 1 again that I showed you --

24   A.   So you are referring to our report?

25   Q.   Correct. Well, Exhibit 1 there.

1   B. Rose

2   Do you agree or not that the size of

3   that TIFF image as it appears in Exhibit 1, is

4   that different than the size of that TIFF image

5   as it appeared in the report you filed with the

6   Court?

7   A.   I don't know.

8   Q.   Did you or anyone from Stroz Friedberg

9   magnify the TIFF image, magnify it and print it

10   as an exhibit to your report before you filed it?

11   A.   Not that I recall.

12   Q.   The TIFF images attached to the Kole

13   e-mail have -- it's true they have the file names

14   Scan0001.tif for the second page of the contract;

15   true?

16   A.   I would have to refresh the report. My

17   recollection is that Scan0001 is in fact the

18   first page of the report.

19   Q.   If you could grab your report there, do

20   you see -- I'll get you there quickly.

21   Let's go to page 19 of 102 in the upper

22   right-hand corner, do you see that table that's

23   in the middle of page there, it has a blue top

24   line?

25   A.   Yes.

1   B. Rose

2   Q.   So does that refresh your recollection

3   as to the page 1 of the StreetFax contract being

4   file name Scan0002.tif?

5   A.   Again, let's -- I don't want to confuse

6   the issue here.

7   What you are referring to is a table

8   that has the subject so that it was denominated

9   by the sender, Paul Ceglia, as page 1 of 2 for

10   StreetFax contract and what was attached to that

11   was Scan0002.tif. In fact, if you look at the

12   image, that is in fact a copy of page 1 of the

13   contract, in other words, it is a misdescription

14   in the subject line and they were sent out of

15   order, but the names are in fact accurate in

16   terms of 1 and 2 being -- 1 being the first page

17   of the contract and 2 being the second page of

18   the contract.

19   Q.   And that file-naming convention there

20   appears to be a default file name that a scanner

21   would use or scanner software, let's put it that

22   way?

23   A.   Yeah, it's consistent with that.

24   Q.   Did you find any evidence in your

25   analysis different than that that indicated

1   B. Rose

2   that's not a default file name from software?

3   A.   I don't know what we would find in a

4   forensic analysis of the Ceglia media that would

5   show us what the default naming scheme for a

6   particular scanner was; that is a typical default

7   naming convention for scanned documents.

8   MR. SOUTHWELL: Mr. Boland, if I may

9   interrupt, attached as Exhibit F and G to

10   the report are the scans that go along with

11   it. I just want to make -- I just want to

12   make sure it's clear. Maybe you are under

13   the misapprehension about the 002 whether it

14   is the first page or second page.

15   MR. BOLAND: No, I'm fine. Thank you.

16   Q.   So let's continue on with this table

17   here, Scan0002.tif, was that file scanned, was

18   that the earliest of the two pages that was

19   scanned, based on your report?

20   A.   Yes, so that -- well, I should say what

21   we know is that that would have been the one that

22   was first created on the Seagate hard drive.

23   Q.   And then the Scan001.tif was created

24   later?

25   A.   That's correct.

1   B. Rose

2   Q.   Now, in your experience with default

3 file names of scanner software, wouldn't you

4 agree with me that if you scan four different

5 jobs, the scanner software by default is going to

6 continue to count forward and not backward?

7   A.   Generally.

8   Q.   And yet here we have the earlier

9 scanned image having a higher number than the

10 later scanned image, as you just testified;

11 correct?

12   A.   I don't believe I testified -- I'm

13 sorry, what was your question?

14   Q.   The file name Scan0002 was created on

15 the hard drive before the file name Scan0001, you

16 just testified to that; correct?

17   A.   That's correct.

18   Q.   So if they were scanned, how did

19 that -- if they were scanned onto that hard

20 drive, that's one way they could have gotten on

21 to that hard drive; true?

22   A.   That's one possible way they could have

23 gotten on the hard drive.

24   Q.   So how would that happen? If

25 hypothetically they were scanned onto that hard

1   B. Rose

2   drive, how would that scanner have been counting

3   backwards?

4   A.   The scanner would not have to have been

5   counting backwards, so there are a couple of

6   possibilities; one is that they were copied to

7   the hard drive in a different order than they

8   were scanned so that scan 2 was the second scan

9   but it was copied to the hard drive first, in

10   other words, not a direct scan. It's also

11   certainly possible that when you put something

12   into a scanner that the first item to be scanned

13   would be the second page; right? Scanners scan

14   things depending upon how you feed documents in,

15   and it is certainly possible to feed documents in

16   in a backwards order, so it is not the scanner

17   counting backwards, but it's the way in which the

18   user scanned it.

19   Q.   And what evidence did you find in

20   analyzing the Ceglia media of either one of those

21   two things happening?

22   A.   I don't think we found any evidence as

23   to the order of scan, of direct scanning, right,

24   or of how a user was feeding documents into the

25   scanner. I mean, it seems clear -- the only

1   B. Rose

2   thing we can say from the evidence is I would

3   agree that it appears as if the second page of

4   the contract was scanned first.

5   Q.   Well, and it's obvious from your

6   analysis that the file name Scan0002 was created

7   first as well?

8   A.   What do you mean by created?

9   Scan0002 was created first on the

10   Seagate hard drive.

11   Q.   Yes. And then the Scan0001 was created

12   second on the Seagate hard drive?

13   A.   Yes. Which could be a function of them

14   just being copied in that order.

15   Again, I'm not offering an opinion as

16   to, you know, the origination of the document,

17   but rather, what I can tell you from the metadata

18   associated with the creation dates of the files

19   is what order they were copied to that computer in.

20   Q.   Let's ask about those creation dates

21   for a second.

22   The creation dates associated with

23   those two TIFF image files, are those accurate?

24   A.   I believe so, yes.

25   Q.   Based on what?

1   B. Rose

2   A.   I think that was the time recorded by

3   the computer and it appears to be an accurate

4   time.

5   Q.   What are all the facts you have that

6   those dates are accurate, the creation dates of

7   those two TIFF images are accurate dates and

8   times? Can you list for me the facts that

9   support that conclusion?

10   A.   Sure.

11   So we have the creation date of the

12 files, right, so -- and let me refresh my

13 recollection of the report to give you the exact

14 creation dates.

15   So you have an initial creation date of

16 approximately 10:37 for the first e-mail, which

17 again contains the second page of the contract,

18 so that was 10:37 a.m.

19   You then have that being sent out via

20 e-mail and an initial time being appended in the

21 Internet headers by the Adelphia servers which is

22 immediately following which is consistent

23 evidence that in fact that time setting on the

24 computer is correct because then you're dealing

25 with a consistent time set by an independent

1   B. Rose

2   server.

3   You then also have times appended by

4   two servers at Sidley & Austin, including the

5   intermediary server and the final server

6   receiving it.

7   All of those which are independent of

8   each other all indicate consistent times, so in

9   fact I think based on that evidence we can

10   conclude that in fact the creation and the sent

11   time of the e-mail on the computer is the same.

12   I will also say that you also have the

13   e-mails then being forwarded on by Mr. Kole

14   shortly after again with a consistent time, so

15   all of those times appended by servers that are

16   independent of this clock setting demonstrate

17   this time is accurate.

18   Q.   So it's those, the Adelphia e-mail

19   server is one factor that confirms this time in

20   your mind?

21   A.   You have the fact that the system clock

22   has recorded the time and then -- so look for

23   evidence outside of the system clock, right,

24   correct, the first piece of evidence I would look

25   to is the Adelphia server, which is the first

1   B. Rose

2   server it hit after being transmitted.

3   Q.   And then the server at Sidley & Austin?

4   A.   Two servers at Sidley & Austin.

5   Q.   So two e-mail servers?

6   A.   Correct.

7   Q.   So three e-mail servers now, Adelphia

8   and two at Sidley Austin, those help bolster your

9   confidence in the creation date of the two TIFF

10   images?

11   A.   Correct.

12   Q.   Anything else?

13   A.   I think that's it.

14   Q.   Without those e-mail servers,

15   hypothetically, say you had no evidence of e-mail

16   servers at all, would you still be confident in

17   that creation date, that time being accurate?

18   A.   I mean, that's a complete hypothetical,

19   since I have those e-mail servers, so it's a

20   little hard to evaluate that outside the context

21   of having those e-mail servers, which I think

22   clearly demonstrate the times are correct.

23   If all we had was the system clock,

24   which is not the case here, I would say that, you

25   know, we would look for evidence of system clock

1   B. Rose

2   manipulation.

3   Absent that, I think, you know, we

4   would proceed as if it were the correct time,

5   but, you know, your confidence of not having all

6   of those external factors would be much less than

7   it is when you have external evidence that's all

8   consistent with the time.

9   Q.   Well, what about -- okay.

10   And you've been an expert in other

11   cases; right, an expert witness?

12   A.   I have not been an expert witness in

13   other cases.

14   Q.   This is the first time you have ever

15   even sat for a deposition?

16   A.   Well, I have sat for a deposition

17   before.

18   Q.   Have you ever been asked hypotheticals

19   at those depositions?

20   A.   Yes.

21   Q.   Okay.

22   So you know that's a fair question for

23   experts, hypotheticals?

24   A.   Yes.

25   Q.   So the hypothetical I asked you was if

1   B. Rose

2   the three e-mail servers didn't exist, none of

3   that data existed, it's fair to say you'd have

4   less confidence in the creation date of those two

5   TIFF images; true?

6   A.   I mean, again, your hypothetical asks

7   me to discard the servers, it doesn't -- I mean,

8   we would look for other, you know, other evidence

9   outside of that.

10   Assuming the only thing I have -- maybe

11   this is your hypothetical -- the only thing I

12   have is the time appended by the computer

13   itself --

14   Q.   Yes, assume that.

15   A.   -- would I be as confident as I am in a

16   case where I also have consistent evidence from

17   external servers?

18   No, I would not be as confident.

19   Q.   And if you found evidence of a system

20   clock being manipulated along with only having

21   the date appended to that file, would you be even

22   less confident in the accuracy of that creation

23   date?

24   A.   I think that would depend on the system

25   clock manipulation and our evaluation of how it

1   B. Rose

2 would have affected that particular e-mail.

3   These are all very context -- the

4 problem with the hypotheticals is they are all

5 very contextual, so it really depends on the

6 other evidence, you know, in terms of if I have a

7 system clock manipulation that appears to have

8 impacted that time, I wouldn't be confident in it

9 at all.

10   Q.   How would you know if a system clock

11 manipulation affected a particular file's

12 creation date?

13   A.   Well, if you -- I mean, if I can show

14 that at the time the file was created on the

15 computer the system clock was backdated, that

16 would be one way.

17   Q.   Are you aware that Mark Zuckerberg --

18 related to the TIFF images attached to the Kole

19 e-mail, your expert opinion in that report was

20 that that is the authentic contract between the

21 parties; true?

22   A.   The TIFF images, the StreetFax contract,

23 yes.

24   Q.   And you are aware that Mark Zuckerberg

25 has never offered a declaration in this case

1   B. Rose

2   agreeing with that position, that that is the

3   authentic contract between the parties?

4   A.   I am not aware one way or the other of

5   what Mr. Zuckerberg has offered in the way of

6   declarations.

7   Q.   Are you aware that none of the other

8   experts in this entire case have offered an

9   opinion that the StreetFax contract is the

10   authentic contract between the parties?

11   A.   I don't know that one way or the other.

12   Q.   Now, we talked a little bit earlier

13   about rootkits and malware; you remember I was

14   discussing that?

15   A.   Yes.

16   Q.   And rootkits can be used by hackers,

17   you would agree?

18   A.   Rootkits can be used by hackers, I

19   would agree with that.

20   Q.   Can hackers take over the operation of

21   a computer, is that one of the things hackers

22   have the ability to do?

23   A.   It depends, again, on the specific

24   circumstances. I mean, if they have the proper

25   access and, you know, that the software which

1   B. Rose

2   would allow that kind of control is in place,

3   yes.

4   Q.   Does that kind of software exist for

5   them to do that, for hackers to do that?

6   A.   Does it exist in the world?

7   Q.   Yes.

8   A.   Yes.

9   Q.   Can hackers take over e-mail programs?

10   A.   What do you mean, take over e-mail

11   programs?

12   Q.   Intrude on someone's computer and send

13   out e-mails on their behalf.

14   A.   Yes.

15   Q.   Can hackers intrude on someone's

16   computer and deposit files onto that person's

17   computer?

18   A.   There's no questions about what hackers

19   are capable of doing in the world today, yes.

20   Yes.

21   Q.   Well, let's talk about back in 2004,

22   then.

23   Would you amend any of my answers if I

24   asked you those questions and said in 2004 can a

25   rootkit be used by a hacker, is there a different

1   B. Rose

2   answer?

3   A.   I think the same general answer would

4   apply to 2004.

5   Q.   Very well.

6   Did your work on this case cause you to

7   learn that anyone involved in this case has some

8   ability for computer hacking?

9   MR. SOUTHWELL: Object to the form.

10   A.   Could you rephrase that?

11   Q.   You analyzed a bunch of computers in

12   this case; right?

13   A.   Right.

14   Q.   Some were provided or produced by Paul

15   Ceglia; correct?

16   A.   Correct.

17   Q.   Some were produced by Mark Zuckerberg?

18   A.   Correct.

19   Q.   In part of your analysis of those

20   computers did you learn that anyone involved in

21   this case has hacking ability?

22   A.   Nothing in my analysis indicated that

23   anyone involved in the case had hacking ability,

24   no.

25   Q.   Are you aware from things outside of

1   B. Rose

2   your analysis that Mark Zuckerberg has some

3   proficiency as a computer hacker?

4   A.   I am aware in a general sense that

5   Mr. Zuckerberg has been accused of some actions

6   which were called hacking in the past; I do not

7   have any information regarding his proficiencies

8   or his ability to do that.

9   Q.   Are you aware that his company Facebook

10   has a hacking contest every year amongst

11   employees?

12   A.   No.

13   Q.   Are you aware that Mr. Zuckerberg has

14   hired renowned hackers to be employees?

15   A.   I'm not aware of that one way or the

16   other.

17   Q.   Did you look for evidence of hacking on

18   Paul Ceglia's parents' computer where these TIFF

19   images supposedly originated from?

20   A.   We did not.

21   Q.   But even if you looked at it, is it

22   possible that a hacker who accessed a computer

23   could leave no trace of that intrusion? Isn't

24   that possible?

25   A.   It is theoretically possible for a

1   B. Rose

2   hacker to leave no trace.

3   Q.   Now, the StreetFax contract that we've

4   been talking about you found on two different

5   pieces of media; correct? I think you say that

6   at the top of 15, page 15 of Exhibit 21?

7   A.   Yes, that's correct.

8   Q.   And let's just be clear for the Court,

9   because later on on that page -- correct me if

10 I'm wrong -- you say, you clarify that the

11 StreetFax contract was found on a hard drive that

12 you analyzed and a forensic copy of that same

13 hard drive that you analyzed.

14   Is that a fair statement?

15   A.   I don't think we're clarifying anything.

16 I think we're being very clear about the pieces

17 of media we analyzed. The StreetFax contract was

18 on two different hard drives. I think we're very

19 clear on that very page; right? I think actually

20 in the first paragraph in the second sentence

21 that in fact one is a copy of a hard drive that

22 we made and was produced to us in July and the

23 other, again, was a copy we made of StreetFax in

24 July that we determined upon analysis was a

25 actually a forensic image of the hard drive, so

1   B. Rose

2   we have the Seagate hard drive that's produced to

3   us, we have a Western Digital, we determined the

4   Western Digital hard drive was in fact a forensic

5   copy that had been previously made of that, and I

6   think we're very clear about that in the second

7   sentence.

8   Q.   So the forensic copy was that physical

9   hard drive that had that forensic copy on it,

10   that was not produced by Paul Ceglia, that was a

11   copy made of something he produced; true?

12   A.   Are you referring to the Western

13   Digital hard drive?

14   Q.   I'm referring to the forensic copy that

15   you mentioned on page 15.

16   A.   Okay.

17   The forensic copy was on a Western

18   Digital hard drive that was produced to us in

19   Chicago by Mr. Lake as part of the Ceglia media.

20   To me, that's produced by Paul Ceglia, so I would

21   say that both of them in fact were produced to us

22   by Paul Ceglia.

23   Q.   Now, the computer where these TIFF

24   images were found, did you read Paul Ceglia's

25   father's declaration that was filed in this case

1   B. Rose

2   that was document number 419?

3   A.   I may have read it at one point in

4   time, I don't have a specific recollection of

5   that.

6   Q.   Well, let's assume, since you don't

7   have a recollection of that, that Mr. Ceglia's

8   father declared that his son, Paul Ceglia, the

9   plaintiff, never had access to the computer on

10   which the Kole e-mail originated, let's assume he

11   says that.

12   A.   Rather than assuming it, can we

13   actually look at a copy of the --

14   Q.   This is a hypothetical for now.

15   Let's just assume he said that, which

16   I'll represent to you he did say that in document

17   419, but I'll let you answer the question with an

18   assumption, you don't have to accept the fact as

19   true, we'll just do the hypothetical.

20   Would that change your opinion that

21   Paul Ceglia sent those e-mails if his father

22   declared under the penalty of perjury that Paul

23   Ceglia never had access to that computer?

24   MR. SOUTHWELL: Mr. Boland, are you

25   referring to document 419?

1   B. Rose

2   MR. BOLAND: That's what my notes say,

3   yeah.

4   MR. SOUTHWELL: Because that's not what

5   it says. It doesn't say anything about he

6   never had access. It asserts my son Paul

7   Ceglia never used the computer, which is

8   contrary to some earlier declarations he's

9   provided, but --

10   MR. BOLAND: Let's clarify that.

11   Q.   Let's just say hypothetically Mr. Ceglia

12 does offer a declaration of the father, Carmine

13 Ceglia, saying that Paul Ceglia never had access,

14 never used, never got anywhere near that

15 computer.

16   Would that declaration change your

17 opinion regarding your conclusion that Paul

18 Ceglia sent those e-mails?

19   A.   Based on the forensic evidence, I think

20 it is clear that Paul Ceglia sent those e-mails.

21 I would not regard a statement like that from

22 Mr. Ceglia to be credible in light of the

23 evidence that's been uncovered in this case, so

24 no, it would not change my opinion.

25   Q.   And how did, in your opinion, based on

1   B. Rose

2   your forensic analysis, how did Paul Ceglia send

3   this e-mail, meaning was he physically at the

4   computer and hit the keys on the keyboard to send

5   it or did he somehow remotely access the computer

6   and then send the e-mail that way?

7   A.   Again, given the fact that the files

8   were copied physically to the hard drive, I would

9   think the most likely explanation is in fact a

10   physical access to the computer, but, you know, I

11   can't eliminate remote access as a possibility.

12   Q.   So you're saying one's more likely? Is

13   that your --

14   A.   I believe so.

15   Q.   And define the term "likely." What

16   does that mean? How did you rule out the

17   likelihood of remote access?

18   A.   Define likely?

19   I think if I had to from -- if you

20   asked me do I think he had physical access or

21   remote access, I think there's a greater

22   probability, meaning more likely that he had

23   physical access, that's likely.

24   Q.   And what's the forensic evidence that

25   supports that opinion?

1   B. Rose

2   A.   Again, I think the copying of the

3 scanned image to the hard drive immediately

4 beforehand to me is more consistent with physical

5 access, but, again, you know, you're asking

6 whether remote access is possible? Yes.

7   And I should say, you know, I mean, I'm

8 talking remote access theoretically. You know,

9 whether under the circumstances and the

10 capabilities that, you know, Adelphia had at the

11 time in terms of whether it offered Web access

12 and all of that, that's a specific question as to

13 whether in these circumstances remote access is

14 possible, I don't know that.

15   As a general matter, I can't eliminate

16 remote access as a possibility.

17   Q.   Did your investigation reveal where

18 Paul Ceglia resided at the time that e-mail was

19 sent?

20   A.   Our forensic analysis of the Ceglia

21 media did not reveal where Mr. Ceglia resided at

22 the time this was sent.

23   Q.   And did it reveal where Paul Ceglia's

24 parents' computer was physically located at the

25 time those e-mails were sent?

1   B. Rose

2   A.   There is some evidence that in 2010

3   that IP address was registered to the Buffalo,

4   New York, area, so I think there's some support

5   for the fact that the computer resided somewhere

6   in upstate New York, but in terms of drawing a

7   definitive conclusion about where that resided, I

8   can't do that from the forensics.

9   Q.   Well, you'd agree with me that your

10   conclusion about -- again, another

11   hypothetical -- your conclusion about Paul Ceglia

12   having most probably physical access to the

13   computer to send the e-mails, if he resided

14   outside the state of New York and was physically

15   outside the state of New York at the time those

16   e-mails were sent, the likelihood of him being

17   the one who sent the e-mails is very low, since

18   he wasn't physically accessing the computer at

19   that time; true?

20   MR. SOUTHWELL: Object to the form.

21   A.   I completely disagree with that.

22   I mean, the question is not where did

23   he reside, the question is where he is at a

24   particular point in time.

25   I reside in New York, I visit my

1   B. Rose

2   parents frequently in Indiana, so I don't

3   think -- and I use their computer when I'm there,

4   so I don't think you can possibly conclude from

5   where somebody purportedly resides that there's a

6   low likelihood they were at their parents' house

7   or at a location where their parents resided at

8   any particular point in time.

9   Q.   Well, let's not use reside. I'll be

10   more precise.

11   What if hypothetically on the date and

12   time these e-mails were sent he was not

13   physically in Buffalo, New York, he was in

14   another state, then what's the likelihood he sent

15   the e-mails then, what's the probability he was

16   the one who sent the e-mail?

17   A.   I wouldn't want to put a number on it.

18   Again, you know, remote access is

19   possible. I think it is more likely explained by

20   physical access, but in terms of if Mr. Ceglia

21   was in a particular location, what's the

22   likelihood he sent the e-mails, I think it is

23   absolutely clear from all of the evidence in this

24   case, from the StreetFax e-mails themselves, from

25   the attempt to manipulate the Work For Hire

1   B. Rose

2   document, attempt to create fraudulent Work For

3   Hire documents, from all the manipulation of the

4   computer we see in this case I think it is

5   absolutely clear that the StreetFax e-mails, that

6   those e-mails are genuine, were sent by Paul

7   Ceglia and contain the authentic contract, so I

8   think the probability that Mr. Ceglia sent those,

9   regardless of where he was at any particular

10   point in time, is exceedingly high.

11   Q.   So it's your testimony that if at the

12   precise moment those e-mails were sent he was in

13   Florida or New Mexico when these were sent from

14   New York, same probability he sent them as if he

15   was in Buffalo?

16   A.   His location would not change my

17   assessment that Paul Ceglia sent those because I

18   think the evidence is absolutely overwhelming.

19   The only thing that would do would

20   change my conclusion about the form of access to

21   the computer, it would not impact my

22   determination as to who sent it at all because,

23   again, the forensics in this case is absolutely

24   overwhelming.

25   Q.   Outlook Express, which was the e-mail

1   B. Rose

2   account from which this was sent, has the

3   capacity to synchronize with a Web-based account;

4   true?

5   A.   As a general principle, yes, that's

6   true.

7   Q.   Do you find any evidence that this

8   Outlook Express account was unable to synchronize

9   with a Web-based account?

10   A.   No. Again, you know, I don't know the

11   specifics in terms of versioning and how and what

12   particular data was syncing, you know, those can

13   vary across time, so I don't know how this version

14   of Outlook Express operated in conjunction with

15   an Adelphia account, but I have no reason to

16   believe that there wasn't some syncing capability

17   because that's generally something that Outlook

18   Express offers.

19   Q.   And when Outlook Express synchronizes,

20   when it's set up that way, with an external

21   e-mail account, it can synchronize and pull down

22   everything, the inbox, the deleted files,

23   attachments, et cetera; true?

24   A.   I think it depends, again, on how it's

25   set up to sync. There is certainly a possibility

1   B. Rose

2   that -- and by deleted items I assume you are

3   talking about deleted items that still physically

4   reside in some kind of trash bin or something.

5   Q.   Yes, that is possible.

6   A.   There are certainly programs that sync

7   everything, there are programs that sync only the

8   inbox, there are programs that sync the inbox and

9   the sent mail, there are programs which sync

10   everything, it really depends, and a lot of

11   programs can be configured in different ways, so,

12   I mean, as a general matter, if you're asking me

13   is it possible, do there exist programs in the

14   world that allow you to sync the entire contents

15   of a Web mail account to a program like Outlook

16   Express, yes, that's true.

17   Q.   And I'm asking about Outlook Express

18   specifically, does it have the capability to

19   synchronize with a Web-based e-mail account?

20   A.   It does, again, but, you know, what

21   items specifically are synced I think could vary

22   from version to version and from configuration to

23   configuration, so as to this version of Outlook

24   Express, I don't know.

25   As a general principle, yes, Outlook

1   B. Rose

2   Express does sync with Webmail accounts.

3   Q.   So if I have an Outlook Express account

4   and I have it synchronizing with my Web-based

5   account and I'm nowhere near my office computer

6   which has Outlook Express on it, but I'm here at

7   the offices of Gibson, Dunn and I get online to

8   my Web-based e-mail, the one that's synchronizing,

9   and I send an e-mail out with a couple of

10   attachments.

11   Are you with me so far?

12   A.   Yes.

13   Q.   Okay.

14   And I go back to my office two days

15   later and turn on my computer and Outlook Express

16   is configured to synchronize my entire inbox and

17   sent e-mails with my Web-based account.

18   You'd agree with me that that function

19   would pull down from my Web-based account an

20   e-mail that I sent here at Gibson, Dunn along

21   with the attachments that I sent?

22   A.   So your hypothetical is if you from

23   Gibson, Dunn sent two e-mails using your Webmail

24   account and then you returned to your offices and

25   opened Outlook Express would it sync?

1   B. Rose

2   I mean, I think that would depend on

3   how it was configured. My guess would be you

4   would actually probably have to access the

5   Webmail account being synced, and I don't know

6   that there's --

7   Q.   But depending on how it was configured,

8   that could happen?

9   A.   Again, I think if you went and you

10   accessed your Webmail account and it was set up

11   to sync, yeah, I would think that certainly would

12   be possible.

13   Q.   Let's talk about the -- you are

14   familiar with the getzuck e-mail account, it's in

15   your report?

16   A.   Yes.

17   Q.   And you claim there that Mr. Ceglia

18   deleted e-mails from that account.

19   A.   Can I go to the part of the report

20   where we discuss that?

21   Q.   Let me ask you, do you recall that

22   conclusion, that he deleted e-mails from the

23   account?

24   A.   I recall the conclusion that e-mails

25   had been deleted from the account, it is in my

1   B. Rose

2   recollection that we had evidence that that

3   account had been in use through 2011 and that

4   there were no e-mails existing in the account

5   prior to sometime in January, so the logical

6   conclusion is that something has been deleted.

7   Q.   Now, by the phrase you just used, the

8   account was in use, you mean the account was

9   opened at a certain date, that's what you're

10   calling in use?

11   A.   That's not what I'm calling in use.

12   What I'm calling in use, I'm saying the

13   account was actually used, not just opened.

14   Q.   And used for -- in what way?

15   A.   I would have to refresh my recollection

16   with the report for the specifics. I know it was

17   used -- it was used in some way in connection

18   with a receipt of something from Facebook or

19   something like that, we found evidence of that,

20   and so it was evidence of actual use and not just

21   the fact that the account was opened.

22   Q.   Let's look at page 52 of your -- of the

23   Exhibit 21 you have in front of you --

24   A.   52, the top page?

25   Q.   Yes.

1   B. Rose

2   And I think section D is where you talk

3   about deletion of data from the getzuck Webmail

4   account.

5   Do you see that?

6   MR. SOUTHWELL: Are you referring to

7   Exhibit 1?

8   MR. BOLAND: What did I say?

9   MR. SOUTHWELL: You said Exhibit 21.

10   MR. BOLAND: I'm sorry, Exhibit 1.

11   Thank you for the correction.

12   MR. SOUTHWELL: And we're on page 52 in

13   the upper right?

14   MR. BOLAND: Page 52.

15   A.   Yes.

16   Q.   So the activity that you found --

17   correct me if I'm wrong -- was that the Ceglia

18   media was used to read an e-mail on April 18,

19   2011.

20   Do you see that phrase there?

21   A.   Mm-hm.

22   Q.   And that was an e-mail received from

23   Facebook, actually, on the activation of a

24   Facebook account; right?

25   A.   Yes.

1   B. Rose

2   Q.   And do you know how Facebook accounts

3   get set up?

4   A.   Not specifically.

5   Q.   Do you know if Mr. Ceglia had to send

6   an e-mail to someone at Facebook to set up that

7   account, if you know?

8   A.   I don't know.

9   Q.   So what you do know is an e-mail was

10   received from Facebook, so there's one; right?

11   A.   Yes.

12   Q.   And there's no evidence you found of

13   any e-mails being sent from that account; true?

14   A.   I believe the evidence we have, again,

15   is the evidence that's outlined here, that that

16   e-mail address was used to receive an e-mail

17   related to the Facebook account, yes.

18   Q.   And so my question is, no evidence that

19   e-mails were ever sent from that account; true?

20   A.   Well, I don't know whether that's the

21   case because I don't know whether in fact the

22   post-January 28, 2012 e-mail included sent

23   e-mails or not.

24   Q.   I'm just saying your report doesn't

25   show any evidence that he ever sent an e-mail

1   B. Rose

2   from that account.

3   True?

4   A.   Again, that's not relevant to our

5   report; right?

6   We received that e-mail data, we looked

7   at it for only two things; one, we reviewed it

8   for presumptively relevant materials that would

9   be produced to you and then subsequently to

10   Gibson, Dunn to pass privilege review.

11   We identified no such data in the

12   existing data. We did know from an Internet

13   analysis from the Ceglia media that in fact that

14   e-mail was in use for the purposes of receiving

15   an e-mail from Facebook in April 2011 and despite

16   that there was no content for any of 2011 up to

17   January 28th of 2012. That indicates to me the

18   e-mail's been deleted. I don't know who deleted

19   it, I don't know what the activity was that led

20   to the deletion, I don't know how much data was

21   received or sent prior to January 28, 2012.

22   Your question to me was do I have any

23   evidence that it was used to send e-mail.

24   What I'm saying is it's possible that

25   we have sent e-mail from after January 28, 2012.

1   B. Rose

2   I don't know, because my only analysis of that

3   media, of that data was to see whether there were

4   presumptively relevant materials.

5   Q.   But I'm talking about your conclusion

6   that my client did have e-mails in that account

7   and he deleted them.

8   It's fair to say your report indicates

9   that he actually had e-mails which he deleted

10   from that account; true?

11   A.   Yes, based on the conclusion, again,

12   that we have evidence it was in use and there's

13   no e-mail.

14   Q.   All right.

15   Let's ask about the Harvard e-mail

16   account of Mr. Zuckerberg.

17   You are aware that there are no e-mails

18   at all in that account from -- related to

19   Mr. Ceglia and Zuckerberg from, the earliest one

20   being June 2003, you are aware of that, that's

21   the earliest e-mail?

22   A.   I have not done a date analysis of that

23   e-mail, no.

24   Q.   Well, your team worked to produce the

25   e-mail that was provided us from that account;

1   B. Rose

2   true?

3   A.   Correct.

4   Q.   And were you aware that the e-mail that

5   your team produced using a variety of search

6   terms which included my client's name and

7   Mr. Zuckerberg didn't produce a single e-mail

8   between those two individuals until June of 2003?

9   Are you aware of that?

10   A.   I am not aware of the content of that

11   production.

12   Q.   All right.

13   Well, let's say that that's what

14   happened, okay, let's use a hypothetical.

15   Are you aware that the contract in this

16   case, the paper contract that's being disputed

17   has a signing date of April 28, 2003? Are you

18   aware of that?

19   A.   Again, I don't think I've seen the

20   paper contract.

21   Q.   Copies that you've seen.

22   A.   Yes, the copies I've seen have a signing

23   date of that date.

24   Q.   Okay.

25   And April is before June in the

1   B. Rose

2   calendar; right?

3   A.   Well, April 2003 is before June 2003.

4   Q.   Correct.

5   And would you agree with me, then, if

6   there are no e-mails that you were able to

7   recover, your team, from Mr. Zuckerberg's Harvard

8   account from April to June of 2003, that

9   Mr. Zuckerberg must have deleted them?

10   MR. SOUTHWELL: Objection.

11   Q.   I am asking if that's your conclusion

12   based on that hypothetical, if there's no e-mails

13   from April of '03 when the contract was signed

14   between the parties and June of '03, which was

15   the first e-mail that we were provided, they must

16   have been deleted?

17   A.   That would not be my conclusion.

18   Q.   Very well.

19   But it is your conclusion that my

20   client had the getzuck e-mail account in use and

21   because there's no e-mails in it, it's been

22   deleted?

23   A.   Excuse me --

24   Q.   Just let me finish the question.

25   A.   Excuse me, you keep misrepresenting

1   B. Rose

2 what I said.

3   What I said was --

4   Q.   Sir, I'm asking the questions. I

5 didn't finish my question.

6   A.   And I'm answering the question.

7   What I said was that this e-mail

8 account was in use prior to January 28, 2012,

9 there was data in there.

10   MR. BOLAND: I am going to object to

11   this entire answer. There's no question

12   pending. I'm going to object to everything

13   he is saying and ask that it all be stricken

14   from the record.

15   A.   I absolutely was clear with you that I

16 can't say who deleted --

17   MR. BOLAND: You know, if we need to

18   dial up the judge, Mr. Southwell, and ask

19   him to instruct the witness to answer

20   questions, I'll be happy to take a break and

21   do that.

22   MR. SOUTHWELL: He answered your

23   question. I'm looking at the transcript

24   right here, he answered your question.

25   Why don't you let him finish.

1   B. Rose

2   MR. BOLAND: I didn't finish my

3   question before he started speaking.

4   MR. SOUTHWELL: There was a question, a

5   question mark and then he proceeded.

6   Q.   It's your position that Mr. Ceglia

7 deleted e-mails from the getzuck account?

8   A.   It is my position that e-mail was

9 deleted from the getzuck account.

10   Q.   So your answer is yes?

11   A.   My answer is not yes.

12   Your question was my position is

13 Mr. Ceglia deleted the e-mail. I am being very

14 clear with you that my position is there was

15 e-mail in that account prior to January 28, 2012

16 that is no longer there, meaning that it was

17 deleted.

18   I'm offering no opinion whatsoever

19 -- let's be clear about this -- as to how that

20 e-mail was deleted or as to who deleted it, so

21 the answer to your question is no.

22   Q.   How many e-mails were deleted?

23   A.   I do not know what was deleted, I do

24 not know what content was in that account.

25   Again, what I know is that that account

1   B. Rose

2 was in use prior to January 28, 2012, we know it

3 received at least one e-mail. There is no data

4 in that account, so something has been deleted; I

5 can't tell you who deleted it, I can't tell you

6 what has been deleted because that e-mail is

7 gone.

8   Q.   When were the e-mails deleted from that

9 account?

10   A.   I cannot tell you that except to say

11 that it was prior to January 28th of 2012.

12   Q.   Can a person set up an e-mail account

13 and not ever send an e-mail using that account?

14   A.   Yes.

15   Q.   What evidence do you have that

16 Mr. Ceglia set up this account and actually sent

17 e-mails out to someone?

18   A.   Again, the only evidence we would have

19 is if the post-January 28, 2012 e-mail includes

20 sent e-mail.

21   I don't have that information in front

22 of me, I don't know whether that's the case or

23 not. I don't have evidence right now that I can

24 rely on to tell you that Mr. Ceglia set up that

25 account and sent e-mail from it.

1   B. Rose

2   Q.   In your report you talk about a Hex

3   editor.

4   Do you recall that?

5   A.   I do.

6   Q.   And it's true that your analysis did

7   not find -- well, let me back up.

8   A Hex editor is a computer program?

9   A.   Yes.

10   Q.   You did not find any evidence of a

11   computer program in the category of Hex editor

12   installed on any of the media that you analyzed?

13   A.   No. We found evidence of the use of a

14   Hex editor, but you're correct, we did not find

15   the actual Hex editor installed on the computer,

16   which, frankly, is not surprising given that

17   people who use Hex editors generally delete them.

18   Q.   And the anomalies that you found that

19   you attributed to a Hex editor, is a Hex editor

20   the only program that can create those anomalies,

21   if you know?

22   A.   Can I go to the page where we discussed

23   the --

24   Q.   Very well.

25   A.   So, I mean, so I think it depends on

1   B. Rose

2   what anomalies you're talking about. I mean, I

3   think what we discuss is the fact that there are

4   six documents which I think, you know, including

5   ones named test document, including ones which

6   have the content that says I'm going to

7   essentially test how the Hex editor worked, and

8   it's not a direct quote, and I would give you the

9   direct language, but it's been redacted from this

10   report, that leads to our conclusion that in

11   fact, you know, this is consistent with someone

12   using a Hex editor to try to forge a document.

13   As to the second anomaly, which is is

14   in this sfwebworkforhiremz.doc which is an

15   anomaly in the metadata, depending on whether it

16   was viewed through, you know, Metadata Assistant,

17   which is a common tool we use, or a forensic

18   program like EnCase.

19   I think, based on the evidence, the

20   only reasonable conclusion is that this was the

21   result of a Hex editor; whether that is the only

22   possible explanation for that I don't know.

23   Q.   And what other explanations are

24   possible?

25   A.   I don't know.

1   B. Rose

2   Q.   The Hex editor in this case you claim

3   was used to manipulate metadata on a file;

4   correct?

5   A.   In one instance.

6   Q.   Well, what was it used for in the other

7   instance?

8   A.   It was actually used to create a

9   fraudulent document, it was used to test how the

10   Hex editor worked, it was used to essentially, I

11   think, merge documents together to try to create

12   a fraudulent document that appeared as if it was

13   one document.

14   I would say, frankly, that based on all

15   the evidence that it was your client's attempt to

16   manipulate the Work For Hire document and create

17   a fraudulent document.

18   Q.   So the Hex editor was used to alter

19   metadata is one of your conclusions; right?

20   A.   Yes.

21   Q.   What other ways can metadata be altered

22   other than a Hex editor, or is that the only way,

23   if that's what your testimony is going to be?

24   A.   Again, I think the anomaly we see here,

25   which is it being -- it's not just manipulated

1   B. Rose
2   metadata, it's what we see, which is that when
3   you view it in metadata assistant you essentially
4   get no metadata.
5   When you view it in a forensic tool,
6   what you see is the metadata, although it is
7   interspersed with machine code. I think that
8   particular circumstance -- I don't know that
9   there is any explanation for that other than the
10   use of a Hex editor, but, again, if you are
11   asking me whether anything else is possible, I
12   don't know whether there are any other
13   explanations, I don't think there are any likely
14   explanations given those circumstance.
15   Q.   That's not my question.
16   What other ways can metadata be altered
17   is my question, generally.
18   A.   I mean, there are programs which allow
19   you to manipulate metadata.
20   Q.   For example, can you list some of those?
21   A.   I don't know the names of the programs.
22   I mean, there are some open source tools that do
23   it, I know there are some software versions you
24   can buy that allow you to do it, I don't know the
25   names.

1   B. Rose
2   Q.   How about if I copy files from my
3   computer on a CD and give them to you and you
4   copy them out of your computer at your office,
5   can metadata change during that process associated
6   with those files?
7   A.   Metadata can change, yes.
8   Q.   And that's not intentional change, it
9   just happened in that process, the hypothetical
10 that I gave you?
11   A.   Are you talking about like an update of
12 a creation date or an access date?
13   Q.   Yes.
14   A.   That can happen through ordinary usage.
15   This particular circumstance cannot
16 happen through ordinary usage.
17   Q.   How did you rule out ordinary usage as
18 not a possible cause of that, how did you rule
19 that out?
20   A.   The ordinary update of a file -- I
21 mean, you're right, if I have last 10 authors
22 metadata and I go on and I change the document, I
23 am going to now be the first last 10 author and
24 one of the names is going to drop off, that is a
25 common alteration if I am going to write the

1   B. Rose

2   document.

3   To have this, last 10 authors metadata

4   with all of these question marks that essentially

5   metadata assistant is returning me the idea that

6   there's no metadata here, that's an anomaly,

7   that's not caused by ordinary usage of a file,

8   and the fact that I can now view it in EnCase

9   Forensic and see what some of the metadata is,

10   including the file path, that indicates to me a

11   Hex editor was been used. That is not -- this

12   pattern where metadata assistant cannot give me

13   any metadata does not happen merely because we

14   exchanged a file and somebody modified it.

15   Q.   So the only cause for that is a Hex

16   editor is your opinion?

17   A.   I think the only reasonable explanation

18   for these facts is that a Hex editor was used.

19   Q.   That's not my question.

20   Is that the only way that that happened?

21   A.   Again, I think I've answered this

22   before. I don't know whether anything else is

23   theoretically possible. I'm drawing a conclusion

24   based upon the evidence I see. In this case I

25   don't think there's a reasonable explanation for

1   B. Rose

2   this other than the fact that a Hex editor was

3   used.

4   Theoretically possible?

5   I don't know one way or the other.

6   Q.   Those 15 to 20 computers of

7   Mr. Zuckerberg's that someone on your team

8   evaluated, was there evidence of Mr. Zuckerberg

9   using those computers to electronically

10   communicate with anyone?

11   MR. SOUTHWELL: Objection, calls for

12   speculation. He already said he was not

13   involved with that.

14   Q.   If you know.

15   A.   I am not aware one way or the other.

16   MR. BOLAND: Can we take it about a

17   10-minute break?

18   MR. SOUTHWELL: Are you close to being

19   done?

20   MR. BOLAND: I don't know. I'm going

21   to take a break and sort of assess where I'm

22   at.

23   MR. SOUTHWELL: We can go off the

24   record.

25   (Recess taken.)

1   B. Rose

2   THE VIDEOGRAPHER: The tape is rolling.

3   BY MR. BOLAND:

4   Q.   Mr. Rose, we are back on the record.

5   I want to go back over a couple of

6   things that, just a couple of questions on a

7   topic or two that we already discussed.

8   Did your team -- your team evaluated 15

9   or 20 computers that Mr. Zuckerberg used

10   historically; right?

11   A.   I don't know that I would it call my

12   team; Stroz Friedberg personnel did, yes,

13   correct.

14   Q.   I'll be clear, Stroz Friedberg

15   personnel, right.

16   I am not going to ask you again, but we

17   already determined you don't know who actually

18   did the analysis or who supervised; true?

19   A.   Correct.

20   Q.   Did Stroz Friedberg rely on the

21   analysis of those computers in coming to the

22   conclusions in your report that you filed in this

23   case?

24   A.   Well, we -- I mean, we didn't find

25   anything relevant on those devices so no, the

1   B. Rose

2 answer is no.

3   Q.   If you had found something relevant on

4 those devices would you have inserted it into

5 this report?

6   A.   I don't know. I mean, you know, we

7 were -- we were asked to look at the authenticity

8 or inauthenticity of the document and to examine

9 Ceglia media, so we had to consider how that fit

10 into what the Court had asked us to do, but in

11 general, if we had found something in there that

12 I think, you know, was, it was relevant, I think

13 we would have considered including it, certainly.

14   Q.   The Kole e-mail that we had some

15 discussion about, is it possible that someone

16 other than Paul Ceglia, physically possible that

17 someone else other than Paul Ceglia could have

18 sent that e-mail?

19   A.   Is it physically possible?

20   I suppose anything's possible.

21   Q.   So the answer is yes, it's possible?

22   A.   Yes.

23   Q.   I know you've concluded otherwise;

24 true?

25   A.   I think it's implausible, but it's

1   B. Rose

2 certainly theoretically possible.

3   Q.   Have you ever in either your personal

4 or professional work used the copy-and-paste

5 function on some content on the Internet and then

6 pasted into a document?

7   A.   Yes.

8   Q.   And are you familiar with one of the

9 common programming file formats for the Internet

10 is HTML?

11   A.   Yes.

12   Q.   And when you've copied and pasted

13 stuff from the Internet to a document has that

14 process ever resulted in that content's

15 formatting being different in the document from

16 what it looked like on the Internet?

17   A.   Yes.

18   Q.   In the conversation we had about the

19 Hex editor, I need to be a little more precise in

20 my question about one of the areas there.

21   Can you detail for me, list for me the

22 computer forensics evidence that supports your

23 conclusion that the person who used the Hex

24 editor was Paul Ceglia?

25   A.   Can you repeat that question? I'm

1   B. Rose

2 sorry.

3   Q.   Yes. Let me clarify.

4   A.   Sure.

5   Q.   I am aware from your report that you

6 believe, at the very least, a Hex editor was used

7 to manipulate some metadata.

8   Is that a fair statement?

9   A.   Yes.

10   Q.   It was used?

11   A.   Yes.

12   Q.   And you detailed the forensic evidence

13 that you believe supports that opinion.

14   Now what I'm asking you is not the

15 forensic evidence that supports that it was used,

16 but what, if any, computer forensics evidence

17 supports the conclusion that Paul Ceglia used the

18 Hex editor?

19   And I'm saying forensic evidence.

20   A.   Sure.

21   So the six documents that were created,

22 their names, for instance, document created to

23 copy out of test doc, that I think is very

24 clearly a pattern to try to create a merged

25 forged document. Whether that was done by -- I

1   B. Rose

2   think that was clearly done by someone with

3   motivation to create a fake document. In this

4   case the person with the motivation to create a

5   fake document, the person with the greatest

6   motivation is obviously Mr. Ceglia, who is

7   attempting to rely on it to support a claim worth

8   a tremendous amount of money, and whether it was

9   actually Mr. Ceglia did that or somebody working

10   in concert with Mr. Ceglia, I don't know, but I

11   think it's somebody clearly with motivations to

12   create a false document and in this case I think

13   the person with the greatest motivation is

14   Mr. Ceglia.

15   Q.   And how do you know what his motivation

16   is?

17   A.   How do I know what his motivation is?

18   Q.   How did you determine what his

19   motivation is?

20   You just talked about his motivation.

21   How did you determine that?

22   A.   My understanding is he claims to, based

23   on a contract, own half of Facebook. That seems

24   like clear motivation to me, but --

25   Q.   Clear motivation to do what?

1   B. Rose

2   A.   He's made a claim for half of Facebook,

3   and clearly your motivation there is money,

4   right? Facebook's a tremendously valuable

5   organization. I think the motivation is money.

6   The motivation, then how do you get a

7   claim?

8   Well, he can't base it on the real

9   document, the StreetFax contract, because that

10 doesn't mention Facebook, so I think the

11 motivation to create a false document is to try

12 to create something which is not real and didn't

13 exist in 2003 and is not a contract between Mark

14 Zuckerberg, but which appears to be a contract on

15 which you can support a claim.

16   I mean, your motivation, your ultimate

17 motivation is money. The actions taken are, you

18 know, all of this, it's not just the Hex editor,

19 but all of this evidence of manipulation of

20 documents and fraud in an attempt to support that

21 claim.

22   Q.   But you don't have any opinion --

23 you're not challenging any of the plaintiff's

24 experts' opinions that the paper, two-page paper

25 document is real?

1   B. Rose

2   A.   I'm limiting to digital forensics, I

3 haven't considered the paper at all, I have no

4 opinion about that.

5   Q.   You are not challenging any of their

6 claims?

7   A.   I have no opinion about it whatsoever.

8   Q.   Are you challenging any of their claims?

9   A.   I have no opinion about it.

10   Q.   The question is not whether you have an

11 opinion.

12   Do you have any evidence to challenge

13 their claims?

14   A.   I'm not challenging or not challenging

15 their claims, I have no opinion about their

16 claims.

17   Q.   Now, you talk about my client's

18 motivation sort of is outside the realm of

19 computer forensics, it seems to me, wouldn't you

20 agree?

21   His motivation doesn't come out of

22 metadata or applications or whatever, that

23 doesn't communicate someone's motivation?

24   A.   I think that's correct, yes.

25   Q.   And you are speculating about his

1   B. Rose

2   motive?

3   A.   Well, I'm not sure I understand that

4   question.

5   I mean, I think -- I think it is a

6   clear motive. Whether that's actually what's

7   motivating him, I mean, I think it's a fairly

8   clear motive, but I'm not inside his head, if

9   that's your question.

10   Q.   If his paper contract, which you have

11   no opinion about -- let's have a hypothetical --

12   if the paper contract's authentic, then you'd

13   agree with me he doesn't have a motive to fake

14   electronic documents because he's got a real

15   contract.

16   Again, it's a hypothetical. If the

17   paper contract is authentic, he has no motive to

18   create electronic documents?

19   A.   So hypothetically, if his paper

20   contract is authentic, I would say that's

21   correct, given the forensic evidence that in fact

22   all of this fraud was attempted, I would say, you

23   know, that the corollary to that is it seems

24   clear that the paper contract is not the genuine

25   contract.

1   B. Rose

2   Q.   But my question is if you assume it is,

3 so we're not going to talk about it not being

4 authentic, we are assuming it is authentic, then

5 he has no motivation to manipulate electronic

6 files; right?

7   A.   I would say that no one has the

8 motivation to manipulate the files and we

9 wouldn't see it on here, but we do, so, I mean,

10 that tells me the contract's not real.

11   Q.   Let's talk about motivation.

12   If the paper contract is real you then

13 would agree with me Mark Zuckerberg has a

14 motivation to do something to call into question

15 the authenticity of that paper document. Don't

16 you think he -- he would lose a lot of money too

17 if the paper contract is authentic, wouldn't he?

18   MR. SOUTHWELL: Object to the form.

19   A.   I certainly -- I mean, I guess I don't

20 know personally what he would lose versus, you

21 know, Facebook, who owns what in terms of

22 their -- but I assume it would have a very

23 detrimental financial impact on him where he

24 would have to give up half of Facebook.

25   Q.   So my point is about the motivation

1   B. Rose

2   comment. If the paper contract's authentic then

3   Mr. Zuckerberg, just like Mr. Ceglia in the

4   opposite conclusion, has a motivation to try and

5   fake evidence to prevent that contract from being

6   enforced; correct?

7   A.   True. And I do think if we had seen

8   fraud going the other way, right, that the

9   motivation might play in. If we'd seen, you

10   know, that evidence that the StreetFax contract

11   was in fact apparently a fraudulent document, I

12   would agree with you that, you know, maybe we

13   would factor in the motivation and that my

14   conclusion would be that if the StreetFax

15   contract that we found, if the forensics

16   indicated it was a fake document, I think a

17   logical conclusion would be Mr. Zuckerberg faked

18   it.

19   That's not what the forensics shows.

20   The forensics clearly shows that the StreetFax

21   contract is authentic, there is overwhelming

22   evidence that there's been fraud perpetrated here

23   both in the creation of purported e-mails and the

24   Work For Hire contract relied on by your client.

25   The same holds true there. Our

                              B. Rose

1   B. Rose

2   conclusion is that the likely person who would

3   engage in that kind of fraud is Mr. Ceglia.

4   Now, whether any specific action was

5   actually taken by Mr. Ceglia or was done by

6   someone, you know, sharing the same motivation or

7   working in concert with him such as use of the

8   Hex editor, again, I can't pinpoint an individual

9   for you, but I can say that, you know, I think,

10   again, Mr. Ceglia is a likely candidate just as

11   if the forensics had cut the other way,

12   Mr. Zuckerberg would be a logical candidate, but,

13   you know, it didn't.

14   Q.   Are you aware that Mr. Zuckerberg was

15   provided a signed copy of the agreement he

16   entered into with Mr. Ceglia at the time it was

17   signed?

18   A.   I am not.

19   Q.   Okay.

20   Are you aware that there are e-mails

21   missing from Mr. Zuckerberg's Harvard e-mail

22   account from periods of time where he was in

23   communication with Mr. Ceglia?

24   A.   I am not.

25   Q.   And the two TIFF images that make up

1   B. Rose

2   the StreetFax contract are digital images.

3   We've already talked about that; right?

4   A.   Yes.

5   Q.   And you don't know where they -- what

6   device they originated from for sure; correct?

7   A.   Again, not beyond saying they appear to

8   be scanned documents which were then created on

9   the hard drive, you know, on the morning of March

10   3rd, yes.

11   Q.   And so they could have been scanned at

12   any point prior to March 3rd?

13   A.   They could have been.

14   Q.   And what computer forensics evidence,

15   specifically computer forensics evidence about

16   those TIFF images tells you they are the

17   authentic contract between the parties?

18   Not all the other stuff, because I know

19   you've gone into that multiple times, just those

20   two TIFF images, what is all the computer

21   forensics data about those images which tells you

22   that's the authentic contract?

23   A.   So, I mean, as an initial matter, let

24   me just say that I think in terms of analysis of

25   the authenticity of the StreetFax contract it is

1   B. Rose

2   impossible from our standpoint to divorce that

3   from the other evidence that's on the computer,

4   including evidence that the purported e-mails

5   were fake, that there was manipulation of

6   documents, there's backdating of the system clock

7   on multiple occasions.

8   Having said that, if you just analyze

9   that alone, and it's not what we do, right, we do

10   everything in context, but if you just look at

11   the TIFF images alone I think you have the fact

12   that it was found on a computer belonging to

13   Mr. Ceglia, it was e-mailed to his attorney, it

14   was e-mailed on March 3rd of 2004, it was

15   e-mailed through intermediary servers at Adelphia

16   and Sidley & Austin before residing at Sidley &

17   Austin.

18   The fact that Sidley & Austin

19   maintained a copy of the e-mail, so you have both

20   the sending side and the receiving side of a

21   contract, the fact that it was sent via e-mail

22   that says -- again, typed, but says Paul to his

23   attorney saying this is the contract with Mark,

24   the fact that you have the March 4th and 5th

25   e-mail chain where, again consistent with the

1   B. Rose

2   small images you've talked about, Mr. Kole says,

3   I can't read this, there's a handwritten note,

4   all of that evidence shows me that this is a

5   genuine contract.

6   I mean, frankly, to me, having the

7   plaintiff produce a piece of media that contains

8   a contract that does not support his claim and

9   having the same e-mail that based on a forensic

10   analysis was purportedly sent to Sidley & Austin,

11   to have that be produced by Sidley & Austin, I

12   mean, even if you put all the other evidence

13   aside, that ends this case, I mean, that is clear

14   smoking-gun evidence that the StreetFax contract

15   is the authentic contract e-mailed from your

16   client to his lawyer at Sidley & Austin and

17   you've got both sides of the conversation

18   producing the same identical e-mail chain.

19   Q.   Let me try this way, because you are

20   not answering my question.

21   MR. SOUTHWELL: Objection.

22   Q.   Here's a hypothetical, trying to make

23   this more precise.

24   If you found an e-mail between Paul

25   Ceglia and Jim Kole that had a photograph

1   B. Rose

2   attached to it that showed Paul Ceglia's mother

3   walking on a wire between two buildings in

4   downtown New York, okay, like a wire walker,

5   would it be -- and you found all of the server

6   information that you just detailed that went from

7   here to here to here, all the servers, and Sidley

8   Austin had a copy of that e-mail on their server,

9   everything you've just said about that, would it

10   be your position that that image of his mother

11   walking on a wire 400 feet in the air is an

12   authentic picture of an event that actually

13   happened? Would that be your position?

14   A.   Forgive me if I pause for a minute,

15   this is an awfully strange hypothetical.

16   So let's assume -- I mean, if I have an

17   e-mail and the e-mail says, Hey, Jim, this is my

18   mom tightrope walking, Paul --

19   Q.   There you go.

20   A.   -- I mean, I guess the question in my

21   mind would be is there any evidence she is

22   actually a tightrope walker; right?

23   I mean, it's sort of an odd

24   hypothetical because you have posited a photograph

25   of a woman doing something that very few people

1   B. Rose

2   in the world could actually do, so the fact that

3   the image itself is fairly unrealistic, again,

4   you know, these are all fairly contextual

5   analyses, then I think it would lead me to

6   question whether -- I mean, it wouldn't lead --

7   it would clearly be an e-mail sent from, you

8   know, from, I think -- it wouldn't lead me to

9   question it was sent from Paul to Jim Kole, it

10   would lead me to question whether it was actually

11   a true image, but just because of the

12   strangeness, in this case, you know, it's a

13   hypothetical which is completely off point to the

14   actual case, which is you have a standard

15   contract being e-mailed from, you know, Paul to

16   his lawyer at Sidley & Austin and a subsequent

17   conversation about it.

18   Q.   Well, to be clear, the e-mail was

19   actually e-mailed from an account owned by Vera

20   and Carmine Ceglia; true?

21   A.   Well, let's be careful.

22   It is an account that is registered to

23   Carmine Ceglia. The user name resolves to Vera

24   Ceglia and the e-mail is signed -- again, as you

25   pointed out, not a signature, but typed, is Paul.

1   B. Rose

2   Q.   So do you feel you're qualified to

3   testify about the authenticity of images

4   generally when you see them attached to e-mails,

5   you can declare which images are authentic and

6   which images are not?

7   MR. SOUTHWELL: Objection to form.

8   Q.   Just yes or no, are you qualified to

9   testify about it?

10   A.   It is not a yes-or-no question, it

11 would depend on the circumstances.

12   I mean, in a case like this where I

13 think you have obvious evidence of authenticity

14 and obvious evidence of fraud, it's a fairly

15 straightforward case.

16   In other cases I could see, you know,

17 you depending again on what the image was and

18 what the question was, in some cases I would say

19 yes and in some cases no, but it would depend on

20 what analysis was needed.

21   Q.   If I sent an e-mail to Mr. Southwell

22 and typed the message, Hey, check out this

23 contract, Alex, signed, and then typed in Bryan

24 Rose, is it your position that you sent that

25 e-mail?

 1   B. Rose

 2   I would assume not.

 3   A.   So you're -- if you sent an e-mail to

 4 Alex and typed Bryan Rose, is it my position that

 5 I sent that?

 6   No.

 7   Q.   No. I sent a message saying, Alex,

 8 this is Bryan Rose sending you a contract, and I

 9 typed Bryan Rose, that's not from Bryan Rose is

10 it?

11   A.   Not if you sent it, no.

12   Q.   Correct.

13   Just because your name is typed at the

14 bottom doesn't mean it's sent from you; true?

15   A.   That's true.

16   Again, if you isolate -- if you isolate

17 any individual piece, it's possible to say there

18 are other possibilities, but, again, that's not

19 what we do. We analyze the forensic evidence in

20 the entire context of the case, and so that is

21 one piece of evidence, the fact that it went to

22 Jim Kole is another piece of evidence, the fact

23 that Jim Kole had a handwritten note where he

24 responds is another piece of evidence, the

25 evidence of backdating is another piece of

1   B. Rose

2   evidence.

3   This is all part of building a picture

4   of what happened, and so, I mean, if you pull out

5   any piece of evidence and say what's possible,

6   that's one thing.

7   That's not what we do. We consider it

8   in the context of the entire case and we say what

9   are the reasonable explanations for this, and

10   given the forensic evidence in this case, the

11   only reasonable explanation is that the StreetFax

12   contract is authentic and that your client was

13   engaged in a massive fraud to attempt to generate

14   a fraudulent contract, that's the only reasonable

15   explanation for the digital forensics taken as a

16   whole.

17   Q.   You've made that clear.

18   Can we go to page 21 of your report,

19   which is Exhibit 11 --

20   A.   You mean the top level?

21   Q.   Yes.

22   You just mentioned a response from Jim

23   Kole.

24   This is the document you were referring

25   to; right?

1   B. Rose

2   A.   Correct.

3   Q.   And can you -- I'm going to be real

4   specific.

5   Can you read the date and time of that

6   e-mail being sent allegedly from Jim Kole?

7   A.   Friday, March 5th, 2004, 11:44 a.m.

8   Q.   So that's a day later than the alleged

9   Kole e-mail was sent to him; true?

10   A.   I believe it's two days later, correct.

11 The Kole e-mails were sent by Mr. Ceglia on March

12 3rd, 2004. This response appears to be on March

13 5th, 2004, so that's two days.

14   Q.   Even better.

15   Whose handwriting is on the document?

16   What computer forensics evidence tells

17 you who wrote that handwritten note?

18   A.   Based on the context the fact that it's

19 on an e-mail printed out by Jim Kole and the fact

20 that it is giving legal advice about a contract

21 that was put in front of him by Mr. Ceglia, the

22 context indicates to me that it's Mr. Kole's

23 handwriting, but we haven't -- we are not

24 forensic -- we are not handwriting experts and,

25 you know, I couldn't tell you ultimately who

1   B. Rose

2   wrote that.

3   Q.   And this is a reply to Paul's -- I'm

4   sorry, this is an e-mail from paulceglia@msn.com

5   at the top; right?

6   MR. SOUTHWELL: Objection.

7   Can you just be specific? You're

8   referring to the top from Ceglia to Kole on

9   March 5th or the ones below?

10   Q.   The very top of the e-mail where it

11   says from paulceglia@msn; isn't that correct?

12   A.   Which one, again, the top level e-mail?

13   Q.   The most top level --

14   A.   Yes, that is from paulceglia@msn.com.

15   Q.   Right.

16   Then let's go down into the body of the

17   e-mail, there's another e-mail referenced there

18   and there's the next word "from" and a colon and

19   "to" and a colon.

20   Do you see that?

21   A.   Are we talking about the e-mail

22   immediately below towards the top level, the

23   reply to, yes.

24   Q.   Yes.

25   And that's paulceglia@msn as well?

1   B. Rose

2   A.   Correct.

3   Q.   Let's go a little farther down

4 underneath a little portion that says "original

5 message" and under there it says "from," and you

6 see that says paulceglia@msn again?

7   MR. SOUTHWELL: The one on March 4th?

8   A.   March 4th, 2004 at 9:49 a.m., yes,

9 that's correct.

10   Q.   So this, you would agree with me,

11 appears to be an exchange between, if it's

12 authentic, Mr. Kole and Mr. Ceglia who is

13 communicating using his msn account?

14   A.   Correct.

15   Q.   Okay.

16   And as you pointed out, the

17 communication that is the Kole e-mail came from

18 an account registered to Carmine Ceglia with the

19 user name Vera Ceglia?

20   A.   Correct.

21   Q.   And it's your position that this

22 represents a reply by Mr. Kole two days later to

23 the e-mail that came from the Adelphia account?

24   MR. SOUTHWELL: Objection,

25   mischaracterizes.

1   B. Rose

2   A.   That's not my position.

3   That is clearly a separate e-mail

4   chain, so the Kole e-mails -- the Kole e-mails

5   that were sent on March 3rd are not part of this

6   chain, so, you know, what it looks like,

7   Mr. Ceglia sends the March 3rd e-mails to

8   Mr. Kole, then opens up a new e-mail chain using

9   his msn account and they go back and forth based

10   on that, and so this is -- so it's not a direct

11   reply.

12   What I'm saying is based on the

13   content, right, it appears to be discussing the

14   contract that was provided on March 3rd, 2004,

15   including a reference to the fact that it can't

16   be read.

17   Q.   Do you know if it was actually

18   discussing that blurry TIFF image or another

19   blurry TIFF image? Do you know?

20   Did your forensics analysis tell you

21   what blurry image they're talking about?

22   A.   We only have evidence of one blurry

23   TIFF image, so we have one blurry TIFF image or

24   two blurry TIFF images sent on March 3rd, 2004,

25   and a response here indicating that he's received

1   B. Rose

2   blurry TIFF images, which we know he received,

3   right, because we know, A, Sidley & Austin still

4   has them and we know he forwarded them on, so,

5   yes, I'm basing that on the context here that

6   when he's referring to blurry TIFF images he's

7   referring to the blurry TIFF images we know he

8   received two days before.

9   Q.   And he is referring to the blurry TIFF

10   images he received from the Adelphia account is

11   your position about when you read this e-mail

12   here?

13   A.   That seems to me to be a reasonable

14   inference based on what we know, yes.

15   Q.   And how did you rule out someone

16   scanning --

17   A.   Again, I'm talking about what --

18   Q.   Let me finish the question, sir.

19   A.   Yes.

20   Q.   How did you rule out additional e-mails

21   with blurry TIFF images sent from Paul Ceglia's

22   msn account to Jim Kole and he's replying

23   regarding that, how did you rule that out?

24   A.   I haven't ruled that out. What I'm

25   saying is what is the likely and reasonable

1   B. Rose

2   explanation.

3   Q.   How likely is it that an e-mail was

4   sent by Paul Ceglia from his msn account with

5   blurry attachments that he's responding to here,

6   how likely is that?

7   A.   Well, I think given the fact that we

8   know he sent blurry TIFF images two days before,

9   it's unlikely.

10   I don't know how to --

11   Q.   Why is it unlikely? What do you know

12   about Mr. Ceglia's personal habits that make it

13   unlikely in that two-day period he did not send

14   blurry TIFF images to his lawyer by his msn

15   account?

16   A.   I think it's probably unlikely he's

17   sending multiple copies of blurry TIFF images,

18   but --

19   Q.   Why is it unlikely? How did you

20   determine that?

21   A.   It seems to me people don't generally

22   do that, but, you're right, he could have sent a

23   thousand blurry TIFF images, it seems exceedingly

24   unlikely to me, but I have not ruled it out.

25   Q.   Why is it unlikely?

1   B. Rose

2   A.   Again, I think I've answered that

3 question. It seems to me that if you have a

4 reference to an attorney having been sent blurry

5 TIFF images and we know that two days before he

6 was sent blurry TIFF images that we know he

7 received, the likely explanation is that he's

8 referring to those TIFF images. I have not ruled

9 out the fact that he's referring to other TIFF

10 images.

11   Q.   And there's an intervening two-day

12 period between the Kole e-mail and this one;

13 right?

14   A.   Correct.

15   Q.   And the Kole e-mail and this one were

16 sent with two different e-mail accounts?

17   I'm sorry, the Kole e-mail is sent with

18 an Adelphia account; true?

19   A.   The Kole e-mail was sent from -- yes.

20   Q.   And these exchanges with Mr. Kole are

21 sent by Mr. -- are with Mr. Ceglia at his msn

22 account; correct?

23   A.   Correct.

24   Q.   Okay.

25   So for two days some number of

1   B. Rose

2   e-mails we will never know, right, went back and

3   forth between Mr. Kole and Paul Ceglia from his

4   msn account.

5   You don't know how many they sent back

6   and forth during those two days, do you?

7   A.   Well, I know -- I mean, based on the

8   evidence we have, it would appear to be as if the

9   e-mail chain here is four e-mails.

10   Whether, you know, how many more than

11   that, that puts a lower limit on it. I can't

12   tell you how many e-mails would be in the entire

13   chain.

14   Q.   And they could have simultaneous

15   different threads going back and forth that

16   aren't even included here; right?

17   A.   They could.

18   Q.   So you don't know?

19   A.   I don't.

20   Q.   Now, your report also challenges

21   generally the authenticity -- let me back up.

22   Are you aware that there have been two

23   documents -- two categories of documents

24   submitted to the Court thus far as attachments to

25   pleadings that Mr. Ceglia is claiming are

1   B. Rose

2   authentic, one of which is the two-page paper

3   contract -- you're aware he's claiming that's

4   authentic; right?

5   A.   Yes. You are referring to the Work For

6   Hire, what we call the Work For Hire document?

7   Q.   Yes.

8   A.   Yes.

9   Q.   And he's also attached to an amended

10 complaint copies of e-mails that he exchanged

11 with Mr. Zuckerberg which he's claiming are

12 authentic e-mails exchanged with Mr. Zuckerberg.

13   MR. SOUTHWELL: Objection. That's not

14   in evidence, he didn't attach any e-mails.

15   Q.   He attached documents to an amended

16 complaint purporting to be copied and pasted

17 e-mails between him and Mr. Zuckerberg.

18   MR. SOUTHWELL: Take a look at the

19   complaint, there's nothing attached.

20   Q.   It's attached -- well, let's just

21 assume you've evaluated e-mails that he claims to

22 have exchanged with Mr. Zuckerberg; true? You

23 took a look at them?

24   A.   We have evaluated Word documents

25 containing what appear to be cut and paste --

1   B. Rose

2   Q.   Well, my client admits they are copied

3 and pasted into the Word document, does he not?

4   A.   Well, I should say that are claimed to

5 be cut and pasted.

6   I mean, I am aware that Mr. Ceglia

7 claims to have Word documents containing e-mails

8 that purportedly support his claim. We

9 identified in our forensic analysis three Word

10 documents that we believe to be those e-mails.

11   Q.   And you analyzed them?

12   A.   Correct.

13   Q.   And there's at least two areas of that

14 analysis which support -- and maybe there's more,

15 you can correct me -- your claim and your report

16 that those e-mails are fakes, so let's go over

17 them.

18   One of the areas is the Coordinated

19 Universal Time as it appears in those e-mails is

20 incorrect based on the fact that it was Daylight

21 Savings Time at the time they were sent; right?

22   A.   So, yes --

23   Q.   Is that the e-mails --

24   A.   There is a group of e-mails, I believe

25 it is sent between October 2003 and April 2004 at

1   B. Rose

2   which point Eastern Standard Time would have been

3   in effect and the offset that's in the e-mails

4   appear to be Eastern Daylight Time which is an

5   anomaly which shouldn't occur.

6   Q.   Right, that's one area.

7   And the second area you indicate in

8   your report is formatting and differences between

9   these e-mails, for example -- and I think you

10   might remember this one, in one of the e-mails

11   the word "Tuesday" is spelled out and in the

12   other one it's abbreviated, things like this is

13   one of the other ares that you indicate supporting

14   your belief that those are fraudulent; true?

15   A.   Yes, and that's inconsistencies that

16   they both between the way those should appear,

17   for instance, the way, you know, Microsoft

18   Hotmail would abbreviate Tuesday and the way it's

19   actually abbreviated in the e-mails themselves,

20   so Microsoft, you know, abbreviates it T-u-e, if

21   you cut and paste it out it should not say

22   T-u-e-s, and I know you asked questions earlier

23   about whether formatting differences can be

24   introduced during cut and paste; that's true,

25   but, for instance, the addition of an "s" is not

1   B. Rose

2 a formatting difference that would occur, so I

3 think that's clear evidence of fraud.

4   There's also inconsistencies among the

5 documents themselves, so after the "from," colon,

6 sometimes there's one space, sometimes there's

7 two, after the "to" there are an inconsistent

8 number of spaces, there are various formatting

9 inconsistencies like that and, again, going back

10 to your point about copy and paste, to the extent

11 I copy and paste out Hotmail documents and the

12 formatting change, I would expect it to change in

13 a consistent way, I wouldn't expect the copy-and-

14 paste operation to, for instance, insert two

15 spaces after "to" sometimes and three in another

16 and one in another.

17   Q.   Why would you expect it to do it in a

18 uniform way?

19   A.   Generally -- because, again, when you

20 are cutting and pasting, if you are cutting from

21 the same source to the same source, what you

22 would expect to see is a consistent change.

23   Q.   Did Mr. Ceglia cut from the same source

24 to the same source?

25   A.   My understanding is he's cutting from

1   B. Rose

2   his Hotmail account, yes.

3   Q.   On what computer was he copying that

4   from?

5   A.   He is copying it from his account, it

6   wouldn't matter what computer he's copying it

7   from, you're copying from an Internet Webmail

8   account, the data is residing on Hotmail servers,

9   it wouldn't matter what computer he's using.

10   Q.   Would it matter what browser he's

11 using?

12   All browsers format Web mail the same;

13 is that your position?

14   A.   Well, so for the T-u-e-s, right, that

15 difference and --

16   Q.   No. I'm asking you do all browsers --

17   A.   You asked me a question, I'm trying to

18 answer the question.

19   MR. BOLAND: He is rephrasing the

20   question.

21   MR. SOUTHWELL: He is answering your

22   question.

23   Q.   Do all browsers format Webmail accounts

24 the same?

25   A.   No.

1   B. Rose

2   Q.   What browser was Mr. Ceglia using when

3 he copied and pasted each one of these e-mails?

4   A.   I don't know.

5   Q.   How did Hotmail function when it came

6 to abbreviations of things like Tuesday in 2004?

7   A.   It abbreviated it T-u-e.

8   Q.   How do you know that?

9   A.   I think we've tested, we've seen the

10 way it format, Hotmail formulates Tuesday and it

11 is T-u-e.

12   Q.   In 2004 you ran tests to confirm that?

13   A.   My understanding is that we confirmed

14 that in fact that's the way Hotmail abbreviates

15 T-u-e.

16   Q.   Where do you get that understanding?

17   A.   So that understanding was passed --

18 that information comes from, I believe, directly

19 from Mike McGowan.

20   Q.   So it's your testimony that Mike

21 McGowan in 2004 tested the Hotmail server?

22   A.   No, that's not my testimony.

23   Q.   Okay.

24   How did he determine in 2004 that's how

25 Hotmail worked?

1   B. Rose

2   A.   I don't know how he determined that.

3   Q.   To the best of your recollection he's

4   the person who told you that that's how it worked

5   in 2004?

6   A.   Yes.

7   Q.   Okay.

8   Did anyone else from Stroz Friedberg

9   conduct any testing on how Hotmail might have

10   worked in 2004?

11   A.   I don't know the answer to that, I

12   don't know if the information came directly from

13   him.

14   I would also just note that how that

15   works in 2004 is one question.

16   I would also note that you would expect

17   it to work the same way in 2004 each time; in

18   other words, you wouldn't expect Hotmail in 2004

19   to sometimes abbreviate T-u-e, sometimes

20   abbreviate T-u-e-s.

21   Q.   Why would you not expect that?

22   Do you know how Hotmail operates?

23   A.   Because they don't configure themselves

24   back and forth like that, right, there's a

25   uniform configuration that they don't just run

1   B. Rose

2   and change willy-nilly.

3   Q.   How do you know there's a uniform

4   configuration, what's your basis for that

5   statement?

6   A.   The Webmail account displays dates in a

7   consistent format.

8   Q.   What's your basis for that in 2004

9   Hotmail consistently displayed Webmail account

10   information?

11   A.   I think it is unquestionable that that

12   would be the way it would operate, but if you

13   feel -- I mean, and the idea somehow that

14   Hotmail, the way they set themselves up, right --

15   and these are all behind-the-scenes configurations

16   -- that they somehow had a configuration which

17   allowed T-u-e sometimes and T-u-e-s other times

18   as the display is completely implausible to me.

19   Q.   What's your basis for it being

20   implausible?

21   A.   I'm saying it's implausible.

22   These are behind-the-scenes

23   configurations that display uniformly over time.

24   Now, that's not -- I just -- it's implausible to

25   me that when you're talking about a series of

1   B. Rose

2   documents from the same time frame, sometimes

3   very close together, that they're going to

4   display inconsistently is just implausible.

5   Q.   Based on what?

6   A.   It's my experience and my understanding

7   of the way they operate.

8   Q.   And do you have any experience with

9   Hotmail back in 2004?

10   A.   I mean, I don't know. I think I may

11   have been a Hotmail user back in 2004, but --

12   Q.   Were you or were you not?

13   A.   I don't recall.

14   Q.   And the version of Microsoft Word

15   used -- that contains these documents that this

16   data was pasted into, how was Microsoft Word

17   configured back at that time to handle the

18   pasting-in of data from a browser like a Webmail

19   account?

20   A.   I'm not sure I understand that

21   question.

22   Q.   What kind of changes could Microsoft

23   Word's program cause to data that's copied and

24   pasted from a Web mail account back in 2004?

25   A.   I don't know.

1   B. Rose

2   Q.   Did anyone from Stroz Friedberg try and

3   test the versions of Microsoft Word that these

4   documents were created in to see what changes

5   might occur, if you know?

6   A.   Not that I'm aware of.

7   Q.   Did you ask Microsoft for any advice on

8   how formatting changes might have occurred through

9   that process?

10   A.   We did not have any conversation with

11   Microsoft about that.

12   Q.   Did you contact Hotmail?

13   A.   No.

14   Q.   Did you attempt to configure a Hotmail

15   server the way it would have been configured back

16   in 2004, e-mail server?

17   A.   No.

18   Q.   And did you test even in the current

19   time, 2011, how data copied from different Web

20   browsers in Webmail accounts and then pasted into

21   Microsoft Word might result in different

22   formatting? Did you run that test?

23   A.   I did not. I don't know whether it was

24   done.

25   Q.   Now, the Coordinated Universal Time

1   B. Rose

2   that appears in an e-mail if -- let's just say

3   2011 as a hypothetical, assume this is the case,

4   but I'll just ask you to assume it as a

5   hypothetical, that Daylight Savings Time, we went

6   from Standard Time to Daylight Savings Time

7   somewhere in March of 2011, the date's not

8   relevant to the question, is it the case that if

9   an e-mail is sent before that change of time, but

10   the person doesn't open it until after we've

11   changed into Daylight Savings Time, what

12   Coordinated Universal Time would appear in that

13   e-mail if it's opened at that time? Is

14   Coordinated Universal Time reflective of when the

15   person actually opens the e-mail or when the

16   e-mail was sent?

17   A.   So it would in general, I think,

18   display based on the time zone of the computer

19   clock being used to view it, but I don't know

20   with Hotmail how that would operate in that

21   hypothetical.

22   Q.   And if that computer clock is set

23   correctly, hypothetically, then the Coordinated

24   Universal Time in that e-mail should be correct,

25   should be accurate?

1   B. Rose

2   A.   Again, I don't know how Hotmail

3 specifically operated there.

4   Q.   Are there any -- you conclude about

5 these e-mails that the Coordinated Universal Time

6 is not consistent with the time of year in which

7 they were allegedly received, I believe -- I'm

8 summarizing and if I'm doing it incorrectly,

9 please put the words in you think make it

10 correct.

11   A.   Okay.

12   Q.   Is it only fraud which could be the

13 cause of that Coordinated Universal Time being

14 apparently in error in these e-mails? Just the

15 e-mail itself, not considering everything else

16 that you clearly think my client's committing a

17 fraud, just looking at that e-mail and

18 Coordinated Universal Time is off, is the only

19 conclusion for that fraud got to be fraud?

20   A.   So forgetting -- I guess I'm forgetting

21 everything else I know, I just got an e-mail --

22   Q.   If I just give you an e-mail and I say

23 I just got this e-mail today or it was sent today

24 and received today and you look at it and say,

25 Well, Dean, the Coordinated Universal Time is

1   B. Rose

2   off, would you then say, in my opinion that

3   e-mail is a fraud because of that one fact?

4   A.   I'd say that standing alone, no, not

5   necessarily.

6   Q.   And the formatting differences we

7   talked about before, standing alone, not

8   indications of fraud necessarily either, they can

9   just occur sometimes?

10   A.   I think the formatting differences we

11   see here are clear indications that the document

12   has been manipulated, so I would disagree with

13   that. I don't think there's any plausible

14   explanation that these could be the result of

15   formatting differences introduced as a cut-and-

16   paste operation, so I would disagree with that.

17   You're asking me the mere appending of

18   the wrong time zone to an e-mail standing alone

19   without any other fact surrounding it, there

20   could be other explanations for that.

21   Q.   And are you aware of any e-mails or

22   references to e-mails in this case from a source

23   other than Mr. Ceglia which have the wrong

24   Coordinated Universal Time attached to them?

25   A.   I am aware -- I'm trying to think in

1   B. Rose

2   terms of the time zones -- there is in, I think,

3   one of the, again, the intermediary servers in

4   the Sidley & Austin e-mails had the wrong time

5   zone setting; those are the only examples I can

6   think of.

7   Q.   Let me try and jog your memory a little

8   bit.

9   You and I have exchanged e-mails in the

10   past couple of weeks about this Kasowitz letter

11   issue; are you generally familiar with that?

12   A.   Yes.

13   Q.   You sent me a TrueCrypt container on a

14   couple of occasions, and there's an item 379,

15   does that ring a bell, as one of the items we've

16   been corresponding with and --

17   A.   It does.

18   Q.   And you had to evaluate that item to

19   see if it was relevant to put it on a relevant

20   items log in the past; do you recall that?

21   A.   Yes.

22   Q.   I'm not asking you to memorize it, but

23   you did read through it to see if it was

24   relevant, obviously?

25   A.   Yes. I mean, it is an extremely long

1   B. Rose

2   document --

3   Q.   It is.

4   A.   -- so I may not have read it word for

5   word, but I've reviewed enough of it to know that

6   the contents are relevant.

7   Q.   Right.

8   And let me just state, and this is the

9   record in this case, that that item 379 is a

10   single e-mail with some attachments and then in

11   the body of that e-mail are referenced many more

12   e-mails, it's quite a long document, as you

13   indicated.

14   A.   It's a long chain.

15   Q.   Right.

16   So that's generally what it is.

17   And many of those e-mails referenced in

18   the body of 379 are e-mails that appear to be

19   between lawyers that were working with Mr. Ceglia

20   at that time.

21   Do you recall that?

22   A.   I know there are some, some of those

23   e-mail exchanges are between lawyers working for

24   Mr. Ceglia at the time.

25   Q.   And now here's the hypothetical, and

1   B. Rose

2 because I don't have 379 in front of me, I won't

3 ask you to trust me on this, so I will convert it

4 to a hypothetical.

5   Let's say some of those e-mails

6 referenced in the body of 379, if some of them

7 were sent at a time where the Coordinated

8 Universal Time should have been, let's say, minus

9 500, but it says minus 400, it's wrong, you

10 wouldn't conclude, based on that, that some of

11 those prior lawyers for Paul Ceglia were

12 committing fraud?

13   A.   So this is a hypothetical specifically

14 about 379?

15   Q.   Right.

16   If some of those e-mails have the wrong

17 Coordinated Universal Time that's not an

18 indication of fraud by those lawyers, in your

19 opinion?

20   A.   So given the context, no, I would not

21 conclude that.

22   Q.   And that Kasowitz e-mail you just

23 recently sent it to me in a TrueCrypt container

24 as a native format e-mail.

25   Do you recall sending that to me?

1   B. Rose

2   A.   Yes.

3   Q.   Okay.

4   That native format e-mail itself has

5   one attachment. I don't know if you recall that.

6   Do you recall it?

7   A.   I thought it had more attachments than

8   that, but I don't recall.

9   Q.   And that actual individual e-mail was

10 never included by you on a privilege log in this

11 case by itself, if you recall?

12   MR. SOUTHWELL: What specifically are

13   you referring to?

14   MR. BOLAND: The native format

15   individual e-mail dated August -- April 13,

16   2011, which you recently sent to me itself

17   was never included on a privilege log in

18   this case.

19   MR. SOUTHWELL: I'm just going to

20   object, this doesn't seem to have anything

21   to do with Coordinated Universal Time or the

22   report, so it's an objectionable line, but

23   if you're going to connect it, I'd like to

24   hear that.

25   MR. BOLAND: I would like to hear the

1   B. Rose

2   answer of the witness, but I hear your

3   objection.

4   A.   I mean, I sent you, as I recall, what I

5 recently sent you included several -- it was

6 one -- it was item 379 -- I mean, there were

7 various items in that, right, there were various

8 attachments, I don't think it was limited to one

9 attachment, so I guess I'm not sure exactly which

10 document you're talking about.

11   I mean, it's possible to me -- and, you

12 know, we include, when we include an e-mail, we

13 also include their attachment, so just merely

14 saying dated April 13th I'm not sure I can with

15 precision identify the document which you're

16 talking about.

17   Q.   Fair enough.

18   Let's talk about use of computers

19 generally.

20   Would you agree with me that -- and

21 maybe you've seen this in your work -- that

22 people can lie about how they actually use their

23 computers?

24   A.   Yes, I would agree that people can lie

25 about the way they use their computers.

1   B. Rose

2   Q.   And as a forensics expert you wouldn't

3   rely on a witness' statement about how they used

4   their computer without confirming it through

5   forensic analysis?

6   A.   That's correct.

7   Q.   And would you agree that people who

8   commit fraud often make self-interested

9   statements to try and avoid detection for that

10 fraud?

11   A.   As a hypothetical, yes, I think I would

12 agree with that.

13   Q.   And I think I asked you this before.

14   You never spoke with Mark Zuckerberg

15 about how he used his Harvard e-mail account?

16   A.   I've never spoken with Mark Zuckerberg

17 about anything.

18   Q.   Did you ask his lawyers to get

19 information from him telling you how he used his

20 Harvard e-mail account?

21   A.   So let me be clear: Our role in the

22 Harvard e-mail account was to work with Harvard

23 to make sure we'd gotten all of the historical

24 copies, to perform whatever collections were

25 necessary and then to perform electronic

1   B. Rose

2   discovery processing to create an aggregate data

3   set, to then subject that to certain search terms

4   and provide those to Gibson, Dunn for review as

5   well as to conduct our own review of those, of

6   certain specified documents to determine whether

7   the purported e-mails were found there and to

8   identify communications between Mr. Zuckerberg

9   and various people involved with StreetFax.com,

10   that was our charge with the Harvard e-mail, and

11   so I did not ask Gibson, Dunn to do that, I don't

12   think, given our role, that would have been a

13   relevant consideration for us or appropriate for

14   me to tell Gibson, Dunn to go ask a question

15   that's irrelevant to the work I'm tasked to do.

16   Q.   And did you somehow confirm with anyone

17   that this was all of Mark Zuckerberg's available

18   e-mail that was relevant to expedited discovery?

19   A.   I find that to be a confusing question

20   because my reading of the order in the protocol

21   is that the expedited discovery phase is focused

22   on an analysis of Mr. Ceglia's media and

23   Mr. Ceglia's e-mail, so --

24   Q.   I'm just asking the question, sir.

25   Did you ask someone to have Mark

1   B. Rose

2   Zuckerberg confirm that you had access to all of

3   his e-mail? Did you ask someone that question?

4   MR. SOUTHWELL: Objection. You are

5   asking -- well, you are asking a different

6   question, but --

7   MR. BOLAND: That's my question.

8   A.   I did not ask anyone to make sure that

9   we had access to all of Mark Zuckerberg's e-mail.

10   There was, you know, we were involved in

11   conversations with Harvard IT to make sure that

12   we had gotten everything that was available. We

13   were, as I said, involved early on in analysis of

14   various other assets of Mr. Ceglia that I

15   understood to be comprehensive, but as to that

16   specific question, no, I don't recall asking that

17   specific question.

18   Q.   It's possible, then, that there is

19   additional sources of e-mail relevant to this

20   case which you have not had access to?

21   A.   Is it possible?

22   I mean, again, anything's possible, so

23   I would say yes.

24   Q.   Don't you think it's a prudent thing to

25   do to ask the person who's the custodian of their

1   B. Rose

2   e-mail account if that's everything?

3   A.   Is that a prudent thing to do in

4   general?

5   Q.   In this case don't you think it would

6   have been a prudent thing to do to ask the

7   defendants, Hey, ask Mr. Zuckerberg is this is

8   everything or if he's got e-mails somewhere else?

9   A.   To me, you're asking me a question that

10 is appropriately a strategy question for

11 attorneys that goes outside what I was charged to

12 do in the case, which involves expedited

13 discovery and to describe the work with

14 Mr. Zuckerberg's e-mails, so as to whether that

15 would be prudent in this case, you know, I

16 haven't really considered that and I don't think

17 I want to offer an opinion on it.

18   Q.   What do you think the likelihood is

19 that there's other e-mail or electronic

20 communications relevant to this case that you

21 have not had access to?

22   A.   I would think, given the thoroughness

23 I've seen of the investigations that I've been

24 party to, I think it unlikely, but it's possible.

25   Q.   You talked about one of the retrievals

1   B. Rose

2   from the Harvard server was from November 2003,

3   you got e-mail from that time period?

4   A.   That's correct.

5   Q.   Not in that time period, but from that

6   time period?

7   A.   From that time period.

8   In other words, just to be clear, a

9   historical snapshot of what existed in the

10   mailbox at some point in November 2003.

11   Q.   And did you find any e-mails in that

12   retrieval that were not included in the

13   subsequent productions that you got, either

14   collected or received from Harvard?

15   MR. SOUTHWELL: Are you asking about

16   Ceglia-Zuckerberg e-mails?

17   MR. BOLAND: Yes.

18   A.   I believe so. You're talking about

19   between the November 2003 and the subsequent

20   productions, the first of which would have been

21   in October 2010?

22   Q.   Right.

23   A.   Yes, I believe there were e-mails that

24   were included in that production that were not

25   included, not unsurprisingly, in a production

1   B. Rose

2   that occurred seven years later.

3   Q.   And what happened to those e-mails that

4   were not in that production seven years later?

5   A.   I don't know.

6   Q.   Did you ask the defendants to ask

7   Mr. Zuckerberg what happened to those e-mails?

8   A.   I did not.

9   Q.   Did anyone else from Stroz Friedberg

10   ask that question of the defendants, if you know?

11   A.   Again, given our task with the e-mail,

12   I don't think that would be an appropriate

13   question for us to direct to Gibson, Dunn.

14   Q.   Did you see Paul Ceglia's -- a recent

15   declaration of Paul Ceglia stating that he sent

16   e-mails to Mr. Zuckerberg between the time period

17   of March 2003 and June of 2003?

18   A.   I may have, I don't recall that.

19   Q.   And are you aware that your -- that

20   Stroz Friedberg did not recover any e-mails

21   between Mr. Ceglia and Mr. Zuckerberg during that

22   time period?

23   A.   I am not.

24   Q.   Did you see the production that Stroz

25   Friedberg provided to the plaintiff pursuant to

 1   B. Rose

 2   the expedited discovery order of the Harvard

 3   e-mails?

 4   A.   Did I see the production itself?

 5   Q.   Before it was produced to us did you

 6   look at it?

 7   A.   No.

 8   Q.   Do you think it's -- what's your

 9   opinion of the likelihood that this contract

10   signed on April 28, 2003, that the terms of this

11   contract were discussed between Mr. Ceglia and

12   Mr. Zuckerberg using e-mails before the date it

13   was signed?

14   A.   I wouldn't even want to offer an

15   opinion on that.

16   Q.   Assuming, because it is the case, but

17   we will just assume it for this, that there are

18   no e-mails between the parties Ceglia and

19   Zuckerberg from around March of '03 till June of

20   '03, don't you think that's a little odd that

21   they have no e-mail communication before the

22   signing of this contract in April of 2003 and

23   then for another six weeks, 5-1/2 weeks later,

24   still no e-mail communication in Mr. Zuckerberg's

25   Harvard e-mail account? Don't you find that odd?

1   B. Rose

2   A.   No.

3   Q.   Now, you found -- the report details

4   several different documents that are similar to

5   the paper contract in this case with the Facebook

6   language in it, true, in your report, you talk

7   about those?

8   A.   So we talk about multiple unsigned

9   versions of what we refer to as the Work For Hire

10 contract, yes.

11   Q.   Yes.

12   And did your forensic analysis provide

13 you with which one, if any, of those unsigned

14 versions was the one that was printed and became

15 the paper contract that my client is now offering

16 as the authentic contract between the parties?

17   A.   I think none of them were printed

18 directly because they all vary somewhat in

19 substance from the actual original contract; in

20 other words, they are all similar documents, but

21 there are seven different variations, so the

22 printed copy is ultimately different.

23   We did not identify any exact duplicate

24 copies of the Work For Hire contract save for one

25 that was included in an e-mail from Mr. Argentieri

1   B. Rose

2 that was post litigation.

3   Q.   And you are aware that Mr. Ceglia has

4 not offered or attached to any pleadings any of

5 those similar versions of the Work For Hire

6 contract? You are aware of that?

7   A.   I don't believe he has.

8   Q.   And he didn't attach the e-mail from

9 Jim Kole or the TIFF images to any pleadings or

10 anything that he's filed in this case, you are

11 aware of that?

12   A.   I am aware of that, yes.

13   Q.   Now, your forensic report and your

14 analysis is not arguing that the paper contract

15 itself is backdated somehow?

16   A.   I am not offering any opinions on the

17 paper contract at all.

18   Q.   And there's no computer evidence that

19 you found suggesting that Mr. Zuckerberg did not

20 sign page 2 of the paper contract?

21   That's a double negative, I can ask it

22 a little more clearly.

23   A.   Sure, that would help.

24   Q.   Did you find any computer forensics

25 evidence suggesting that Mr. Zuckerberg was not

1   B. Rose

2   the person who signed the second page of the

3   paper contract?

4   MR. SOUTHWELL: You're talking about

5   the original paper Work For Hire document

6   that was presented for production?

7   MR. BOLAND: Correct.

8   A.   The forensic evidence that we found

9   overwhelmingly indicates that the StreetFax

10   contract is authentic; therefore -- and the

11   evidence also indicates with all the manipulation

12   that the Work For Hire contract is a fake, so I

13   would say that that evidence would lead me to

14   conclude, without even having to analyze the

15   paper, which I have no opinion on and I am not an

16   expert on, that any paper document presented that

17   purports to be the Work For Hire document signed

18   by Mark Zuckerberg is a fake.

19   Q.   What I'm asking you is, is the computer

20   forensic evidence, is there any that tells you

21   that the person who put a signature on page 2 of

22   the paper contract was not Mark Zuckerberg? Do

23   you have forensic evidence that points you to

24   that not happening, for example, an e-mail that

25   Mark Zuckerberg says, I never signed page 2 of

1   B. Rose

2   the contract, did you find anything like that?

3   A.   We did not find anything like an e-mail

4   from Mr. Zuckerberg disclaiming that he'd signed

5   page 2 of that contract.

6   Q.   Okay.

7   Did you find any Web history that

8   supports an argument that Mr. Zuckerberg didn't

9   sign page 2 of the paper contract?

10   A.   I mean, again, beyond, you know, some

11 of the Internet history providing some evidence

12 that, you know, the StreetFax contract is

13 authentic, the other contract is fake, no.

14   Q.   Did you visually compare a copy of page

15 2 of the paper contract with page 2 of the

16 StreetFax contract, looking at them side by side?

17   A.   I probably have looked at them side by

18 side before. I don't recall.

19   Q.   Do you recall what your reaction was to

20 that comparison? Did they look the same to you

21 or different?

22   A.   I don't recall.

23   Q.   Now --

24   MR. SOUTHWELL: If you are going to a

25   different topic, we are approaching 3-1/2

1   B. Rose

2   hours.

3   Do you know how much more you think

4   you've got planned?

5   MR. BOLAND: I don't really know. I

6   will probably go over 3-1/2 a little bit.

7   MR. SOUTHWELL: When would you like to

8   take a lunch break? I would like to take a

9   little lunch break.

10   MR. BOLAND: We can do that now.

11   Do you want to?

12   MR. SOUTHWELL: How much more do you

13   think you have?

14   MR. BOLAND: Probably an hour, I'm

15   guessing.

16   MR. SOUTHWELL: Do you want to go off

17   the record, then, at this point?

18   MR. BOLAND: Let's go off the record,

19   we can do that.

20   (Lunch recess: 2:09 p.m.)

21

22

23

24

25

1   B. Rose

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

3   (Time noted: 3:05 p.m.)

4   MR. BOLAND: We can start the tape.

5   THE VIDEOGRAPHER: And we are rolling.

6   MR. DUPREE: Timewise, I know you

7   requested, I think, three and a half hours,

8   which I think we are probably at about that

9   limit now. I am not going to shut things

10   down, but I wanted to call that to your

11   attention.

12   MR. BOLAND: Yes, we are a little bit

13   over. Probably another hour or so and that

14   will wrap it up, presumably.

15   MR. DUPREE: Hopefully we can do that

16   quickly.

17   MR. BOLAND: Yes, I will.

18 B R Y A N   J.   R O S E,   resumed and

19   testified as follows:

20 EXAMINATION BY (Cont'd)

21 MR. BOLAND:

22   Q.   Mr. Rose, in addition to the two TIFF

23 images which were named Scan0001 and 0002, you

24 didn't find any other -- you found those on the

25 computer in one location and that was it,

1   B. Rose

2   according to your report, if I'm recalling it

3   correctly, you didn't find them anywhere else?

4   I'm saying the Ceglia media, not the

5   Sidley & Austin servers now.

6   A.   So we found -- so we found the TIFF

7   images in the Outlook Express mailbox, we also

8   found what appeared to be deleted versions that

9   had been created on the hard drive immediately

10   before being sent, which is why we determined

11   they appeared to be copied from the hard drive

12   and then sent from the hard drive, but we

13   believed those copies represented those files

14   because the file size and file name, but in terms

15   of an actual copy with content, although one of

16   the deleted files was partially recoverable in

17   terms of content, that was the only location was

18   the Outlook Express file.

19   Q.   And the comment you just made about

20   believing that those files were the same, let's

21   talk about that for a moment.

22   The deleted versions had the same file

23   name as the versions you actually found and they

24   had the same file size?

25   A.   The same file size, in addition to one

1   B. Rose

2 of them was partially recoverable and the content

3 was the same.

4   Q.   And what's the likelihood that those

5 files that had the same file name and the same

6 file size were in fact versions of the two files

7 that you did find, what would be your opinion on

8 that?

9   A.   I think it's very likely. Certainly

10 for the one -- I would say for the one -- very

11 likely, particularly given the fact we were able

12 to recover some content, compare that.

13   Q.   Even without the content, is it fairly

14 likely they are same?

15   A.   Yeah.

16   Q.   Is that a common way that forensic

17 experts will reach that conclusion in general is

18 if they have two files with the same name and the

19 same file size, but one of them the content is

20 missing, they will conclude it's likely that

21 that's a copy?

22   A.   I think it depends on the context, but

23 in general, yes. I mean, you know, the file

24 name, depending on what you're comparing, can be

25 more or less persuasive, depending on the

1   B. Rose

2   circumstances. Comparing the file size, you

3   know, it's one way to reach a conclusion the two

4   files are the same.

5   Q.   Can you, on this similar topic, on page

6   54 of Exhibit 1, which is the version of your

7   report that we provided you today that has the

8   file stamp across the top, do you see on page 54

9   you are talking about a missing USB device and

10   links, link files on a Toshiba laptop that

11   reference two files that your report indicates

12   you believe were on that missing USB device?

13   Do you see where I'm referring to

14   there?

15   A.   So the -- at the top of the page it's a

16   list of USB devices which were attached to

17   various PC media but were not produced.

18   Q.   Right.

19   A.   And then the discussion does include

20   two files which were link files were found on a

21   Toshiba laptop, two files on a USB device, yes.

22   Q.   Right.

23   And those are the files -- those are

24   two files that I believe -- correct me if I'm

25   wrong -- you're saying they were named -- well,

1   B. Rose

2   yeah, what's a link file, if you can just

3   describe that for the Court?

4   A.   It's essentially like a shortcut, I

5   mean, it's a file, your computer puts down a link

6   file so that it can recall a document quicker, it

7   is a shortcut file, it's a pointer, essentially.

8   Q.   In about the third full paragraph you

9   start talking about on the Toshiba satellite

10   laptop.

11   Do you see that?

12   A.   Mm-hm.

13   Q.   And then you name the two link files?

14   A.   Yes.

15   Q.   And the embedded metadata, these link

16   files show that they point, what does that mean,

17   the embedded metadata, what are you referring to

18   there, these link files show that they point to a

19   removable device? Can you explain that?

20   A.   So if you analyze the link file itself

21   you can see essentially to what it's pointing,

22   generally whether it's an Internet location,

23   whether it is a removable device location, so

24   that would just indicate that the metadata

25   associated with the files, which is just, you

1   B. Rose

2   know, information about the -- data about data,

3   right, so it is data about the files, we were

4   able to determine from that that it pointed to a

5   USB removable device rather than to the Internet

6   or some other location.

7   Q.   And the link is not an actual file,

8   it's just a pointer?

9   A.   Well, it's an actual file, I mean, it's

10   a link file, but it's not -- it is a pointer to

11   another file, yes.

12   Q.   It isn't the file that it is pointing

13   to, it's just a pointer to it?

14   A.   So a link file to the Zuckerberg

15   contract page 1 TIFF is not the actual TIFF

16   document, it's a pointer to that document.

17   Q.   And it's not a copy of the actual

18   document, it's just a pointer?

19   A.   No, yes.

20   Q.   So that file, as you put in your report,

21   is one of the evidence, pieces of evidence under

22   a claim the defendants -- you know the defendants

23   have made a claim of spoliation of evidence

24   against Mr. Ceglia; right? Are you aware of

25   that?

1   B. Rose

2   A.   I don't -- I mean, a formal claim, I

3   know that there have been allegations of

4   spoliation, yes.

5   Q.   And this is in your report two TIFF

6   files which your report indicates existed at one

7   time on removable media; true?

8   A.   Mm-hm.

9   Q.   But yet weren't produced in discovery;

10   true?

11   A.   Correct.

12   Q.   And --

13   A.   I should point out existed on removable

14   media subsequent to the filing of the complaint.

15   Q.   I'm going to show you -- I don't know

16   if I have two copies or not, so your lawyers may

17   have to look over your shoulder. I thought I

18   did.

19   MR. BOLAND: Could you mark this as

20   Exhibit -- I think we're on 3.

21   (Rose Exhibit 3, supplemental

22   declaration of Paul D. Ceglia, marked for

23   identification, as of this date.)

24   Q.   And this is document number -- this is

25   Exhibit 3, document number 139-2 filed in this

1   B. Rose

2   case, it's entitled "Supplemental Declaration of

3   Paul Ceglia."

4   Do you see that, Mr. Rose?

5   A.   I do.

6   Q.   Can you look at paragraph 6 of that

7   document, and it should indicate there that he

8   produced by way of Mr. Argentieri two files with

9   the same file name that we were just talking

10   about from your report.

11   Go ahead and confirm that that's what

12   those files names say.

13   A.   It actually appears to be a different

14   file name in that the file name cited in

15   Mr. Ceglia's affidavit includes underscores and

16   not spaces.

17   Q.   And does the file name that there's a

18   link file to --

19   A.   And just to be clear, in a file-naming

20   convention that's not a small difference; to me

21   they're different file names.

22   Q.   And the file name in your report does

23   not include an underscore?

24   A.   It does not.

25   Q.   And is that the accurate file name for

1   B. Rose

2   that file?

3   A.   I believe so.

4   Q.   Can you check out paragraph 49, please.

5   A.   Okay.

6   Q.   Does that file name seem to be the same

7   two files names as we were just talking about in

8   your report?

9   A.   So now we are in paragraph 49 and 50?

10   Q.   Yes.

11   A.   It does appear to be the same file

12   names.

13   Q.   And this is a declaration by Mr. Ceglia

14   of items he has produced; true?

15   A.   I'm just looking at the entire document.

16   So it's not clear to me what he's

17   stating here. I mean, it appears to be a list

18   of -- initially a list of documents that are in

19   the possession of various groups, as I understand

20   at some point who had been employed or retained

21   by Mr. Ceglia, so he lists documents which are in

22   their possession and then there's a certification

23   in 173 that indicates that all of the above are

24   being produced to defendants on August 29, 2011.

25   To the extent -- I mean, I guess this

1   B. Rose

2   is a little ambiguous, but to the extent 173

3   refers to everything listed in the proceeding,

4   172 paragraphs, that would be the case.

5   Q.   And do you know the file size of

6   Zuckerberg, the two files we were just talking

7   about from your report that were on the USB

8   drive?

9   A.   I do not.

10   Q.   Do you know the file size for the two

11   files that were in paragraph 49 of the

12   declaration that you just read?

13   A.   I do not.

14   Q.   Would it surprise you to learn that

15   they are the identical file size?

16   A.   I don't know that it would surprise me

17   or not surprise me.

18   Q.   What's the likelihood that the file in

19   paragraph 49 of his declaration is an exact copy

20   of the files you reference in your report from

21   the USB drive if the file names are the same and

22   the file sizes are the same, what's the

23   likelihood those are the same files?

24   MR. DUPREE: Just for clarification,

25   you are talking about file size.

1   B. Rose

2   Are you talking about the linked files

3   or the actual files?

4   MR. BOLAND: Actual files.

5   A.   So if the actual files have the same

6   name and the same file size, although -- I mean,

7   you couldn't determine file size from the link

8   files themselves, so you'd have to have the files

9   as they existed on the removable media and the

10   files that exist -- is it -- I'm sorry, which

11   expert was this? Mr. Stewart?

12   If you had the name in the files --

13   well, if you had the files, you could compare the

14   content. If you just the name and the file sizes

15   and it had the same name and the same file size I

16   guess I would conclude, depending on if there

17   were any other circumstances surrounding that,

18   that it's likely they're the same.

19   Q.   So you're saying a link file cannot

20   tell you the file size of the file it is pointing

21   to?

22   A.   I think generally link files don't show

23   you the size, but --

24   Q.   But can they?

25   A.   I don't know.

1   B. Rose

2   MR. BOLAND: Can you mark this as

3   Exhibit 4, please.

4   (Rose Exhibit 4, five-page document

5   headed "Shortcut file," marked for

6   identification, as of this date.)

7   MR. DUPREE: Is this a document that

8   was filed in the case?

9   MR. BOLAND: No.

10   Q.   Mr. Rose, this is Exhibit 4, this is a

11 document prepared by our expert.

12   A.   Yes.

13   Q.   The first three pages are -- the first

14 two pages are the link file metadata for

15 Zuckerberg contract page 1 TIFF and Zuckerberg

16 contract page 2 TIFF from, as you see there, the

17 removable media, the same link files you refer to

18 in your report.

19   Do you see the file size that's listed

20 on that contract page1.tif that ends in 036?

21   A.   I do.

22   Q.   And on page 2 the file size ends in 172

23 for the second one?

24   A.   Correct.

25   Q.   Can you flip to the second to last page

1   B. Rose

2 of Exhibit 4.

3   A.   Second to last page, that's the

4 properties screenshot for Zuckerberg contract,

5 page 1, yes.

6   Q.   Exactly, properties screenshot.

7   And do you see the file size for

8 Zuckerberg contract page 1 the actual TIFF file

9 that was produced is referenced in the

10 declaration and it ends in 036 as well, it's the

11 same file size; true?

12   A.   Yes, it appears to be.

13   Q.   And then the last page is a screenshot

14 of the properties of Zuckerberg contract page 2

15 that was produced to defendants and it also ends

16 in 172, but it's the identical file size to the

17 one from the link file; right?

18   MR. DUPREE: And I'm just going to

19   object to the use of the document because we

20   don't know what it is, it hasn't been

21   verified.

22   MR. BOLAND: Very well.

23   Q.   You would agree that those file sizes

24 are the same?

25   A.   Yes, in comparing link files to the

1   B. Rose

2   screenshot you showed me.

3   Q.   So assuming -- we'll go with a

4   hypothetical -- that those, that data on that

5   exhibit you just reviewed is all accurate

6   regarding the link files and the actual files

7   that were produced to the defendants, what is the

8   likelihood that the files that you identified in

9   your report as missing from -- along with a USB

10 device were in fact produced to the defendants?

11   MR. DUPREE: Object to form, calls for

12   speculation.

13   Q.   Just what's the likelihood,

14 probability, whichever word you choose?

15   MR. DUPREE: Same objection.

16   A.   I would say it's likely, but, you know,

17 without having the two files to compare, I

18 couldn't say conclusively.

19   Q.   You used the phrase fraud or evidence

20 of fraud several times during your testimony

21 today; is that correct?

22   A.   I believe so, yes.

23   Q.   Are you aware that there is actually a

24 certification for people to obtain if they want

25 to be a fraud examiner or a fraud expert? Are

1   B. Rose

2   you aware of that?

3   A.   I am.

4   Q.   Do you have such a certification?

5   A.   Well, I do not. To my knowledge, the

6   CFE you're talking about is not a digital

7   forensic certification.

8   Q.   Fair enough.

9   I was just asking, you don't have that

10 certification?

11   A.   No, I do not.

12   Q.   Are you aware that plaintiff's expert

13 Mr. Broom does have that certification?

14   A.   I am not aware of that.

15   Q.   Did you review his report and his CV?

16   A.   I don't know that I -- I did review his

17 report, I don't know that I reviewed his CV.

18   Q.   I think I marked his report --

19   A.   I have it.

20   Q.   -- as Exhibit -- could you tell me what

21 exhibit number is on there?

22   A.   Exhibit 2.

23   Q.   Can you look at page 29 of Exhibit 2,

24 again using the numbers in the upper right-hand

25 corner.

1   B. Rose

2   A.   29, yes.

3   Q.   And the third full paragraph, if you

4   could read there where it starts with the U.S.

5   Department of Justice.

6   A.   Mm-hm.

7   Q.   Mr. Broom provides -- by the way, are

8   you familiar with that document that he refers to

9   in that paragraph?

10   A.   I'm not.

11   Q.   You've never read it?

12   A.   Not to my knowledge.

13   Q.   Is the Department of Justice a reliable

14   source for computer forensics guidelines and

15   information, generally speaking?

16   A.   I don't know that I would offer an

17   opinion on that one way or the other.

18   Q.   Are there experts of a different

19   standard than experts outside of the government?

20   Are they not quite as good? Are they relatively

21   the same?

22   A.   I think it depends on the expert.

23   Q.   Do you see the quote in the next

24   paragraph, if you could read that and tell me if

25   you agree with that quote from that document.

1   B. Rose

2   A.   I think I would generally agree with

3   that statement.

4   Q.   And on the top of page 30 the quote

5   there which says "Caution. If the date and time

6   associated with the e-mail are important to the

7   investigation, consider that this received time

8   recorded in the e-mail header comes from the

9   e-mail server and may not be accurate."

10   Do you agree with that caution there?

11   A.   I would hesitate to agree or disagree

12   with that because it appears this received time

13   appears to be referring to something that

14   preceded this statement, and I don't know what

15   that is. I mean, you've got -- you've got a

16   selected quotation here referring to some prior

17   paragraph that is not included.

18   Q.   Let me ask you, when an e-mail is going

19   through an e-mail server, does the received time

20   of that e-mail come from the server or from the

21   person's computer who receives the e-mail?

22   A.   So if you're looking at the copy -- I

23   mean, it depends on what copy you are looking at,

24   right, so if you're looking at the copy as it

25   flowed, for instance, through the Internet

1   B. Rose

2   headers as we discussed, it would be appended by

3   the server. If you're looking at it on the

4   actual machine itself, the received time would

5   appear based on the system clock of the computer

6   used to do it.

7   Q.   And in the e-mails that you evaluated

8   the content of the Word documents which you

9   evaluated where my client copied and pasted

10   e-mails, which is his statement, do you know

11   whether that data you just referred to came from

12   an e-mail server or from my client's computer?

13   A.   Well, I mean, they appear to -- I mean,

14   they purport to be Hotmail e-mails, so they would

15   have been accessed through the Internet and

16   generally would reside on Hotmail servers.

17   Does that -- if I understand your

18   question --

19   Q.   So is the date and time that that

20   e-mail was received as it's reflected in that,

21   those Word documents, is it your opinion that

22   that information, that data came from the Hotmail

23   server or came from my client's computer clock on

24   which -- the computer he was using to copy and

25   paste those e-mails?

1   B. Rose

2   MR. DUPREE: Object to form.

3   A.   Specifically with the e-mails that are

4 part of the copy and paste?

5   Q.   Yes.

6   A.   I mean, I don't think those are

7 legitimate e-mails, so I think they've been

8 edited and manipulated and altered, so, I mean, I

9 think the forensic evidence shows that these are

10 Word documents that were generated and altered.

11   Q.   Is it your opinion that no part of

12 those Word documents came from any e-mail between

13 Mr. Ceglia and Mr. Zuckerberg?

14   A.   I think it likely that some e-mail,

15 some underlying Hotmail was used as a template,

16 which is why we see the time zone anomaly.

17   Q.   I'm asking about the content of the

18 e-mail itself.

19   Are you saying that all that content

20 was manually typed into that document by my

21 client or just some of it?

22   A.   I don't know the answer to that

23 question.

24   What I am saying is that the e-mails

25 themselves show clear signs of manipulation, so

1   B. Rose

2   whether he's taking e-mails and editing them or

3   generating them out of whole cloth from a

4   template drawn from an msn e-mail he has, I don't

5   know.

6   Q.   And the evidence of manipulation, just

7   to be clear, is the time zone anomaly is one of

8   the elements of the manipulation evidence; true?

9   A.   True.

10   Q.   The formatting issues we discussed,

11   Tuesday being one of the references, that's the

12   other evidence?

13   A.   True.

14   Q.   What else?

15   A.   I mean, you also have the issue that

16   the documents themselves all have been backdated,

17   which is further evidence that they are not

18   genuine documents.

19   Q.   We have backdating.

20   Anything else other than those three

21   items?

22   A.   Not that I can think of right now.

23   Q.   The next quote that's on page 30 --

24   A.   Oh, I -- let me amend myself.

25   I actually think not only do you have

1   B. Rose

2   backdated documents, but you have multiple

3   versions of various documents, which is generally

4   something you would not expect to see and in our

5   experience it is consistent with people trying

6   to -- in forgery cases trying to draft fraudulent

7   documents as they sort of experiment and go

8   through various drafts and versions.

9   Q.   Does Stroz Friedberg have more than one

10   client that you are being paid by currently, just

11   as a general rule?

12   A.   As a general rule, yes.

13   Q.   Do you use fee agreements that are

14   written with those clients?

15   A.   Yes.

16   Q.   Are you here to tell this court that

17   Stroz Friedberg types from a blank page every

18   time they rewrite a fee agreement, they just

19   start out with a blank page and start writing or

20   do you use a previous version and update it for

21   each new client?

22   A.   I wouldn't want to speak for what

23   everybody does. I think generally you would work

24   off either a template or off a pre-existing

25   agreement and substitute a different client in.

1   B. Rose

2   Q.   So on your computer and the computer of

3   other employees of Stroz Friedberg there are

4   multiple versions of your fee agreement sitting

5   there today; true?

6   A.   True, but there are -- I mean, let's

7   look at the example.

8   There are multiple fee agreements, so,

9   yes, there are multiple versions. My fee

10 agreement with Gibson, Dunn in one case might be

11 very different with a different law firm in

12 another case, so I would have two copies of those.

13   What you generally would not expect to

14 see is, if this was a true cut-and-paste

15 operation and I was just saving documents, I

16 would cut and paste and I would save the

17 document, I wouldn't have three different

18 versions of it.

19   The reason you have different versions

20 of documents on our system in terms of a fee

21 agreement is because to produce new fee

22 agreements we have to edit it, and so to the

23 extent that there are multiple versions of that

24 contract, yeah, I think that this cut-and-paste

25 operation, I think those multiple versions are

1   B. Rose

2   indications that he's edited this document over

3   time, which frankly shouldn't happen if this was

4   just a true cut-and-paste of those e-mails, he

5   shouldn't be editing them.

6   Q.   Maybe we're talking about different

7   things. I thought you were discussing the Work

8   For Hire document different versions now.

9   A.   I'm talking about different versions of

10   the three Word documents contained in the

11   purported e-mails.

12   Q.   Did you have a written -- well, let's

13   stay on this topic since I accidentally waded

14   into it.

15   When you negotiate with someone who's

16   hiring your firm do copies of your agreement go

17   back and forth by e-mail until you arrive at a

18   final one that both sides agree to?

19   A.   Occasionally.

20   Q.   And that would result in different

21   versions potentially of that same document being

22   on your computer?

23   A.   Yes.

24   Q.   And that's not an indication of fraud

25   by you guys?

1   B. Rose

2   A.   No.

3   Q.   Or by the recipient?

4   A.   No.

5   Q.   It's just how you do business?

6   A.   Contract negotiations, no, I would not

7   view them as evidence of fraud.

8   Q.   But you did find different versions of

9   a contract in this case in electronic form on

10   Mr. -- on media that you analyzed?

11   A.   Of the Work For Hire contract?

12   Q.   Yes.

13   A.   Yes.

14   Q.   And that in and of itself is not

15   evidence of fraud?

16   A.   If you ignore the margin manipulations

17   and the backdating and the other problems

18   associated with those documents, yes, that

19   standing alone, if you put the other evidence

20   aside, is not, the mere existence of versions is

21   not evidence of fraud.

22   I do think, and just to be clear, I do

23   think when you have something like the Word

24   documents containing the purported e-mails, when

25   you have multiple versions, I think in that case

1   B. Rose

2   that is, given the circumstances, evidence of

3   fraud.

4   Q.   What's your opinion about the

5   reliability of metadata in Microsoft's Windows

6   operating system?

7   A.   I think that is too general a question

8   for me to answer.

9   Q.   Does the Windows -- okay.

10   Metadata associated with files gets

11   placed into those files somehow in relation to

12   the operating system and the computer clock.

13   Am I right?

14   A.   So, yes, I mean, certainly the time and

15   date stamps, for instance, would be dependent on

16   the system clock, yes.

17   Q.   And are you aware that Microsoft

18   generally discredits the reliability of the last

19   accessed time stamp since it's easily altered by

20   system operations that are not sort of user

21   initiated?

22   MR. DUPREE: Objection, vague.

23   Q.   If you are aware.

24   A.   I am not aware as to Microsoft's

25   opinion on the last access date.

1   B. Rose

2   Q.   Are you aware of other individuals in

3 the field who have talked about Microsoft's

4 opinion in this way?

5   A.   I am not aware of anyone who has talked

6 about Microsoft's opinion regarding last access

7 dates.

8   Q.   And do you know a computer security

9 expert named Rebecca Mercuri?

10   A.   I do not.

11   Q.   Now, you brought up the concept of

12 backdating that you put into your report and your

13 conclusion is that -- I want to be clear -- that

14 a computer was backdated or that files were

15 backdated or is it both?

16   A.   Well, I think, in the circumstances

17 we're talking about it's taking an action with

18 the system clock to backdate it and then taking

19 an action with the document so that it picks up a

20 date which is not the true date.

21   In other words, if I have a Word document

22 and I want to backdate the creation date, before

23 I saved it on the computer I would backdate the

24 system clock of the computer, save the document

25 onto the file system, it's going to pick up that,

1   B. Rose

2   the creation date, as, you know, as pursuant to

3   the system clock.

4   Q.   And the way you determine backdating

5   here is by comparing different dates in metadata

6   associated with files; is that a fair statement?

7   A.   Well, I think that's one way in some

8   circumstances you could do it. You know, there's

9   other ways to do it, looking at system restore

10   points, looking at information regarding the

11   relationship between the system setting on the

12   computer and Microsoft's network time, I mean, so

13   there are other evidence of backdating, but one

14   way is to look at the relationship between

15   different dates.

16   Q.   Well, that's the way you used here, in

17   your report here?

18   A.   We also discuss, of course, the

19   examples of system restore points that are out of

20   order, should be sequential, and we talk about

21   one instance where the system clock was well off

22   of the time recorded by Microsoft, the system

23   generates an error log because it's so far off,

24   so I would say we discussed all three methods of

25   identifying backdating.

1   B. Rose

2   Q.   And all this backdating evidence that's

3   in your report comes exclusively from the Seagate

4   hard drive; true?

5   A.   I think that is not true.

6   Q.   Where else did you find backdating

7   evidence other than the Seagate hard drive, what

8   other computer did you find that on?

9   A.   I know there's evidence of backdated

10   documents on one of the -- I believe it was a

11   floppy disk.

12   Q.   Do you know where in your report you

13   talk about that floppy disk having evidence of

14   backdating?

15   A.   I will try to find it.

16   So on page -- there's a discussion of

17   backdating related to one of the versions of the

18   Work For Hire document that begins -- and I'm

19   using the upper, the page number on page 37.

20   Q.   Where was that file found? On a CD?

21   A.   It was found on a floppy disk.

22   Q.   It's true that a floppy disk, for

23   evidence of backdating, you have to find out what

24   computer it was actually inserted into, because

25   floppy disks don't have clocks; right?

1   B. Rose

2   A.   Let's be clear.

3   So the time itself of the files would

4   be appended by the computer that was used to

5   essentially save the document onto the floppy

6   disk; right?   That doesn't mean the floppy disk

7   itself is not going to contain evidence of

8   backdating.

9   For instance, in this case you have two

10 documents, you have documents which are last

11 accessed February 18, 2011 that are deleted

12 documents and you have another document that was

13 created on May 2nd, 2003 that sits on top of

14 those documents, or if that makes no sense, it's

15 inherently inconsistent and could only resolve

16 some system clock anomalies.

17   Q.   The deleted files had no content which

18 you could recover; true?

19   A.   That's correct.

20   Q.   And so there's no way to say whether

21 they connect there the same as the file that sits

22 over top of them?   I mean, you can't say it's the

23 same file as the one you have content from

24 because you don't have the content to compare it?

25   A.   Well, they are different names, so I

1   B. Rose

2   think that would be unusual, but it can't do a

3   content-by-content comparison, that's correct.

4   Q.   We were talking about the hourly rate

5   you charged and the hourly rates for everyone

6   else.

7   Do you know what your total billable

8   hours were that went into the work that produced

9   this report?

10   A.   I don't.

11   Q.   Is that something you could get from

12   your office? How difficult would that be to get

13   from whoever does accounting at your office?

14   A.   The total billable hours from myself

15   preparing this report?

16   Q.   And everyone else.

17   A.   I mean, you'd have to aggregate it from

18   the invoices, so it's not -- it's not right at

19   hand, but it would be a task that could be

20   completed fairly easily.

21   Q.   I would ask you if you could have

22   someone from your office compile that together.

23   The rules regarding experts, I think,

24   entitle us to a statement of the compensation

25   that you guys were paid for all of your study and

1   B. Rose

2   your testimony in the case, so --

3   MR. DUPREE: We'll see what we can do

4   on that.

5   Q.   What were your instructions when you

6   first started doing this gathering of evidence to

7   prepare this report?

8   You said several times in your

9   testimony we were charged with this, we were

10 charged with that, sort of -- instructed meaning

11 charged.

12   What were you instructed to do generally,

13 as far as your analysis?

14   MR. DUPREE: I just, for the record, I

15   want to make sure we don't get into

16   privileged areas.

17   I think it's acceptable for him to give

18   a high-level response, but I'm assuming

19   we're not going to get into the specific

20   contents of any communications he's had with

21   Gibson, Dunn lawyers?

22   MR. BOLAND: You're correct, yes, just

23   the high level.

24   Q.   What was your general approach? After

25 you had your conversations with the defense

1   B. Rose

2 lawyers, what did you understand you were

3 supposed to do?

4   A.   It has nothing to do with my

5 conversations with the defense attorneys. I

6 mean, the work to produce this report was done

7 pursuant to Electronic Asset Inspection Protocol,

8 which I'm sure you've read, it was issued by the

9 Court and sets forth what we are to do in terms

10 of an analysis, and the charge based on that was

11 to collect, preserve and analyze the Ceglia media

12 for evidence of the authenticity or

13 inauthenticity of the Work For Hire contract and

14 the purported e-mails and then it sets forth, of

15 course, various other procedural ways to identify

16 presumptively relevant material, produce it to

17 you first for privilege review and then produce

18 it to Gibson, Dunn, so when I talk about what we

19 were charged with doing, I'm talking about that

20 document that was issued by the Court, and my

21 understanding was agreed on between the parties.

22   Q.   In the Word documents that contain the

23 e-mail exchanges between my client and

24 Mr. Zuckerberg, how did you determine which one

25 of the dates in the metadata were the authentic

1   B. Rose

2   ones and which ones weren't the authentic ones?

3   A.   I'm not sure what you mean.

4   Q.   Well, if a creation date and an access

5   date somehow conflicted, how did you determine

6   which one was the one to rely on and which was

7   the one to say, well, that's obviously the wrong

8   date?

9   A.   I'm not sure I can answer that question

10   in the abstract, I'd have to -- I mean, these are

11   all fact-specific inquiries and depend on

12   circumstances.

13   Do you have a specific example?

14   I mean, for the purported e-mails, in

15   other words, documents, I mean, I think the

16   inaccuracy such as the time zone stamp is

17   something which is fairly clear, right? I mean,

18   things e-mailed in October should have a time

19   zone consistent with Eastern Standard Time.

20   In terms of the rest of it, you know,

21   these documents, based on our analysis of them,

22   are clearly edited, manipulated documents, so I

23   don't believe they are real e-mails and so making

24   a choice as to which one is the accurate date,

25   right, we don't have to do that and we are not

1   B. Rose

2   faced with that because frankly, you have a sent

3   and received time on the face of the e-mail and

4   it's a Word document. I don't have access dates,

5   I don't have modified dates that are sort of the

6   embedded data you would have if it were an e-mail

7   file.

8   Q.   Did you review the report by Jerry

9   Grant, plaintiff's expert?

10   A.   Yes.

11   Q.   And he evaluated exclusively the data

12   on the floppy disks in this case; true?

13   A.   That is what I recall him discussing;

14   whether that's exclusively, I'd have to look back

15   at the reports, but I do remember him focused on

16   that issue.

17   Q.   After reading the report did you have

18   any dispute with the accuracy of the forensic

19   data that he found?

20   A.   I don't recall specific disputes. I do

21   remember some questions about his analysis, but

22   it's been some time since I looked at that.

23   Q.   Do you recall today any specific

24   forensic data he recovered that you think is

25   somehow not the correct forensic information, not

1   B. Rose

2 his interpretation of it, but that he pulled the

3 wrong dates or he pulled the wrong information

4 somehow?

5   A.   Not that I recall as I sit here today.

6   (Rose Exhibit 5, article entitled "Real

7   Evidence, Virtual Crimes The Role of

8   Computer Forensic Experts" by Paul H. Luehr,

9   marked for identification, as of this date.)

10   Q.   I'm giving you Exhibit 5, Mr. Rose, it

11 is an article by someone named Paul, I don't know

12 how to pronounce his last name, L-u-e-h-r.

13   A.   Luehr.

14   Q.   Do you know who that is?

15   A.   I do.

16   Q.   Who is that person?

17   A.   He is the managing director of Stroz

18 Friedberg in our Minneapolis office.

19   Q.   Can you look at the -- I guess it's the

20 third page from the end of all of this.

21   A.   Third page from the end?

22   Q.   Yes.

23   In the right-hand column near the

24 bottom, the last full paragraph, the second to

25 last full paragraph starts with the word "While."

1   B. Rose

2   Do you see that?

3   A.   Mm-hm.

4   Q.   It says here "While some computer dates

5 and time stamps will be conclusive, others may be

6 open to interpretation by competing experts.

7 Created, modified and accessed dates may be

8 viewed differently depending on whether a file

9 remained in one place or whether it was copied

10 and saved to several locations. In addition, log

11 files may vary by time zone, and metadata are

12 generally only as accurate as the underlying

13 computer clock time."

14   Would you agree with that statement

15 from his article?

16   MR. DUPREE: And just, for the record,

17   this appears to be about a 10-page

18   single-spaced article you have shown the

19   witness and he has not had an opportunity to

20   review the full article, obviously.

21   MR. BOLAND: True.

22   A.   Let me just read it again, so I can --

23   Q.   Very well.

24   A.   I think I would generally agree with

25 those statements.

1   B. Rose

2   Q.   Have you ever read that article before?

3   A.   I don't recall if I read it before.

4   Q.   But it's essentially a co-worker of

5   yours in Stroz Friedberg who wrote it; true?

6   A.   It's the managing director in our

7   Minneapolis office.

8   Q.   Do you know that person?

9   A.   I do.

10   Q.   Okay.

11   You mentioned you -- we had talked

12   about a residence in different locations and that

13   you'd go to Indiana occasionally and you'd use

14   your parents computer there; do you remember

15   talking about that?

16   A.   Yes.

17   Q.   Have you ever used your parents'

18   computer to e-mail documents to lawyers in cases

19   that you're working on using their account?

20   A.   I don't recall one way or the other.

21   Q.   So it's possible you've used your

22   parents' e-mail account to send documents to

23   lawyers in cases on which you are working?

24   A.   Is it possible?

25   It's possible.

1   B. Rose

2   Q.   How many times do you think that might

3   have happened?

4   A.   I don't have any recollection of it one

5   way or the other.

6   Q.   Did you find any forensic evidence in

7   your analysis before or after producing this

8   report to dispute Mr. Ceglia's declaration that

9   he sent as an attachment a copy of the Facebook

10   contract to Mark Zuckerberg before April of 2003?

11   MR. DUPREE: Object to form.

12   A.   Could you repeat it?

13   Q.   Did you find any evidence before or

14   after you produced your report there to dispute

15   my client's declaration under oath that he sent

16   at least one e-mail to Mark Zuckerberg before

17   April 2003, when they signed the contract, that

18   included as an attachment the Facebook contract

19   in electronic form?

20   MR. DUPREE: Same objection.

21   A.   And what's the Facebook contract?

22   Q.   The two-page document that my client

23   has presented as an authentic contract between

24   him and Mr. Zuckerberg which mentions Facebook.

25   A.   So during our analysis we did not find

1   B. Rose

2   any evidence of that, I don't think we found any

3   evidence regarding that whatsoever.

4   Q.   So no evidence to dispute his claim

5   that he sent that e-mail?

6   A.   I mean, we didn't find any evidence

7   regarding that issue at all.

8   Q.   And regarding the TIFF images and

9   physical size, et cetera, do you know how to use

10   the metadata associated with those TIFF images

11   and calculate the physical size of that file, the

12   mathematical formula that's used by digital

13   imaging experts to sort of tell you the physical

14   size of the file by using the pixels that are

15   listed in the metadata?

16   A.   No.

17   Q.   And you mentioned a November 2003

18   e-mail production from Harvard; do you recall

19   testifying about that?

20   A.   Yes.

21   Q.   And that there were some e-mails from

22   that production that were not in later productions;

23   true?

24   I think that's what you testified.

25   A.   My recollection is that there were some

1   B. Rose

2 unique e-mails contained in the November 2003

3 collection that were not contained in the October

4 2010 collection and subsequent, obviously

5 subsequent collections.

6   Q.   And were any of those e-mails that

7 weren't in the later collections relevant to this

8 case based upon your evaluation of them?

9   A.   I don't recall.

10   And let me just be clear about that.

11   In identifying unique e-mails, what we

12 were doing is essentially deciding what to add to

13 an aggregate review set, so what I'm working off

14 is essentially an aggregate set, so I don't

15 recall whether, you know, what particular source

16 each e-mail came from.

17   Q.   And the floppy disk which contained

18 these Word documents that my client has said are

19 the copy-and-pasted e-mails, plaintiff's expert

20 Jerry Grant determined that the versions of

21 Microsoft Word that those documents were created

22 in were all contemporaneous with the dates that

23 my client says he created them, 2003 and 2004.

24   Did you find anything to dispute that

25 conclusion of Mr. Grant?

1   B. Rose

2   A.   I don't have any information about the

3   versioning of those Word documents at this point,

4   so --

5   Q.   Who would have that amongst the people

6   who did work for you on this report?

7   A.   I don't know. It's certainly possible

8   that either Mr. McGowan or Mr. Novak would have

9   that information.

10   Q.   Would Mr. Friedberg have that

11 information?

12   A.   I doubt it.

13   MR. BOLAND: I just want to take about

14   a five-minute break and then I think we will

15   wrap it up.

16   MR. DUPREE: Okay.

17   We're off the record.

18   (Recess taken.)

19   THE VIDEOGRAPHER: The camera is on.

20   MR. BOLAND: All right. Back on the

21   record.

22 BY MR. ROSE:

23   Q.   Mr. Rose, just a few last questions.

24   Other than the four people associated

25 with the report there, can you give me the names

1   B. Rose

2   of anyone else who did any work on this case in

3   some way contributing to the report?

4   A.   I don't know that I can give you a full

5   and accurate list from memory. There are -- the

6   vast majority of the work, including the vast

7   majority of the forensics was done by Mr. McGowan

8   and Mr. Novak and together with them I primarily

9   supervised the matter and the three of us were

10   the primary drafters of the report, so most of

11   the work, the vast majority of the work was done

12   by us.

13   Now, to the extent small projects were

14   done by various people, there were certainly

15   other people who were involved at various stages

16   in other projects and I'm not sure -- I could

17   certainly reconstruct that for you, but I'm not

18   sure I could give you an accurate and

19   comprehensive list today.

20   Q.   Very well.

21   If you could reconstruct that, that

22   would be good.

23   Can give a ballpark on the number of

24   hours you spent? I know you don't know exactly.

25   I'm assuming it's not a thousand, but

1   B. Rose

2   maybe it is.

3   A.   I don't think it would be a thousand.

4   On the report, the case itself, I

5   mean --

6   Q.   On everything leading up to the

7   production of the report.

8   A.   So not just -- I mean, I just want to

9   be clear, because there's sort of an expedited

10 discovery phase and there's a pre-expedited

11 discovery phase, so the work, you know, I would

12 say that we were involved in the case prior to

13 the expedited discovery, I think, order which

14 came down on July 1st, I believe, of 2010, and

15 then there's been a significant amount of work

16 since then, so we're talking about everything.

17   Q.   Yes.

18   A.   Okay.

19   I don't. It would be more than a

20 hundred, it's less than a thousand, but --

21   Q.   Somewhere in there?

22   A.   Yeah, somewhere in there.

23   Q.   Now, is the term "fraud" that's

24 throughout your report, is that defined anywhere

25 in the computer forensics field? Is there is an

1   B. Rose

2   agreed definition of that amongst computer

3   forensics experts?

4   A.   I don't know if there's an agreed

5   definition of that among computer forensics

6   experts, I'm not aware of one.

7   Q.   So would it be fair to say that the

8   determination of fraud which you repeat in the

9   report is really your personal opinion, not an

10 expert opinion, since you're not a fraud expert?

11   A.   I would say it's an expert opinion, I

12 mean, it is an opinion based on our analysis of

13 the digital forensics evidence that we as digital

14 forensic experts uncovered, I would regard that

15 as an expert opinion.

16   Q.   And you feel it's appropriate to opine

17 about fraud when you are not a certified fraud

18 expert or fraud examiner?

19   MR. DUPREE: Object to form.

20   Q.   You feel that's appropriate?

21   A.   Yes.

22   MR. BOLAND: Can you mark this one last

23   thing, please, I think we are on 6.

24   (Rose Exhibit 6, article entitled

25   "Criminal Defense Challenges in Computer

1   B. Rose

2   Forensics" by Rebecca Mercuri, marked for

3   identification, as of this date.)

4   Q.   Exhibit 6, Mr. Rose, is an article by

5   Dr. Rebecca Mercuri, it's actually an excerpt

6   from a book.

7   A.   Okay.

8   Q.   I would like to draw your attention to

9   the paragraph on page 134 of that document, it is

10 actually the third physical page of the document.

11   A.   Okay.

12   Q.   And in the section 2.3, "Confusing Time

13 Stamps," do you see there's a third full

14 paragraph that reads "Although Microsoft

15 generally discredits the reliability of the last

16 access time stamp, since it is easily altered by

17 system operations that are not directly user

18 initiated, either or both prosecution and defense

19 may choose to use this metadata if it is helpful

20 to their construction. Best practice should

21 always be to disallow it for any use."

22   What's your opinion -- do you agree or

23 disagree with Ms. Mercuri's statement about --

24   A.   I disagree with that.

25   Q.   Have you had any training from

1   B. Rose

2   Microsoft on that topic?

3   A.   I have not, but let me give you a clear

4   example where I think that paragraph is clearly

5   incorrect.

6   There are examples, for instance, in

7   the report where a last-access date predates a

8   last-written-to date. That would be a

9   circumstance where, in fact -- it should not be

10   possible, right, you cannot open up a document

11   and modify it without accessing it, and so the

12   inconsistency itself is evidence of an anomaly.

13   In that case I think you could clearly rely on

14   the last-access date.

15   As I understand this, if you're talking

16   about looking at a particular last-access date

17   and saying I can conclusively determine when

18   somebody last accessed that file, I do agree that

19   it is a very fragile time stamp that can be

20   updated by a variety of things including user

21   action and system action, and so to the extent

22   you're talking about using it for that particular

23   purpose I think last-access dates are fragile and

24   should be -- they should be interpreted

25   accordingly.

1   B. Rose

2   I do think there are clear examples

3   where inconsistencies between last-access dates

4   and last-written dates, for example, there are

5   times when it should be used, so I would disagree

6   with that paragraph.

7   Q.   Has Microsoft ever issued, to your

8   knowledge, as a computer forensics expert, any

9   formal statements about relying on the access

10   date that the operating system stamps on the

11   files?

12   A.   I don't know about that one way or the

13   other.

14   Q.   Did you call Microsoft or contact them

15   in preparation of this report to find out if

16   those dates are reliable?

17   A.   No.

18   Q.   You're just assuming that they are?

19   A.   Again, you're going to have to give me

20   a specific example.

21   I don't think we in the report relied

22   on it in the way I just said, that we said we can

23   conclusively tell you that somebody accessed this

24   document on this date because of the last-access

25   date.

1   B. Rose

2   There are examples of times where we

3   use a last-access date as -- to inform our

4   opinion. I am giving you one example. If the

5   last-access date predates the last written-to

6   date, that's an anomaly which indicates to me

7   some kind of system clock problem or manipulation,

8   so, again, depending on the way we used it, I

9   think you'd have to give me a specific example

10   and I could address that.

11   I don't think we had just gone through

12   and necessarily assumed in all cases that last-

13   access dates are in fact reliable and in fact I

14   think, if you've read the report, we do note on

15   occasion that that is in fact a fragile time

16   stamp and can be updated by system activity.

17   Q.   Is fraud the only way these anomalies

18   that you've attributed to backdating could have

19   occurred?

20   A.   Well, again, I have to deal with

21   specific examples. I think there are examples,

22   for instance, of flip flopping time stamps, so

23   you're not just dealing with trying to determine

24   when something happened, but you're looking at,

25   you know, time stamps should not go -- should

1   B. Rose

2   not, you know, toggle back and forth, but when

3   you see that what you're seeing is, I think, an

4   example of some kind of system clock manipulation.

5   Again, you'd have to consider within

6   the circumstances and I think the various

7   motivations and what the documents are being used

8   for and how the particular manipulation affected

9   the interpretation of that document to determine

10   whether I would conclude it was fraud.

11   I mean, fraud is a conclusion that's

12   drawn from a complete analysis of the facts with

13   everything considered, right, so -- and again,

14   this is an overwhelming case of it, so if you

15   look at this case and you look at all of the

16   manipulations of data and you look at the

17   existence of the StreetFax contract and you look

18   at the manipulation of the Work For Hire document

19   and the backdating and the margin manipulation

20   and all of that example, that, I think, is a

21   relatively clear conclusion of fraud.

22   Having said that, if you are looking at

23   a particular metadata anomaly, whether I would

24   conclude that in the context is fraud would

25   depend on each individual example.

1   B. Rose

2   Q.   My question is, let's put aside the

3 constellation of things that you have brought up

4 many times. I'm talking about just a document

5 which has the anomaly you've identified, this

6 difference of dates.

7   That alone is not enough to say fraud,

8 just the single document with some anomaly in

9 dates; isn't that true?

10   A.   A single document with -- I mean, this

11 is a very general question. I don't know what

12 kind of anomaly in dates you're talking about.

13   I think there are examples of documents

14 where you have date anomalies, but if you just

15 had that standing alone you couldn't draw a

16 conclusion of fraud.

17   Q.   And why couldn't you draw fraud from

18 just that alone, a date anomaly?

19   A.   I think there are examples where you

20 couldn't, I think there are probably examples

21 where you could. It's all fact specific, so --

22   Q.   Tell me about one where you couldn't.

23   You had just a date anomaly on a Word

24 document, but you would not be comfortable saying

25 it's the result of fraud.

1   B. Rose

2   Why not?

3   Isn't every date anomaly fraud?

4   A.   No.

5   Q.   Well, how else could a date anomaly

6 happen if it's not fraud?

7   A.   Well, let me give you a clear example

8 because -- in this case.

9   You have the Sidley & Austin

10 intermediary server which had the time zone

11 setting that's incorrect. I would not conclude

12 from that that somebody at Sidley & Austin is

13 engaged in fraud because I see no -- it's a

14 misconfiguration which could easily occur, it

15 doesn't affect the actual dating of the document

16 itself because the time's correct, it's an

17 intermediary server, so you have the real time

18 appended by the server after it, it's something

19 which could easily escape notice at a place like

20 Sidley & Austin and I cannot think of any reason

21 that anybody would want to manipulate that time

22 zone stamp and the time zone stamp alone for any

23 purpose, for any fraudulent purpose.

24   So that's an example of one where, I

25 think, if you look at that and the circumstances

1   B. Rose

2   it would be very difficult to draw the conclusion

3   of fraud from that, I think it's clearly not, but

4   again, you're looking at all the circumstances.

5   Q.   But in reality there could have been

6   someone who was a rogue employee from Sidley &

7   Austin for some other purpose not related to this

8   case who manipulated their clock and was

9   committing a fraud internal to the company or

10   internal to the law firm, that's hypothetically

11   possible; right?

12   A.   I cannot think of a single fraud that

13   you could perpetrate merely by misconfiguring the

14   time zone setting and not the time itself and

15   only doing it on the intermediary server, so I

16   think that is a farfetched hypothetical.

17   Q.   So your opinion in this case that

18   there's -- the reason you think there's

19   backdating and fraud with the backdating isn't

20   because of one specific document that you can

21   conclude fraud from; true? It's a collection of

22   everything together, it's in context, as you say?

23   A.   No, no. I think you have to take it

24   case by case.

25   So there are examples, for instance,

1   B. Rose

2   you know, you look at some of these, you look at

3   some of these documents and I think you look at

4   them alone, they are clearly backdated, the

5   documents themselves are backdated. Now -- and

6   that happens multiple times throughout the thing.

7   If I see a system clock which generates

8   an error because it's 94 days off of the

9   Microsoft time, I know the system clock is off;

10   right?

11   If I see restore points that go --

12   which should be sequential and go from December

13   2010 to September 2010, I know that there's been

14   manipulation of the system clock.

15   So in all these examples we're not

16   saying, Hey, there's been manipulation of the

17   system clock because we're considering this piece

18   of evidence in the context of the entire case.

19   What we're doing is saying, Okay, let's

20   look at this document. This document is clearly

21   backdated.

22   Let's look at this document. This

23   document is clearly backdated and has been

24   manipulated.

25   Let's look at this document. This

1   B. Rose

2   document has clearly been backdated.

3   Let's look an example of the error

4   report, that is a clear example of where the

5   system clock is off.

6   So you take each individual evaluation

7   separately, so you look at a document -- I'm not

8   necessarily -- I'm looking at the metadata of

9   that, I'm not evaluating in the context of the

10   case, I'm evaluating that particular document.

11   When I see that's backdated and when I

12   see backdating in multiple versions and I see

13   manipulation of documents, you put all of that

14   together and you draw your ultimate conclusion

15   which in our case is, I think, clear evidence the

16   StreetFax contract is authentic and the Work For

17   Hire contract is not, so that ultimate conclusion

18   is built upon what I think is overwhelming

19   evidence from a variety of different sources that

20   show fraud, but each individual instance is

21   evaluated on its own and then you determine how

22   to interpret that in the broader context of the

23   case.

24   Q.   Whenever you use the word "backdating"

25   is that synonymous with a fraudulent motive?

1   B. Rose

2   A.   I think it -- in my experience you

3 generally see backdating in a case of document

4 manipulation, document fraud, it's certainly not

5 synonymous with it.

6   Q.   And the 94-day system clock difference

7 you just talked about, that's on the Seagate hard

8 drive, that's what you're referring to in the

9 report?

10   A.   I believe so.

11   Can I refresh my recollection?

12   Q.   Sure.

13   MR. DUPREE: Are we about to wrap

14   things up, I hope?

15   MR. BOLAND: Yes.

16   MR. DUPREE: Okay. Thank you.

17   A.   Yes.

18   Q.   And the copy of the StreetFax contract

19 that's in Exhibit 1 there, you would agree with

20 me in large part is not legible, either one of

21 those pages, the way it is in that document?

22   MR. DUPREE: This is the version you

23   handed him today?

24   MR. BOLAND: Yes.

25   A.   So we're back to -- so we're back to

1   B. Rose

2 Exhibit F, second page --

3   Q.   Exhibit H was the first page.

4   A.   So Exhibit F is the second page and

5 Exhibit H is the first page of the StreetFax

6 contract.

7   Q.   And in the size that they are in that

8 report -- I'm sorry, in that exhibit I gave you,

9 in large part they are not legible?

10   A.   I would say these exhibits, based on

11 size and, you know, the lightness of the ink and

12 other, you know, the way they appear in this

13 report, I mean, there are certain parts of that

14 that are legible, but most of it I would say

15 would be illegible.

16   Q.   And Mr. Southwell had a version where

17 the document was significantly magnified.

18   Have you ever seen that version of the

19 StreetFax images?

20   A.   I saw --

21   MR. DUPREE: Object to form.

22   I'm not sure what we are talking about,

23   that's all.

24   Q.   Have you ever seen a larger -- a

25 version of that image that you just talked about

1   B. Rose

2   in those two exhibits that was magnified to be

3   close to an 8-1/2-by-11 piece of paper? Have you

4   ever seen that?

5   MR. DUPREE: Object to form.

6   Go ahead.

7   A.   I have seen larger versions of this.

8   Q.   Are they legible in all respects? Can

9   you read all the words of those larger versions,

10   if you know?

11   A.   I don't recall having any difficulty

12   reading it.

13   Q.   Do you know which one was given to the

14   Court, the smaller version of that exhibit or the

15   larger magnified version that you might have

16   seen?

17   A.   I do not.

18   Q.   And finally, in Mr. Broom's report he

19   talked about the BIOS battery.

20   What is that on a computer, a BIOS

21   battery?

22   A.   A BIOS battery? I am not sure I've

23   ever hear it called a BIOS battery. It tracks

24   certain information about the computer itself

25   such as the system clock settings and other

1   B. Rose

2   information.

3   Q.   Well, there's a battery on board the

4   mother board of most desktop computers at least;

5   right?

6   A.   I don't know.

7   Q.   How does a computer know what time it

8   is if you unplug it from the wall, for example?

9   Doesn't it have a battery that helps keep track

10   of the time for a while?

11   A.   I don't know.

12   Q.   Have you ever heard of a CMOS battery?

13   A.   No.

14   Q.   What happens to the time zone setting

15   of a computer if you unplug it from the wall for

16   a year, what will happen to it's ability to know

17   what time it is when you plug it back in?

18   A.   I don't know whether it retains that

19   the entire time or whether when you plug it back

20   in it resyncs with the system clock, network

21   clock, I should say.

22   Q.   This computer that the Seagate hard

23   drive came from, do you know if that computer was

24   ever unplugged for any period of time like a

25   year?

1   B. Rose

2   A.   I don't.

3   Q.   So at this point you're not qualified

4   to give an opinion about a CMOS battery or a BIOS

5   battery?

6   A.   I would not give an opinion about a

7   CMOS or BIOS battery.

8   MR. BOLAND: I have no further

9   questions, Mr. Dupree.

10   MR. DUPREE: We don't have any

11   redirect.

12   We are off the record.

13   (Time noted: 4:23 p.m.)

14

15   _____

16   BRYAN J. ROSE

17

18   Subscribed and sworn to before me

19   this _____ day of _____, 2012.

20

21   _____

22   Notary Public

23

24

25

1

2   C E R T I F I C A T E

3   STATE OF NEW YORK   )

4   : ss.

5   COUNTY OF NEW YORK   )

6

7   I, CARY N. BIGELOW, Court Reporter,

8   a Notary Public within and for the State of

9   New York, do hereby certify:

10   That BRYAN J. ROSE, the witness whose

11   testimony is hereinbefore set forth, was

12   duly sworn by me and that such testimony

13   given by the witness was taken down

14   stenographically by me and then transcribed.

15   I further certify that I am not

16   related to any of the parties to this

17   action by blood or marriage, and that I am

18   in no way interested in the outcome of this

19   matter.

20   IN WITNESS WHEREOF, I have hereunto

21   set my hand this 23rd day of July, 2012.

22

23   _____

24   CARY N. BIGELOW

25

1

2 ----------------- I N D E X ------------------

3 WITNESS   EXAMINATION BY   PAGE

4 BRYAN J. ROSE   MR. BOLAND   6

5

6 ------------------ EXHIBITS ------------------

22

23

24

25

1

2   **ERRATA SHEET**

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4   **212-279-9424**

5   NAME OF CASE: CEGLIA VS. ZUCKERBERG

    DATE OF DEPOSITION: JULY 18, 2012

6   NAME OF DEPONENT: BRYAN J. ROSE

7   PAGE   LINE(S)   CHANGE   REASON

8   ____|_____|_____|_____

9   ____|_____|_____|_____

10 ____|_____|_____|_____

11 ____|_____|_____|_____

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20 ____|_____|_____|_____

21   _____

                          BRYAN J. ROSE

22

    SUBSCRIBED AND SWORN TO BEFORE ME

23 THIS _____ DAY OF _____, 20__.

24

    _____   _____

25 (NOTARY PUBLIC)   MY COMMISSION EXPIRES:

&			
& 1:19 2:11 35:20 58:15 59:7 62:24 98:4 99:3,4 149:16 149:16,18 150:10 150:11,16 152:16 160:3 177:4 195:5 244:9,12,20 245:6	**11:44** 156:7 **12** 42:20 **123** 90:7 **1250** 255:3 **13** 54:23 180:15 **134** 238:9 **139-2** 200:25 **13th** 181:14 **144** 59:22 **1475** 2:6	**200** 1:19 2:13 254:11 **2003** 42:19 44:9,15 45:2,13 46:10,13 72:14,23 74:25 124:20 125:8,17 126:3,3,8 142:13 165:25 186:2,10,19 187:17,17 188:10 188:22 222:13 231:10,17 232:17 233:2,23	**212-279-9424** 255:4 **228** 254:15 **23** 60:12,16 **237** 254:19 **23rd** 253:21 **24** 58:6 60:11 61:3 61:11,13 79:8 **26** 6:3 8:8 254:8 **28** 122:22 123:21,25 125:17 127:8 128:15 129:2,19 188:10

& continued / 0 / 1 sections:

&

& 1:19 2:11 35:20 58:15 59:7 62:24 98:4 99:3,4 149:16 149:16,18 150:10 150:11,16 152:16 160:3 177:4 195:5 244:9,12,20 245:6

0

0002 194:23
002 93:13
00569 1:4
02 59:8
03 126:13,14 188:19 188:20
036 205:20 206:10

1

1 3:10 5:6 6:2 8:5 9:3,16 10:20 14:18 17:10,23 19:12 20:13 30:8 40:6,18 58:6 60:16 87:6,7 87:14,17,20,23 88:12,13,16,20 90:23,25 91:3 92:3 92:9,12,16,16 121:7 121:10 197:6 199:15 205:15 206:5,8 248:19 254:7
10 22:12 82:12,24 134:21,23 135:3 136:17 229:17
10001 255:3
10166-0193 2:14
102 27:17,23 29:6 76:9 91:21
10:09 1:15
10:37 60:17,23 97:16,18
10:39 61:11
11 87:8 88:17,21 90:2 155:19 250:3

2

11:44 156:7
12 42:20
123 90:7
1250 255:3
13 54:23 180:15
134 238:9
139-2 200:25
13th 181:14
144 59:22
1475 2:6
15 33:2 34:3,9,13 35:11,14 37:3,9 38:6,9 39:25 45:11 45:19 76:3 83:8 84:8 107:6,6 108:15 136:6 137:8
15th 42:14 46:21
16 76:9
163 55:7
17 55:10
172 203:4 205:22 206:16
173 202:23 203:2
18 1:14 121:18 222:11 255:5
19 91:21
1:10 1:4
1st 236:14

2

2 30:12,13 82:16,21 84:11 89:5 92:9,16 92:17 95:8 190:20 191:21,25 192:5,9 192:15,15 205:16 205:22 206:14 208:22,23 254:9
2.3 238:12
2.4 85:21 86:6 90:5
20 33:2 34:3,9,13 35:11,15 37:4,9 38:6,9 40:2 83:8 84:8 136:6 137:9 255:23

200 1:19 2:13 254:11
2003 42:19 44:9,15 45:2,13 46:10,13 72:14,23 74:25 124:20 125:8,17 126:3,3,8 142:13 165:25 186:2,10,19 187:17,17 188:10 188:22 222:13 231:10,17 232:17 233:2,23
2003-2004 44:4
2004 44:9,15 45:2 72:20 73:21 74:2,5 74:7,18 104:21,24 105:4 149:14 156:7 156:12,13 158:8 159:14,24 165:25 169:6,12,21,24 170:5,10,15,17,18 171:8 172:9,11,24 173:16 233:23
2010 42:16,21 45:12 45:25 47:7 113:2 186:21 233:4 236:14 246:13,13
2011 15:15,20 42:14 45:11,19 47:8 54:23 74:9,12 120:3 121:19 123:15,16 173:19 174:3,7 180:16 202:24 222:11
2012 1:14 6:3 8:8 42:20 45:12 74:23 122:22 123:17,21 123:25 127:8 128:15 129:2,11,19 252:19 253:21 254:8 255:5
205 254:13
21 84:18 85:7 107:6 120:23 121:9 155:18

3

212-279-9424 255:4
228 254:15
23 60:12,16
237 254:19
23rd 253:21
24 58:6 60:11 61:3 61:11,13 79:8
26 6:3 8:8 254:8
28 122:22 123:21,25 125:17 127:8 128:15 129:2,19 188:10
28th 123:17 129:11
29 202:24 208:23 209:2
2:09 193:20
2nd 222:13

3

3 200:20,21,25 254:11
3-1/2 192:25 193:6
3.2 85:21 86:6 90:5
30 89:11,23 90:4 210:4 213:23
37 221:19
379 177:14 178:9,18 179:2,6,14 181:6
3:05 194:3
3rd 148:10,12 149:14 156:12 159:5,7,14,24

4

4 89:8 205:3,4,10 206:2 254:13
400 10:7 151:11 179:9
419 109:2,17,25
44107 2:8
49 202:4,9 203:11 203:19
4:23 252:13
4th 149:24 158:7,8

5

5 228:6,10 254:15
5-1/2 188:23
50 202:9
500 10:7 179:9
51 61:9
52 120:22,24 121:12
121:14
54 197:6,8
5th 149:24 156:7,13
157:9

6

6 201:6 237:23,24
238:4 254:4,7,19
650 9:24

7

770724 2:7

8

8-1/2 87:8 88:17,21
90:2 250:3
82 254:9

9

9 58:18 59:2
90 27:17,23 29:6
94 246:8 248:6
945 90:6
950 10:2
9:38 61:4
9:41 61:14
9:49 158:8

a

a.m. 1:15 60:17,23
97:18 156:7 158:8
abbreviate 166:18
170:19,20
abbreviated 166:12
166:19 169:7
abbreviates 166:20
169:14
abbreviations 169:6
ability 69:13 73:3
103:22 105:8,21,23

106:8 251:16
able 26:16 78:19
79:21,25 126:6
196:11 199:4
absent 100:3
absolutely 48:20
50:2,16 114:23
115:5,18,23 127:15
abstract 226:10
accept 109:18
acceptable 224:17
access 65:3,5,6,15
65:17,20 67:16,21
68:10,18,25 69:2,5
69:14,21 71:18,23
72:16,24 73:5,14
103:25 109:9,23
110:6,13 111:5,10
111:11,17,20,21,23
112:5,6,8,11,13,16
113:12 114:18,20
115:20 119:4
134:12 184:2,9,20
185:21 218:25
219:6 226:4 227:4
238:16 239:7,14,16
239:23 240:3,9,24
241:3,5,13
accessed 68:11
106:22 119:10
211:15 218:19
222:11 229:7
239:18 240:23
accessibility 41:14
accessible 41:20
45:3
accessing 113:18
239:11
accidental 55:25
56:5,5
accidentally 216:13
account 42:2,5 43:2
44:8,12,18 59:15
76:17,20,22 77:2,3
77:5,10,14,21 78:25

79:4,10,16 80:5,13
81:4 116:2,3,8,9,15
116:21 117:15,19
118:3,5,17,19,24
119:5,10,14,18,23
119:25 120:3,4,8,8
120:13,21 121:4,24
122:7,13,17,19
123:2 124:6,10,16
124:18,25 126:8,20
127:8 128:7,9,15,24
128:25 129:4,9,12
129:13,16,25
147:22 152:19,22
158:13,18,23 159:9
160:10,22 161:4,15
162:18,22 163:4
168:2,5,8 171:6,9
172:19,24 182:15
182:20,22 185:2
188:25 230:19,22
accounting 223:13
accounts 118:2
122:2 162:16
168:23 173:20
accuracy 101:22
227:18
accurate 92:15
96:23 97:3,6,7
98:17 99:17 174:25
201:25 207:5 210:9
226:24 229:12
235:5,18
accusation 50:6
accuse 50:11
accused 106:5
action 79:24 147:4
219:17,19 239:21
239:21 253:17
actions 106:5
142:17
activation 121:23
activity 121:16
123:19 241:16

actual 12:22 13:4,6
14:13 16:9 45:20
46:6 61:24 65:19
84:7 88:4 120:20
130:15 152:14
180:9 189:19
195:15 199:7,9,15
199:17 204:3,4,5
206:8 207:6 211:4
244:15
adapt 75:19
add 233:12
addition 48:12
166:25 194:22
195:25 229:10
additional 8:22,23
42:21,22 51:8
160:20 184:19
additions 8:21
address 113:3
122:16 241:10
adelphia 97:21
98:18,25 99:7
112:10 116:15
149:15 158:23
160:10 162:18
admissibility 3:15
4:5
admits 165:2
advice 156:20 173:7
affect 19:8 244:15
affidavit 201:15
aggregate 51:3
183:2 223:17
233:13,14
ago 25:5 26:22
53:20 74:24
agree 11:2 14:20
17:6,11,20 18:2,18
20:24 24:5 27:7
36:12,20 41:7,11
50:10 51:17 54:15
54:18 55:5,19,23
56:3 62:9 66:14
68:14 74:13 76:7

91:2 94:4 96:3
103:17,19 113:9
118:18 126:5
143:20 144:13
145:13 146:12
158:10 181:20,24
182:7,12 206:23
209:25 210:2,10,11
216:18 229:14,24
238:22 239:18
248:19
agreed 225:21 237:2
237:4
agreeing 103:2
agreement 147:15
214:18,25 215:4,10
215:21 216:16
agreements 214:13
215:8,22
ahead 83:6 201:11
250:6
air 151:11
alert 6:23
alex 87:25 153:23
154:4,7
alexander 2:15 3:2
allegations 200:3
alleged 156:8
allegedly 156:6
175:7
allow 23:24 68:25
69:20 71:17 72:2
104:2 117:14
133:18,24
allowed 171:17
allowing 68:10
allows 68:9
alter 24:21 26:9
132:18
alteration 134:25
altered 20:4,9 24:7
24:14 26:14 57:24
132:21 133:16
212:8,10 218:19
238:16

amanda 2:18 3:4
ambiguous 86:20
203:2
amend 62:13 104:23
213:24
amended 16:3 164:9
164:15
amount 141:8
236:15
analyses 152:5
analysis 12:22,25
13:2,4,6,18,25
14:17 15:21 16:22
17:2,8,12 18:9 19:8
19:19,22 20:18 34:8
34:13,22 35:14
36:19 37:9,18,24
38:18 39:25 40:8
59:9,13 63:17 72:7
72:8,12 77:6,8,10
78:7,14 80:14,19,21
80:23 81:3,5,17,22
82:3 92:25 93:4
96:6 105:19,22
106:2 107:24 111:2
112:20 123:13
124:2,22 130:6
137:18,21 148:24
150:10 153:20
159:20 165:9,14
182:5 183:22
184:13 189:12
190:14 224:13
225:10 226:21
227:21 231:7,25
237:12 242:12
analyst 35:6
analyze 19:20 32:4
38:2 43:17 149:8
154:19 191:14
198:20 225:11
analyzed 31:19,21
33:6 39:16 43:15
83:10 105:11
107:12,13,17

130:12 165:11
217:10
analyzing 35:8 84:8
95:20
anomalies 130:18
130:20 131:2
222:16 241:17
243:14
anomaly 131:13,15
132:24 135:6 166:5
212:16 213:7
239:12 241:6
242:23 243:5,8,12
243:18,23 244:3,5
answer 7:20 10:14
10:16 26:6 32:24
33:4 37:22 51:13,16
62:14 71:20 105:2,3
109:17 127:11,19
128:10,11,21 138:2
138:21 168:18
170:11 181:2
212:22 218:8 226:9
answered 39:9
51:23,23 127:22,24
135:21 162:2
answering 11:19
127:6 150:20
168:21
answers 104:23
anybody 244:21
anything's 138:20
184:22
apparent 47:22
48:25
apparently 146:11
175:14
appear 3:18 21:19
25:21 28:4 50:13
86:23 87:5 148:7
163:8 164:25 166:4
166:16 174:12
178:18 202:11
211:5,13 249:12

appeared 28:18
47:13 51:20 91:5
132:12 195:8,11
appears 28:7 30:2
91:3 92:20 96:3
97:3 102:7 142:14
156:12 158:11
159:13 165:19
174:2 201:13
202:17 206:12
210:12,13 229:17
appended 58:17
97:20 98:3,15
101:12,21 211:2
222:4 244:18
appending 176:17
applications 143:22
apply 78:24 79:3
105:4
approach 7:23,24
35:2 224:24
approaching 192:25
appropriate 183:13
187:12 237:16,20
appropriately
185:10
approximately
22:12 37:8 97:16
april 42:14 45:11,19
46:21 47:8 121:18
123:15 125:17,25
126:3,8,13 165:25
180:15 181:14
188:10,22 231:10
231:17
area 90:5 113:4
166:6,7
areas 39:21 139:20
165:13,18 224:16
ares 166:13
argentieri 189:25
201:8
arguing 190:14
argument 54:24
55:17 192:8

arose 47:7 48:13
arrive 19:16 216:17
article 228:6,11
  229:15,18,20 230:2
  237:24 238:4
  254:15,19
articles 40:24 41:3
aside 150:13 217:20
  243:2
asked 3:18 39:8
  44:13 45:4 51:22
  53:6 66:18 67:6
  80:18 83:20 100:18
  100:25 104:24
  111:20 138:7,10
  166:22 168:17
  182:13
asking 7:7,21 24:11
  26:13 31:18 36:20
  39:19,23 44:20
  50:10 55:13 75:5
  86:15 87:25 112:5
  117:12,17 126:11
  127:4 133:11
  140:14 168:16
  176:17 177:22
  183:24 184:5,5,16
  185:9 186:15
  191:19 208:9
  212:17
asks 101:6
asserts 110:6
assess 136:21
assessment 115:17
asset 225:7
assets 32:15 33:12
  33:17 35:23 52:6,7
  52:25 53:3,5,7 54:3
  54:5 184:14
assistant 131:16
  133:3 135:5,12
assisted 12:22
associated 76:21,22
  96:18,22 134:5
  198:25 210:6

217:18 218:10
  220:6 232:10
  234:24
associations 4:2
assume 7:19 17:13
  17:14,19 46:14
  101:14 109:6,10,15
  117:2 145:2,22
  151:16 154:2
  164:21 174:3,4
  188:17
assumed 241:12
assuming 62:22
  69:23 101:10
  109:12 145:4
  188:16 207:3
  224:18 235:25
  240:18
assumption 109:18
attach 164:14 190:8
attached 12:10,20
  16:3 85:15 90:9
  91:12 92:10 93:9
  102:18 151:2 153:4
  164:9,15,19,20
  176:24 190:4
  197:16
attachment 180:5
  181:9,13 231:9,18
attachments 116:23
  118:10,21 161:5
  163:24 178:10
  180:7 181:8
attempt 114:25
  115:2 132:15
  142:20 155:13
  173:14
attempted 144:22
attempting 141:7
attention 194:11
  238:8
attorney 62:24
  149:13,23 162:4
attorneys 2:5,12
  53:10,11 82:6

185:11 225:5
attributed 130:19
  241:18
august 180:15
  202:24
austin 35:20 58:11
  58:15 59:5,7,10,20
  60:4 61:4,14 62:24
  98:4 99:3,4,8
  149:16,17,18
  150:10,11,16 151:8
  152:16 160:3 177:4
  195:5 244:9,12,20
  245:7
authentic 15:8,10
  16:5 17:18,21 18:17
  18:24 19:2,6,6,13
  19:21 20:4 102:20
  103:3,10 115:7
  144:12,17,20 145:4
  145:4,17 146:2,21
  148:17,22 150:15
  151:12 153:5
  155:12 158:12
  164:2,4,12 189:16
  191:10 192:13
  225:25 226:2
  231:23 247:16
authenticity 22:20
  34:6 36:10,14,17,22
  138:7 145:15
  148:25 153:3,13
  163:21 225:12
author 134:23
authorization 69:15
authors 134:21
  135:3
automated 49:16
automatically 49:23
available 4:25 25:24
  41:9,16,18 183:17
  184:12
avenue 1:19 2:13
average 77:20

avoid 182:9
aware 7:16 15:7,13
  15:21 16:19 23:23
  42:23 53:18 57:22
  70:23 71:2,3 75:2
  102:17,24 103:4,7
  105:25 106:4,9,13
  106:15 124:17,20
  125:4,9,10,15,18
  136:15 140:5
  147:14,20 163:22
  164:3 165:6 173:6
  176:21,25 187:19
  190:3,6,11,12
  199:24 207:23
  208:2,12,14 218:17
  218:23,24 219:2,5
  237:6
awfully 151:15
aycock 2:18 3:5

b

b 6:5 7:1 8:1 9:1
  10:1 11:1 12:1 13:1
  14:1 15:1 16:1 17:1
  18:1 19:1 20:1 21:1
  22:1 23:1 24:1 25:1
  26:1 27:1 28:1 29:1
  30:1 31:1 32:1 33:1
  34:1 35:1 36:1 37:1
  38:1 39:1 40:1 41:1
  42:1 43:1 44:1 45:1
  46:1 47:1 48:1 49:1
  50:1 51:1 52:1 53:1
  54:1 55:1 56:1 57:1
  58:1 59:1 60:1 61:1
  62:1 63:1 64:1 65:1
  66:1 67:1 68:1 69:1
  70:1 71:1 72:1,14
  73:1 74:1 75:1 76:1
  77:1 78:1 79:1 80:1
  81:1 82:1 83:1 84:1
  85:1 86:1 87:1 88:1
  89:1 90:1 91:1 92:1
  93:1 94:1 95:1 96:1

97:1 98:1 99:1	231:1 232:1 233:1	**base** 142:8	**believed** 195:13
100:1 101:1 102:1	234:1 235:1 236:1	**based** 11:20 18:4	**believing** 195:20
103:1 104:1 105:1	237:1 238:1 239:1	28:13,18 30:11	**bell** 53:16 177:15
106:1 107:1 108:1	240:1 241:1 242:1	33:10 35:16 36:18	**belonged** 32:18
109:1 110:1 111:1	243:1 244:1 245:1	56:23 78:14 79:7	**belonging** 32:15
112:1 113:1 114:1	246:1 247:1 248:1	93:19 96:25 98:9	62:21 149:12
115:1 116:1 117:1	249:1 250:1 251:1	110:19,25 116:3,9	**benjamin** 2:17 3:4
118:1 119:1 120:1	252:1	117:19 118:4,8,17	**best** 3:25 170:3
121:1 122:1 123:1	**back** 19:16 30:23	118:19 124:11	238:20
124:1 125:1 126:1	60:15 82:20,22 83:5	126:12 131:19	**better** 32:22 156:14
127:1 128:1 129:1	85:6 87:4 104:21	132:14 135:24	**beyond** 18:8 19:3
130:1 131:1 132:1	118:14 130:7 137:4	141:22 150:9	53:22 80:17 148:7
133:1 134:1 135:1	137:5 159:9 163:2,5	156:18 159:9,12	192:10
136:1 137:1 138:1	163:15,21 167:9	160:14 163:7	**bigelow** 1:21 253:7
139:1 140:1 141:1	170:24 172:9,11,17	165:20 172:5	253:24
142:1 143:1 144:1	172:24 173:15	174:18 179:10	**billable** 9:24 223:7
145:1 146:1 147:1	216:17 227:14	211:5 225:10	223:14
148:1 149:1 150:1	234:20 242:2	226:21 233:8	**bin** 117:4
151:1 152:1 153:1	248:25,25 251:17	237:12 249:10	**bios** 250:19,20,22,23
154:1 155:1 156:1	251:19	**basing** 160:5	252:4,7
157:1 158:1 159:1	**backdate** 219:18,22	**basis** 9:18 33:18	**bit** 59:22 62:14
160:1 161:1 162:1	219:23	171:4,8,19	103:12 177:8 193:6
163:1 164:1 165:1	**backdated** 102:15	**bathroom** 82:13	194:12
166:1 167:1 168:1	190:15 213:16	**battery** 250:19,21	**blacked** 77:16
169:1 170:1 171:1	214:2 219:14,15	250:22,23 251:3,9	**blank** 214:17,19
172:1 173:1 174:1	221:9 246:4,5,21,23	251:12 252:4,5,7	**blood** 253:17
175:1 176:1 177:1	247:2,11	**begins** 221:18	**blue** 91:23
178:1 179:1 180:1	**backdating** 149:6	**behalf** 104:13	**blurry** 159:18,19,21
181:1 182:1 183:1	154:25 213:19	**belief** 166:14	159:22,23,24 160:2
184:1 185:1 186:1	217:17 219:12	**believe** 5:18 8:24	160:6,7,9,21 161:5
187:1 188:1 189:1	220:4,13,25 221:2,6	9:25 12:6 22:2	161:8,14,17,23
190:1 191:1 192:1	221:14,17,23 222:8	25:21 32:13 38:15	162:4,6
193:1 194:1,18	241:18 242:19	42:10,17 44:6,16,17	**board** 251:3,4
195:1 196:1 197:1	245:19,19 247:12	49:6 52:7 66:9	**body** 157:16 178:11
198:1 199:1 200:1	247:24 248:3	76:25 77:3 84:2	178:18 179:6
201:1 202:1 203:1	**backup** 43:15,18,21	85:11 94:12 96:24	**boland** 2:4,9 3:6,6
204:1 205:1 206:1	43:23 44:5,8,11,14	111:14 116:16	3:12 4:11,16,18,22
207:1 208:1 209:1	44:20 45:2,6,8,22	122:14 140:6,13	5:2,5,11,18,24 6:9
210:1 211:1 212:1	46:2,8,14,15	156:10 165:10,24	15:6,18 16:12 18:3
213:1 214:1 215:1	**backups** 44:22	169:18 175:7	21:13,16 29:3,20
216:1 217:1 218:1	**backward** 94:6	186:18,23 190:7	31:25 32:3 33:15,20
219:1 220:1 221:1	**backwards** 95:3,5	197:12,24 202:3	50:5 54:22 55:14
222:1 223:1 224:1	95:16,17	207:22 221:10	58:4,21 70:22 82:9
225:1 226:1 227:1	**ballpark** 235:23	226:23 236:14	82:19,22,23 83:20
228:1 229:1 230:1		248:10	85:2,5 86:11 87:19

87:24 88:6,10 93:8
93:15 109:24 110:2
110:10 121:8,10,14
127:10,17 128:2
136:16,20 137:3
168:19 180:14,25
184:7 186:17 191:7
193:5,10,14,18
194:4,12,17,21
200:19 204:4 205:2
205:9 206:22
224:22 229:21
234:13,20 237:22
248:15,24 252:8
254:4
boland's 87:22
bolster 99:8
book 238:6
bother 36:3
bottom 58:22 61:13
63:22 154:14
228:24
box 46:12
break 31:9 79:5
82:12,25 83:3
127:20 136:17,21
193:8,9 234:14
breaks 7:11
brief 6:19
briefly 83:5
broader 82:3 247:22
broadway 255:3
broom 9:10 70:22
75:6 82:17 85:13
89:9 208:13 209:7
254:10
broom's 26:20
72:12,19 74:10
84:15 85:8 89:4
90:16 250:18
brought 219:11
243:3
browser 168:10
169:2 172:18

browsers 168:12,16
168:23 173:20
bryan 1:17 3:8
153:23 154:4,8,9,9
252:16 253:10
254:4 255:6,21
buffalo 113:3
114:13 115:15
building 155:3
buildings 151:3
built 247:18
bunch 15:14 105:11
business 217:5
butt 62:11
button 23:11
buy 133:24

c

c 2:2 253:2,2
c.p.l.r. 3:22
calculate 232:11
calculated 85:20
86:13
calculates 89:9
calculation 59:21
86:3,5,9,16,18 89:4
89:7,21
calendar 126:2
california 84:3
call 74:23 137:11
145:14 164:6
194:10 240:14
called 6:5 21:3
52:14 71:5 74:25
106:6 250:23
calling 15:25 23:10
24:3 120:10,11,12
calls 136:11 207:11
camera 23:6,10,12
234:19
candidate 147:10,12
capabilities 72:10
72:23 112:10
capability 116:16
117:18

capable 104:19
capacity 116:3
capture 23:9
captured 23:12,16
24:4
card 23:12 82:7,11
careful 152:21
carmine 77:4,11
110:12 152:20,23
158:18
carmine's 77:7
carve 35:6
cary 1:20 253:7,24
case 6:24 7:4,14 9:7
10:21 13:18 14:11
15:22 16:25 17:17
18:6,14 31:25 32:3
32:5 37:6,12 40:19
41:19 47:3 52:13,23
52:25 53:3,13,24,25
62:20 64:20 70:7,18
70:24 77:13,13 82:3
99:24 101:16
102:25 103:8 105:6
105:7,12,21,23
108:25 110:23
114:24 115:4,23
122:21 125:16
129:22 132:2
135:24 137:23
141:4,12 150:13
152:12,14 153:12
153:15 154:20
155:8,10 174:3,8
176:22 178:9
180:11,18 184:20
185:5,12,15,20
188:16 189:5
190:10 201:2 203:4
205:8 215:10,12
217:9,25 222:9
224:2 227:12 233:8
235:2 236:4,12
239:13 242:14,15
244:8 245:8,17,24

245:24 246:18
247:10,15,23 248:3
255:5
cases 4:10 13:25
52:4 54:3 100:11,13
153:16,18,19 214:6
230:18,23 241:12
cataloged 72:6
categories 163:23
category 130:11
cause 47:22 105:6
134:18 135:15
172:23 175:13
caused 48:18,21
56:12,14,20 135:7
caution 210:5,10
cd 25:7 66:19 134:3
221:20
cds 57:6
ceglia 1:5 3:7 12:23
16:2 17:19 28:8
35:18 36:19 61:22
62:2 63:4,4,9,18
64:13 65:16 67:15
68:12,15 76:24 77:4
77:11,12,14 80:19
92:9 93:4 95:20
105:15 108:10,19
108:20,22 109:8,21
109:23 110:7,11,13
110:13,18,20,22
111:2 112:18,20,21
113:11 114:20
115:7,8,17 119:17
121:17 122:5
123:13 124:19
128:6,13 129:16,24
138:9,16,17 139:24
140:17 141:6,9,10
141:14 146:3 147:3
147:5,10,16,23
149:13 150:25
152:20,23,24
156:11,21 157:8
158:12,18,19 159:7

161:4 162:21 163:3 163:25 165:6 167:23 169:2 176:23 178:19,24 179:11 184:14 186:16 187:15,21 188:11,18 190:3 195:4 199:24 200:22 201:3 202:13,21 212:13 225:11 254:12 255:5

ceglia's 59:18 60:3 73:19 76:16,20 77:2 106:18 108:24 109:7 112:23 151:2 160:21 161:12 183:22,23 187:14 201:15 231:8

ceglias 62:21

central 37:7 61:4

certain 30:9 32:14 120:9 183:3,6 249:13 250:24

certainly 10:17 12:17 14:4 33:11 41:13,17,19 63:16 69:3 73:15 75:15 77:25 95:11,15 116:25 117:6 119:11 138:13 139:2 145:19 196:9 218:14 234:7 235:14,17 248:4

certification 202:22 207:24 208:4,7,10 208:13

certified 3:17 14:7 19:19 237:17

certify 253:9,15

cetera 116:23 232:9

cfe 208:6

chain 149:25 150:18 159:4,6,8 163:9,13 178:14

challenge 143:12

challenges 163:20 237:25 254:20

challenging 142:23 143:5,8,14,14

chance 70:17

change 82:8,10 109:20 110:16,24 115:16,20 134:5,7,8 134:22 167:12,12 167:22 171:2 174:9 255:7

changed 24:8,9,10 174:11

changes 172:22 173:4,8

characterize 63:15 69:20

charge 183:10 225:10

charged 9:20 80:17 81:24 185:11 223:5 224:9,10,11 225:19

chat 83:2

check 153:22 202:4

chicago 108:19

choice 4:3 226:24

choose 207:14 238:19

circumstance 38:6 133:8,14 134:15 239:9

circumstances 38:3 50:23 51:4,11,25 63:2 103:24 112:9 112:13 153:11 197:2 204:17 218:2 219:16 220:8 226:12 242:6 244:25 245:4

cited 201:14

civil 3:20

claim 16:4 119:17 132:2 141:7 142:2,7 142:15,21 150:8

165:8,15 199:22,23 200:2 232:4

claimed 165:4

claiming 163:25 164:3,11

claims 141:22 143:6 143:8,13,15,16 164:21 165:7

clarification 7:7 8:2 203:24

clarify 21:11 45:16 60:7 66:13 70:20 107:10 110:10 140:3

clarifying 107:15

classes 20:7

cleanup 73:14,16

clear 5:16 16:8,11 36:17 42:12 44:11 54:20 67:7 88:9,11 93:12 95:25 107:8 107:16,19 108:6 110:20 114:23 115:5 127:15 128:14,19 137:14 141:24,25 144:6,8 144:24 150:13 152:18 155:17 167:3 176:11 182:21 186:8 201:19 202:16 212:25 213:7 217:22 219:13 222:2 226:17 233:10 236:9 239:3 240:2 242:21 244:7 247:4,15

clearly 3:24 18:4 51:25 99:22 140:24 141:2,11 142:3 146:20 152:7 159:3 175:16 190:22 226:22 239:4,13 245:3 246:4,20,23 247:2

client 15:8 18:7 124:6 126:20 146:24 150:16 155:12 165:2 189:15 211:9 212:21 214:10,21 214:25 225:23 231:22 233:18,23

client's 125:6 132:15 143:17 175:16 211:12,23 231:15

clients 67:21 68:24 69:7 214:14

clock 98:16,21,23 99:23,25 101:20,25 102:7,10,15 149:6 174:19,22 211:5,23 218:12,16 219:18 219:24 220:3,21 222:16 229:13 241:7 242:4 245:8 246:7,9,14,17 247:5 248:6 250:25 251:20,21

clocks 221:25

close 136:18 172:3 250:3

cloth 213:3

cmos 251:12 252:4,7

coach 88:7

code 133:7

collaborative 11:13

collect 81:18 225:11

collected 42:4,13 45:10 186:14

collecting 50:25 56:22

collection 45:18 46:21 47:8 48:22 50:8 56:21 84:4 233:3,4 245:21

collections 182:24 233:5,7

colon 157:18,19 167:5

column 228:23

come 25:4 143:21 210:20

comes 169:18 210:8 221:3

comfortable 243:24

coming 137:21

comment 146:2 195:19

comments 12:18

commission 255:25

commit 182:8

committing 50:12 50:21 175:16 179:12 245:9

common 131:17 134:25 139:9 196:16

communicate 136:10 143:23

communicating 158:13

communication 40:6 147:23 158:17 188:21,24

communications 183:8 185:20 224:20

company 35:7 106:9 245:9 255:2

compare 49:3 192:14 196:12 204:13 207:17 222:24

comparing 196:24 197:2 206:25 220:5

comparison 192:20 223:3

compensated 9:17

compensation 223:24

competing 229:6

compile 223:22

complaint 16:3 164:10,16,19 200:14

complete 78:16 99:18 242:12

completed 223:20

completely 70:6 113:21 152:13 171:18

comprehensive 184:15 235:19

comprise 23:3

comprised 20:13

computer 12:25 23:17,19 24:21 32:18 34:25 40:25 41:4,8 57:15 59:9 59:19 60:3 61:20,25 62:5,9,12,20 63:5,9 64:9,14,17 65:4,7 65:11,15 67:17 68:11,13,16,18 69:2 69:10,11,22,25 71:18 72:9,15 73:5 73:19,21 74:2,7,9 74:12,15 75:6 80:22 84:16,22 86:23 96:19 97:3,24 98:11 101:12 102:15 103:21 104:12,16 104:17 105:8 106:3 106:18,22 108:23 109:9,23 110:7,15 111:4,5,10 112:24 113:5,13,18 114:3 115:4,21 118:5,15 130:8,11,15 134:3,4 139:22 140:16 143:19 148:14,15 148:20 149:3,12 156:16 168:3,6,9 174:18,22 182:4 190:18,24 191:19 194:25 198:5

209:14 210:21 211:5,12,23,24 215:2,2 216:22 218:12 219:8,14,23 219:24 220:12 221:8,24 222:4 228:8 229:4,13 230:14,18 236:25 237:2,5,25 240:8 250:20,24 251:7,15 251:22,23 254:17 254:21

computers 32:17,19 32:23 33:5,25 34:4 34:9,13 35:11,15 37:4,10 38:6,10 40:2 57:3 69:14 83:8 84:8 105:11,20 136:6,9 137:9,21 181:18,23,25 251:4

concedes 18:14

concept 219:11

concert 141:10 147:7

conclude 78:2,16 98:10 114:4 175:4 179:10,21 191:14 196:20 204:16 242:10,24 244:11 245:21

concluded 138:23

conclusion 19:11 65:21 74:9 97:9 110:17 113:7,10,11 115:20 119:22,24 120:6 124:5,11 126:11,17,19 131:10,20 135:23 139:23 140:17 146:4,14,17 147:2 175:19 196:17 197:3 219:13 233:25 242:11,21 243:16 245:2 247:14,17

conclusions 11:3 14:17 90:20 132:19 137:22

conclusive 229:5

conclusively 207:18 239:17 240:23

conduct 51:12 170:9 183:5

conducted 18:5 32:14

confidence 99:9 100:5 101:4

confident 99:16 101:15,18,22 102:8

configuration 117:22,23 170:25 171:4,16

configurations 171:15,23

configure 170:23 173:14

configured 117:11 118:16 119:3,7 172:17 173:15

confirm 169:12 183:16 184:2 201:11

confirmed 44:13 169:13

confirming 182:4

confirms 98:19

conflicted 226:5

confuse 92:5

confused 7:5

confusing 27:21 183:19 238:12

conjunction 116:14

connect 180:23 222:21

connected 84:22

connection 120:17

connectu 52:15,22 52:25 53:3

consider 75:13 138:9 155:7 210:7

242:5

consideration 183:13

considered 138:13 143:3 185:16 242:13

considering 50:24 175:15 246:17

consistent 92:23 97:22,25 98:8,14 100:8 101:16 112:4 131:11 149:25 167:13,22 171:7 175:6 214:5 226:19

consistently 171:9

constellation 243:3

construction 238:20

consultation 53:9

cont'd 194:20

contact 173:12 240:14

contain 115:7 222:7 225:22

contained 35:19 216:10 233:2,3,17

container 177:13 179:23

containing 164:25 165:7 217:24

contains 97:17 150:7 172:15

contemporaneous 233:22

content 123:16 125:10 128:24 131:6 139:5 159:13 195:15,17 196:2,12 196:13,19 204:14 211:8 212:17,19 222:17,23,24 223:3 223:3

content's 139:14

contents 78:15 117:14 178:6 224:20

contest 106:10

context 22:24 99:20 102:3 149:10 154:20 155:8 156:18,22 160:5 179:20 196:22 242:24 245:22 246:18 247:9,22

contextual 62:18 102:5 152:4

continue 93:16 94:6

contract 14:10,11 14:21,23 15:4,10,25 16:5 17:7,9,16,18 17:21,23 18:6,6,7 18:15,16,19,24,24 18:25 19:2,6,7,8,12 19:13 20:12 21:19 23:3 24:12 28:8,12 28:17 34:7 36:11,15 36:18,23 91:14 92:3 92:10,13,17,18 96:4 97:17 102:20,22 103:3,9,10 107:3,11 107:17 115:7 125:15,16,20 126:13 141:23 142:9,13,14 144:10 144:15,17,20,24,25 145:12,17 146:5,10 146:15,21,24 148:2 148:17,22,25 149:21,23 150:5,8 150:14,15 152:15 153:23 154:8 155:12,14 156:20 159:14 164:3 188:9 188:11,22 189:5,10 189:15,16,19,24 190:6,14,17,20 191:3,10,12,22 192:2,5,9,12,13,15 192:16 199:15 205:15,16,20 206:4 206:8,14 215:24

217:6,9,11 225:13 231:10,17,18,21,23 242:17 247:16,17 248:18 249:6

contract's 144:12 145:10 146:2

contrary 110:8

contributed 9:25 10:4 11:16 12:18 14:6 31:12

contributing 235:3

control 69:22 72:15 104:2

convention 92:19 93:7 201:20

conversation 6:13 6:17,20,22 139:18 150:17 152:17 173:10

conversations 7:13 184:11 224:25 225:5

conversion 55:2 56:23

convert 179:3

coordinated 165:18 173:25 174:12,14 174:23 175:5,13,18 175:25 176:24 179:7,17 180:21

copied 25:7,9,11,22 25:25 26:5 65:18 66:19 90:3 95:6,9 96:14,19 111:8 139:12 164:16 165:2 169:3 172:23 173:19 195:11 211:9 229:9

copier 90:3

copies 5:15 14:14,22 16:15 23:4 32:11 37:20 38:16 41:25 42:4 43:15,18,21,24 44:5,8,11,14,20 45:2,5,7,10,14

46:25 55:4 125:21 125:22 161:17 164:10 182:24 189:24 195:13 200:16 215:12 216:16

copy 5:6,9 8:7 16:3 20:4 30:11 37:25 38:4 42:15,19,20,21 42:22 45:22,24 46:9 46:12,16,17,23 48:2 48:3 88:19 92:12 107:12,21,23 108:5 108:8,9,11,14,17 109:13 134:2,4 139:4 140:23 147:15 149:19 151:8 167:10,11,13 189:22 192:14 195:15 196:21 199:17 203:19 210:22,23,24 211:24 212:4 231:9 233:19 248:18

copying 29:2 112:2 168:3,5,6,7

corner 58:8 84:19 91:22 208:25

corollary 144:23

correct 5:24 8:13 12:11 13:13,16 19:14,15,19 20:14 20:17,19,21,25 21:5 23:24 25:5,10,13,16 26:11,12 31:12,13 31:17 37:4 38:4 43:2 44:15 45:21,23 47:4,11 56:7 58:13 59:5 61:5,12,15,17 61:19 63:8,23,25 64:4,15 65:13 66:17 67:15 68:2 71:16 77:18 80:2 83:12 85:21 88:14,21 90:25 93:25 94:11

94:16,17 97:24
98:24 99:6,11,22
100:4 105:15,16,18
107:5,7,9 121:17
125:3 126:4 130:14
132:4 137:13,19
143:24 144:21
146:6 148:6 154:12
156:2,10 157:11
158:2,9,14,20
162:14,22,23
165:12,15 174:24
175:10 182:6 186:4
191:7 197:24
200:11 205:24
207:21 222:19
223:3 224:22
227:25 244:16
correction 121:11
correctly 66:12
174:23 195:3
correspondence
81:21
corresponding
177:16
counsel 6:14,23 9:10
9:13,20 38:18 39:11
83:2
count 94:6
counting 95:2,5,17
county 253:5
couple 83:6 95:5
118:9 137:5,6
177:10,14
course 49:8 220:18
225:15
court 1:2,21 9:15
11:5 17:17 20:2
28:5 30:6 33:23
35:17 36:13,21,21
84:15,24 91:6 107:8
138:10 163:24
198:3 214:16 225:9
225:20 250:14
253:7

courts 22:19
covered 32:13 35:17
create 49:24 55:3
75:13,19 85:14 87:2
115:2 130:20 132:8
132:11,16 140:24
141:3,4,12 142:11
142:12 144:18
183:2
created 24:18,20,25
25:2,17,20 57:25
66:2,8,11,16 93:22
93:23 94:14 96:6,8
96:9,11 102:14
140:21,22 148:8
173:4 195:9 222:13
229:7 233:21,23
creation 96:18,20,22
97:6,11,14,15 98:10
99:9,17 101:4,22
102:12 134:12
146:23 219:22
220:2 226:4
credible 110:22
crimes 228:7 254:16
criminal 237:25
254:20
crutcher 1:19 2:11
current 4:22 8:20,21
8:24 9:23 10:6
74:23 78:15 173:18
currently 75:6
214:10
custodian 184:25
cut 147:11 164:25
165:5 166:21,24
167:23 176:15
215:14,16,24 216:4
cutting 167:20,20,25
cv 1:4 8:19 9:2
12:20 208:15,17
cvs 12:5,6,10

d

d 1:5 121:2 200:22
254:2,12
data 35:6 41:13,21
42:20,20,21 45:11
51:3 101:3 116:12
121:3 123:6,11,12
123:20 124:3 127:9
129:3 148:21 168:8
172:16,18,23
173:19 183:2 199:2
199:2,3 207:4
211:11,22 227:6,11
227:19,24 242:16
date 6:4 37:9 82:18
97:11,15 99:9,17
101:4,21,23 102:12
114:11 120:9
124:22 125:17,23
125:23 134:12,12
156:5 188:12
200:23 205:6 210:5
211:19 218:15,25
219:20,20,22 220:2
226:4,5,8,24 228:9
238:3 239:7,8,14,16
240:10,24,25 241:3
241:5,6 243:14,18
243:23 244:3,5
255:5
date's 174:7
dated 6:3 8:8 180:15
181:14 254:8
dates 96:18,20,22
97:6,6,7,14 171:6
219:7 220:5,15
225:25 227:4,5
228:3 229:4,7
233:22 239:23
240:3,4,16 241:13
243:6,9,12
dating 244:15
day 17:15 54:24
156:8 161:13

162:11 248:6
252:19 253:21
255:23
daylight 165:20
166:4 174:5,6,11
days 66:22 118:14
156:10,13 158:22
160:8 161:8 162:5
162:25 163:6 246:8
dbx 75:22 76:4
77:21
deal 241:20
dealing 20:20 41:14
97:24 241:23
dean 2:9 3:6 175:25
december 54:23
246:12
deciding 233:12
decision 13:20
declaration 47:6,9
47:13,21 48:2,14
82:16 102:25
108:25 110:12,16
187:15 200:22
201:2 202:13
203:12,19 206:10
231:8,15 254:9,12
declarations 47:2
103:6 110:8
declare 153:5
declared 109:8,22
dedupe 49:8 50:8
51:6
deduping 51:2
default 92:20 93:2,5
93:6 94:2,5
defect 24:6
defendant 52:5
defendants 1:10
2:12 3:3 10:9 39:16
39:25 40:8 42:23
43:7 185:7 187:6,10
199:22,22 202:24
206:15 207:7,10

defense 6:13,22 9:10
9:13,20 38:18 39:11
83:2 224:25 225:5
237:25 238:18
254:20
define 111:15,18
defined 22:5 236:24
definition 23:13
56:9 237:2,5
definitive 113:7
delete 130:17
deleted 47:22,23
78:6,8,18,20 79:21
79:22,23 80:4,13
116:22 117:2,3
119:18,22,25 120:6
123:18,18 124:7,9
126:9,16,22 127:16
128:7,9,13,17,20,20
128:22,23 129:4,5,6
129:8 195:8,16,22
222:11,17
deletion 121:3
123:20
delineated 45:9
deliveries 42:11
43:12
delivery 42:17,18
46:5
demonstrate 98:16
99:22
denominated 92:8
department 209:5
209:13
depend 67:24
101:24 119:2
153:11,19 226:11
242:25
dependent 218:15
depending 9:22
57:13 69:19 95:14
119:7 131:15
153:17 196:24,25
204:16 229:8 241:8

depends 102:5
103:23 116:24
117:10 130:25
196:22 209:22
210:23
deponent 255:6
deposed 7:5,13
18:14
deposing 87:24
deposit 104:16
deposition 1:17 3:16
3:24 4:5,8 6:25 7:12
7:15 9:6 18:23
54:13 83:3 100:15
100:16 255:5
depositions 9:7
100:19
derived 90:17
describe 11:5 12:12
28:5 30:5 32:16
185:13 198:3
description 32:22
85:16,17
desktop 67:22 251:4
despite 123:15
detail 139:21
detailed 60:13
140:12 151:6
details 189:3
detected 73:10
detection 182:9
determination
115:22 237:8
determine 19:21
20:9 25:23 72:20,22
77:6 141:18,21
161:20 169:24
183:6 199:4 204:7
220:4 225:24 226:5
239:17 241:23
242:9 247:21
determined 13:21
17:17,21 107:24
108:3 137:17 170:2
195:10 233:20

determining 36:14
36:22
detrimental 145:23
device 25:9 148:6
197:9,12,21 198:19
198:23 199:5
207:10
devices 137:25
138:4 197:16
dial 127:18
differ 59:21 60:5
difference 49:5 56:2
61:6,9 167:2 168:15
201:20 243:6 248:6
differences 47:7,24
48:9,12,19,21 49:11
49:18,20,25 50:3,13
50:22 51:20 54:17
55:2,21 56:12,17,18
56:24 57:4,8,13
166:8,23 176:6,10
176:15
different 47:3 49:7
85:23 91:4 92:25
94:4 95:7 104:25
107:4,18 117:11
139:15 162:16
163:15 173:19,21
184:5 189:4,21,22
192:21,25 201:13
201:21 209:18
214:25 215:11,11
215:17,19 216:6,8,9
216:20 217:8 220:5
220:15 222:25
230:12 247:19
differently 229:8
difficult 62:16
223:12 245:2
difficulty 250:11
digital 10:3 18:3,4
19:9,18,20,22,25
20:8,23 21:4,7 22:4
22:15,17,18 23:6,10
23:16 24:17 25:24

26:4 41:12 108:3,4
108:13,18 143:2
148:2 155:15 208:6
232:12 237:13,13
dimension 85:20
dimensions 85:13
85:17,20,25 86:13
86:14,24 88:24 89:4
89:10,22 90:12,17
direct 7:6 95:10,23
131:8,9 159:10
187:13
directly 169:18
170:12 189:18
238:17
director 228:17
230:6
disagree 86:3,5,15
86:18 89:3,20
113:21 176:12,16
210:11 238:23,24
240:5
disallow 238:21
disaster 43:24
disc 44:22
discard 101:7
disclaiming 192:4
discovered 21:25
28:8 75:17
discovery 21:22
33:23 35:17,21,25
36:4,6,13 42:24
43:9 80:18 81:5,10
183:2,18,21 185:13
188:2 200:9 236:10
236:11,13
discovery's 36:16
discredits 218:18
238:15
discrepancies 55:3
discrepancy 48:10
discuss 9:9,12 38:17
70:2 119:20 131:3
220:18

discussed 35:15
130:22 137:7
188:11 211:2
213:10 220:24
discusses 85:13
discussing 13:8
103:14 159:13,18
216:7 227:13
discussion 38:20,23
38:24 58:11,14 85:4
138:15 197:19
221:16
discussions 54:2
disk 25:4 66:22
221:11,13,21,22
222:6,6 233:17
disks 221:25 227:12
display 171:18,23
172:4 174:18
displayed 171:9
displays 171:6
dispute 90:15
227:18 231:8,14
232:4 233:24
disputed 125:16
disputes 227:20
disputing 29:23
district 1:2,3
division 11:11,20
divorce 149:2
doc 140:23
document 14:7,8
15:7,9,14,15,19
16:2,10,16 21:2
22:22 27:25 29:6
48:25 56:3 57:11,23
85:24 96:16 109:2
109:16,25 115:2
131:5,12 132:9,12
132:13,16,17
134:22 135:2 138:8
139:6,13,15 140:22
140:25 141:3,5,12
142:9,11,25 145:15
146:11,16 155:24

156:15 164:6 165:3
176:11 178:2,12
181:10,15 191:5,16
191:17 198:6
199:16,16,18
200:24,25 201:7
202:15 205:4,7,11
206:19 209:8,25
212:20 215:17
216:2,8,21 219:19
219:21,24 221:18
222:5,12 225:20
227:4 231:22 238:9
238:10 239:10
240:24 242:9,18
243:4,8,10,24
244:15 245:20
246:20,20,22,23,25
247:2,7,10 248:3,4
248:21 249:17
254:13
documentation
34:12
documents 22:21
34:16,18,22 51:6,8
65:18 66:10 67:22
85:14,18 86:21 93:7
95:14,15,24 115:3
131:4 132:11
140:21 142:20
144:14,18 148:8
149:6 163:23,23
164:15,24 165:7,10
167:5,11 172:2,15
173:4 183:6 189:4
189:20 202:18,21
211:8,21 212:10,12
213:16,18 214:2,3,7
215:15,20 216:10
217:18,24 221:10
222:10,10,12,14
225:22 226:15,21
226:22 230:18,22
233:18,21 234:3
242:7 243:13 246:3

246:5 247:13
doing 56:21 80:14
104:19 151:25
175:8 224:6 225:19
233:12 245:15
246:19
dollars 10:7
double 190:21
doubt 29:16 234:12
downloaded 25:14
downtown 151:4
dr 238:5
draft 214:6
drafters 235:10
drafting 11:13
13:10
drafts 12:17 214:8
draw 238:8 243:15
243:17 245:2
247:14
drawing 113:6
135:23
drawn 213:4 242:12
drive 24:19,25 25:2
25:11,12,18,20,22
26:7,14 65:19 66:2
66:8,11,16,24 67:2
67:10,24 93:22
94:15,20,21,23 95:2
95:7,9 96:10,12
107:11,13,21,25
108:2,4,9,13,18
111:8 112:3 148:9
195:9,11,12 203:8
203:21 221:4,7
248:8 251:23
drives 32:18 107:18
drop 134:24
duly 6:6 253:12
dunn 1:18 2:11 51:8
53:10 118:7,20,23
123:10 183:4,11,14
187:13 215:10
224:21 225:18

duplicate 42:22
189:23
duplicating 5:14
dupree 2:16 3:4
194:6,15 203:24
205:7 206:18
207:11,15 212:2
218:22 224:3,14
229:16 231:11,20
234:16 237:19
248:13,16,22
249:21 250:5 252:9
252:10
duty 42:24

e

e 2:2,2 6:5 24:19
26:8 32:12 35:20
40:5 42:2,5,14,15
42:25,25 43:8,16,21
43:22 44:5,8,12,14
44:18 45:5,11,15,20
46:8,12,17 47:8,14
47:14,22,23 48:19
49:4,7,7,20 50:7,9
50:13,22,25 51:21
54:18 55:4 56:19,22
57:7 58:15,17 59:5
59:7,11,15,15,19,20
60:3,6,14,17,20
61:10,21 62:7,8,20
62:22 63:4,6,10,15
63:19,21,22 64:10
64:13,18 65:10,11
73:20 76:16,20,21
76:22,24 77:2,14,20
78:3,4,5,8,18,20,25
79:3,10,15,16,19,20
79:23 80:4,4,13
81:4,9,14,17,20
85:15 90:9 91:13
97:16,20 98:11,13
98:18 99:5,7,14,15
99:19,21 101:2
102:2,19 104:9,10

104:13 109:10,21
110:18,20 111:3,6
112:18,25 113:13
113:16,17 114:12
114:15,16,22,24
115:5,6,12,25
116:21 117:19
118:8,9,17,20,23
119:14,18,22,24
120:4 121:18,22
122:6,9,13,16,16,19
122:22,23,25 123:6
123:14,15,18,23,25
124:6,9,13,15,17,21
124:23,25 125:4,7
126:6,12,15,20,21
127:7 128:7,8,13,15
128:20,22 129:3,6,8
129:12,13,17,19,20
129:25 138:14,18
146:23 147:20,21
149:4,13,14,15,19
149:21,25 150:9,15
150:18,24 151:8,17
151:17 152:7,15,18
152:19,24 153:4,21
153:25 154:3 156:6
156:9,11,19 157:4
157:10,12,17,17,21
158:17,23 159:3,4,4
159:7,8 160:11,20
161:3 162:12,15,16
162:17,19 163:2,9,9
163:12 164:10,12
164:14,17,21 165:7
165:10,16,19,23,24
166:3,9,10,19,20,22
168:14 169:3,7,11
169:15 170:19,20
171:17,17 173:16
174:2,9,13,15,16,24
175:5,14,15,17,21
175:22,23 176:3,18
176:21,22 177:4,9
178:10,11,12,17,18

178:23 179:5,16,22
179:24 180:4,9,15
181:12 182:15,20
182:22 183:7,10,18
183:23 184:3,9,19
185:2,8,14,19 186:3
186:11,16,23 187:3
187:7,11,16,20
188:3,12,18,21,24
188:25 189:25
190:8 191:24 192:3
194:2,2,18 210:6,8
210:9,18,19,20,21
211:7,10,12,14,20
211:25 212:3,7,12
212:14,18,24 213:2
213:4 216:4,11,17
217:24 225:14,23
226:14,18,23 227:3
227:6 228:12
230:18,22 231:16
232:5,18,21 233:2,6
233:11,16,19 253:2
253:2 254:2
earlier 22:5 65:24
74:18 87:9 94:8
103:12 110:8
166:22
earliest 93:18
124:19,21
early 41:22,23
184:13
easily 218:19 223:20
238:16 244:14,19
eastern 58:24 60:24
166:2,4 226:19
edit 215:22
edited 212:8 216:2
226:22
editing 23:24 213:2
216:5
editor 130:3,8,11,14
130:15,19,19 131:7
131:12,21 132:2,10
132:18,22 133:10

135:11,16,18 136:2
139:19,24 140:6,18
142:18 147:8
editorial 12:18
editors 130:17
eduardo 53:14
effect 51:7 166:3
eight 74:24
either 22:25 41:24
42:3 73:13 79:24
95:20 139:3 176:8
186:13 214:24
234:8 238:18
248:20
electronic 19:24
20:17,20 22:20
30:17,19,22 31:3,20
31:24 32:4 40:16
52:3 53:3,13,24
54:3 144:14,18
145:5 182:25
185:19 217:9 225:7
231:19
electronically 136:9
elements 213:8
eliminate 111:11
112:15
elliot 1:8
embedded 198:15
198:17 227:6
employed 202:20
employee 245:6
employees 81:21
106:11,14 215:3
encase 131:18 135:8
ends 150:13 205:20
205:22 206:10,15
enforced 146:6
engage 147:3
engaged 48:17
50:25 155:13
244:13
engagement 8:23
entered 147:16

entire 10:23 17:3
103:8 117:14
118:16 127:11
154:20 155:8
163:12 202:15
246:18 251:19
entitle 223:24
entitled 201:2 228:6
237:24 254:15,19
equate 49:9
equivalent 79:14
eric 9:24 12:15
errata 255:2
error 175:14 220:23
246:8 247:3
escape 244:19
esq 2:9,15,16,17,18
essentially 30:10
73:16 131:7 132:10
133:3 135:4 198:4,7
198:21 222:5 230:4
233:12,14
et 116:23 232:9
evaluate 20:8 34:3
36:3,17 72:19 89:7
90:19 99:20 177:18
evaluated 15:14,19
34:2 36:5 136:8
137:8 164:21,24
211:7,9 227:11
247:21
evaluates 34:25
evaluating 247:9,10
evaluation 35:2
38:18 72:25 73:19
101:25 233:8 247:6
event 151:12
everybody 214:23
everyone's 79:18
evidence 3:21 25:24
26:4 28:21 30:18,19
30:22 31:3,20,21,24
32:4,6 34:5 36:10
40:17 41:10 51:14
51:18 52:3,22 53:13

53:23,24 62:18 63:7
63:11,12,13,13,16
63:16 64:20 65:14
73:6,10,13,14 75:7
78:8,12,19,21 83:14
83:17,25 84:5 92:24
95:19,22 96:2 97:23
98:9,23,24 99:15,25
100:7 101:8,16,19
102:6 106:17
110:19,23 111:24
113:2 114:23
115:18 116:7 120:2
120:19,20 122:12
122:14,15,18,25
123:23 124:12
129:15,18,23
130:10,13 131:19
132:15 135:24
136:8 139:22
140:12,15,16,19
142:19 143:12
144:21 146:5,10,22
148:14,15 149:3,4
150:4,12,14 151:21
153:13,14 154:19
154:21,22,24,25
155:2,5,10 156:16
159:22 163:8
164:14 167:3
190:18,25 191:8,11
191:13,20,23
192:11 199:21,21
199:23 207:19
212:9 213:6,8,12,17
217:7,15,19,21
218:2 220:13 221:2
221:7,9,13,23 222:7
224:6 225:12 228:7
231:6,13 232:2,3,4
232:6 237:13
239:12 246:18
247:15,19 254:16
exact 10:5 33:4,9
97:13 189:23

203:19
exactly 19:4 22:23
32:25 181:9 206:6
235:24
examination 6:8
194:20 254:3
examine 138:8
examined 6:7 41:12
examiner 14:8
207:25 237:18
examiners 10:4
12:21
example 23:20 35:2
64:22 67:16 133:20
166:9 191:24 215:7
226:13 239:4 240:4
240:20 241:4,9
242:4,20,25 244:7
244:24 247:3,4
251:8
examples 177:5
220:19 239:6 240:2
241:2,21,21 243:13
243:19,20 245:25
246:15
exceedingly 115:10
161:23
excerpt 238:5
exchange 158:11
exchanged 135:14
164:10,12,22 177:9
exchanges 162:20
178:23 225:23
excluded 44:18
exclusively 221:3
227:11,14
excuse 126:23,25
exercise 11:14
exhibit 5:6 6:2 8:5
9:3,16 10:20 14:18
17:10,23 19:12
20:13 27:24 29:8,14
29:17 30:15 40:6,18
58:6 82:16 84:11
87:6,7,14,17,20,23

88:2,4,12,15,16,20
90:23,25 91:3,10
93:9 107:6 120:23
121:7,9,10 155:19
197:6 200:20,21,25
205:3,4,10 206:2
207:5 208:20,21,22
208:23 228:6,10
237:24 238:4
248:19 249:2,3,4,5
249:8 250:14 254:7
254:9,11,13,15,19
exhibits 5:12 249:10
250:2 254:6
exist 16:23 78:13
101:2 104:4,6
117:13 142:13
204:10
existed 46:12 72:14
72:20,23 75:8 77:21
101:3 186:9 200:6
200:13 204:9
existence 14:21 17:6
74:18 81:20 217:20
242:17
existing 54:5 120:4
123:12 214:24
exists 16:20
expect 167:12,13,17
167:22 170:16,18
170:21 214:4
215:13
expedited 33:23
35:16,21,25 36:4,5
36:13,16 42:24 43:8
80:18 81:5,10
183:18,21 185:12
188:2 236:9,10,13
experience 69:11
94:2 172:6,8 214:5
248:2
experiment 214:7
expert 16:24 19:18
19:20 22:4,16,17,19
22:22 26:21 34:25

41:9,12 69:12 84:16
100:10,11,12
102:19 182:2
191:16 204:11
205:11 207:25
208:12 209:22
219:9 227:9 233:19
237:10,10,11,15,18
240:8
expert's 70:18
expertise 18:3
experts 15:15
100:23 103:8
142:24 156:24
196:17 209:18,19
223:23 228:8 229:6
232:13 237:3,6,14
254:17
expires 255:25
explain 198:19
explained 114:19
explanation 47:15
47:19 70:6 72:16
111:9 131:22 133:9
135:17,25 155:11
155:15 161:2 162:7
176:14
explanations 47:12
131:23 133:13,14
155:9 176:20
express 115:25
116:8,14,18,19
117:16,17,24 118:2
118:3,6,15,25 195:7
195:18
extent 25:23 78:3,18
80:15 81:10 167:10
202:25 203:2
215:23 235:13
239:21
external 100:6,7
101:17 116:20
extra 49:2 50:16
51:5

extremely 177:25
eye 23:20,24 24:6

f

f 93:9 194:2 249:2,4
  253:2
face 227:3
facebook 1:9 15:25
  18:16 53:20 106:9
  120:18 121:23,24
  122:2,6,10,17
  123:15 141:23
  142:2,10 145:21,24
  189:5 231:9,18,21
  231:24
facebook's 142:4
faced 227:2
facility 38:14
fact 20:3 28:22 51:6
  62:19 63:15 65:18
  66:11 78:2 84:14
  91:17 92:11,12,15
  97:23 98:9,10,21
  107:21 108:4,21
  109:18 111:7,9
  113:5 120:21
  122:21 123:13
  131:3,11 135:8
  136:2 144:21
  146:11 149:11,18
  149:21,24 152:2
  154:21,22 156:18
  156:19 159:15
  161:7 162:9 165:20
  169:14 176:3,19
  196:6,11 207:10
  226:11 239:9
  241:13,13,15
  243:21
factor 14:16 98:19
  146:13
factors 100:6
facts 97:5,8 135:18
  242:12

fair 7:22,24 16:12
  16:18 20:11 24:23
  40:25 41:2 42:2
  50:4,11,14,19 58:5
  58:10 59:22 61:7,22
  73:7 87:19 100:22
  101:3 107:14 124:8
  140:8 181:17 208:8
  220:6 237:7
fairly 144:7 152:3,4
  153:14 196:13
  223:20 226:17
fake 141:3,5 144:13
  146:5,16 149:5
  191:12,18 192:13
faked 146:17
fakes 165:16
false 141:12 142:11
familiar 23:21 52:13
  52:17,20 64:23,24
  119:14 139:8
  177:11 209:8
familiarity 3:19
far 4:13 118:11
  163:24 220:23
  224:13
farfetched 245:16
farther 158:3
fashion 49:17
father 109:8,21
  110:12
father's 108:25
faulkner 53:11
faulty 77:25
february 42:20
  45:12 222:11
federal 3:20,21
fee 214:13,18 215:4
  215:8,9,20,21
feed 95:14,15
feeding 95:24
feel 11:19 153:2
  171:13 237:16,20
feet 151:11

field 219:3 236:25
file 5:19 19:24 20:17
  66:15 75:23 76:4
  77:21 86:10 89:10
  91:13 92:4,19,20
  93:2,17 94:3,14,15
  96:6 101:21 102:14
  132:3 134:20 135:7
  135:10,14 139:9
  195:14,14,18,22,24
  195:25 196:5,6,19
  196:23 197:2,8
  198:2,5,6,7,20
  199:7,9,10,11,12,14
  199:20 201:9,14,14
  201:17,18,19,21,22
  201:25 202:2,6,11
  203:5,10,15,18,21
  203:22,25 204:6,7
  204:14,15,19,20,20
  205:5,14,19,22
  206:7,8,11,16,17,23
  219:25 221:20
  222:21,23 227:7
  229:8 232:11,14
  239:18 254:14
file's 102:11
filed 5:17,25 8:7
  29:11,18,25 30:14
  87:11,13,18 91:5,10
  108:25 137:22
  190:10 200:25
  205:8
files 22:21 24:25
  25:17 57:6,7 68:11
  90:6 96:18,23 97:12
  104:16 111:7
  116:22 134:2,6
  145:6,8 195:13,16
  195:20 196:5,6,18
  197:4,10,11,20,20
  197:21,23,24
  198:13,16,18,25
  199:3 200:6 201:8
  201:12 202:7 203:6

  203:11,20,23 204:2
  204:3,4,5,8,8,10,12
  204:13,22 205:17
  206:25 207:6,6,8,17
  218:10,11 219:14
  220:6 222:3,17
  229:11 240:11
filing 29:5 200:14
final 98:5 216:18
finally 250:18
financial 145:23
find 20:18 27:11
  75:22 78:7 92:24
  93:3 95:19 116:7
  130:7,10,14 137:24
  183:19 186:11
  188:25 190:24
  192:2,3,7 194:24
  195:3 196:7 217:8
  221:6,8,15,23 231:6
  231:13,25 232:6
  233:24 240:15
fine 55:17 85:3
  93:15
finish 126:24 127:5
  127:25 128:2
  160:18
firm 70:14 83:10
  215:11 216:16
  245:10
first 21:17,21 27:23
  28:10,11 38:2 40:22
  45:18 60:8,10,23
  76:2 91:18 92:16
  93:14,22 95:9,12
  96:4,7,9 97:16
  98:24,25 100:14
  107:20 126:15
  134:23 186:20
  205:13,13 224:6
  225:17 249:3,5
fit 138:9
five 77:15 78:2,11
  78:12 205:4 234:14
  254:13

fixed 24:5
flip 205:25 241:22
flopping 241:22
floppy 25:4 66:22
  221:11,13,21,22,25
  222:5,6 227:12
  233:17
florida 115:13
flowed 210:25
focus 35:20
focused 36:22
  183:21 227:15
folder 76:16 79:15
folks 12:13 21:3
following 3:24 97:22
follows 6:7 194:19
footnote 58:18,23
  59:2
forensic 10:3 12:21
  22:17 25:24 26:4,21
  37:20,25,25 38:10
  41:12 44:7 45:7
  52:8 56:21 59:9,13
  62:10,15 63:7,11,12
  63:16,17 65:14 77:5
  77:8 78:7 80:14,19
  80:20 93:4 107:12
  107:25 108:4,8,9,14
  108:17 110:19
  111:2,24 112:20
  131:17 133:5 135:9
  140:12,15,19
  144:21 150:9
  154:19 155:10
  156:24 165:9 182:5
  189:12 190:13
  191:8,20,23 196:16
  208:7 212:9 227:18
  227:24,25 228:8
  231:6 237:14
  254:17
forensics 18:4,5
  19:9 24:18 40:25
  41:4,9 57:3 62:16
  65:22 69:12 77:9

84:16 113:8 115:23
  139:22 140:16
  143:2,19 146:15,19
  146:20 147:11
  148:14,15,21
  155:15 156:16
  159:20 182:2
  190:24 209:14
  235:7 236:25 237:3
  237:5,13 238:2
  240:8 254:21
forge 131:12
forged 140:25
forgery 214:6
forgetting 175:20,20
forgive 151:14
form 15:2 17:25
  18:21 21:15 31:7
  44:10,22 47:17
  56:15 58:2 73:22
  76:18 86:8 105:9
  113:20 115:20
  145:18 153:7
  207:11 212:2 217:9
  231:11,19 237:19
  249:21 250:5
formal 40:5 200:2
  240:9
format 19:25 20:3
  55:2,3 81:19 168:12
  168:23 169:10
  171:7 179:24 180:4
  180:14
formats 56:24 139:9
formatting 47:24
  48:9,12,18,23 49:5
  49:10,18,20,25 50:3
  50:13,21 51:20
  54:17 55:20 56:2,12
  56:17,18,24 57:4,7
  57:13,24 139:15
  166:8,23 167:2,8,12
  173:8,22 176:6,10
  176:15 213:10

formula 232:12
formulates 169:10
forth 62:23 159:9
  163:3,6,15 170:24
  216:17 225:9,14
  242:2 253:11
forward 94:6
forwarded 98:13
  160:4
found 19:9 21:9,12
  24:15,16 26:25
  28:19,21 34:12,14
  34:17,18,19,20
  58:15 61:21 67:11
  67:17 71:3,5,9,14
  72:9,13 73:20 75:6
  75:25 79:14 86:2
  88:25 89:22,23
  95:22 101:19 107:4
  107:11 108:24
  120:19 121:16
  122:12 130:13,18
  138:3,11 146:15
  149:12 150:24
  151:5 183:7 189:3
  190:19 191:8
  194:24 195:6,6,8,23
  197:20 221:20,21
  227:19 232:2
four 12:6 31:4 64:5
  94:4 163:9 234:24
fourth 89:13,15
fragile 239:19,23
  241:15
frame 172:2
frankly 70:5 130:16
  132:14 150:6 216:3
  227:2
fraud 18:8 48:18
  49:9 50:4,12,21
  51:10,18,25 56:4,8
  56:10 59:10,14
  142:20 144:22
  146:8,22 147:3
  153:14 155:13

167:3 175:12,17,19
  175:19 176:3,8
  179:12,18 182:8,10
  207:19,20,25,25
  216:24 217:7,15,21
  218:3 236:23 237:8
  237:10,17,17,18
  241:17 242:10,11
  242:21,24 243:7,16
  243:17,25 244:3,6
  244:13 245:3,9,12
  245:19,21 247:20
  248:4
fraudulent 51:12
  115:2 132:9,12,17
  146:11 155:14
  166:14 214:6
  244:23 247:25
frequently 114:2
friday 156:7
friedberg 3:9 6:2
  8:14 9:17,24 10:9
  10:13 12:15,16,24
  13:3,14,24 14:4
  22:9 37:23 39:7
  40:14,23 43:14
  48:17 49:14,18,19
  49:24 50:4,6,12,15
  50:20,24 51:9,18
  56:13 83:13 88:23
  91:8 137:12,14,20
  170:8 173:2 187:9
  187:20,25 214:9,17
  215:3 228:18 230:5
  234:10 254:7
friedberg's 8:8
  81:13
front 65:8 120:23
  129:21 156:21
  179:2
full 85:12 89:15
  198:8 209:3 228:24
  228:25 229:20
  235:4 238:13

function 68:7,10
96:13 118:18 139:5
169:5
functions 69:23
further 213:17
252:8 253:15
future 4:21

g

g 93:9
gain 69:4 73:5
gathering 224:6
general 30:9 41:7,20
55:22 57:16 66:9,15
72:8 73:4 105:3
106:4 112:15 116:5
117:12,25 138:11
174:17 185:4
196:17,23 214:11
214:12 218:7
224:24 243:11
generally 8:24 58:10
69:9 71:14 73:13
75:11 94:7 116:17
130:17 133:17
153:4 161:21
163:21 167:19
177:11 178:16
181:19 198:22
204:22 209:15
210:2 211:16 214:3
214:23 215:13
218:18 224:12
229:12,24 238:15
248:3
generate 85:25
155:13
generated 212:10
generates 220:23
246:7
generating 213:3
generically 84:2
genuine 14:24 17:10
17:24 18:6,20 115:6
144:24 150:5

213:18
geographically
83:17
getting 39:20
getzuck 119:14
121:3 126:20 128:7
128:9
gibson 1:18 2:11
51:8 53:10 118:7,20
118:23 123:10
183:4,11,14 187:13
215:10 224:21
225:18
gif 19:25
give 20:2 97:13
131:8 134:3 135:12
145:24 175:22
224:17 234:25
235:4,18,23 239:3
240:19 241:9 244:7
252:4,6
given 39:15 50:23
51:11,24 62:19
65:17 111:7 130:16
133:14 144:21
155:10 161:7
179:20 183:12
185:22 187:11
196:11 218:2
250:13 253:13
giving 5:14 156:20
228:10 241:4
go 7:3 27:10,14
42:11 48:7 60:15
67:21 82:9 83:16
84:18,24 85:2 91:21
93:10 118:14
119:19 130:22
134:22 136:23
137:5 151:19
155:18 157:16
158:3 159:9 165:16
183:14 193:6,16,18
201:11 207:3 214:7
216:16 230:13

241:25 246:11,12
250:6
goes 185:11
going 7:19 14:25
27:10,14,15 46:7
78:19 83:5 94:5
127:10,12 131:6
132:23 134:23,24
134:25 136:20
137:16 145:3 146:8
156:3 163:15 167:9
172:3 180:19,23
192:24 194:9
200:15 206:18
210:18 219:25
222:7 224:19
240:19
good 6:10,11 8:3
209:20 235:22
gotomeeting 67:20
68:4
gotomypc 64:22
65:3,16 67:16 68:4
68:6,9,17
gotten 94:20,23
182:23 184:12
government 209:19
grab 91:19
grant 9:13 227:9
233:20,25
graphic 27:12 76:15
greater 111:21
greatest 141:5,13
greatly 44:2
group 165:24
groups 202:19
guess 75:9,13 119:3
145:19 151:20
175:20 181:9
202:25 204:16
228:19
guessing 193:15
guidelines 209:14
gun 150:14

guys 216:25 223:25

h

h 2:15,16 27:24
228:8,12 249:3,5
254:17
habits 161:12
hacker 104:25 106:3
106:22 107:2
hackers 73:4 103:16
103:18,20,21 104:5
104:9,15,18 106:14
hacking 69:8 105:8
105:21,23 106:6,10
106:17
half 58:25 61:17
141:23 142:2
145:24 194:7
hand 10:17 84:19
91:22 208:24
223:19 228:23
253:21
handed 8:4 28:24
30:11 88:20 248:23
handle 172:17
handwriting 156:15
156:23,24
handwritten 63:24
64:3 150:3 154:23
156:17
handy 48:5
happen 94:24 119:8
134:14,16 135:13
216:3 244:6 251:16
happened 40:11
58:3 65:16 125:14
134:9 135:20
151:13 155:4 187:3
187:7 231:3 241:24
happening 95:21
191:24
happens 246:6
251:14
happy 127:20

hard 24:18,25 25:2
25:11,12,18,20,22
26:7,14 32:18 65:19
66:2,8,11,16 67:2
67:10,24 93:22
94:15,19,21,23,25
95:7,9 96:10,12
99:20 107:11,13,18
107:21,25 108:2,4,9
108:13,18 111:8
112:3 148:9 195:9
195:11,12 221:4,7
248:7 251:22
harvard 32:12
41:25 42:5,13,15,19
42:25 44:4,14,25
45:4 46:6 52:18
54:18 56:19 59:15
78:25 79:15 80:4
81:8,16 124:15
126:7 147:21
182:15,20,22,22
183:10 184:11
186:2,14 188:2,25
232:18
harvard's 43:16
head 144:8
headed 205:5
254:14
header 58:12,16
210:8
headers 97:21 211:2
headings 30:9
hear 180:24,25
181:2 250:23
heard 251:12
held 1:18
help 99:8 190:23
helpful 238:19
helping 43:7
helps 251:9
hereinbefore 253:11
hereunto 253:20
hesitate 210:11

hex 130:2,8,11,14,15
130:17,19,19 131:7
131:12,21 132:2,10
132:18,22 133:10
135:11,15,18 136:2
139:19,23 140:6,18
142:18 147:8
hey 151:17 153:22
185:7 246:16
high 115:10 224:18
224:23
higher 94:9
hire 18:7,23,25 34:7
114:25 115:3
132:16 146:24
164:6,6 189:9,24
190:5 191:5,12,17
216:8 217:11
221:18 225:13
242:18 247:17
hired 106:14
hiring 216:16
historical 45:5,15
46:17,22 53:6 54:5
78:16,22 79:11
81:25 182:23 186:9
historically 32:20
33:6 46:22 83:9
137:10
history 192:7,11
hit 23:11 99:2 111:4
hm 121:21 198:12
200:8 209:6 229:3
hold 5:10 48:3
holds 146:25
hope 248:14
hopefully 194:15
hotmail 166:18
167:11 168:2,8
169:5,10,14,21,25
170:9,18,22 171:9
171:14 172:9,11
173:12,14 174:20
175:2 211:14,16,22
212:15

hour 9:24 10:2,7
193:14 194:13
hourly 9:18 223:4,5
hours 193:2 194:7
223:8,14 235:24
house 114:6
html 139:10
hundred 236:20
hundreds 74:5
hypothetical 17:14
18:12 57:10 99:18
100:25 101:6,11
109:14,19 113:11
118:22 125:14
126:12 134:9
144:11,16 150:22
151:15,24 152:13
174:3,5,21 178:25
179:4,13 182:11
207:4 245:16
hypothetically
64:19 73:12 94:25
99:15 110:11
114:11 144:19
174:23 245:10
hypotheticals
100:18,23 102:4

i

idea 51:4,9,10 135:5
171:13
identical 49:4
150:18 203:15
206:16
identification 6:4
82:17 200:23 205:6
228:9 238:3
identified 17:10,23
123:11 165:9 207:8
243:5
identifies 61:21
identify 8:6 11:25
20:12 45:4,15
181:15 183:8
189:23 225:15

identifying 220:25
233:11
ignore 217:16
illegible 249:15
image 19:18,22 20:3
20:23,23 21:4,7
22:4,16,18,21,22
24:6 37:25 44:7
64:2 87:21 88:13,15
88:17,19 90:12 91:3
91:4,9 92:12 94:9
94:10 96:23 107:25
112:3 151:10 152:3
152:11 153:17
159:18,19,21,23,23
249:25
images 19:20 20:9
20:13,19 21:8,9,18
21:23 23:2,4,16,25
24:12 26:25 27:4,7
27:12 30:13 38:11
52:8,11 62:8 65:25
66:7 67:10,17 68:13
85:15 86:2,13,22
87:2,5 88:24 89:5
89:22 90:9 91:12
97:7 99:10 101:5
102:18,22 106:19
108:24 147:25
148:2,16,20,21
149:11 150:2 153:3
153:5,6 159:24
160:2,6,7,10,21
161:8,14,17,23
162:5,6,8,10 190:9
194:23 195:7 232:8
232:10 249:19
imagine 49:9
imaging 232:13
immediately 10:17
97:22 112:3 157:22
195:9
impact 115:21
145:23

impacted 102:8
implausible 70:6
  138:25 171:18,20
  171:21,24 172:4
implying 88:3,6
important 41:8,11
  210:6
impossible 149:2
inaccuracy 226:16
inauthenticity 34:6
  36:10,14,18,23
  138:8 225:13
inbox 116:22 117:8
  117:8 118:16
inch 90:2
inches 85:21 86:6
  90:6
include 52:8 181:12
  181:12,13 197:19
  201:23
included 12:5,6 36:2
  42:19 81:9 122:22
  125:6 163:16
  180:10,17 181:5
  186:12,24,25
  189:25 210:17
  231:18
includes 90:12
  129:19 201:15
including 22:21
  65:10 98:4 131:4,5
  135:10 138:13
  149:4 159:15 235:6
  239:20
inconsistencies
  48:24 166:15 167:4
  167:9 240:3
inconsistency
  239:12
inconsistent 167:7
  222:15
inconsistently 172:4
incorrect 165:20
  239:5 244:11

incorrectly 58:24
  175:8
independent 97:25
  98:7,16
indiana 114:2
  230:13
indicate 50:4 65:14
  70:9 98:8 166:7,13
  198:24 201:7
indicated 7:4 45:13
  47:21 83:10 92:25
  105:22 146:16
  178:13
indicates 123:17
  124:8 135:10
  156:22 191:9,11
  197:11 200:6
  202:23 241:6
indicating 159:25
indication 179:18
  216:24
indications 176:8,11
  216:2
individual 147:8
  154:17 180:9,15
  242:25 247:6,20
individually 1:9
individuals 13:25
  31:19 69:12 125:8
  219:2
industry 21:4
inference 160:14
inform 241:3
information 8:15
  35:18 58:12,16 77:9
  89:6 90:18 106:7
  129:21 151:6
  169:18 170:12
  171:10 182:19
  199:2 209:15
  211:22 220:10
  227:25 228:3 234:2
  234:9,11 250:24
  251:2

informed 21:22
inherently 222:15
initial 97:15,20
  148:23
initially 202:18
initiated 218:21
  238:18
ink 249:11
innumerable 69:4
inquiries 226:11
insert 49:20 50:7,16
  167:14
inserted 51:5 138:4
  221:24
inserting 49:18
insertion 56:2,6
inside 144:8
inspection 225:7
installation 69:18
installed 69:10,24
  130:12,15
instance 48:24 49:2
  63:14 67:20,22
  72:11 75:17 132:5,7
  140:22 166:17,25
  167:14 210:25
  218:15 220:21
  222:9 239:6 241:22
  245:25 247:20
institutions 43:23
instruct 127:19
instructed 224:10
  224:12
instructions 224:5
intent 56:9
intentional 134:8
intentionally 49:17
  49:24
interested 182:8
  253:18
intermediary 59:7
  98:5 149:15 177:3
  244:10,17 245:15
internal 245:9,10

internet 25:15 58:16
  67:4 97:21 123:12
  139:5,9,13,16 168:7
  192:11 198:22
  199:5 210:25
  211:15
interpret 247:22
interpretation 228:2
  229:6 242:9
interpreted 239:24
interrupt 93:9
interspersed 133:7
intervening 162:11
interview 80:16
introduced 56:25
  166:24 176:15
intrude 104:12,15
intrusion 73:6,11
  106:23
inventory 33:11,13
  33:16
investigation 112:17
  210:7
investigations
  185:23
investigator 12:2
invoices 10:18
  223:18
involved 10:10 11:6
  11:10 12:16 31:4
  43:6 52:4,11 53:19
  105:7,20,23 136:13
  183:9 184:10,13
  235:15 236:12
involvement 37:12
involves 56:8 185:12
involving 52:14,18
  53:13
ip 113:3
irrelevant 183:15
isolate 154:16,16
issue 28:25 37:7
  49:6 54:16 55:12
  92:6 177:11 213:15
  227:16 232:7

issued 31:20 32:5
225:8,20 240:7

issues 41:14 48:13
48:23 213:10

issuing 14:5 30:19
31:5 33:7 40:18

item 60:2 95:12
177:14,18 178:9
181:6

items 59:18 75:22
76:4,16 77:16 78:8
79:9,9,14,14 117:2
117:3,21 177:15,20
181:7 202:14
213:21

j

j 1:17 6:5 194:18
252:16 253:10
254:4 255:6,21

january 120:5
122:22 123:17,21
123:25 127:8
128:15 129:2,11,19

jason 10:2 12:20
13:8

jerry 227:8 233:20

jim 62:25 150:25
151:17 152:9
154:22,23 155:22
156:6,19 160:22
190:9

jobs 94:5

jog 177:7

jpeg 19:25

jr 2:16

judge 6:24 7:4
127:18

july 1:14 15:15,20
107:22,24 236:14
253:21 255:5

june 124:20 125:8
125:25 126:3,8,14
187:17 188:19

jury 17:17
justice 209:5,13

k

kasowitz 177:10
179:22

keep 126:25 251:9

kept 35:11

keyboard 111:4

keys 111:4

kilobytes 90:6,7

kind 69:18,21 72:15
72:24 104:2,4 117:4
147:3 172:22 241:7
242:4 243:12

kinds 71:21 72:3

know 4:6 7:8 9:19
10:8,13 11:14 18:8
19:11 21:24 22:6,7
22:15,25 24:17
25:25 26:18,19 27:3
29:9,19 30:23 31:2
31:18 32:25 33:4,9
34:8,22 35:10,12
37:11,17,21 38:5,8
38:9,21,22,24,25
39:6,11 40:9,14
41:13,15,16,17,22
43:4,11 44:4,21,23
46:3,15,17,18,23
48:5 49:12 51:19
52:21 53:2,15 54:6
58:4 61:24 62:3,4,6
63:14 67:12,13,19
68:2,6 69:2,3,12,17
69:19 71:19,20 72:2
72:11 73:18,25 74:4
74:6,14,17,20 75:11
75:15,16,16,20
78:13 80:15,21 81:3
81:8,16 83:15,19,21
83:24 84:6,9 86:21
89:2 91:7 93:3,21
96:16 99:25 100:3,5
100:22 101:8 102:6

102:10 103:11,25
111:10 112:5,7,8,10
112:14 114:18
116:10,10,12,13
117:20,24 119:5
120:16 122:2,5,7,8
122:9,20,21 123:12
123:18,19,20 124:2
127:17 128:23,24
128:25 129:2,22
130:21 131:4,11,16
131:22,25 133:8,12
133:21,23,24
135:22 136:5,14,20
137:11,17 138:6,6
138:12,23 141:10
141:15,17 142:18
144:23 145:20,21
146:10,12 147:6,9
147:13 148:5,9,18
152:4,8,12,15
153:16 156:25
159:6,17,19 160:2,3
160:4,7,14 161:8,10
161:11 162:5,6
163:2,5,7,10,18
166:17,20,22 169:4
169:8 170:2,11,12
170:22 171:3
172:10,25 173:5,23
174:19 175:2,21
178:5,22 180:5
181:12 184:10
185:15 187:5,10
192:10,12 193:3,5
194:6 196:23 197:3
199:2,22 200:3,15
203:5,10,16 204:25
206:20 207:16
208:16,17 209:16
210:14 211:10
212:22 213:5 219:8
220:2,8 221:9,12
223:7 226:20
228:11,14 230:8

232:9 233:15 234:7
235:4,24,24 236:11
237:4 240:12
241:25 242:2
243:11 246:2,9,13
249:11,12 250:10
250:13 251:6,7,11
251:16,18,23

knowing 81:24

knowledge 208:5
209:12 240:8

kole 59:19 60:3
61:20 62:25 63:19
73:20 85:15 90:9
91:12 98:13 102:18
109:10 138:14
150:2,25 152:9
154:22,23 155:23
156:6,9,11,19 157:8
158:12,17,22 159:4
159:4,8 160:22
162:12,15,17,19,20
163:3 190:9

kole's 156:22

l

l 228:12

labor 11:11,20

lacking 72:11

lake 108:19

lakewood 2:8

landed 24:14 26:7
26:13 74:15

language 3:23 48:15
131:9 189:6

laptop 197:10,21
198:10

large 43:20,23
248:20 249:9

larger 28:23 249:24
250:7,9,15

law 215:11 245:10

lawyer 150:16
152:16 161:14

lawyers 7:8,14
178:19,23 179:11
179:18 182:18
200:16 224:21
225:2 230:18,23
lead 152:5,6,8,10
191:13
leading 236:6
leads 131:10
leaf 27:16
learn 105:7,20
203:14
leave 73:6,10 82:5
106:23 107:2
led 123:19
legal 2:4 3:17
156:20
legible 30:2,3,11
248:20 249:9,14
250:8
legitimate 212:7
letter 177:10
letters 64:5
level 27:19 155:20
157:12,13,22
224:18,23
lie 181:22,24
light 110:22
lightness 249:11
likelihood 111:17
113:16 114:6,14,22
185:18 188:9 196:4
203:18,23 207:8,13
limit 163:11 194:9
limited 35:21 36:13
81:17,23 181:8
limiting 143:2
line 17:15 49:3
50:17 55:10 76:11
76:13 85:10 91:24
92:14 180:22 255:7
link 197:10,20 198:2
198:5,13,15,18,20
199:7,10,14 201:18
204:7,19,22 205:14

205:17 206:17,25
207:6
linked 204:2
links 197:10
list 31:21 32:6,9
35:7 68:21,22,23
71:24 74:10 77:15
97:8 133:20 139:21
197:16 202:17,18
235:5,19
listed 8:16,19 30:20
31:5 39:17 203:3
205:19 232:15
lists 202:21
literally 72:5
litigation 52:10,17
53:19 190:2
litigations 52:9
littered 74:4
little 15:4 22:23
27:21 60:5 61:7,16
62:14 99:20 103:12
139:19 158:3,4
177:7 188:20
190:22 193:6,9
194:12 203:2
live 46:7,8,11
livenote 84:23
llc 2:4
llp 1:19 2:11
located 21:20 83:25
112:24
location 114:7,21
115:16 194:25
195:17 198:22,23
199:6
locations 229:10
230:12
locked 38:13
log 177:20 180:10
180:17 220:23
229:10
logical 120:5 146:17
147:12

long 22:8,13 43:25
177:25 178:12,14
longer 24:6 128:16
look 8:4 10:18 27:14
34:5 49:2 58:6
60:13 62:18 76:9
81:8 84:10 85:7
87:11,25 90:8 92:11
98:22,24 99:25
101:8 106:17
109:13 120:22
138:7 149:10
164:18,23 175:24
188:6 192:20
200:17 201:6
208:23 215:7
220:14 227:14
228:19 242:15,15
242:16,17 244:25
246:2,2,3,20,22,25
247:3,7
looked 37:3 87:9,17
88:12,20 106:21
123:6 139:16
192:17 227:22
looking 29:5 36:9
65:20 81:19 87:12
90:22 127:23
175:17 192:16
202:15 210:22,23
210:24 211:3 220:9
220:10 239:16
241:24 242:22
245:4 247:8
looks 8:7 159:6
loosely 22:23
lose 145:16,20
lot 117:10 145:16
low 28:15 113:17
114:6
lower 163:11
luehr 228:8,13
254:18
lunch 193:8,9,20

m

machine 65:21
73:17 133:7 211:4
magnified 249:17
250:2,15
magnify 91:9,9
mail 32:12 40:5 42:2
42:5,14,15,25 43:16
43:21,22 44:5,8,12
44:14,18 45:5,11,15
45:20 46:8,12,17
47:8 49:7,20 50:7,9
50:25 55:4 56:22
59:5,7,8,15,19,20
60:3,17 61:10,21
63:6,15,21,22 64:10
64:13,18 65:10,11
73:20 76:16,20,21
76:22,24 77:2,20
78:8,25 79:3,10,15
79:19 80:4,13 81:4
81:9,14,17 85:15
90:9 91:13 97:16,20
98:11,18 99:5,7,14
99:15,19,21 101:2
102:2,19 104:9,10
109:10 111:3,6
112:18 114:16
115:25 116:21
117:9,15,19 118:8,9
118:20 119:14
121:18,22 122:6,9
122:16,16,22,25
123:6,14,15,23,25
124:13,15,21,23,25
125:4,7 126:15,20
127:7 128:8,13,15
128:20 129:3,6,12
129:13,19,20,25
138:14,18 147:21
149:19,21,25 150:9
150:18,24 151:8,17
151:17 152:7,18,24
153:21,25 154:3

156:6,9,19 157:4,10
157:12,17,17,21
158:17,23 159:3,8
160:11 161:3
162:12,15,16,17,19
163:9 168:12
172:24 173:16
174:2,9,13,15,16,24
175:15,17,21,22,23
176:3,18 178:10,11
178:23 179:22,24
180:4,9,15 181:12
182:15,20,22
183:10,18,23 184:3
184:9,19 185:2,19
186:3 187:11
188:21,24,25
189:25 190:8
191:24 192:3 210:6
210:8,9,18,19,20,21
211:12,20 212:12
212:14,18 213:4
216:17 225:23
227:3,6 230:18,22
231:16 232:5,18
233:16
mail's 123:18
mailbox 78:15,22
186:10 195:7
mailed 24:19 26:8
149:13,14,15
150:15 152:15,19
226:18
mailing 57:7
mails 35:20 42:25
43:8 47:14,14,22,23
48:19 49:4,7 50:13
50:22 51:21 54:18
56:19 58:15,17
59:11,15 60:6,14,20
62:7,8,20,22 63:4
63:10,19 77:14 78:3
78:4,5,18,20 79:16
79:20,23 80:4 81:20
98:13 104:13

109:21 110:18,20
112:25 113:13,16
113:17 114:12,15
114:22,24 115:5,6
115:12 118:17,23
119:18,22,24 120:4
122:13,19,23 124:6
124:9,17 126:6,12
126:21 128:7,22
129:8,17 146:23
147:20 149:4 153:4
156:11 159:4,4,7
160:20 163:2,9,12
164:10,12,14,17,21
165:7,10,16,19,23
165:24 166:3,9,10
166:19 169:3 175:5
175:14 176:21,22
177:4,9 178:12,17
178:18 179:5,16
183:7 185:8,14
186:11,16,23 187:3
187:7,16,20 188:3
188:12,18 211:7,10
211:14,25 212:3,7
212:24 213:2 216:4
216:11 217:24
225:14 226:14,23
232:21 233:2,6,11
233:19
main 47:12
maintain 43:21,25
44:2
maintained 38:15
149:19
majority 235:6,7,11
making 88:10
226:23
malware 69:19,24
70:3,5,12,15,25
71:3,15,17,22 72:5
72:7,9,10,13,19,21
72:22 73:2,16,16,20
73:25 74:5,10,12,14
74:17 75:5,8,11,14

75:16,17,19 103:13
managing 228:17
230:6
manipulate 114:25
132:3,16 133:19
140:7 145:5,8
244:21
manipulated 101:20
132:25 176:12
212:8 226:22 245:8
246:24
manipulation 100:2
101:25 102:7,11
115:3 142:19 149:5
191:11 212:25
213:6,8 241:7 242:4
242:8,18,19 246:14
246:16 247:13
248:4
manipulations
217:16 242:16
manually 49:13
212:20
march 6:3 8:8 148:9
148:12 149:14,24
156:7,11,12 157:9
158:7,8 159:5,7,14
159:24 174:7
187:17 188:19
254:8
margin 217:16
242:19
mark 1:8 5:5 15:10
17:18 18:13 32:11
32:15 33:5 42:25
53:7 78:24 79:15
81:3 102:17,24
105:17 106:2 128:5
142:13 145:13
149:23 182:14,16
183:17,25 184:9
191:18,22,25
200:19 205:2
231:10,16 237:22

marked 6:3 8:5
82:17 84:10 200:22
205:5 208:18 228:9
238:2
marks 135:4
marriage 253:17
massive 155:13
material 225:16
materials 123:8
124:4
math 59:23 61:18
mathematical
232:12
matter 41:20 55:22
75:14 112:15
117:12 148:23
168:6,9,10 235:9
253:19
matthew 2:17 3:4
mcgowan 8:13 10:2
13:8,11,23 21:23
22:10 31:15 33:9
169:19,21 234:8
235:7
mcmanis 53:10
mean 14:13 15:3,16
18:25 19:23,24
21:12 22:18 37:5,6
40:4 42:22 43:17
53:9 55:22 58:19
67:20 68:24 69:3,16
71:21 72:3 73:12
76:19 77:24 82:4
95:25 96:8 99:18
101:6,7 102:13
103:24 104:10
111:16 112:7
113:22 117:12
119:2 120:8 130:25
131:2 133:18,22
134:21 137:24
138:6 142:16 144:5
144:7 145:9,19
148:23 150:6,12,13
151:16,20,23 152:6

153:12 154:14
155:4,20 163:7
165:6 171:13
172:10 177:25
181:4,6,11 184:22
192:10 196:23
198:5,16 199:9
200:2 202:17,25
204:6 210:15,23
211:13,13 212:6,8
213:15 215:6
218:14 220:12
222:6,22 223:17
225:6 226:3,10,14
226:15,17 232:6
236:5,8 237:12
242:11 243:10
249:13
meaning 111:3,22
128:16 224:10
means 19:4,4 22:24
41:16 44:12 67:14
86:21
measure 88:24
measurement 88:23
media 12:23 20:20
21:20 24:15 28:8,18
34:25 35:8,18 36:19
37:19,20,24 39:16
61:22 70:3,12,15,24
80:19 93:4 95:20
107:5,17 108:19
112:21 121:18
123:13 124:3
130:12 138:9 150:7
183:22 195:4
197:17 200:7,14
204:9 205:17
217:10 225:11
meeting 6:21
members 37:13
83:10
memorize 177:22
memory 48:6 177:7
235:5

mention 27:6 77:15
142:10
mentioned 11:9
108:15 155:22
230:11 232:17
mentions 231:24
mercuri 219:9 238:2
238:5 254:21
mercuri's 238:23
mere 176:17 217:20
merely 51:18 135:13
181:13 245:13
merge 132:11
merged 140:24
message 153:22
154:7 158:5
met 54:8,12
metadata 90:8,11,16
96:17 131:15,16
132:3,19,21 133:2,3
133:4,6,16,19 134:5
134:7,22 135:3,5,6
135:9,12,13 140:7
143:22 198:15,17
198:24 205:14
218:5,10 220:5
225:25 229:11
232:10,15 238:19
242:23 247:8
method 25:20
methods 25:19 26:2
220:24
mexico 115:13
microsoft 57:11,12
57:14 74:20,25 75:2
75:12 166:17,20
172:14,16,22 173:3
173:7,11,21 218:17
220:22 233:21
238:14 239:2 240:7
240:14 246:9
microsoft's 218:5,24
219:3,6 220:12
middle 58:12 61:11
91:23

mike 8:13 10:2 13:8
21:23 22:10,19 33:8
169:19,20
mind 4:7 55:6 98:20
151:21
minneapolis 228:18
230:7
minor 47:23 48:8,12
48:18,23 49:5,10
50:12,21 51:20
54:16 55:3,20
minus 179:8,9
minute 61:6,7,16,17
82:12,25 136:17
151:14 234:14
minutes 24:19 60:5
misapprehension
93:13
mischaracterizes
66:5 158:25
misconfiguration
244:14
misconfiguring
245:13
misdescription
92:13
misrepresenting
126:25
missing 47:13,14
147:21 196:20
197:9,12 207:9
misspoke 68:3
mm 121:21 198:12
200:8 209:6 229:3
modified 135:14
227:5 229:7
modify 239:11
mom 151:18
moment 27:11 82:10
115:12 195:21
money 141:8 142:3
142:5,17 145:16
morning 6:10,11,20
148:9

mother 151:2,10
251:4
motivating 144:7
motivation 50:16,19
51:10 141:3,4,6,13
141:15,17,19,20,24
141:25 142:3,5,6,11
142:16,17 143:18
143:21,23 145:5,8
145:11,14,25 146:4
146:9,13 147:6
motivations 141:11
242:7
motive 144:2,6,8,13
144:17 247:25
mountains 41:18
move 41:18 83:6
msn 157:11,25
158:6,13 159:9
160:22 161:4,14
162:21 163:4 213:4
msn.com 157:4
msn.com. 157:14
multiple 5:15 36:21
66:14 148:19 149:7
161:17 189:8 214:2
215:4,8,9,23,25
217:25 246:6
247:12

n

n 1:21 2:2 6:5 194:2
194:2,2,18 253:7,24
254:2
name 52:16 53:16
63:21 64:6 76:23
77:12 92:4,20 93:2
94:14,15 96:6 125:6
152:23 154:13
158:19 195:14,23
196:5,18,24 198:13
201:9,14,14,17,22
201:25 202:6 204:6
204:12,14,15
228:12 255:5,6

named 52:18 131:5
194:23 197:25
219:9 228:11
names 91:13 92:15
94:3 133:21,25
134:24 140:22
201:12,21 202:7,12
203:21 222:25
234:25
naming 92:19 93:5,7
201:19
native 179:24 180:4
180:14
near 110:14 118:5
228:23
necessarily 19:7
46:11 67:14 78:19
79:8,16 176:5,8
241:12 247:8
necessary 72:24
182:25
need 69:23 72:16
82:7 127:17 139:19
needed 85:14,24
153:20
negative 190:21
negotiate 216:15
negotiations 217:6
neighborhood 33:2
neil 82:16 84:15
254:9
neither 13:3
network 53:21
220:12 251:20
never 57:23 80:10
80:11 102:25 109:9
109:23 110:6,7,13
110:14,14 163:2
180:10,17 182:14
182:16 191:25
209:11
new 1:3,19,20,22
2:14,14 3:22 8:20
75:13,19 113:4,6,14
113:15,25 114:13

115:13,14 151:4
159:8 214:21
215:21 253:3,5,9
255:3,3
night 10:22,24
nilly 171:2
notably 72:11
notary 1:21 6:6
252:22 253:8
255:25
note 58:20 150:3
154:23 156:17
170:14,16 241:14
noted 194:3 252:13
notes 34:11,16,18,21
34:24 58:18 110:2
notice 1:20 244:19
notion 62:9
novak 10:3 12:20
13:8,15,17 31:15
234:8 235:8
november 22:14
42:19 45:12 46:10
46:13 186:2,10,19
232:17 233:2
number 27:15 33:9
60:16 62:23 74:22
85:10 94:9 109:2
114:17 162:25
167:8 200:24,25
208:21 221:19
235:23
numbering 27:20
numbers 58:8 76:12
76:13 84:19 208:24

o

o 6:5 194:2,2,2,18
oath 231:15
object 3:15 4:4 15:2
17:25 18:21 21:15
44:10 47:17 73:22
76:18 86:8 105:9
113:20 127:10,12
145:18 180:20

206:19 207:11
212:2 231:11
237:19 249:21
250:5
objection 3:14 28:20
31:7 39:8,18 43:3
51:22 56:15 58:2
66:4 71:8 77:23
80:8 83:18 87:10
126:10 136:11
150:21 153:7 157:6
158:24 164:13
181:3 184:4 207:15
218:22 231:20
objectionable
180:22
obligations 43:4
obtain 44:7 207:24
obtained 41:24
63:17 77:10 83:14
83:20
obvious 96:5 153:13
153:14
obviously 4:2 16:4
46:20 69:17 141:6
177:24 226:7
229:20 233:4
occasion 241:15
occasionally 23:7
216:19 230:13
occasions 73:9
149:7 177:14
occur 49:11 57:4,8
57:13,17,19,20
166:5 167:2 173:5
176:9 244:14
occurred 42:7 50:22
173:8 187:2 241:19
occurring 57:22
october 42:16,21
45:12,25 47:7
165:25 186:21
226:18 233:3
odd 151:23 188:20
188:25

offer 22:20 110:12
185:17 188:14
209:16
offered 15:8,9 18:7
47:2,2,6 102:25
103:5,8 112:11
190:4
offering 96:15
128:18 189:15
190:16
offers 116:18
office 40:10 118:5
118:14 134:4
223:12,13,22
228:18 230:7
offices 1:18 38:14
118:7,24
offset 166:3
oh 5:24 68:5 213:24
ohio 2:8
okay 5:4 7:10 11:23
15:23 16:6,7 20:22
21:6,16 22:3 23:8
23:13,15 28:3 31:14
36:25 38:8 39:14
41:6 58:9 60:9
89:18 100:9,21
108:16 118:13
125:14,24 147:19
151:4 158:15
162:24 169:23
170:7 175:11 180:3
192:6 202:5 218:9
230:10 234:16
236:18 238:7,11
246:19 248:16
old 66:22
once 23:19 46:20
75:16
one's 111:12
ones 5:13 72:18
78:10 131:5,5 157:9
226:2,2,2
online 118:7

open 57:12 133:22 174:10 229:6 239:10
opened 118:25 120:9,13,21 174:13
opens 159:8 174:15
operate 12:25 65:7 171:12 172:7 174:20
operated 67:25 116:14 175:3
operates 67:20 170:22
operating 218:6,12 240:10
operation 103:20 167:14 176:16 215:15,25
operations 218:20 238:17
opine 237:16
opinion 20:2 24:13 48:16 79:7 85:23 96:15 102:19 103:9 109:20 110:17,24 110:25 111:25 128:18 135:16 140:13 142:22 143:4,7,9,11,15 144:11 176:2 179:19 185:17 188:9,15 191:15 196:7 209:17 211:21 212:11 218:4,25 219:4,6 237:9,10,11,12,15 238:22 241:4 245:17 252:4,6
opinions 142:24 190:16
opportunity 229:19
opposed 21:2
opposite 146:4
oral 54:24

order 36:21 92:15 95:7,16,23 96:14,19 183:20 188:2 220:20 236:13
ordered 33:23 35:17 36:13
orders 36:21
ordinary 134:14,16 134:17,20 135:7
organization 44:2,3 52:14 142:5
organizations 43:20
original 14:15 15:16 16:10,13,19 20:4 23:3,10,13 24:3,7 37:19,20,24 90:4 158:4 189:19 191:5
originals 24:13 38:10
originated 106:19 109:10 148:6
origination 96:16
orin 54:6
outcome 253:18
outlined 122:15
outlook 77:22 115:25 116:8,14,17 116:19 117:15,17 117:23,25 118:3,6 118:15,25 195:7,18
outrageous 50:5 51:12
outside 98:23 99:20 101:9 105:25 113:14,15 143:18 185:11 209:19
overall 12:16,19 13:9
overwhelming 115:18,24 146:21 242:14 247:18
overwhelmingly 191:9
owned 152:19

owner 61:25
owns 145:21

p

p 2:2,2
p.m. 193:20 194:3 252:13
page 11:7,8 14:11 15:7,9,13,19 16:2 17:7,15 18:15 27:10 27:14,17,23,24 28:9 28:10,11 29:6 30:12 30:13 55:7,11,16 58:6,8,10,13 59:17 60:11,12,15,16,21 61:3,11 75:22 76:3 76:9 79:8 84:18,19 85:7,9 88:13 89:9 91:14,18,21,23 92:3 92:9,12,16,17 93:14 93:14 95:13 96:3 97:17 107:6,9,19 108:15 120:22,24 121:12,14 130:22 142:24 155:18 164:2 190:20 191:2 191:21,25 192:5,9 192:14,15 197:5,8 197:15 199:15 205:4,15,16,22,25 206:3,5,8,13,14 208:23 210:4 213:23 214:17,19 221:16,19,19 228:20,21 229:17 231:22 238:9,10 249:2,3,4,5 254:3 254:13 255:7
page1.tif 205:20
pages 28:9 93:18 205:13,14 248:21
paid 9:16 10:8 214:10 223:25
paper 14:8,10,11,21 15:4,9,14,14,21

16:2 17:2,7,12,16 18:9 20:15,18 86:25 87:8 88:18 89:11,24 90:3 125:16,20 142:24,24 143:3 144:10,12,17,19,24 145:12,15,17 146:2 164:2 189:5,15 190:14,17,20 191:3 191:5,15,16,22 192:9,15 250:3
paragraph 51:15 58:19 85:12 86:6,16 86:17,20 87:3 89:5 89:8,14,15 107:20 198:8 201:6 202:4,9 203:11,19 209:3,9 209:24 210:17 228:24,25 238:9,14 239:4 240:6
paragraphs 203:4
pardon 54:10
parents 59:19 60:3 73:19 106:18 112:24 114:2,6,7 230:14,17,22
park 1:19 2:13
part 9:2 14:16 30:3 33:20 35:23,24,24 36:4 43:8 48:9 61:22 73:15 81:9 105:19 108:19 119:19 155:3 159:5 212:4,11 248:20 249:9
partially 195:16 196:2
particular 78:22 79:12 93:6 102:2,11 113:24 114:8,21 115:9 116:12 133:8 134:15 233:15 239:16,22 242:8,23 247:10

particularly 58:16
  196:11
parties 17:22 19:13
  21:19 102:21 103:3
  103:10 126:14
  148:17 188:18
  189:16 225:21
  253:16
parts 30:4,5 249:13
party 52:5 185:24
pass 123:10
passed 169:17
paste 139:4 164:25
  166:21,24 167:10
  167:11,14 176:16
  211:25 212:4
  215:14,16,24 216:4
pasted 139:6,12
  164:16 165:3,5
  169:3 172:16,24
  173:20 211:9
  233:19
pasting 167:20
  172:18
path 135:10
pattern 135:12
  140:24
paul 1:5 3:7 17:19
  61:25 62:23 63:4,9
  63:15,18 64:13
  67:15 73:19 77:14
  92:9 105:14 106:18
  108:10,20,22,24
  109:8,21,22 110:6
  110:13,17,20 111:2
  112:18,23 113:11
  115:6,17 138:16,17
  139:24 140:17
  149:22 150:24
  151:2,18 152:9,15
  152:25 160:21
  161:4 163:3 179:11
  187:14,15 200:22
  201:3 228:8,11
  254:12,17

paul's 157:3
paulceglia 157:4,11
  157:14,25 158:6
pause 84:21 151:14
payment 30:10
pc 197:17
penalty 109:22
pending 127:12
people 6:24 11:9
  12:4,9 31:4,11
  40:23 57:6,20 64:22
  69:16 73:4 75:11
  130:17 151:25
  161:21 181:22,24
  182:7 183:9 207:24
  214:5 234:5,24
  235:14,15
people's 69:14
percent 89:11,23
  90:4
perform 69:23
  182:24,25
period 161:13
  162:12 186:3,5,6,7
  187:16,22 251:24
periods 147:22
perjury 109:22
permit 71:22
perpetrate 245:13
perpetrated 146:22
person 7:7 8:11 9:23
  14:5 21:17 40:13
  64:8,12,17 65:2
  67:15 129:12
  139:23 141:4,5,13
  147:2 170:4 174:10
  174:15 184:25
  191:2,21 228:16
  230:8
person's 104:16
  210:21
personal 53:11
  139:3 161:12 237:9
personally 23:6 39:3
  145:20

personnel 137:12,15
persuasive 196:25
phase 183:21 236:10
  236:11
phone 39:4 62:23
photo 23:23
photograph 150:25
  151:24
phrase 30:24 120:7
  121:20 207:19
physical 26:24 27:3
  65:19,20 67:23
  88:22 89:21 108:8
  111:10,20,23 112:4
  113:12 114:20
  232:9,11,13 238:10
physically 83:16
  111:3,8 112:24
  113:14,18 114:13
  117:3 138:16,19
pick 219:25
picked 75:18
picks 219:19
picture 23:9,11 24:4
  151:12 155:3
pictures 23:20
piece 34:25 35:8
  75:19 87:8 88:18
  89:11,24 90:2 98:24
  150:7 154:17,21,22
  154:24,25 155:5
  246:17 250:3
pieces 72:4,22 73:2
  75:16 86:25 107:5
  107:16 199:21
pinpoint 147:8
pixels 232:14
place 37:10 104:2
  229:9 244:19
placed 30:14 218:11
places 75:23 76:6
plaintiff 1:6 2:5 3:7
  109:9 150:7 187:25
plaintiff's 70:18
  84:16 142:23

208:12 227:9
  233:19
plaintiffs 16:25
  26:21
planned 193:4
planning 4:8,14
plans 4:11,18,22 5:2
plausible 176:13
play 146:9
pleadings 163:25
  190:4,9
please 5:6 28:12
  32:10,16 68:21
  175:9 202:4 205:3
  237:23
plug 251:17,19
point 4:20 11:14
  18:14 26:7 78:22
  79:12 86:25 109:3
  113:24 114:8
  115:10 145:25
  148:12 152:13
  166:2 167:10
  186:10 193:17
  198:16,18 200:13
  202:20 234:3 252:3
pointed 152:25
  158:16 199:4
pointer 198:7 199:8
  199:10,13,16,18
pointing 55:9
  198:21 199:12
  204:20
points 191:23
  220:10,19 246:11
poor 27:7
portion 37:15,16
  158:4
portions 11:8,18
posited 151:24
positing 64:9
position 63:7 103:2
  128:6,8,12,14
  151:10,13 153:24
  154:4 158:21 159:2

160:11 168:13
possession 51:19
90:19 202:19,22
possibilities 95:6
154:18
possibility 69:25
111:11 112:16
116:25
possible 14:4 33:8
38:14 54:25 55:8
56:22 68:15 73:12
73:15 75:15 94:22
95:11,15 106:22,24
106:25 112:6,14
114:19 117:5,13
119:12 123:24
131:22,24 133:11
134:18 135:23
136:4 138:15,16,19
138:20,21 139:2
154:17 155:5
181:11 184:18,21
184:22 185:24
230:21,24,25 234:7
239:10 245:11
possibly 114:4
post 4:8,15,19,23
122:22 129:19
190:2
potentially 216:21
practice 13:24 14:3
37:23 70:14,16
238:20
practices 3:25 81:14
81:25
pre 214:24 236:10
preceded 210:14
precise 114:10
115:12 139:19
150:23
precision 181:15
predates 239:7
241:5
predecessor 20:19

prefer 38:3
premise 75:10 77:25
preparation 6:15
9:5,21 11:7 54:13
240:15
prepare 224:7
prepared 205:11
preparing 8:16 9:16
12:13 223:15
present 2:21 38:22
38:25
presented 191:6,16
231:23
preserve 225:11
president 12:15
presumably 194:14
presumptively
123:8 124:4 225:16
pretty 67:7
prevent 146:5
previous 26:3 30:24
214:20
previously 3:19
83:23 108:5
primarily 235:8
primary 12:2
235:10
principle 116:5
117:25
print 91:9
printed 27:13 88:19
156:19 189:14,17
189:22
printout 87:12,16
87:23
prior 26:14 50:8
51:2 52:3,9,10
74:12,24 75:7 120:5
123:21 127:8
128:15 129:2,11
148:12 179:11
210:16 236:12
privilege 123:10
180:10,17 225:17

privileged 39:21
224:16
probability 111:22
114:15 115:8,14
207:14
probably 5:11
113:12 119:4
161:16 192:17
193:6,14 194:8,13
243:20
problem 102:4
241:7
problems 23:20
217:17
procedural 225:15
procedure 3:21
proceed 100:4
proceeded 128:5
proceeding 203:3
process 11:15 48:22
50:25 55:3 56:23
57:8 134:5,9 139:14
173:9
processes 79:25
processing 183:2
produce 29:8 33:16
42:24 43:7 45:7
75:11 124:24 125:7
150:7 215:21 225:6
225:16,17
produced 9:2 10:20
29:4,7,17 45:10,11
70:11 105:14,17
107:22 108:2,10,11
108:18,20,21 123:9
125:5 150:11 188:5
197:17 200:9 201:8
202:14,24 206:9,15
207:7,10 223:8
231:14
producing 11:12
41:10 150:18 231:7
product 68:9
production 10:10,11
28:25 43:12 125:11

186:24,25 187:4,24
188:4 191:6 232:18
232:22 236:7
productions 186:13
186:20 232:22
professional 40:24
139:4
proffered 16:10
proficiencies 106:7
proficiency 106:3
program 64:23
65:11 69:19 117:15
130:8,11,20 131:18
172:23
programming 139:9
programs 104:9,11
117:6,7,8,9,11,13
133:18,21
projects 235:13,16
pronounce 228:12
proof 50:20 56:4
proper 103:24
properties 206:4,6
206:14
prosecution 238:18
protocol 183:20
225:7
proves 14:22 17:9
63:8
provide 39:22,24
46:22 72:10,24
81:18 183:4 189:12
provided 5:22 9:6
12:19 47:12 54:4
72:14 73:3 105:14
110:9 124:25
126:15 147:15
159:14 187:25
197:7
provides 209:7
providing 47:15,18
192:11
provisions 30:9
prudent 184:24
185:3,6,15

public 1:21 6:6
252:22 253:8
255:25
publications 40:24
41:4
publicly 4:25
published 41:4
pull 116:21 118:19
155:4
pulled 228:2,3
purport 211:14
purported 81:20
146:23 149:4 183:7
216:11 217:24
225:14 226:14
purportedly 114:5
150:10 165:8
purporting 164:16
purports 191:17
purpose 63:3 239:23
244:23,23 245:7
purposes 43:24 76:2
123:14
pursuant 1:20 35:19
187:25 220:2 225:7
put 3:13 23:17 28:6
67:18 68:13 87:7
90:3 92:21 95:11
114:17 150:12
156:21 175:9
177:19 191:21
199:20 217:19
219:12 243:2
247:13
puts 89:5 163:11
198:5

q

qualified 19:20 20:2
22:19 153:2,8 252:3
quality 28:15
question 7:6,7,20,25
10:14,16 11:6 23:5
26:3 30:24 34:15,19
37:22 43:19 50:18

50:19 51:13,16,23
53:8 57:5,18 66:9
66:10 70:8,10 71:21
74:19 75:10 76:2
82:5 86:4 89:19
94:13 100:22
109:17 112:12
113:22,23 122:18
123:22 126:24
127:5,6,11,23,24
128:3,4,5,12,21
133:15,17 135:4,19
139:20,25 143:10
144:4,9 145:2,14
150:20 151:20
152:6,9,10 153:10
153:18 160:18
162:3 168:17,18,20
168:22 170:15
172:21 174:8
183:14,19,24 184:3
184:6,7,16,17 185:9
185:10 187:10,13
211:18 212:23
218:7 226:9 243:2
243:11
questions 7:20
11:20 16:11 49:22
83:7 104:18,24
127:4,20 137:6
166:22 227:21
234:23 252:9
quick 27:15
quicker 198:6
quickly 91:20
194:16
quite 178:12 209:20
quotation 210:16
quote 131:8 209:23
209:25 210:4
213:23

r

r 2:2 6:5,5 194:2,18
194:18 228:12

253:2
ran 169:12
range 10:7
rate 9:19,22,24
223:4
rates 10:6 223:5
reach 196:17 197:3
reaction 192:19
read 10:19,23 11:15
12:17 16:24 17:2,8
26:20 28:11,14,17
29:22 30:5,7,8,9
55:6,18 70:17 86:17
89:16,18 108:24
109:3 121:18 150:3
156:5 159:16
160:11 177:23
178:4 203:12 209:4
209:11,24 225:8
229:22 230:2,3
241:14 250:9
reading 11:3 30:6
55:8 71:11 90:16
183:20 227:17
250:12
reads 238:14
real 142:8,12,25
144:14 145:10,12
156:3 226:23 228:6
244:17 254:15
reality 245:5
really 21:3 26:9 69:4
75:9 82:4 102:5
117:10 185:16
193:5 237:9
realm 143:18
reason 13:17 16:22
29:16 44:17 46:16
76:25 89:3,20 90:15
116:15 215:19
244:20 245:18
255:7
reasonable 74:8
131:20 135:17,25
155:9,11,14 160:13

160:25
reasonably 41:20
reasons 37:3
rebecca 219:9 238:2
238:5 254:21
recall 17:5 26:23
30:13,16 33:11 39:5
47:5,9 48:11,15,22
52:12 71:10,11,14
75:24 90:13 91:11
119:21,24 130:4
172:13 177:20
178:21 179:25
180:5,6,8,11 181:4
184:16 187:18
192:18,19,22 198:6
227:13,20,23 228:5
230:3,20 232:18
233:9,15 250:11
recalling 66:11
195:2
receipt 120:18
receive 122:16
received 9:2 41:25
42:4,10,14,17,18
45:24,25 57:23
59:20 60:4 61:3,3
61:13,14 121:22
122:10 123:6,21
129:3 159:25 160:2
160:8,10 162:7
175:7,24 186:14
210:7,12,19 211:4
211:20 227:3
receives 210:21
receiving 98:6
123:14 149:20
recess 82:15 136:25
193:20 234:18
recipient 57:25
217:3
recognize 52:16
recollection 33:10
52:24 91:17 92:2
97:13 109:4,7 120:2

120:15 170:3 231:4
232:25 248:11
reconstruct 10:18
235:17,21
record 3:13 8:6 42:6
78:17 79:12 82:10
82:22 84:14,25 85:2
85:4,6 88:4,9
127:14 136:24
137:4 178:9 193:17
193:18 224:14
229:16 234:17,21
252:12
recorded 97:2 98:22
210:8 220:22
recording 82:21
records 35:10 40:10
40:14
recover 78:19 79:21
79:25 126:7 187:20
196:12 222:18
recoverable 195:16
196:2
recovered 227:24
recovery 43:24
red 23:20,24 24:6
redacted 8:7 131:9
redirect 252:11
refer 189:9 205:17
reference 60:18
159:15 162:4
197:11 203:20
referenced 85:10
157:17 178:11,17
179:6 206:9
references 176:22
213:11
referred 17:8 76:3
211:11
referring 7:2 15:5
15:24 17:4 27:19
54:21 56:16 59:4,6
59:24 60:11 76:11
86:22,24 89:13
90:24 92:7 108:12

108:14 109:25
121:6 155:24 157:8
160:6,7,9 162:8,9
164:5 180:13
197:13 198:17
210:13,16 248:8
refers 203:3 209:8
reflect 40:11
reflected 211:20
reflective 174:14
reflects 42:6
refresh 91:16 92:2
97:12 120:15
248:11
regard 70:5 110:21
237:14
regarding 39:16,25
40:7 53:20 59:10,18
106:7 110:17
160:23 207:6 219:6
220:10 223:23
232:3,7,8
regardless 115:9
registered 77:4,11
113:3 152:22
158:18
regular 89:11,24
related 31:25 32:2,3
32:5 33:22 35:11
40:19 52:3,25 53:3
90:8 102:18 122:17
124:18 221:17
245:7 253:16
relates 55:12,17
relation 59:14
218:11
relationship 220:11
220:14
relatively 209:20
242:21
relevant 41:13
80:23,25 81:2,7,15
82:2,2 123:4,8
124:4 137:25 138:3
138:12 174:8

177:19,19,24 178:6
183:13,18 184:19
185:20 225:16
233:7
reliability 218:5,18
238:15
reliable 209:13
240:16 241:13
relied 8:16 146:24
240:21
rely 129:24 137:20
141:7 182:3 226:6
239:13
relying 240:9
remained 229:9
remember 29:13
47:15,18,24 48:8,13
66:3,6 103:13
166:10 227:15,21
230:14
remote 65:3,5,6,15
65:17 67:21 68:10
68:17,25 69:4,21
71:18,22 72:16,24
73:5 111:11,17,21
112:6,8,13,16
114:18
remotely 67:16
68:11 69:13 111:5
removable 198:19
198:23 199:5 200:7
200:13 204:9
205:17
renowned 106:14
repeat 64:11 86:4
139:25 231:12
237:8
rephrase 105:10
rephrasing 168:19
reply 157:3,23
158:22 159:11
replying 160:22
report 5:7 6:2 8:8,9
8:11,14,16,17,20
9:21,23,25 10:5,11

10:20,23 11:3,8,12
11:17,18,24 12:5,7
12:10,10,13,18
13:10,12,19,22 14:5
14:6,17,23 17:3,4
18:19 19:12 25:18
26:20,23 27:6,11
28:6 29:4,7,10,18
30:14,20,20 31:4,5
31:6,12,20,22 32:2
32:5,7,13 33:7,24
35:15,16,21,22 36:2
39:17,22,23,24 40:4
40:6,8,15,18 41:10
58:18 60:11 61:21
70:2,8,11,18 71:12
72:12,19 74:11
75:21,23 76:6,10
80:25 81:11,13
84:15,20 85:8 87:6
90:21,24 91:5,10,16
91:18,19 93:10,19
97:13 102:19
119:15,19 120:16
122:24 123:5 124:8
130:2 131:10
137:22 138:5 140:5
155:18 163:20
165:15 166:8
180:22 189:3,6
190:13 195:2 197:7
197:11 199:20
200:5,6 201:10,22
202:8 203:7,20
205:18 207:9
208:15,17,18
219:12 220:17
221:3,12 223:9,15
224:7 225:6 227:8
227:17 231:8,14
234:6,25 235:3,10
236:4,7,24 237:9
239:7 240:15,21
241:14 247:4 248:9
249:8,13 250:18

254:7

reporter 1:21 84:24
253:7

reporting 255:2

reports 14:2 16:24
39:15 227:15

represent 55:14
109:16

represented 195:13

represents 158:22

request 7:6 33:19

requested 194:7

require 69:17,18

required 3:23

researched 72:21

reserve 3:14 4:4

reside 113:23,25
114:9 117:4 211:16

resided 78:21
112:18,21 113:5,7
113:13 114:7

residence 230:12

resides 114:5

residing 149:16
168:8

resolution 27:7
28:15

resolve 222:15

resolves 76:23 77:12
152:23

respect 4:7

respects 250:8

responding 161:5

responds 154:24

response 155:22
156:12 159:25
224:18

responsible 13:7

rest 78:10 226:20

restore 220:9,19
246:11

rests 16:4

result 35:13 131:21
173:21 176:14
216:20 243:25

resulted 139:14

resulting 89:10 90:6

results 13:9 35:14
38:17 40:7

resumed 194:18

resyncs 251:20

retain 44:23

retained 202:20

retains 251:18

retrieval 186:12

retrievals 185:25

returned 118:24

returning 135:5

reveal 59:10,13
112:17,21,23

review 14:10 32:14
41:9 51:3,9 52:2
53:12 123:10 183:4
183:5 208:15,16
225:17 227:8
229:20 233:13

reviewed 11:16
29:10 30:18,19,23
30:25 31:4,19 32:6
32:11 33:17 40:17
41:21 52:6,22 53:2
81:19 123:7 178:5
207:5 208:17

reviewing 13:9
70:23

rewrite 214:18

right 3:15 4:4 5:10
12:5,8 18:11 20:16
24:9 25:2 27:22
54:6 56:20 58:22
61:11,23 64:6 65:4
66:16 72:5 81:17
82:9 84:19 85:19
90:19 91:22 95:13
95:23 97:12 98:23
100:11 105:12,13
107:19 121:13,24
122:10 123:5
124:14 125:12
126:2 127:24

129:23 132:19
134:21 137:10,15
142:4 145:6 146:8
148:3 149:9 151:22
155:25 157:5,15
159:13 160:3
161:22 162:13
163:2,16 164:4
165:21 166:6
168:14 170:24
171:14 178:7,15
179:15 181:7
186:22 197:18,22
199:3,24 206:17
208:24 210:24
213:22 218:13
221:25 222:6
223:18 226:17,25
228:23 234:20
239:10 242:13
245:11 246:10
251:5

ring 53:16 177:15

rja 1:4

road 2:6

rogue 245:6

role 13:5 182:21
183:12 228:7
254:16

rolling 137:2 194:5

rootkit 71:5 104:25

rootkits 103:13,16
103:18

rose 1:18 3:8,8 6:10
7:1 8:1,5 9:1 10:1
11:1 12:1 13:1 14:1
15:1 16:1 17:1 18:1
19:1 20:1 21:1 22:1
23:1 24:1 25:1 26:1
27:1 28:1 29:1 30:1
31:1 32:1 33:1 34:1
35:1 36:1 37:1 38:1
39:1 40:1 41:1 42:1
43:1 44:1 45:1 46:1
47:1 48:1,6 49:1

50:1 51:1 52:1 53:1
54:1 55:1 56:1 57:1
58:1 59:1 60:1 61:1
62:1 63:1 64:1 65:1
66:1 67:1 68:1 69:1
70:1 71:1 72:1 73:1
74:1 75:1 76:1 77:1
78:1 79:1 80:1 81:1
82:1,16,24 83:1
84:1,11 85:1 86:1
87:1 88:1 89:1 90:1
91:1 92:1 93:1 94:1
95:1 96:1 97:1 98:1
99:1 100:1 101:1
102:1 103:1 104:1
105:1 106:1 107:1
108:1 109:1 110:1
111:1 112:1 113:1
114:1 115:1 116:1
117:1 118:1 119:1
120:1 121:1 122:1
123:1 124:1 125:1
126:1 127:1 128:1
129:1 130:1 131:1
132:1 133:1 134:1
135:1 136:1 137:1,4
138:1 139:1 140:1
141:1 142:1 143:1
144:1 145:1 146:1
147:1 148:1 149:1
150:1 151:1 152:1
153:1,24 154:1,4,8
154:9,9 155:1 156:1
157:1 158:1 159:1
160:1 161:1 162:1
163:1 164:1 165:1
166:1 167:1 168:1
169:1 170:1 171:1
172:1 173:1 174:1
175:1 176:1 177:1
178:1 179:1 180:1
181:1 182:1 183:1
184:1 185:1 186:1
187:1 188:1 189:1
190:1 191:1 192:1

193:1 194:1,22
195:1 196:1 197:1
198:1 199:1 200:1
200:21 201:1,4
202:1 203:1 204:1
205:1,4,10 206:1
207:1 208:1 209:1
210:1 211:1 212:1
213:1 214:1 215:1
216:1 217:1 218:1
219:1 220:1 221:1
222:1 223:1 224:1
225:1 226:1 227:1
228:1,6,10 229:1
230:1 231:1 232:1
233:1 234:1,22,23
235:1 236:1 237:1
237:24 238:1,4
239:1 240:1 241:1
242:1 243:1 244:1
245:1 246:1 247:1
248:1 249:1 250:1
251:1 252:1,16
253:10 254:4,7,9,11
254:13,15,19 255:6
255:21
roughly 33:3 61:7
61:17,19
rule 7:16 111:16
134:17,18 160:15
160:20,23 214:11
214:12
ruled 160:24 161:24
162:8
rules 3:20,21 6:23
7:2,17 49:21 223:23
run 82:13 170:25
173:22

s

s 2:2 6:5 166:22,25
168:14 170:20
171:17 194:2,2,2,18
255:7

sat 100:15,16
satellite 198:9
save 67:23 68:11
189:24 215:16
219:24 222:5
saved 68:16 219:23
229:10
saverin 53:14
saving 215:15
savings 165:21
174:5,6,11
saw 74:10 249:20
saying 26:10 47:24
51:24 78:14,20 81:2
87:20 90:2 110:13
111:12 120:12
122:24 123:24
127:13 140:19
148:7 149:23 154:7
159:12 160:25
171:21 181:14
195:4 197:25
204:19 212:19,24
239:17 243:24
246:16,19
says 19:5 30:7,8
39:23 89:12 109:11
110:5 131:6 149:22
149:22 150:2
151:17 157:11
158:4,5,6 179:9
191:25 210:5 229:4
233:23
scan 70:12,15,24
90:5 94:4 95:8,8,10
95:13,23
scan0001 91:17
94:15 96:11 194:23
scan0001.tif 91:14
scan0002 94:14 96:6
96:9
scan0002.tif 92:4
93:17
scan0002.tif. 92:11

scan001.tif 93:23
scanned 64:2 65:18
85:13,18,25 86:21
86:22,25 90:5 93:7
93:17,19 94:9,10,18
94:19,25 95:8,12,18
96:4 112:3 148:8,11
scanner 92:20,21
93:6 94:3,5 95:2,4
95:12,16,25
scanners 95:13
scanning 95:23
160:16
scans 25:21 75:18
93:10
scenes 171:15,22
scheme 93:5
scratch 58:21
screenshot 206:4,6
206:13 207:2
seagate 93:22 96:10
96:12 108:2 221:3,7
248:7 251:22
search 35:3 45:14
125:5 183:3
seat 62:11,17
second 17:13 42:17
48:3 61:10 84:22
85:12 91:14 92:17
93:14 95:8,13 96:3
96:12,21 97:17
107:20 108:6
131:13 166:7 191:2
205:23,25 206:3
228:24 249:2,4
seconds 59:22 61:9
section 11:16,24
26:23 30:8 121:2
238:12
secured 38:13
security 219:8
see 27:25 53:5,6,23
55:9,11,16 58:25
59:3 60:15,18 73:13
77:17 85:12,16,17

89:12 91:20,22
115:4 121:5,20
124:3 132:24 133:2
133:6 135:9,24
145:9 153:4,16
157:20 158:6
167:22 173:4
176:11 177:19,23
187:14,24 188:4
197:8,13 198:11,21
201:4 205:16,19
206:7 209:23
212:16 214:4
215:14 224:3 229:2
238:13 242:3
244:13 246:7,11
247:11,12,12 248:3
seeing 242:3
seen 14:12,13,14,15
14:22 16:9,13,15,21
53:21 84:11 125:19
125:21,22 146:7,9
169:9 181:21
185:23 249:18,24
250:4,7,16
selected 210:16
self 182:8
semantics 75:14
send 57:12 64:10
65:10 76:24 104:12
111:2,4,6 113:13
118:9 122:5 123:23
129:13 161:13
230:22
sender 92:9
sending 24:22 63:3
63:6 149:20 154:8
161:17 179:25
sends 159:7
sense 66:15 75:10
106:4 222:14
sent 59:18 60:2,14
60:17,21,23 61:11
62:8,24 63:10,18
64:13,16 75:22 76:3

76:16 77:16,20 78:4
78:5,8,11,17 79:9
79:10,14,17,22
92:14 97:19 98:10
109:21 110:18,20
112:19,22,25
113:16,17 114:12
114:14,16,22 115:6
115:8,12,13,14,17
115:22 116:2 117:9
118:17,20,21,23
122:13,19,22,25
123:21,25 129:16
129:20,25 138:18
149:21 150:10
152:7,9 153:21,24
154:3,5,7,11,14
156:6,9,11 159:5,24
160:21 161:4,8,22
162:4,6,16,17,19,21
163:5 165:21,25
174:9,16 175:23
177:13 179:7,23
180:16 181:4,5
187:15 195:10,12
227:2 231:9,15
232:5
sentence 58:22,25
59:2,3 107:20 108:7
separate 42:11
43:12 159:3
separately 247:7
september 246:13
sequential 220:20
246:12
series 78:23 171:25
serve 48:6
server 44:5,14 45:20
46:2,6,7,8,8,11,21
58:11,20 59:5,21
61:4,14 98:2,5,5,19
98:25 99:2,3 151:5
151:8 169:21
173:15,16 186:2
210:9,19,20 211:3

211:12,23 244:10
244:17,18 245:15
servers 43:16,22
59:7 97:21 98:4,15
99:4,5,7,14,16,19,21
101:2,7,17 149:15
151:7 168:8 177:3
195:5 211:16
service 64:23
set 3:25 43:7 51:2,3
57:14,15 58:24 90:5
97:25 116:20,25
119:10 122:3,6
129:12,16,24
171:14 174:22
183:3 233:13,14
253:11,21
sets 56:18 62:23
225:9,14
setting 58:23 97:23
98:16 177:5 220:11
244:11 245:14
251:14
settings 250:25
seven 22:14 187:2,4
189:21
sfwebworkforhire...
131:14
sharing 147:6
sheet 255:2
shortcut 198:4,7
205:5 254:14
shortly 98:14
shoulder 200:17
show 18:10 93:5
102:13 122:25
198:16,18 200:15
204:22 212:25
247:20
showed 77:8,10
87:15 90:23 151:2
207:2
shown 87:6 229:18
shows 63:18 146:19
146:20 150:4 212:9

shut 75:17 194:9
shutter 23:11
side 7:8,14 19:9
149:20,20 192:16
192:16,17,18
sides 150:17 216:18
sidley 35:20 58:11
58:15 59:4,7,10,20
60:4 61:4,14 62:24
98:4 99:3,4,8
149:16,16,18
150:10,11,16 151:7
152:16 160:3 177:4
195:5 244:9,12,20
245:6
sign 12:9,14 13:18
13:22 14:2 190:20
192:9
signatories 13:21
signatory 14:6
signature 63:24
64:3 152:25 191:21
signed 8:9,11,14
13:11 62:23 63:15
63:20 126:13
147:15,17 152:24
153:23 188:10,13
191:2,17,25 192:4
231:17
significant 236:15
significantly 10:4
24:10 249:17
signing 125:17,22
188:22
signs 212:25
similar 189:4,20
190:5 197:5
simultaneous
163:14
single 125:7 178:10
229:18 243:8,10
245:12
sir 51:16 127:4
160:18 183:24

sit 22:16 228:5
sits 222:13,21
sitting 6:25 62:17
63:9 64:9,14,17
65:7 215:4
six 131:4 140:21
188:23
size 26:24 27:3
28:18,21 29:5,6,13
29:17,22,24,25
85:16,21,24,25 86:3
87:20 89:11,23 90:4
91:2,4 195:14,24,25
196:6,19 197:2
203:5,10,15,25
204:6,7,15,20,23
205:19,22 206:7,11
206:16 232:9,11,14
249:7,11
sizes 203:22 204:14
206:23
small 28:16,24
87:13 88:5 150:2
201:20 235:13
smaller 87:7 88:17
88:21 250:14
smoking 150:14
snapshot 79:11
186:9
snyder 54:6,16,23
54:25
social 53:21
software 13:2 35:5
69:9,19,24 92:21
93:2 94:3,5 103:25
104:4 133:23
somebody 80:21
114:5 135:14 141:9
141:11 239:18
240:23 244:12
someone's 104:12
104:15 143:23
somewhat 189:18
son 109:8 110:6

sorry 59:25 68:5 70:22 90:22 94:13 121:10 140:2 157:4 162:17 204:10 249:8

sort 11:25 136:21 143:18 151:23 214:7 218:20 224:10 227:5 232:13 236:9

source 45:8 46:3,19 46:23 133:22 167:21,21,23,24 176:22 209:14 233:15

sources 184:19 247:19

southwell 2:15 3:2,3 3:12 4:14,17,20,24 5:4,9,16,21 14:25 15:16 16:8 17:25 18:21 21:11,15 28:20 29:23 31:7,23 32:2 33:15,18,22 39:8,18 40:3 43:3 44:10 47:17 51:22 54:20 55:11 56:15 58:2 59:24 60:10 66:4 70:20 71:8 73:22 76:18 77:23 80:8 83:18,23 84:21 86:7 87:10,16,22 88:3,8 93:8 105:9 109:24 110:4 113:20 121:6,9,12 126:10 127:18,22 128:4 136:11,18,23 145:18 150:21 153:7,21 157:6 158:7,24 164:13,18 168:21 180:12,19 184:4 186:15 191:4 192:24 193:7,12,16 249:16

space 49:3 50:7,17 51:5 167:6

spaced 229:18

spaces 167:8,15 201:16

speak 80:9,12 214:22

speaking 8:23 128:3 209:15

specific 15:5 48:15 54:3 57:9 72:4,9 79:2 103:23 109:4 112:12 147:4 156:4 157:7 184:16,17 224:19 226:11,13 227:20,23 240:20 241:9,21 243:21 245:20

specifically 35:14 59:8 63:5 67:19 71:10 90:13 117:18 117:21 122:4 148:15 175:3 179:13 180:12 212:3

specifics 71:9 116:11 120:16

specified 183:6

specify 15:3 40:3

speculate 17:12 18:9 26:16 37:22

speculating 143:25

speculation 136:12 207:12

spelled 166:11

spent 235:24

split 49:7

spoke 182:14

spoken 80:6,10,11 182:16

spoliation 199:23 200:4

ss 253:4

stages 235:15

stamp 5:19 197:8 218:19 226:16 238:16 239:19 241:16 244:22,22

stamps 59:17 60:2 218:15 229:5 238:13 240:10 241:22,25

stand 27:16

standard 60:24 70:14,16 152:14 166:2 174:6 209:19 226:19

standing 176:4,7,18 217:19 243:15

standpoint 62:10,15 149:2

start 60:8 72:7 82:19 194:4 198:9 214:19,19

started 6:12 36:6 55:7 128:3 224:6

starts 209:4 228:25

state 1:22 65:2,12 74:6 113:14,15 114:14 178:8 253:3 253:8

stated 37:2

statement 41:8 50:11 54:15,19,22 55:5,20 78:23 107:14 110:21 140:8 171:5 182:3 210:3,14 211:10 220:6 223:24 229:14 238:23

statements 78:24 79:3 182:9 229:25 240:9

states 1:2 80:22 85:22

stating 187:15 202:17

statutory 3:23

stay 216:13

stenographically 253:14

steps 35:7

stewart 204:11

storage 55:2 56:23

straightforward 153:15

strange 151:15

strangeness 152:12

strategic 82:5

strategy 13:9 80:16 185:10

streetfax 14:22 17:9 17:22 18:5,18 19:8 19:12 20:12 23:3 24:12 28:7 30:8 58:15 60:20 63:4 77:13 81:21 92:3,10 102:22 103:9 107:3 107:11,17,23 114:24 115:5 142:9 146:10,14,20 148:2 148:25 150:14 155:11 191:9 192:12,16 242:17 247:16 248:18 249:5,19

streetfax.com 183:9

stricken 127:13

stroz 3:9 6:2 8:8,13 9:17 10:9,13 12:16 13:24 14:4 22:8 37:23 39:6 40:13,23 43:14 48:17 49:13 49:17,19,24 50:4,6 50:11,15,20,24 51:8 51:18 56:13 81:12 83:13 88:23 91:8 137:12,14,20 170:8 173:2 187:9,20,24 214:9,17 215:3 228:17 230:5 254:7

study 223:25

stuff 139:13 148:18
subject 49:3 50:17
  92:8,14 183:3
submitted 16:25
  163:24
subpoenas 35:19
subscribed 252:18
  255:22
subsequent 152:16
  186:13,19 200:14
  233:4,5
subsequently 123:9
substance 189:19
substitute 214:25
sufficient 13:21
suggesting 190:19
  190:25
summarizing 175:8
supervise 37:15
supervised 31:11,16
  37:13,16 84:4
  137:18 235:9
supervising 13:7
supervision 12:17
  12:19
supplemental
  200:21 201:2
  254:11
support 97:9 113:4
  141:7 142:15,20
  150:8 165:8,14
supporting 166:13
supports 64:20
  111:25 139:22
  140:13,15,17 192:8
suppose 138:20
supposed 225:3
supposedly 106:19
sure 10:5,15 15:6
  22:23 25:6 28:23,25
  31:8,10 39:20 55:7
  69:25 74:19,21 75:4
  79:6 82:14 85:3
  89:17 93:12 97:10
  140:4,20 144:3

148:6 172:20 181:9
  181:14 182:23
  184:8,11 190:23
  224:15 225:8 226:3
  226:9 235:16,18
  248:12 249:22
  250:22
surface 48:25
surprise 203:14,16
  203:17
surprising 130:16
surrounding 176:19
  204:17
sworn 3:11 6:6
  252:18 253:12
  255:22
sync 116:25 117:6,7
  117:8,9,14 118:2,25
  119:11
synced 117:21 119:5
synchronize 116:3,8
  116:21 117:19
  118:16
synchronizes 116:19
synchronizing
  118:4,8
syncing 116:12,16
synonymous 247:25
  248:5
system 79:24 98:21
  98:23 99:23,25
  101:19,24 102:7,10
  102:15 149:6 211:5
  215:20 218:6,12,16
  218:20 219:18,24
  219:25 220:3,9,11
  220:19,21,22
  222:16 238:17
  239:21 240:10
  241:7,16 242:4
  246:7,9,14,17 247:5
  248:6 250:25
  251:20

t

t 166:20,22 168:14
  169:7,11,15 170:19
  170:20 171:17,17
  194:2 253:2,2
table 91:22 92:7
  93:16
take 7:11 37:10
  82:12 86:17 103:20
  104:9,10 127:20
  136:16,21 164:18
  193:8,8 234:13
  245:23 247:6
taken 82:15 136:25
  142:17 147:5
  155:15 234:18
  253:13
talk 19:10 21:7
  33:25 60:21 61:2
  65:23 75:22 76:3
  104:21 119:13
  121:2 130:2 143:17
  145:3,11 181:18
  189:6,8 195:21
  220:20 221:13
  225:18
talked 14:23 26:24
  56:19 103:12
  141:20 148:3 150:2
  176:7 185:25 219:3
  219:5 230:11 248:7
  249:25 250:19
talking 7:17 14:8
  15:25 16:6 17:16
  18:16 20:15 23:2
  31:23 32:23 37:18
  51:4 54:17 60:7
  63:21 68:3,4 72:4
  81:11,12,13 86:7,9
  87:14 88:9,16 107:4
  112:8 117:3 124:5
  131:2 134:11
  157:21 159:21
  160:17 171:25

181:10,16 186:18
  191:4 197:9 198:9
  201:9 202:7 203:6
  203:25 204:2 208:6
  216:6,9 219:17
  223:4 225:19
  230:15 236:16
  239:15,22 243:4,12
  249:22
tape 3:10 44:21
  82:21 137:2 194:4
task 187:11 223:19
tasked 183:15
team 21:18 33:6
  34:9 37:13 40:17
  41:24 43:6,15 52:2
  52:22 53:12 72:18
  89:23 124:24 125:5
  126:7 136:7 137:8,8
  137:12
technical 48:13 49:6
tell 9:15 33:10 54:18
  55:19 62:16 84:11
  86:18 96:17 129:5,5
  129:10,24 156:25
  159:20 163:12
  183:14 204:20
  208:20 209:24
  214:16 232:13
  240:23 243:22
telling 34:20 182:19
tells 80:22 145:10
  148:16,21 156:16
  191:20
template 212:15
  213:4 214:24
tens 72:5
term 22:22 45:19
  46:7 48:11 111:15
  236:23
terms 22:18 29:2
  30:10 34:21 35:3
  76:19 92:16 102:6
  112:11 113:6
  114:20 116:11

125:6 145:21
148:24 177:2 183:3
188:10 195:14,17
215:20 225:9
226:20
test 131:5,7 132:9
140:23 173:3,18,22
tested 169:9,21
testified 6:7 18:23
65:24 83:23 94:10
94:12,16 194:19
232:24
testify 153:3,9
testifying 66:3,6
232:19
testimony 6:14,15
9:9,12 22:5,20
26:11 66:5 115:11
132:23 169:20,22
207:20 224:2,9
253:11,12
testing 170:9
tests 169:12
thank 93:15 121:11
248:16
theoretically 106:25
112:8 135:23 136:4
139:2
thing 5:15 96:2
101:10,11 115:19
155:6 184:24 185:3
185:6 237:23 246:6
things 20:5 37:3
41:17 67:23 72:6
95:14,21 103:21
105:25 123:7 137:6
166:12 169:6 194:9
216:7 226:18
239:20 243:3
248:14
think 10:15 14:3,14
16:9,23 18:4,22,24
19:3,7 22:22 24:17
24:20 27:16,17 33:8
36:16 37:5 41:15

45:9 50:15,23 57:16
58:7 63:11 64:19
65:17,19 67:24 68:3
72:6 74:8 77:8,24
77:25 79:18 80:24
86:20 95:22 97:2
98:9 99:13,21 100:3
101:24 105:3 107:5
107:15,16,18,19
108:6 110:19 111:9
111:19,20,21 112:2
113:4 114:3,4,19,22
115:4,8,18 116:24
117:21 119:2,9,11
121:2 125:19
130:25 131:3,4,19
132:11,24 133:7,13
135:17,21,25
138:12,12,25
140:23 141:2,11,12
142:5,10 143:24
144:5,5,7 145:16
146:7,16 147:9
148:24 149:11
152:5,8 153:13
161:7,16 162:2
166:9 167:3 169:9
171:11 172:10
174:17 175:9,16
176:10,13,25 177:2
177:6 181:8 182:11
182:13 183:12
184:24 185:5,16,18
185:22,24 187:12
188:8,20 189:17
193:3,13 194:7,8
196:9,22 200:20
204:22 208:18
209:22 210:2 212:6
212:7,9,14 213:22
213:25 214:23
215:24,25 217:22
217:23,25 218:7
219:16 220:7 221:5
223:2,23 224:17

226:15 227:24
229:24 231:2 232:2
232:24 234:14
236:3,13 237:23
239:4,13,23 240:2
240:21 241:9,11,14
241:21 242:3,6,20
243:13,19,20
244:20,25 245:3,12
245:16,18,23 246:3
247:15,18 248:2
third 42:18 46:5
198:8 209:3 228:20
228:21 238:10,13
thomas 2:16
thorough 45:14
thoroughness
185:22
thought 81:12 180:7
200:17 216:7
thousand 161:23
235:25 236:3,20
thousands 72:6
threads 163:15
three 42:10 43:12
77:16 99:7 101:2
165:9 167:15 194:7
205:13 213:20
215:17 216:10
220:24 235:9
tiff 19:25 20:13,19
20:23 21:8,9,18,23
23:2 24:12 25:17
26:25 27:4,12 30:12
30:13 62:7 65:25
66:7 67:10,17 68:13
85:15 86:2,9,13
87:2,5 88:13,24
89:5,10,22 90:9
91:3,4,9,12 96:23
97:7 99:9 101:5
102:18,22 106:18
108:23 147:25
148:16,20 149:11
159:18,19,23,23,24

160:2,6,7,9,21
161:8,14,17,23
162:5,6,8,9 190:9
194:22 195:6
199:15,15 200:5
205:15,16 206:8
232:8,10
tightrope 151:18,22
till 188:19
time 10:19 24:20,21
26:9,15,22 37:8
58:23,24 59:17,20
60:2,4,24 61:4
78:18,22 79:12
86:17 97:2,4,20,23
97:25 98:11,14,17
98:19,22 99:17
100:4,8,14 101:12
102:8,14 109:4
112:11,18,22,25
113:15,19,24 114:8
114:12 115:10
116:13 147:16,22
156:5 165:19,21,21
166:2,4 170:17
171:23 172:2,17
173:19,25 174:5,6,6
174:9,11,12,13,14
174:18,24 175:5,6
175:13,18,25
176:18,24 177:2,4
178:20,24 179:7,8
179:17 180:21
186:3,5,6,7 187:16
187:22 194:3 200:7
210:5,7,12,19 211:4
211:19 212:16
213:7 214:18 216:3
218:14,19 220:12
220:22 222:3
226:16,18,19 227:3
227:22 229:5,11,13
238:12,16 239:19
241:15,22,25
244:10,17,21,22

245:14,14 246:9
251:7,10,14,17,19
251:24 252:13
time's 244:16
times 41:15 42:3,7
97:8 98:3,8,15
99:22 148:19
171:17 207:20
224:8 231:2 240:5
241:2 243:4 246:6
timewise 194:6
title 30:7
today 4:16 6:14,15
7:20 8:20 22:16
38:11 54:13 74:23
104:19 175:23,23
175:24 197:7
207:21 215:5
227:23 228:5
235:19 248:23
today's 9:5
toggle 242:2
told 170:4
tom 3:4
tomorrow 4:17,19
5:12 17:15
tool 131:17 133:5
tools 23:24 35:5
69:8 133:22
top 5:19 27:19 61:3
76:11,13 85:10
91:23 107:6 120:24
155:20 157:5,8,10
157:12,13,22 197:8
197:15 210:4
222:13,22
topic 46:24 83:5
137:7 192:25 197:5
216:13 239:2
topics 47:3
toshiba 197:10,21
198:9
total 10:8 223:7,14
trace 106:23 107:2

track 251:9
tracks 250:23
trading 57:6
training 3:20 8:25
20:7 238:25
transcribed 253:14
transcript 127:23
transcripts 9:6
transmitted 99:2
trash 117:4
tremendous 141:8
tremendously 142:4
trub 2:22
true 24:25 25:3 42:7
43:16 64:8,10,18,19
65:8,9 67:18 73:23
76:17 79:7,13,18
83:11 84:16 87:8
90:11 91:13,15
94:21 101:5 102:21
108:11 109:19
113:19 116:4,6,23
117:16 122:13,19
123:3 124:10 125:2
130:6 137:18
138:24 146:7,25
152:11,20 154:14
154:15 156:9
162:18 164:22
166:14,24 189:6
200:7,10 202:14
206:11 213:8,9,13
215:5,6,14 216:4
219:20 221:4,5,22
222:18 227:12
229:21 230:5
232:23 243:9
245:21
truecrypt 177:13
179:23
trust 179:3
try 15:4 18:11
131:12 132:11
140:24 142:11
146:4 150:19 173:2

177:7 182:9 221:15
trying 49:24 81:18
88:8 150:22 168:17
176:25 214:5,6
241:23
tuesday 166:11,18
169:6,10 213:11
turn 118:15
twice 41:24
twins 52:18,19
two 10:3 12:4,9,14
13:14,20 14:11 15:7
15:9,13,19 16:2
17:7,15,22 18:15
20:13 21:8,9,18
22:25 26:25 27:4
30:13 31:19 42:6,9
46:25 47:12 48:23
49:4,7 52:18 55:4
60:5,6,20 62:7,8,20
67:10 77:13 93:18
95:21 96:23 97:7
98:4 99:4,5,8,9
101:4 107:4,18
118:14,23 123:7
125:8 137:7 142:24
147:25 148:20
151:3 156:10,13
158:22 159:24
160:8 161:8,13
162:5,11,16,25
163:6,22,23 164:2
165:13 167:7,14
194:22 196:6,18
197:3,11,20,21,24
198:13 200:5,16
201:8 202:7 203:6
203:10 205:14
207:17 215:12
222:9 231:22 250:2
type 64:5
typed 63:21 149:22
152:25 153:22,23
154:4,9,13 212:20

types 71:17 74:5
214:17
typical 93:6
typically 21:3 34:24
35:4,7,9 37:24
typing 64:14,17

u

u 166:20,22 168:14
169:7,11,15 170:19
170:20 171:17,17
228:12
u.s. 209:4
ultimate 142:16
247:14,17
ultimately 156:25
189:22
unable 116:8
uncomfortable
11:19
uncovered 110:23
237:14
underlies 37:5
underlying 212:15
229:12
underneath 158:4
underscore 201:23
underscores 201:15
understand 7:22,25
16:21 21:14 23:5
26:6,9 29:23,25
57:5 74:19 75:9
80:11 86:12 89:25
144:3 172:20
202:19 211:17
225:2 239:15
understanding
45:17 54:4 81:16
84:17 141:22
167:25 169:13,16
169:17 172:6
225:21
understood 7:21
184:15

			z

67:6,9 68:20 69:3,4
69:6 117:11 132:21
133:16 220:9
225:15
we've 18:5 38:15
88:20 107:3 148:3
169:9,9 174:10
177:15
web 112:11 116:3,9
117:15,19 118:4,8
118:17,19 168:12
172:24 173:19
192:7
webmail 118:2,23
119:5,10 121:3
168:7,23 171:6,9
172:18 173:20
weeks 177:10
188:23,23
went 24:5 26:2 35:7
56:11 69:6 119:9
151:6 154:21 163:2
174:5 223:8
western 1:3 108:3,4
108:12,17
whatsoever 40:7
128:18 143:7 232:3
whereof 253:20
whichever 39:4
207:14
white 49:2 50:7,16
51:5
willy 171:2
windows 218:5,9
winklevoss 52:19,23
wire 151:3,4,11
witness 3:11 6:5
7:12 16:9 28:24
55:18 88:7 100:11
100:12 127:19
181:2 182:3 229:19
253:10,13,20 254:3
witnesses 9:7
woman 151:25

word 21:2 57:11,13
57:14 63:8,20 74:20
75:12 157:18
164:24 165:3,7,9
166:11 172:14,16
173:3,21 178:4,5
207:14 211:8,21
212:10,12 216:10
217:23 219:21
225:22 227:4
228:25 233:18,21
234:3 243:23
247:24
word's 172:23
words 28:17 92:13
95:10 170:18 175:9
186:8 189:20
219:21 226:15
250:9
work 9:16 10:10
12:12 13:8,10 18:7
18:23,25 33:20 34:6
37:6 38:4 84:7
105:6 114:25 115:2
132:16 139:4
146:24 164:5,6
170:17 181:21
182:22 183:15
185:13 189:9,24
190:5 191:5,12,17
214:23 216:7
217:11 221:18
223:8 225:6,13
234:6 235:2,6,11,11
236:11,15 242:18
247:16
worked 22:8,10,11
22:13 124:24 131:7
132:10 169:25
170:4,10
worker 230:4
working 9:23 141:9
147:7 178:19,23
230:19,23 233:13

works 75:2 170:15
world 31:24 57:3
69:13 104:6,19
117:14 152:2
worth 41:19 141:7
wrap 194:14 234:15
248:13
write 134:25
writing 214:19
written 18:15 40:23
41:3 214:14 216:12
239:8 240:4 241:5
wrong 47:11 63:8
107:10 121:17
176:18,23 177:4
179:9,16 197:25
226:7 228:3,3
wrote 156:17 157:2
230:5

x

x 1:5,11 254:2

y

y 6:5 194:18
yeah 61:19 76:13
92:23 110:3 119:11
196:15 198:2
215:24 236:22
year 77:20 106:10
175:6 251:16,25
years 22:12,14 25:4
53:19 74:24 78:12
187:2,4
yesterday 6:21
york 1:3,19,20,22
2:14,14 3:22 113:4
113:6,14,15,25
114:13 115:14
151:4 253:3,5,9
255:3,3
youtube 4:9,15,19
4:23

zone 58:23 174:18
176:18 177:5
212:16 213:7
226:16,19 229:11
244:10,22,22
245:14 251:14
zones 177:2
zuckerberg 1:8
15:11 16:5 17:18
18:13,22 19:5 32:15
32:19 52:4,14 53:7
53:19 54:5 59:14
80:3,6,10,16 81:3
81:13 83:9 102:17
102:24 103:5
105:17 106:2,5,13
124:16,19 125:7
126:9 136:8 137:9
142:14 145:13
146:3,17 147:12,14
164:11,12,17,22
182:14,16 183:8
184:2 185:7 186:16
187:7,16,21 188:12
188:19 190:19,25
191:18,22,25 192:4
192:8 199:14 203:6
205:15,15 206:4,8
206:14 212:13
225:24 231:10,16
231:24 255:5
zuckerberg's 32:12
33:5 41:25 42:4,13
42:15,25 43:8 44:8
44:12,18 45:5 52:7
53:11 78:25 79:15
81:25 126:7 136:7
147:21 183:17
184:9 185:14
188:24