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

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PAUL D. CEGLIA,

Plaintiff,

vs.

MARK ELLIOT ZUCKERBERG,  
Individually, and  
FACEBOOK, INC.,

Defendants.

-----x

July 19, 2012  
10:11 a.m.

Videotaped deposition of MICHAEL  
F. McGOWAN, held at the offices of Gibson,  
Dunn & Crutcher LLP, 200 Park Avenue, New  
York, New York, pursuant to notice, before  
Cary N. Bigelow, Court Reporter, a Notary  
Public of the State of New York.

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

BOLAND LEGAL, LLC  
Attorneys for Plaintiff  
1475 Warren Road  
Unit 770724  
Lakewood, Ohio 44107  
BY: DEAN BOLAND, ESQ.

GIBSON, DUNN & CRUTCHER LLP  
Attorneys for Defendants  
200 Park Avenue  
New York, New York 10166-0193  
BY: ALEXANDER H. SOUTHWELL, ESQ.  
MATTHEW BENJAMIN, ESQ.  
AMANDA AYCOCK, ESQ.

ALSO PRESENT :

VILAN TRUB, Videographer

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2 THE VIDEOGRAPHER: The attorneys will  
3 state their appearances.

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MR. SOUTHWELL: Alexander Southwell  
5 from Gibson, Dunn for the defendants and  
6 Matthew Benjamin for the defendants.

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MR. BOLAND: Dean Boland for the  
8 plaintiff, Paul Ceglia.

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THE VIDEOGRAPHER: This is day 2,  
10 tape 1.

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(The witness was sworn in.)

12

MR. SOUTHWELL: Mr. Boland, before we  
13 start, just one thing. I am going to  
14 continue my objection to the use of this  
15 videographer and the admissibility or  
16 preserve our objections to the admissibility  
17 of the videotape, and just to clarify, this  
18 is day 1 of the deposition of Mr. McGowan  
19 rather than day 2.

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MR. BOLAND: Yes.

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MR. SOUTHWELL: I also want to just  
22 formally request the opportunity to review,  
23 the witness to review the transcript under  
24 Rule 40 and want to also request that for  
25 Mr. Rose as well.

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MR. BOLAND: No objection. Obviously,  
the rules entitle them to that, so that's  
fine. I'm assuming he will do that in some  
timely fashion before, not six weeks to do  
it.

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MR. SOUTHWELL: Right. I think the  
rules set out the time frame, we will get a  
transcript and he will review it for  
accuracy and make any corrections needed.

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MR. BOLAND: Fair enough.

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M I C H A E L F. M c G O W A N, called as a  
witness, having been duly sworn by a Notary  
Public, was examined and testified as  
follows:

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EXAMINATION BY

17

MR. BOLAND:

18

Q. Good morning, Mr. McGowan.

19

A. Good morning.

20

Q. You and I have been in the same room,

21

actually, we met before, haven't we?

22

A. We spoke before, yes.

23

Q. At the deposition of Neil Broom?

24

A. That's correct.

25

Q. And at the deposition of Jerry Grant?

1 M. McGowan

2 A. That's correct.

3 Q. Now, I have some exhibits that I used  
4 with Mr. Rose, and since I am going to talk about  
5 some of the similar ones with you, we left them  
6 here in the room or Mr. Benjamin brought them  
7 here to the room, so I'm going to go through  
8 those one at a time and we'll probably just call  
9 them Rose Exhibit whatever the number is and that  
10 will be consistent with yesterday's transcript.

11 A. Okay.

12 Q. Can you tell me if all the information  
13 you relied on in preparing your report in this  
14 case is actually listed in your report?

15 A. All the information that we relied  
16 upon, all the opinions that we, that we reached  
17 and the bases of these opinions with respect to  
18 the Ceglia media, our examination of the Ceglia  
19 media are covered in our report, the Stroz report  
20 from March of 2012.

21 Q. So is the answer yes, all of the  
22 information you relied on in preparing your  
23 reports is listed in here?

24 A. All the information we relied upon in  
25 preparing the report is contained in the report,

1 M. McGowan

2 yes.

3 Q. And is your CV in the report current?

4 A. Yes.

5 Q. No new trainings that you've received  
6 since submitting the report?

7 A. No new trainings, correct.

8 Q. No new certifications?

9 A. Correct.

10 Q. Let's talk about that.

11 What certifications do you have here  
12 today that relate to your work on the report?

13 A. Related to computer forensics, I hold  
14 an EnCase ENCE certification, that is the primary  
15 certification I hold in the area of computer  
16 forensics; I've received other training, but that  
17 is the certification that I hold in this area.

18 Q. So just that one?

19 A. Correct.

20 Q. Have you testified as a witness at a  
21 deposition in the past?

22 A. I have, yes.

23 Q. How many times would you say?

24 A. I've been deposed twice and I testified  
25 at trial a number of other times.

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M. McGowan

Q. Did you receive your EnCase training -- actually, did you ever work for the Government?

A. I have not, no.

Q. How did you receive your EnCase training, in person or was it online?

A. In person.

Q. Now, you are not a certified computer examiner; correct?

A. No.

Q. And you are not a certified fraud expert?

A. No.

Q. And you are aware plaintiff's expert has both those certifications, are you not?

A. Which expert is this?

Q. Neil Broom.

A. Yes, yes, I believe I saw that listed on his report.

Q. Have you written any books about computer forensics?

A. I have contributed to book chapters and articles, I have not written any books personally.

Q. Do you have a college degree?

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M. McGowan

A. I do, yes.

Q. What is that degree?

A. I have a bachelor's from the University of Chicago in economics and statistics.

Q. And the training that you said you received beyond the EnCase certification, can you list that training for me?

A. Sure, I can give you a summary.

The courses are -- the specific courses are listed in my CV, but I have attended periodically external training, generally week-long training in topics in computer forensics, digital forensics as well as, as part of my employment at Stroz Friedberg there is regular in-house training on topics in computer forensics, mobile phones, forensics document authentication and examinations, and so I have participated regularly in those as well.

Q. So in-house training is Stroz Friedberg employees teaching other Stroz Friedberg employees; fair to say?

A. Generally, yes. Occasionally we have an outside speaker, but generally it's, as you said, internal Stroz Friedberg employees.



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M. McGowan

Q. And what's the length of those training sessions, typically?

A. About an hour.

Q. And how often do you have those?

A. Generally once every two weeks or so.

Q. Did you talk to anyone from the defense attorneys' office about your deposition today before coming here?

A. Yes.

Q. How many times did you speak with them?

A. I met with Mr. Southwell, Mr. Benjamin, I believe that Ms. Aycock may have been present as well, several times, I am not sure of the exact number.

Q. When was the last time you met with any of the lawyers for the defendants?

A. The last time I spoke with them briefly was this morning before the deposition started.

Q. Did you speak to them yesterday after Mr. Rose's deposition?

A. I spoke to Mr. Benjamin and Mr. Southwell last night briefly in the evening time, I believe that that was after Mr. Rose's deposition ended.

Q. Briefly is how long?

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M. McGowan

A. It was, I'd say, between half an hour and an hour.

Q. Have you spoken to Mr. Rose since the conclusion of his deposition?

A. I have not spoken with him, I exchanged e-mails with him this morning on another matter.

Q. Did you exchange e-mails with him about his deposition yesterday?

A. No.

Q. Have you been provided a copy, either an audio or print form of his deposition testimony from yesterday?

A. I have not, no.

Q. Have you discussed with anyone the content of his deposition yesterday?

A. No, I haven't.

Q. Have you reviewed the transcript of any other witnesses who have already been deposed in this case?

A. Yes. I've reviewed the transcripts of the depositions of Mr. Grant -- portions of the transcripts of Mr. Grant and Mr. Broom, the deposition I attended in person as well.

Q. Now, the judge in this case has some

1 M. McGowan

2 specific rules about the conduct of witnesses  
3 during depositions.

4 Do you know if the defense attorneys  
5 went over those with you or not?

6 A. They mentioned there was a provision  
7 that we are not allowed -- I am not allowed to  
8 speak with them until the termination of the  
9 deposition except to discuss privilege objections.

10 Q. Fair enough.

11 I'm going to hand you what's been  
12 marked from yesterday Rose Exhibit 1, if you can  
13 just identify that for the record.

14 A. Yes. It appears to be a printed copy  
15 of the report that Stroz Friedberg filed and  
16 submitted on March 26, 2012 related to our  
17 examination of the Ceglia media.

18 Q. And how are you paid for your work in  
19 preparing that report?

20 A. Stroz Friedberg is compensated for my  
21 work, we charge on an hourly rate, my hourly rate  
22 is currently \$550 an hour.

23 Q. And how many hours would you estimate  
24 you put in to work on this case in any area prior  
25 to submitting that report?

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M. McGowan

A. I don't have a -- we have timekeeping records. I don't have a specific -- it would probably be measured in weeks, not days, but I don't know specifically how much time I spent.

Q. There's somebody at the office who would know that?

A. We -- I keep my time in a timekeeping system.

Q. So someone has access to all the time and could do a calculation of --

A. Of how much time I spent on this case, yes.

Q. And the other individuals who contributed to that report, their time is kept in that system as well?

A. Yes.

Q. Let's just talk a ballpark.

Do you think it's a thousand hours you spent or is it 10 working on the case?

I'm just trying to get some idea of how much time was involved in your work on the preparation of that report.

A. Sure.

Between the two, I think it's measured

1 M. McGowan

2 in, I think, multiple weeks. I don't know. The  
3 work transpired over a series of months, so I  
4 don't know, when you add it all up necessarily  
5 what it would come to, so I'd say several,  
6 several weeks of effort is my best sense.

7 Q. Can you identify or list for me the  
8 electronic evidence contained in the report that  
9 you personally reviewed or analyzed, whichever  
10 word you choose?

11 A. Yes. I conducted searches of all of  
12 the Ceglia media that we had, that we acquired  
13 pursuant to the Electronic Asset Inspection  
14 Protocol. I did not personally conduct searches  
15 of some of the e-mail accounts that had been  
16 subsequently received through subpoena or  
17 consent, but I supervised that work.

18 Q. Who did analyze the e-mail accounts  
19 that you didn't personally conduct searches of?

20 A. Mr. Novak, Mr. Jason Novak primarily  
21 performed that work.

22 Q. Is there any part of the report that  
23 you feel like you wouldn't be able to answer  
24 questions about because you were not in any way  
25 involved in that portion of the analysis?

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M. McGowan

A. I don't believe so. I'll let you know if any of the specific questions come up that go beyond my personal experience, but, no, I am familiar with the analyses discussed here.

Q. Do you know how much Stroz Friedberg was paid in total for the all the work that was done from the time they were hired in this case to today?

A. I don't, I generally don't see the invoices.

Q. Would somebody at Stroz Friedberg know that answer?

A. Yes.

Q. And who would that person be?

A. We have an accounting system that keeps track of what we charge our clients, so I believe that our accounting staff could query that if requested.

Q. I am going to sort of leave a line there in the deposition and ask that you work with Mr. Southwell and provide that information, and we asked Mr. Rose for it as well.

TO BE FURNISHED: \_\_\_\_\_  
\_\_\_\_\_

1 M. McGowan

2 Q. When was the last time you read your  
3 report, Rose Exhibit 1, in front of you?

4 A. The last time I read it -- I read  
5 portions of it last night.

6 Q. Just portions last night?

7 A. Yes.

8 Q. What portions do you recall?

9 A. Primarily the -- just refreshing my  
10 recollection on the evidence considered, just  
11 went over my CV again in preparation for this,  
12 those are the portions I looked at last night.

13 Q. And do you still agree with all the  
14 conclusions that are in that report today?

15 A. I do, yes.

16 Q. Now, you are not a certified fraud  
17 examiner, we established that.

18 Do you feel that you are qualified to  
19 offer an opinion on whether fraud occurred in a  
20 case anyhow?

21 A. I am qualified to the extent it deals  
22 with digital forensic media.

23 Q. Is there a part of your EnCase  
24 certification which supports that statement you  
25 just made, that you are qualified to talk about

1 M. McGowan

2 whether fraud occurred?

3 MR. SOUTHWELL: I will object to the  
4 mischaracterization.

5 MR. BOLAND: I can reword it.

6 Q. Is there any part of your EnCase  
7 certification which qualifies you to draw a  
8 conclusion of fraud from your computer forensics  
9 analysis?

10 MR. SOUTHWELL: Same objection.

11 A. Could you repeat the question? I lost  
12 the train.

13 (Record read.)

14 A. Yes. Both my EnCase certification and  
15 another experience I have I dealt with analyses  
16 of computers, including those where there's  
17 commenting on user action, including deletions,  
18 forgeries, issues concerning fraud, so I would  
19 say that both my EnCase certification as well as  
20 my, just my broader experience and training,  
21 these are issues that come up often and I do feel  
22 I am qualified to speak to them.

23 Q. Was there a portion of your EnCase  
24 certification where they taught you how to define  
25 fraud?



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M. McGowan

A. The certification itself --

Q. The classes you took to obtain the certification, did they teach you in those classes how to define fraud?

A. I don't recall a specific component dedicated to a definition of fraud. Certainly there were topics that dealt with types of fraudulent activity when they occur on computers.

Q. Can you define fraud, please?

MR. SOUTHWELL: You are asking him for a common-sense definition or are you asking him for --

MR. BOLAND: I'm just asking his definition. He has made a conclusion in his report that fraud occurred here.

Q. Define fraud.

MR. SOUTHWELL: I'll object, that's not the conclusion he drew.

Sorry, I will let you ask the question.

A. The definition of fraud, in my words, fraud can take many forms, both through the use of computers and otherwise, but fraud generally, as I see it, deals with intentional actions by an individual or a corporation to --

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M. McGowan

Q. Do you want to take a break so you can think it through and answer?

That's fine.

MR. SOUTHWELL: He was still answering.

MR. BOLAND: There was a big long pause there, so --

A. I was just trying to word it precisely.

So actions by a user corporation entity to perpetrate crime or other bad acts, for lack of a better term; examples are, there's fraudulent financial transactions, disguising information, deleting information, there's a number of forms of fraud.

Q. Is every deletion of a file by a computer user fraud?

A. No, not every deletion of a file by a computer user is fraud.

Q. In your opinion, if a person captures an image and fixes an image of their family and fixes the red eye that's in the image, is that a forgery?

A. It may depend on the context. There might be circumstances where it depends where it is being represented at, but no, in a general

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M. McGowan

sense, if someone has a personal image and chooses to fix the red eye I would not consider that, I would not consider that fraud.

Q. And what's the fraud triangle, if you know?

A. Fraud triangle, it's a term I have heard most often used with respect to financial fraud in terms of some of the factors that go into the commission of the fraud, but I'm not sure I could define all of them, all of them sitting here, it's been a bit of time since I have last seen, last reviewed the fraud triangle.

Q. And you are aware that the defendants in this case are claiming that Mr. Ceglia has prepared a paper, two-page paper contract which is a fraud? You are aware of that claim by the defendants?

A. Yes, I'm aware of that claim.

Q. And you are also aware that the defendants claim that some e-mail exchanges that Mr. Ceglia had with Mr. Zuckerberg are also frauds?

A. Yes, I'm aware of that claim.

Q. So can you tell me what the elements

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M. McGowan

are of fraud?

MR. SOUTHWELL: I object to the form of the question.

Q. You used the word "fraudulent" throughout the report.

MR. SOUTHWELL: Objection.

Q. Is it true that you use the word "fraudulent" in your report?

A. I believe so.

Q. What do you mean by fraudulent?

What are the elements of proving fraudulent which you are convinced occurred in this case, obviously, by what you put in your report?

A. I think in the report we are anchoring it to specific instances of where we saw, for example, backdating of files, where we would see metadata anomalies in files, where we saw formatting inconsistencies that pointed to the manual generation of e-mail messages, those were the elements, those were the instances which I believe we were discussing specifically in our report.

Q. Is it your opinion that all metadata

1 M. McGowan

2 anomalies establish fraud?

3 A. No, it's not my opinion that all  
4 metadata anomalies establish fraud, some may be  
5 innocuous, some may be evidence of intentional  
6 user activity.

7 Q. And when you say intentional user  
8 activity, you are talking about motive, right,  
9 the motive to have created the anomaly?

10 A. In that case, yes.

11 Q. How about formatting inconsistencies in  
12 a document?

13 If I just showed you a document, didn't  
14 tell you anything else about it, and something  
15 looked to you that there was formatting  
16 inconsistencies between page 1 and page 2, is  
17 that alone sufficient for you to conclude as an  
18 expert that that document was constructed with  
19 fraudulent intent?

20 A. That alone, no. Generally, in  
21 formulating our expert opinion we are looking at  
22 the cumulative evidence in front of us. That  
23 alone, I think I'd have to know more about the  
24 circumstances of the document it was proffered  
25 for to be able to determine whether or not those

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M. McGowan

formatting inconsistencies were significant or not.

Q. Are you aware that Mr. Ceglia has presented a two-page paper contract in this case and the defendants' paper experts have evaluated that contract?

A. Yes, I'm aware of that much. I didn't participate in those inspections, but I'm aware that a contract, a paper copy of a contract was examined.

Q. And you examined the e-mail exchanges between Mr. Ceglia and Mr. Zuckerberg that he has also presented in this case as an attachment to some pleadings?

A. Yes. I have examined Word documents that contained excerpts of e-mail exchanges.

Q. Do you know if Mr. Ceglia offered his parents' computer as evidence in this case so far, if you know?

A. The materials we examined were the ones that Mr. Ceglia presented for inspection starting on July 15th. I'm aware that subsequent to that there were comments that one of the computers -- I'm aware that one -- of two pieces of media, a

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M. McGowan

hard drive and forensic image, that Mr. Ceglia has made claims that those come from a computer used by his parents.

Q. Well, my question is -- well, those computers were produced pursuant to a court order.

Are you aware of that?

A. Yes, I am aware they were produced pursuant to court order.

Let me clarify. I said computer -- you said computers in your question and I said it in my answer. Strictly speaking, it was a hard drive and a forensic image of it. I am not aware of the computer itself having been produced.

Q. It was a Seagate hard drive; right?

A. Yes, the hard drive itself was a Seagate hard drive.

Q. And then the forensic image of that hard drive was on a Western Digital Mr. Rose had told us yesterday.

You will agree with that?

A. Yes, it was.

Q. So to determine fraudulent in your report you would agree with me that you have to

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M. McGowan

determine the person's intent for the action they took regarding the evidence?

MR. BOLAND: I'm going to object to the shaking of the head of defense counsel which is occurring right now, I interpret that as an attempt to signal the witness how to answer and I would appreciate it if you would not nod up or down or left to right, okay?

It's quite obvious that you are shaking your head yes and no in response to certain questions I'm offering and I think that's a potential to signal the witness.

MR. SOUTHWELL: We hear you, Mr. Boland. It's not intended to signal the witness, Mr. Benjamin and I are communicating about a number of things, but I understand your point and we will ensure that there is no signaling of the witness, which there hasn't been.

MR. BOLAND: Very well.

A. Could we repeat the question?

Q. Sure.

MR. BOLAND: Read it back, please.



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M. McGowan

(Record read.)

A. Is there a specific area that we're talking about here?

Q. That's just that question.

A. One of the components -- yes, intent would be related to, would be a component of fraudulent activity.

Q. What are the other components?

A. I don't know if I have an exhaustive list, but so far the establishment of just identifying the anomaly itself, the anomaly being the fact in the report, so the identification of it, an evaluation of how it may occur and I think intent, whether this was likely to be an action taking the evidence together performed by an individual, that would be one of the primary components, yes.

Q. So I heard you list motive as a factor in using the word "fraudulent"; correct?

A. Did I? I don't know if I --

Q. You can correct me.

Is motive part of a consideration? Before you used the term "fraudulent" in your report.

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M. McGowan

A. Motive would be a component of fraudulent, yes.

Q. And then you said, and you can correct me if I am wrong, that how the anomaly or whatever may have occurred is a component of determining whether it's fraudulent.

A. Correct.

Q. And then you said intent.

A. Yes.

Q. Would you agree with me that intent and motive are synonymous terms?

A. I believe so.

Q. So we have two factors that underlie the use of the word "fraudulent" in the report.

Motive and how it may have occurred, let's talk about that.

You acknowledged earlier that every deletion is not necessarily fraudulent; correct?

A. Correct, we discussed that there are innocuous deletions and there are intentional deletions that may be fraudulent.

Q. But if you just have a deletion and you don't know the person's intent you can't conclude it's fraudulent; true?

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A. If you don't have a deletion --

Q. If you have a deletion, but you don't know the person's intent why they deleted that file, you can't conclude fraudulent?

A. If you do not know or you cannot discern or infer, yeah.

Q. Are you aware that expert witnesses are required to answer hypothetical questions, unlike regular witnesses?

A. I am aware of that, yes.

Q. Okay. So let's try one.

The two-page paper document that the other paper experts analyzed, let's assume that all the paper experts who analyzed it found the two-page paper document to be authentic, it's an authentic contract between the parties, okay, assume that.

A. Okay.

Q. You'd agree with me there can't possibly be any fraudulent intent regarding anything you found on Mr. Ceglia's media because the two-page paper contract is authentic, he doesn't need to commit fraud.

Would you agree with that statement?

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MR. SOUTHWELL: Object to the form.

A. So the two-page paper document -- so what we are referring to as the Work For Hire document is authentic in this hypothetical -- I guess I'm not sure how to answer that.

At this point, in this case we're assuming -- you are asking me to assume the opposite of our findings that the digital, the forensic evidence surrounding the Work For Hire document, that there are multiple versions of it, that there are metadata anomalies with it, that there is an alternate version of it, all of these things that we found in the forensic investigation, so it seems like -- it seems more like counterfactual than hypothetical at this point.

Q. I think all hypotheticals can be counterfactual. It's a hypothetical and you need to answer the question.

Assume the two-page document is authentic.

Isn't it true that Mr. Ceglia has no motive to commit fraud? He has an authentic contract with Mark Zuckerberg, assume that, this is a hypothetical.

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Wouldn't you agree he has got no motive to commit fraud on his computer at that point; true?

MR. SOUTHWELL: Objection, asked and answered.

A. I'm not sure that's the case. I don't know -- even if the paper document is authentic in this hypothetical, I don't know what other reason someone could have for deciding to -- they wanted more proof, that they wanted -- whether they would still give rise to occasions to manipulate a forged electronic document.

Q. So is it your testimony that it's still possible for your report to be accurate in your claim of Mr. Ceglia's fraudulent behavior even if he had an authentic paper contract with Mr. Zuckerberg?

A. Is it possible for -- even if he had an authentic paper copy, I think that goes direct opposition to our conclusion.

What I was addressing was that even if there were an authentic copy of the paper, of the contract, and we don't know, in this case we're assuming it for this hypothetical, there could

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2 still be, there could still give rise to reasons  
3 why someone may want to fabricate electronic  
4 evidence, some of the things we discussed in our  
5 report, for example, the purported e-mails.

6 The two things we looked at was the  
7 contract authentic and were the purported e-mails  
8 that were provided as supporting evidence, so I  
9 could still see reasons why even if the authentic  
10 -- even if the paper document that Mr. Ceglia  
11 submitted were authentic, and we are assuming it  
12 here, assuming it in this hypothetical, I could  
13 still see reasons where someone may want to --  
14 may choose to fabricate, for example, the  
15 purported e-mails as further supporting evidence.

16 Q. You are not offering any opinion about  
17 the authenticity of the paper contract in your  
18 report or even today?

19 A. Correct. I have not examined any of  
20 the paper documents. My opinions are opinions  
21 on, as discussed in the report, concern the fact  
22 that the StreetFax -- the Work For Hire document  
23 and the purported e-mails both appear, there's  
24 evidence that both of them have been fabricated,  
25 so I'm not offering any direct opinion on -- I

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haven't examined the paper document.

I would say that there's an inference which is if the electronic document is -- if the electronic evidence points to the contract being a forgery, then that does bear on the paper evidence to some extent, but I haven't examined it directly.

Q. And would you agree the inference goes the other way as well, that if the paper contract is determined to be authentic it seems to implicate that the electronic StreetFax contract would be a fraud?

A. I think with the electronic evidence there also are the other fact -- there are the other -- there's more evidence than just the four corners of the piece of paper, there are the contemporaneous e-mails, there are other copies, so I think that that would still need to be considered as well regarding the authenticity of the electronic documents.

Q. I'm just asking about the inference.

You said before there's an inference that since you've determined the two TIFF images that make up the StreetFax contract are

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2 authentic, that sort of implicates that the paper  
3 document is probably a fraud, fair to say, that's  
4 the inference that you can draw from that was  
5 your testimony?

6 A. There is an inference that that could  
7 be drawn.

8 Q. And if it turns out that the paper  
9 contract is authentic, the hypothetical, you  
10 could draw the opposite inference that the  
11 StreetFax contract is potentially fraudulent?

12 A. Just to be clear, that would not  
13 address -- I would see that prong not addressing  
14 the purported e-mails, I think those would be  
15 properly separate items and I think if the paper  
16 document were authentic, were determined to be  
17 authentic, and we're just assuming it were for  
18 this hypothetical, I think that would be a factor  
19 in assessing the -- in assessing the electronic  
20 evidence; however, I think that that would still  
21 be necessary to evaluate the electronic evidence  
22 on its own accord, whether it -- whether it  
23 showed signs of authenticity, inauthenticity, are  
24 there competing alternate versions, are there  
25 contemporaneous references, are there independent



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2 verification.

3 I think that we are talking about two  
4 different -- we are talking about two disciplines  
5 here and I think they are both, they are both  
6 valid and both important areas of examination.

7 Q. In your opinion, what's an easier  
8 forgery to create, a two-page paper document with  
9 both printing from a computer and handwriting  
10 from ink or the forgery of a TIFF image?

11 A. I don't have enough experience, I don't  
12 profess to be a paper document examiner, I don't  
13 think I have enough opinion to know what goes  
14 into the difficulty or ease of forging a paper  
15 document, so I don't know if I could properly  
16 compare the two.

17 Q. Just from your personal experience do  
18 you have -- have you ever tried to write someone  
19 else's signature at any point in your life just  
20 for fun?

21 A. Yes.

22 Q. So you don't have any opinion on  
23 whether it's easier to forge a TIFF image, a  
24 digital image, or forge a two-page paper contract  
25 with handwritten signatures that mimic other

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2 people?

3 A. I think that there's -- I am aware of  
4 the factors that go into -- these are areas where  
5 there's both -- there are expert scientific  
6 disciplines.

7 I could give you some of the factors  
8 that go into a digital authentication, which are  
9 more than what a layperson may know, and I  
10 imagine the same is true for handwriting, that  
11 while, sort of as a kid you can play trying to --  
12 whether friends trying to copy each other's  
13 signatures, but I'm aware that there are other  
14 factors that are taken into account in terms of  
15 paper, ink, but I couldn't -- I don't think I  
16 could do it justice, I don't know enough of them  
17 to know, to be able to offer a, what I feel to be  
18 a fair comparison between the two.

19 Q. If I showed you a photograph of a cover  
20 of a magazine that came out yesterday, Sports  
21 Illustrated, and it had a big photograph of some  
22 sporting event occurring, would be willing to  
23 testify then that in your opinion that photograph  
24 has been unaltered just by looking at it?

25 A. Just by looking at it, no.

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Q. Are you a digital imaging expert, have you ever been qualified as that?

A. I am not sure exactly what you mean by digital imaging expert.

I've examined in my forensic work digital image files, their content and metadata.

Q. Do you feel qualified that if you were shown an array of digital images you could pick out which ones were originals and which ones were manipulated somehow just by looking at them?

A. Just by looking at them, no.

Q. Now, the StreetFax contract is comprised of two TIFF images; correct?

A. Yes.

Q. TIFF is a common digital image format?

A. TIFF is a common digital file format, yes.

Q. And a couple of others are JPEG?

A. Yes.

Q. And GIF or GIF as it is pronounced sometimes, G-I-F?

A. That's right.

Q. And there's probably a few others not as widely used; true?

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A. That's fair.

Q. Are you aware of the capabilities of a program called Photoshop?

A. I'm aware of some of the capabilities, Photoshop being a program that can -- it can be used for photo editing, resizing, touching up or manipulating an image, for example, that Sports Illustrated image that you referred to probably there was enhancement of it through Photoshop or a similar tool before it appeared on the cover.

Q. And the use of Photoshop in your experience analyzing digital images as you said you have, can it be used in a way that doesn't leave traces behind of the thing that was manipulated, visual traces?

A. It's possible to alter an image using a tool such as Photoshop such that it doesn't leave traces.

There's further analysis that can be done looking at the content of the file, the structure of the bit map or image to try and detect whether there are -- whether such things have occurred, but it's possible to do it such that a person viewing it may not detect a -- may

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not detect that it has been altered.

Q. And isn't it the case that virtually every magazine cover out there these days, those images have been altered? They don't just shoot them and put them right up there like they are unretouched, wouldn't you agree with that?

A. I don't know if I have any expert opinion on that, but my understanding from reading the newspaper and articles periodically is that yes, the images that appear in magazines are enhanced before putting on the cover.

Q. And Photoshop can edit TIFF images as well?

A. Photoshop can edit TIFF images, yes.

Q. And Photoshop is not the only image-editing software available to the consumer?

A. Correct. There's an open-source version GIMP, there's others as well.

Q. Corel has one; are you aware of that?

A. I don't recall its name offhand, but I believe, yes.

Q. And so the two TIFF images which make up the StreetFax report, let's talk about those.

Did you read Mr. Broom's report where

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he discussed the measurements of those two images?

A. Yes, I did read the portions of Mr. Broom's report where he discusses the size of the images in pixels.

Q. Did you read the portion where he converted pixels using a formula into physical inches in a length and width, a measurement -- confirming the measurement of those two TIFF images, their physical size?

A. Yes, I read the portion where he discusses -- he uses the dots per inch of the image and goes through a calculation and arrives at a measurement in inches.

Q. And did you repeat his calculation using those numbers that were in his report?

A. I did, yes.

Q. And what did you come up with?

A. For that calculation, the numbers he reports are accurate.

Q. Now, the two TIFF images are the image of what? Two pieces of paper, would you say?

A. Yes. The TIFF image, each image appears to be an image of a scanned, one-piece

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document, one-page document.

Q. And what's your opinion, based on reading what Mr. Broom had calculated and you confirmed his calculations, what's your opinion as to the physical size of the pieces of paper that were used that were imaged to create those scanned now TIFF files that you found?

A. So I should specify that Mr. Broom's calculations dealt with the size of the TIFF file itself, they didn't speak to the -- the size of the TIFF file is not necessarily tied to the size of the original; for example, in scanning a document one can choose to reduce it in size in the scanning process or subsequently, after the scanning, to reduce the size of the image, so I don't believe that Mr. Broom's calculations speak to that. In my opinion, it appears that the -- it appears most consistent that the scans were of ordinary size pieces of paper.

Q. You just mentioned two ways that the TIFF image cannot necessarily be tied to, let's call it the source piece of paper that was used to scan in.

A. Okay.

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Q. And one of them was the scanner could be set to reduce the size of the resulting TIFF image; true?

A. That's right, yes.

Q. Did you find any evidence that that happened here, computer evidence of a scanner being set to reduce the size of the resulting TIFF image?

There was no evidence in your report regarding that, was there?

A. There was no evidence in the report, we did not -- we did not see evidence concerning the scanner, what scanner was used or its settings.

Q. Actually, there is no evidence that it was actually scanned, was it?

A. There is evidence that it was scanned. I think the file names, most primarily -- the fact that the file names are Scan0001 and 2, the file names are indicative, the file names, the appearance of the document also are indicative that it -- of a scanned document.

Q. So this use of the scanned file name is a default file name that a scanner would produce?

A. It's a -- it's typical of a file name a



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2 scanner would produce. I believe that we've  
3 identified other files on Mr. Ceglia's media with  
4 similar names.

5 Q. Are those in your report?

6 A. Those specific files aren't referenced  
7 in our report, they were among the materials that  
8 would have been provided to counsel for review.

9 Q. But you didn't note those in your  
10 report?

11 A. We did not note those other files in  
12 the report, correct.

13 Q. And the other one you talked about was  
14 an image being created, whatever method, in the  
15 correct size, 8-1/2 by 11, and then somehow being  
16 manipulated by software afterwards, right, that's  
17 another way that you could have created these  
18 TIFF images but used an 8-1/2-by-11 piece of  
19 paper?

20 A. You could have -- you could have  
21 scanned it in and then in the process of saving  
22 the TIFF file chosen to save it to a smaller size.

23 Q. And there is no evidence in your report  
24 that happened either; true?

25 A. There's no evidence -- there's no

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evidence one way or another in terms of how the scan, how the scan was scanned in.

Q. And would you agree with Mr. Rose that there's not even any evidence that this file was necessarily scanned onto this hard drive originally, that it was most likely created on this hard drive, placed onto this hard drive after being created in another location?

MR. SOUTHWELL: Object to the form, calls for speculation.

Q. If Mr. Rose said that would you agree with that?

A. Which part was the question and which part was what Mr. Rose said?

Q. Is it your opinion that these two TIFF images were scanned directly onto this computer where they were found, onto the Seagate hard drive where they were found?

A. It's my opinion that the TIFF image were either scanned directly onto this computer or copied, copied from another source; I don't think the forensic evidence is sufficient to rule one or the other in or out.

Q. What's the evidence that they were

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scanned directly to the Seagate hard drive? Give me evidence for that that you have.

A. We see evidence of the files on the Seagate hard drive, we see their creation on the morning of July -- excuse me, March 3rd, 2004, shortly before they are e-mailed, so those are the primary pieces of evidence that I can point to for the direct scanning onto the computer.

Q. Hold on a second.

There's multiple ways a file can get onto a computer, onto this Seagate hard drive; true?

A. There are multiple ways a file can get onto a hard drive, yes.

Q. Copy from a floppy disk, years ago, when those were common?

A. That's one way.

Q. Copy from a CD, transfer from a CD onto the hard drive?

A. Yes.

Q. Transfer from a USB device onto the hard drive?

A. Yes.

Q. Transfer from the Internet onto the

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2 hard drive?

3 A. That's a possibility.

4 Q. Transfer from another hard drive onto  
5 this hard drive?

6 A. Another internal hard drive or --

7 Q. Doesn't matter, either way, external or  
8 internal, take your pick, that's another way to  
9 get a file onto this hard drive?

10 A. We have not examined the -- I haven't  
11 seen the computer itself, so I don't know whether  
12 it was capable of having another hard drive  
13 connected to it for an internal hard drive  
14 transfer.

15 Q. But hard drives and computers allow  
16 that to happen?

17 A. In general, yes, but I can't tell  
18 specifically for the hard drive, the Seagate hard  
19 drive it was in without having a chance to  
20 examine it further.

21 Q. So the fact that a file was created on  
22 a Seagate hard drive doesn't tell you anything  
23 about which one of those ways were the ways it  
24 got created on that hard drive; isn't that true?

25 A. The fact that a file was created on the

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hard drive, correct, that fact alone does not tell us how the file came to reside on the hard drive.

I don't know if I said one of those ways. There are other ways, of course, there is the scanning directly onto the computer.

Q. True.

And one other way is a person using a program like GoToMyPC can get remote access to a computer and place files onto the computer using some software like that?

A. Yes, in that manner, in that method you would have to have additional software installed on the computer; I didn't see any evidence of that in my examination of the Seagate hard drive.

Q. There was no GoToMyPC program installed on the Seagate hard drive?

A. I did not note any program.

Q. In reading Mr. Broom's report, though -- well, actually, you didn't do a virus scan of any of this media in preparing your report; correct?

A. In preparing our report, no, we did not conduct a virus scan of the Ceglia media.

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Q. Have you done one since preparing your report?

A. I have, yes.

Q. And did you do it after Mr. Broom's report was provided to you?

A. We did, yes.

Q. And do you dispute any of his findings as to what types of malware he says in his report he found on the media? Do you disagree with him about that list of malware he claims to have found?

A. So the list that he provides in the report itself is a partial listing, but I do not dispute that those files were -- those files were present on the Seagate hard drive and that a virus scan would have -- a virus scan using the programs he identified would have identified them.

Q. When you say it's a partial list, did you find even more malware than he found?

A. There are more -- yes, running the utilities that Mr. Broom identified there would be more malware files than just the listing that he provided in his report. Some of these are

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2 malware files that have been captured and  
3 quarantined by the antivirus programs on the hard  
4 drive, but yes, we did identify a longer list  
5 than was included in Mr. Broom's report.

6 Q. When you say we, who specifically did  
7 the virus scan you're talking about?

8 A. I performed -- I performed the virus  
9 scan, I was aided in my analysis by one of my  
10 colleagues.

11 Q. Who?

12 A. Jodi Forness.

13 Q. How do you spell the last name?

14 A. F-o-r-n-e-s-s.

15 Q. And that person's CV is not attached to  
16 your report; correct?

17 A. That person's CV is not attached to the  
18 report. She has signed the protective order.

19 Q. And the only two people who signed the  
20 report are you and Mr. Rose; true?

21 A. Yes, the only two people that signed  
22 the report are Mr. Rose and me.

23 Q. But there are more people than that who  
24 worked on some portion of the Ceglia media, as  
25 you call it?

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A. There are more people that have examined the Ceglia media in one way or another under my supervision, yes.

Q. Who was the supervisor for the production of this report? You?

A. I supervised the forensic -- I performed much of the forensic analysis myself. To the extent I didn't, the digital forensics analysis using the forensic software, Mr. Rose was -- supervised the analysis, the day-to-day involvement, he himself was not sitting at the keyboard using the EnCase software, for example.

Q. And that's because he is not certified to use EnCase, is he?

A. That's he -- I don't believe he has that certification, no.

Q. Does he have any certification to use any forensic software?

A. I don't believe that -- I'm not aware of any certifications that Mr. Rose has that deal with the operation of forensic software.

Q. So he's not qualified to do the types of forensic analysis that you are?

A. He's not -- he is not proficient in



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performing the technical analysis using the software itself to perform the technical analysis of the hard drive. He has much experience in digital forensic matters, but at a -- but at a higher level.

Q. Now getting back to the malware on the computer, you would agree with me that things like rootkits allow individuals to access computers?

A. You said getting back to this computer. Are we talking about this computer or in general?

Q. Rootkits allow people to access computers if they are installed on a computer?

A. In general? Are you asking in general?

Q. I am asking the question, do rootkits allow individuals to access computers?

A. No.

Q. What are they for?

A. Rootkits, the function of the rootkit, rootkits allow -- the primary function of a rootkit is to, in basic terms, hide the presence of other files. For example, one of the publicized ones was the Sony -- Sony used one in

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2 connection with its digital rights management  
3 where Sony had programs running, when you used  
4 Sony CDs you had programs running that would  
5 control your usage of the CDs and they included a  
6 rootkit to hide the existence of those programs  
7 so that if you looked at your computer and didn't  
8 perform a forensic analysis you wouldn't know  
9 that they were present, so that's the function of  
10 rootkits.

11 Q. Do individuals have the ability to  
12 remotely access computers without the  
13 authorization of that computer's owner? Does  
14 that ability exist in the world?

15 A. Does the ability exist?

16 Yes, it's the -- there are ways of  
17 accessing it using GoToMyPC, authenticating,  
18 those are what generally -- accessing it using  
19 remote desktop, those are ways that generally  
20 would be an authorized access. In theory, or not  
21 in theory, there are ways of essentially breaking  
22 into a computer as well.

23 Q. And you are aware -- you keep up on not  
24 only computer forensics articles in your field  
25 but even articles in the popular media about

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2 various government agencies, for example, who  
3 have their computer systems accessed in an  
4 unauthorized way?

5 A. I am aware, yes, that there are --  
6 there have been articles reported in the media  
7 about government systems being unauthorized,  
8 accessed unauthorized.

9 Q. And in your opinion will there ever be  
10 a computer system that will be completely  
11 prevented from anyone getting unauthorized  
12 access?

13 A. A computer disconnected from the  
14 Internet, for example, sitting alone in a room  
15 would not allow someone to remotely access it.

16 Q. How about a computer connected to the  
17 Internet or a computer system connected to the  
18 Internet, is there any way to fortify that  
19 system, do you think there'll ever be a way to  
20 fortify that system that nobody can gain  
21 unauthorized access to it?

22 A. There are ways to fortify it; however,  
23 at the end of the day, humans are imperfect, code  
24 is complex and I think fortifying it such that it  
25 is invulnerable is not achievable.

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M. McGowan

Q. And for someone to get unauthorized access to a computer they would have to load some files onto that computer to enable that access; would you agree with that?

A. Could you say that one more time?

Q. For someone to get unauthorized access, remote access to a computer, they are going to have to load some type of files on there to enable them to get in?

A. I'm not sure that's the only way.

Q. Is that one way?

A. It is one way, yes.

Q. And could a rootkit hide those files?

A. Hide from whom, are we talking?

Q. Just hide them so nobody but the person who put the files there knows that they are there.

A. In my experience, no, that's not generally -- rootkits would generally hide them from the point of view of the user that is sitting there at the computer.

However, in my experience doing a forensic examination, looking -- or not necessarily a forensics examination, but using

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M. McGowan

utilities oftentimes you could still see those files being present even if a rootkit was being employed to cloak them from the user's perspective.

Q. And that's my question, can a rootkit be used to cloak those files from a user?

A. Yes, a rootkit can be employed to cloak files from a user.

Q. And tell me if you agree with this statement, that rootkits can crack passwords at the administrative level. Is that true?

Or do you agree with that, let me ask that question.

A. No, I don't, I don't agree with that.

Q. Can rootkits disable auditing or edit event logs, would you agree with that?

Let me say it this way: Would you agree with the statement that a rootkit can disable auditing or edit event logs?

A. No, I wouldn't agree with that statement.

Q. Would you agree with the statement that rootkits can spread as a self-propagating mechanism?

1 M. McGowan

2 A. No. Again, I described what rootkits  
3 are; they by themselves can't do that either.

4 Q. And where did you learn about rootkits?  
5 Did you learn about rootkits in your  
6 EnCase certification classes?

7 A. Not in my EnCase certification classes,  
8 other training that I had taken on computer  
9 forensics, among other places, and I've also read  
10 about them and done research.

11 Q. The training that you've taken  
12 specifically involving rootkits was that in-house  
13 training or not in-house training?

14 A. Both. Some of the external training, I  
15 think there are several -- for example, there is  
16 a SANS course offered by SANS that's listed in my  
17 CV that discussed hacker techniques, that was one  
18 of the places that I received training on rootkits.

19 Q. When you took your EnCase training,  
20 it's true it was a series of classes and there  
21 was some sort of proficiency testing at the end  
22 of the classes; is that true?

23 A. Strictly speaking, it was one course,  
24 one required course and then a written exam and  
25 practical exam at the end of it, yeah.

1 M. McGowan

2 Q. So two exams, a written exam and a  
3 practical exam?

4 A. Yes.

5 Q. And did you pass the written exam the  
6 first time?

7 A. I did, yes.

8 Q. And the practical exam as well?

9 A. I did.

10 Q. And how many hours of training  
11 specifically on Microsoft Word have you had?

12 A. By training here what are you looking  
13 for?

14 Q. In-house training or non-in-house  
15 training from someone teaching you about  
16 Microsoft Word?

17 A. The usage of word processing or  
18 forensic examination or --

19 Q. Let's break it up.

20 Training you've had in-house or not  
21 in-house about how to use Microsoft Word, like a  
22 typical user, have you had any training like  
23 that, and how many hours?

24 A. I'm sure somewhere in high school and  
25 college it came up, but I have not -- I use Word

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regularly, I -- but I don't consider myself proficient at using it. I haven't had any training, official training while employed by Stroz on the usage of Microsoft Word as a word processing program.

Q. And how many hours of training have you had regarding Microsoft Word from a computer forensics standpoint?

A. I'm not sure of the exact count.

Microsoft Word, the analysis of its documents, metadata, that's a topic that has come up in several training courses I have taken, it's also a topic I've conducted research in testing, read articles myself in addition to the training that I have taken.

Q. About how many hours would you say that is of training you've had total on computer forensics issues related to Microsoft Word?

A. I don't -- it's not a way I've categorized it, so I am not sure I could give you, I'm not sure I could tell you how many hours specifically on Microsoft Word.

Q. Is it one hour?

A. I don't know.



1 M. McGowan

2 Q. Do you have any idea?

3 A. It's a topic that -- again, it's a  
4 topic, Microsoft Word documents are a common type  
5 to examine, so it has come up considerably, I  
6 just don't -- it's not a way I've kept track of  
7 the time, so I can't give you a more detailed  
8 answer.

9 Q. If you could take a look at what's been  
10 marked Rose Exhibit 2, page 12, that's  
11 Mr. Broom's report for the plaintiff.

12 MR. SOUTHWELL: Page 12 on the top?

13 MR. BOLAND: Yes.

14 Q. And I'm using the numbers, unless I  
15 tell you otherwise, on the top right-hand corner.

16 A. Okay.

17 So this is Mr. Broom's report, page 12?

18 Q. Right, and Rose Exhibit 2.

19 A. Okay.

20 Q. Do you see that statement at the top,  
21 it starts with "According to the EC-Council"?

22 A. Yes. Just give me a minute to read it.

23 I see it, yes.

24 Q. Do you agree with that statement --  
25 let's assume that statement's quoted correctly

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M. McGowan

from the EC-Council. I'm not going to hold you to that necessarily, that you know that it's an EC-Council statement.

Let's assume that that is an accurate quote.

Do you agree with that statement?

MR. SOUTHWELL: Are you referring to the whole first paragraph or just the first line?

MR. BOLAND: I'm referring to the statement about what the EC-Council says.

MR. SOUTHWELL: The first line at the top of page 12?

It's not clear.

MR. BOLAND: The first line is fine.

Q. Do you agree with that statement by the EC-Council which is contained on the first line at the top of that page?

A. No. As we went over earlier, it's not consistent with -- it presupposes a broader, a more expansive definition of what rootkits are than what I believe to be the case.

Q. And about how many hours have you had training with just on what rootkits are, if you

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M. McGowan

can recall?

A. I don't recall the exact number.

Q. Is there any other electronic evidence you reviewed before issuing the report that you issued that's not listed in the report?

A. Could you repeat it one more time?

Q. Is there any other electronic evidence you reviewed or anyone -- what I'm calling your team are the four people associated with the report.

A. Okay.

Q. And any others that are not listed there that also worked on the analysis of evidence in this case, is there any other electronic evidence that anyone from Stroz Friedberg reviewed related to this case and you reviewed it before issuing that report, but it's in the listed in that report?

A. Related to this case, yes. The report lists the evidence that we considered and reviewed related to the Ceglia media, which was the purpose, which was the focus of the report.

Q. My question is, is there other electronic evidence you reviewed related to this

1 M. McGowan

2 case that isn't listed in that report?

3 A. Yes. As I said, there is other  
4 evidence related to this case more broadly that  
5 we reviewed that was not -- but that was not the  
6 -- but that was not the focus of our report which  
7 was pursuant to -- which was our analysis  
8 pursuant to the expedited discovery order of  
9 Ceglia's media, Mr. Ceglia's media.

10 Q. Please list what was reviewed that's  
11 not listed in the report.

12 A. In addition to the Ceglia media that we  
13 reviewed as part of our analysis that's described  
14 in the report, as a part of, as a different part  
15 of our work on this litigation, Ceglia v.  
16 Zuckerberg litigation, I and others at Stroz  
17 Friedberg examined assets belonging to  
18 Mr. Zuckerberg as well as the Harvard, several  
19 copies of Mr. Zuckerberg's Harvard e-mail  
20 accounts that have been described in the several  
21 Rose declarations.

22 Q. Anything else?

23 A. Not that I can recall.

24 Q. Can you describe the assets belonging  
25 to Mr. Zuckerberg that you just mentioned?

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M. McGowan

MR. SOUTHWELL: I'm going to object to this line as beyond the scope of the court-authorized discovery at this point.

I think you can proceed with that question, I am not sure how much more you intended to ask on it.

MR. BOLAND: Well, your objections are noted, but unless there's a privilege issue here, we're driving on.

Q. What other assets do you -- please describe the assets belonging to Mr. Zuckerberg as you just referred to it in your answer to my previous question.

A. There were approximately -- approximately 28 devices belonging to Mr. Zuckerberg that were presented to us for examination.

Q. What were those devices?

A. The devices included original hard drives as well as forensic images of devices that I understand were created during the course of prior litigations.

Q. When you say forensic images of devices, what type of devices are you referring to?

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M. McGowan

A. Primarily computer hard drives.

Q. What else?

A. In addition, there was -- and I don't recall if these were forensic images or if these were devices, were they originals, but external media such as Iomega Clik devices, it's a form of storage.

Q. Were you the person who evaluated all those, analyzed all those devices?

A. I analyzed -- yes, I analyzed them, I had a system at work, but I was the -- I did examine all of them, I was the primary person conducting that examination.

Q. And where was that conducted?

A. It was conducted in San Jose, California, at the offices of the McManis Faulkner law firm.

Q. And who else was present during that examination?

A. Also present was one of my -- a colleague of mine at Stroz Friedberg.

Q. Who?

A. He has since left the firm, but his name is Michael Kunkel, K-u-n-k-e-l.

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M. McGowan

Q. Is he a qualified computer forensics expert?

A. What do you mean by that term?

Q. Does he have an EnCase certification?

A. I haven't reviewed his CV in some time. I consider him to be a qualified computer forensics examiner.

Q. And where does he work now, if you know?

A. I don't know. He moved -- for family reasons he moved to Texas. I don't recall where he's employed.

Q. Do you know if he's still in computer forensics?

A. I believe so.

Q. Why did he leave Stroz Friedberg?

A. As I mentioned, he wanted to get back to Texas for personal reasons.

Q. Did you take notes during your analysis of these 28 devices?

A. We did not take written notes.

Q. Did you take audio notes?

A. No.

Q. Did you take any notes?

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M. McGowan

A. We prepared spreadsheets identifying what it was we were examining, we noted our -- noted our results electronically.

Q. How electronically? What does that mean?

A. Part of our work included keyword searches, so we would document what we searched, what was the search criteria that was used and to the extent that data was identified relevant to the searches we made a copy, we made a copy of that information.

Q. Do you still have the list of keyword searches that you did on that media saved somewhere in your files or someone else's files at Stroz Friedberg?

A. We do, yes.

Q. When did this examination occur of these 28 devices belonging to Mr. Zuckerberg?

A. In around September of 2010.

Q. How long did that work take in California?

A. It was more than several days, I don't recall the full length, the exact length of how long it took.



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M. McGowan

Q. And who paid you to do the work?

A. We were paid -- we conducted this work for Gibson, Dunn on behalf of Facebook, I believe it's Facebook that's paying our bills.

Q. Well, who does the check come from that goes to Stroz Friedberg, from Gibson, Dunn or Facebook?

A. I don't see the checks, but my understanding is the engagement letters calls for Facebook to pay our bills.

Q. And did you provide any reports or any written results to anyone of your analysis of those 28 devices belonging to Mr. Zuckerberg?

A. We did not prepare a written report.

Q. Did you communicate with anyone from defense counsel after evaluating those 28 devices?

A. Yes.

Q. Can you describe how that occurred? Was that a conference call or phone call on your own? How did that happen?

A. I think it was several phone calls that I had with Mr. Benjamin, counsel of Gibson, Dunn, as we conducted our -- as we conducted our work, so there were several of those.

1 M. McGowan

2 There may have been e-mail  
3 correspondence, I don't recall which form it  
4 took, but I recall that Mr. Benjamin was the  
5 primary person at Gibson, Dunn with whom we were  
6 in communication at that time.

7 Q. What categories of electronic evidence  
8 did you find on those 28 devices?

9 A. What categories --

10 Q. Of electronic evidence did you find on  
11 those 28 devices.

12 A. I guess I'm not sure --

13 Q. Was there a Web history on some of  
14 them?

15 A. I'm not sure specifically about that.

16 Q. Was there instant messaging records?

17 A. Yes.

18 Q. Were there e-mails?

19 A. Yes, I believe so.

20 Q. Were there e-mails authored -- were  
21 there e-mails sent by Mr. Zuckerberg?

22 A. I don't recall.

23 Q. Were there e-mails received by  
24 Mr. Zuckerberg?

25 A. I don't recall.

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M. McGowan

I remember that I -- primarily we conducted searches using keywords designed to identify copies of the contract, communications with Mr. Ceglia, other issues related to this case. We did not -- we didn't find any copies of the contract, didn't find any correspondence with Mr. Ceglia.

Those were our primary findings from our examination of the Zuckerberg assets.

Q. Do you know if you found e-mails between Mr. Zuckerberg and Mr. Ceglia from the time period of March 2003 to June 2003?

A. I just said we didn't find any correspondence with Mr. Ceglia.

Q. Were there e-mails on any of those devices, stored on those devices from Mr. Zuckerberg's Harvard e-mail account?

A. I don't recall.

Q. Would you have records? Would Stroz Friedberg have records of what you found in your analysis?

A. Yes.

Q. And who would have those?

A. Primarily we have the messages that we

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M. McGowan

had identified or the data that we had identified pursuant to the search, the search criteria, that's the primary body of information that we have from that, from that work.

Q. I'm talking about the 28 devices.

A. Yes.

Q. Were there any communications you found on those 28 devices about StreetFax?

A. I don't recall specifically.

Q. Any e-mails you found on those 28 devices regarding Karin Peterson?

A. I don't recall.

Q. Did you find any source code related to the StreetFax project that Mr. Zuckerberg worked on for Mr. Ceglia on any of those 28 devices?

A. I don't believe so.

Q. Was this part of the work that you did in arriving at the conclusions that are in your report?

A. I know that the report, our report was -- it was submitted -- discussing our report we conducted, our examination we conducted pursuant to the expedited discovery order of the Ceglia media, so our report does provide a

1 M. McGowan

2 summary of the opinions we reached and the  
3 materials we considered there.

4 Q. Let's throw a hypothetical at you here.  
5 If you would have found e-mails  
6 relevant to expedited discovery --

7 MR. BOLAND: Scratch that. Not  
8 e-mails.

9 Q. Had you found any data on those 28  
10 devices relevant, in your opinion, to the Court's  
11 expedited discovery order would you have provided  
12 that in your report, Exhibit 1 that's in front of  
13 you?

14 A. What's Exhibit 1?

15 Q. It's your report.

16 A. Oh, okay, Rose Exhibit 1.

17 MR. SOUTHWELL: Objection to the form.

18 Q. Do you need the question again?

19 A. No, I'm all set there.

20 The Court's expedited discovery order,  
21 as I understand it, called for us to report our  
22 finding on the Ceglia media, that was the  
23 specific purpose of it, and that's what we did  
24 here.

25 Q. That's not my question.

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M. McGowan

My question is if in your analysis of the 28 devices had you found any information that in your opinion was contemplated by the Court's expedited discovery order, would you have put it in that report?

MR. SOUTHWELL: Objection, asked and answered.

Q. Just yes or no, would you have put it in the report?

A. I went over what my opinion of the Court's expedited discovery order calls for and in my opinion it doesn't call for -- it doesn't call for anything related to the Zuckerberg assets.

Q. So your answer is no, you would not have put it in the report, even if you thought it was contemplated by the Court's expedited discovery order you wouldn't have put it in the report?

MR. SOUTHWELL: Objection, he just said it wasn't.

Q. Let me break it down for you.

Let's say -- hypothetical time -- you found an e-mail on the 28 devices, assets that

1 M. McGowan

2 you analyzed that was from Paul Ceglia to Mark  
3 Zuckerberg discussing the StreetFax business,  
4 let's hypothetically say you found that e-mail on  
5 one of those 28 devices, would you have put that  
6 in your report?

7 A. On that alone, I'm not sure that is  
8 enough of a basis in terms of -- without further  
9 context for knowing what the e-mail said.

10 In this case, what we do is quite  
11 clear, we're -- on the one hand we did conduct a  
12 search of the Zuckerberg assets, didn't find  
13 anything related to, related here, and focused on  
14 the Ceglia media as properly -- as I feel  
15 properly responsive to the Court's expedited  
16 discovery order.

17 So I'm not sure in just an e-mail from  
18 Paul Ceglia to Mark Zuckerberg, I'm not sure that  
19 would give me enough basis to know whether or not  
20 what it said and whether or not it's relevant,  
21 but as I went over earlier, as I understand the  
22 Court's expedited discovery order was for us to  
23 report our examination of the Ceglia media and  
24 our findings.

25 Q. So this is not my question, you are

1 M. McGowan

2 rephrasing it not how I asked it.

3 If you found an e-mail on one of those  
4 28 devices between Mr. Zuckerberg and Paul  
5 Ceglia -- and here's the key thing you're  
6 missing -- discussing the StreetFax agreement,  
7 would you have produced, would you have  
8 referenced that and talked about that e-mail in  
9 your report?

10 MR. SOUTHWELL: Objection. You are  
11 starting to badger and harass the witness.

12 MR. BOLAND: I am not badgering.

13 MR. SOUTHWELL: He is answering your  
14 questions. You may not like the answer, you  
15 may not like the answer, but he is answering  
16 your questions.

17 MR. BOLAND: The question he answered,  
18 he answered a question of whether there was  
19 an e-mail between Paul Ceglia and Mr.  
20 Zuckerberg, is that enough. That's not my  
21 question.

22 A. That was the earlier question.

23 Q. An e-mail between Paul Ceglia and Mark  
24 Zuckerberg discussing the StreetFax business, if  
25 you'd have found an e-mail like that on one of



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M. McGowan

those 28 devices would you put it in the report?

A. Sorry, which one? Is it the contract, the business? What's the e-mail discussing?

Q. Let's break it down.

An e-mail between Paul Ceglia and Mark Zuckerberg discussing the StreetFax business, if you had found an e-mail that discusses that, would you have put it in the report?

A. This is an e-mail that also was located elsewhere in the Harvard account?

Q. Just all by itself, never saw it before, no other e-mail like it in the world, it discusses the StreetFax business between Mr. Zuckerberg, Mr. Ceglia, it's on the 28 devices, would you have put it in the report?

A. I think it's hard for me to answer in the abstract.

What we did is as we found evidence we considered whether -- our charge was is it reasonably related to the authenticity of the StreetFax contract and the purported e-mails, so --

Q. My question is not what your charge is, it's a hypothetical question.

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M. McGowan

A. Well, I guess I --

Q. You are not answering the question, sir, and please listen to the question.

I'm not saying what was your charge, what do you think your charge was, charge was not even in my question.

Hypothetical. If you found an e-mail from Ceglia and Zuckerberg discussing the StreetFax business, would you have put that information that you found that e-mail discussing the StreetFax business in your report?

That's the question.

MR. SOUTHWELL: Objection. This is -- you are just badgering him. He's already clearly stated what he put in the report --

MR. BOLAND: You can't coach him by -- you can object to the form, Alex, but no coaching.

MR. SOUTHWELL: I'm not coaching. I'm try go make it clear. You seem to keep asking the same thing over and over again.

MR. BOLAND: Because he's not answering the question.

MR. SOUTHWELL: He is answering.

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M. McGowan

MR. BOLAND: I'll ask it for the next hour because it's a very clear question he is refusing to answer, and I suspect I know why.

Q. Please answer the question.

It's not a difficult question. The hypothetical you have to assume is an e-mail -- we all know what that is -- between Mr. Ceglia and Mr. Zuckerberg -- so far we know what that is -- and it discusses the StreetFax business.

Assuming that existed on one of these 28 devices and existed nowhere else on any Ceglia media, would you have reported that fact in your report?

That's it, that's all I want to know.

A. And it would depend -- I think one of the facts it would depend on is the content of that e-mail.

Is it -- does it discuss -- does it bear on the -- does it bear on the contract? Is there information in it that either points in favor or cuts against either of the contract, either the version that was produced by Mr. Ceglia or the version that we found on the

1 M. McGowan

2 Seagate hard drive? Is there information in that  
3 e-mail that's consistent with or inconsistent  
4 with any of the purported e-mails?

5 So those would be factors that I think  
6 I'd need -- I think would shape -- would shape my  
7 evaluation of that e-mail.

8 MR. BOLAND: All right. We'll take  
9 about a 10-minute break.

10 (Recess taken.)

11 THE VIDEOGRAPHER: The tape is rolling.

12 BY MR. BOLAND:

13 Q. So we are back on the record,  
14 Mr. McGowan.

15 Do you know who David Cressy is,  
16 spelled C-r-e-s-s-y?

17 A. David Cressy? Without more context I'm  
18 not sure I can place that name.

19 Q. Okay.

20 The 28 devices that we were talking  
21 about before we broke, was there anything on  
22 those 28 devices related to Paul Ceglia at all?

23 A. I don't believe so. I recall we had  
24 run searches for his name, for his e-mail  
25 address. I don't believe we had identified

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2 materials related to Paul Ceglia.

3 Q. That list of search terms you provided  
4 for those 28 devices -- not provided.

5 The list of search terms used for those  
6 28 devices, who created that list?

7 A. We created it in consultation with  
8 Gibson, Dunn, we drew phrases from the contract  
9 and then worked with Gibson, Dunn to develop  
10 other keywords designed to get at -- designed to  
11 surface what were likely to be relevant documents  
12 in this case.

13 Q. And who at Gibson, Dunn worked with you  
14 on creating that list of search terms?

15 A. As I mentioned, we were primarily  
16 dealing with Mr. Benjamin for this portion of  
17 the work.

18 Q. And did you communicate with him by  
19 e-mail about -- prior to the analysis of those 28  
20 devices, about the analysis of those 28 devices?

21 A. Yes.

22 Q. And if you recall, how many of those 28  
23 devices were used by Mr. Zuckerberg in 2003 and  
24 2004, the time frame where he had a business  
25 relationship with Mr. Ceglia?

1 M. McGowan

2 A. I don't recall.

3 Q. Do you know if any of them were used by  
4 him during that time frame?

5 A. Yes.

6 Q. And you just don't know the number of  
7 how many?

8 A. I don't know the number.

9 Q. Were any of those computers used by him  
10 much later in time or anytime after 2004, if you  
11 recall?

12 A. I know one of them that sticks in my  
13 mind, one of the devices had last been used in  
14 2005, but I don't recall how much later devices  
15 were used.

16 Q. And were some of those devices you  
17 analyzed involved in the Winklevoss ConnectU  
18 case, if you know?

19 A. In the ConnectU case?

20 Q. Yes.

21 A. I believe so.

22 Q. Were some of those devices involved in  
23 a case between Mr. Zuckerberg and Eduardo  
24 Saverin, if you know?

25 A. Do you know what the cite of that is?

1 M. McGowan

2 I think I have seen it mostly by captions.

3 Q. No, I don't know the cite off the top  
4 of my head.

5 If you don't recall based on just  
6 Eduardo Saverin being one of the parties, then  
7 that's fine if you don't recall.

8 A. That's right, I don't recall.

9 Q. Do you realize, do you know now that  
10 Paul Ceglia and Mark Zuckerberg in fact had a  
11 business relationship in 2003-2004 related to  
12 StreetFax that Mr. Zuckerberg is not disputing?

13 Are you aware of that?

14 A. I am aware of that.

15 Q. And do you think it's odd that you  
16 didn't find any e-mail correspondence between  
17 Mr. Ceglia and Mr. Zuckerberg on any of those 28  
18 devices, given that they had a business  
19 relationship?

20 A. I don't know if it's odd or not. I  
21 don't know -- the devices were presented to me  
22 for inspection. I don't know, without knowing  
23 more about how they were used, when they were  
24 used, I'm not sure I could -- I'm not sure I have  
25 an opinion one way or another in terms of the

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absence of communication between the two on these devices.

Q. You've seen the Harvard e-mails from Mr. Zuckerberg's Harvard e-mail account that were produced related to the expedited discovery order?

A. I have seen the Harvard e-mails that were produced pertaining to the expedited discovery order.

Q. Were any of those e-mails, copies of them, present on those 28 devices, if you know?

A. I don't believe so.

Q. And what's the basis for your belief that none of them, copies of those e-mails do not appear on those 28 devices?

A. I know that we've conducted searches for Mr. Ceglia's name and e-mail addresses, the several e-mail addresses, those were in the Harvard e-mails, those were the Harvard e-mails that Mr. Zuckerberg and Mr. Ceglia exchanged and so based on the fact that we didn't identify any communications between the two of them on the Zuckerberg assets, the approximately 28 devices, that's my basis for -- that's my basis period.

Q. Did you search for e-mails in which



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Mr. Zuckerberg communicated with other people,  
not Mr. Ceglia, about StreetFax?

A. StreetFax would have been included as  
one of the search criteria. I don't recall the  
full list of search criteria, sitting here, but  
that would have been one of the terms used.

Q. So is your answer -- what's your answer  
to my question?

Did you find any e-mails between  
Mr. Zuckerberg and someone who is not Paul Ceglia  
discussing StreetFax?

MR. SOUTHWELL: Objection.

A. I'm sorry, I thought your question was  
did we search for.

Q. No. Did you find?  
If it was search for, I will correct  
myself.

Did you find any e-mails sent or  
received by Mr. Zuckerberg on those 28 devices  
but not involving sent or received from  
Mr. Ceglia, but they discussed StreetFax?

A. I'm not sure one way or another on  
that.

Q. The set of search terms you used to

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search the 28 devices, was it identical to the search terms used to search the Harvard e-mail account of Mr. Zuckerberg?

A. No.

Q. And did you determine by looking at those 28 devices whether Mr. Zuckerberg used any of those devices to access his Harvard e-mail?

A. We didn't reach a conclusion on that point.

Q. Were you asked to look for that?

A. No.

Q. Did you ever speak with Mr. Zuckerberg?

A. I have not, no.

Q. Did you find any references to StreetFax at all on those 28 devices?

A. I'm not sure the results on that one.

Q. So it's possible there are references to StreetFax on those 28 devices?

A. I'm not sure on that one, one way or another on that.

Q. I'm just asking if it's possible, since you don't know.

Is that possible that there's references to StreetFax on those 28 devices?

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A. It's possible. I don't -- I don't recall the results of that search.

Q. Were any of your results of your searches documented in any way or do those results solely rely on your memory?

A. As part of the search process we applied the search criteria and then obtained high-level search results in terms of just how many documents or how many hits per keyword, so it's documented at that phase and then we exported the search results and so we have a set, we have the set of materials that match the search criteria as well, so with the original keyword list, the what I would call the keyword breakdowns, keyword hit breakdowns and the results themselves.

Q. Did you provide those to defense counsel?

A. We did, yes.

Q. Do you know if Mr. Zuckerberg reviewed that information?

A. I don't have any basis to know one way or another whether he reviewed it.

Q. Can you name everyone that has had

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access to those results, everyone at Stroz  
Friedberg that has had access to those results?

A. The results being the search statistics  
or the documents that resulted?

Q. The entire analysis of those 28  
devices, whatever documentation arose or was  
generated from that analysis, who at Stroz  
Friedberg has had access to that information that  
you know of?

A. That I'm aware, that I know of, it's  
the individuals who had been working on this  
portion of the analysis: myself, Mr. Kunkel,  
Mr. Rose.

The results themselves were made  
available, the documents that matched the search  
criteria were made available for review in our  
electronic discovery search platform. I don't  
know the names of the individuals, but there  
would be additional individuals who would have  
been involved in making the documents available  
for review by Gibson, Dunn.

Q. And do you know who at Gibson, Dunn  
accessed those materials?

A. I know that Mr. Benjamin, I believe

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that Mr. Benjamin did, but beyond that, I'm not certain.

Q. Do you know if the StreetFax source code is on those 28 devices?

A. I think you asked me that. I don't believe so.

Q. And what's the basis for your belief that it's not there?

A. I don't recall -- in the materials I reviewed I don't recall seeing any source code, any StreetFax source code.

Q. Did you conduct a search for StreetFax source code as part of your search?

A. We conducted search -- the keywords would have included terms such as StreetFax. We did not specifically conduct a search -- I myself have not seen the StreetFax -- it's not as if we received it, drew search terms from it and applied a search, but I believe in the searches that we did conduct I'm not aware of having identified it.

Q. And Facebook source code, did you do a search for that on those 28 devices?

A. We did not, no.

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Q. Now, if the word "StreetFax" doesn't appear in the StreetFax source code, then it's logical you wouldn't have found the StreetFax source code; true?

A. If the word "Street" -- it would depend on whether any of the other keywords we had run -- if any of the other keywords appeared then it would have been surfaced through our searches. If none of the word searches, none of the terms appeared in the source code then it would not have been returned as part of the searches.

Q. And so Mr. Benjamin reviewed the results of this, the searches you ran on the 28 devices; true?

A. Mr. Benjamin was provided access to the results.

Q. And would you consider that a report, providing a report to him or not?

A. Would I consider what providing a report?

Q. Providing him access to the results of your search of the 28 devices, is that equivalent, in your mind, to providing him a report of your results?

1 M. McGowan

2 A. Not as I'm thinking of a report, no.

3 Q. Were you told not to take notes of your  
4 analysis, handwritten notes?

5 A. No.

6 Q. Do you typically not take notes when  
7 you're doing analysis?

8 A. Oftentimes I document it electronically  
9 as we're conducting it just so that it's  
10 available and not on a scrap of paper I'm going  
11 to lose, so oftentimes it's just the electronic  
12 documentation.

13 Q. And did you take electronic  
14 documentation searching these 28 devices?

15 A. Yes, we went over the materials that we  
16 prepared there in response to your earlier  
17 questions, yes.

18 Q. Did anyone tell you to take -- make  
19 that electronic documentation, using your point,  
20 did anyone tell you to do that or did you just do  
21 it as a matter of standard practice?

22 A. I do it as a matter of standard practice.

23 Q. Do you sometimes issue reports  
24 following your analysis of electronic assets?

25 A. Yes, sometimes we issue a written

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2 report documenting our analysis.

3 Q. And were you told not to issue a report  
4 relating to your analysis of the 28 devices?

5 A. No, we weren't told, we weren't told  
6 not to issue a report.

7 Q. Why didn't you issue a report, then?

8 A. We weren't requested to issue a report.

9 Q. So can you just describe for me, just  
10 give me a summary of exactly how you analyzed  
11 these 28 devices? What process did you go  
12 through?

13 A. So as I mentioned, we first identified,  
14 first identified the unique assets. By that I  
15 mean that the 28 devices in some cases were  
16 forensic images of other devices that were  
17 already included in the set. In some cases it  
18 was forensic images of forensic images, like a  
19 Russian nest, Russian doll through the various --  
20 I understand there were various past efforts, so  
21 the first step of our process was just  
22 identifying among the materials that we had been  
23 presented with what are the -- what are the  
24 original sources or what are the unique devices  
25 that we have in front of ourselves.



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If a forensic image had already been created we verified it and to the extent we had an existing forensic image that already existed, we relied on that, made a copy of that as opposed to contributing to sort of the proliferation of duplicate copies.

To the extent that a device, it was an original device for which a forensic image had not already been created we attempted to create a forensic image of it and where successful verified that and included that in the results or in the set to search.

The searches themselves, we conducted searches using the EnCase forensic software and a search product called DT Search of both the active contents, the information, the active and recoverable data on the computer as well as an allocated space search, an allocated space component of the hard drives where fragments of deleted data, text fragments may exist, so that was the search process, review of the search results and making -- and then making those data available for review by Gibson, Dunn.

Q. Did you do this in the offices, the

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conference room or whatever of that law firm you mentioned before?

A. Yes. That last -- all except for that last stage where the results themselves were taken out at our data center, they were processed in a format that could be made available for review, but up until that point in time the identification, preservation and searching, that was done at McManis Faulkner's offices.

Q. If you know, were these 28 devices being stored at that law firm prior to you analyzing them or were they brought to that law firm from some other location for you to analyze?

A. I believe that most if not all of the devices had been -- were being stored, stored at that law firm had been brought out for our inspection.

Q. Do you know how they were stored?

A. I do not know.

Q. Can you take a look at Rose Exhibit 1, page 90, please.

A. Okay.

Q. And hold that page for a second.

Are you aware that there are electronic

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assets being held by a company called Parmet & Associates related to this case?

A. Being held by them?

Q. Yes.

A. No, I'm not aware of that.

Q. Did you search any assets provided by a company called Parmet & Associates?

A. Provided by them?

Q. Or being held by them, let's put it that way.

Did you search any assets that are currently being held by Parmet & Associates?

A. Not held by Parmet, no.

Q. Have you ever been to the offices of Parmet & Associates?

A. No.

Q. Did you see a chain of custody document for the 28 devices that you were given to analyze at the law firm that we just mentioned?

A. There was forensic documentation on the hard drive itself about the imaging, but not a written chain of custody form.

Q. And are you aware that there's electronic assets potentially related to this

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case being held by Parmet & Associates?

A. I think you asked me that.

No, I'm not.

Q. Has anyone from Stroz Friedberg, to your knowledge, gained access to those assets to analyze them, the ones at Parmet & Associates?

A. Among the devices that we had been presented, presented to us, I believe there was references to Parmet, but we have not been provided -- those would have been at McManis' offices, we haven't -- to my knowledge, no one has been provided access to assets directly held by Parmet & Associates.

Q. What are the references to Parmet & Associates you just mentioned, what does that mean?

A. That among the 28 devices were some that, according to the documentation, had been preserved by Parmet & Associates in the past and were presently being held by McManis Faulkner.

Q. Documentation, was it paper documentation you are talking about or documentation on the drives themselves?

A. I was thinking of the drives

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themselves, yes.

Q. And so just to be clear, when you analyzed these 28 devices, you had no chain of custody related to those devices, they just landed on that table and you analyzed them, you don't know where they came from before that time as far as in a written documentation form?

A. There was no chain of custody documentation. There was -- I had reviewed declarations that had been filed in a prior case that described, that described the media of where they had come from, so there is some written documentation, but in that format.

Q. Did those declarations have hash values for all of those 28 devices so you could confirm you were looking at the same thing?

A. I am not sure the declarations did. The hash values would have been among the electronic media, the materials that I referred to on the drives.

Q. And isn't it a better practice if you can have it, is to have chain of custody for assets that you're going to analyze in a computer forensics analysis?

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A. A better practice than --

Q. When you got EnCase certified, wasn't it -- weren't you taught that you would ask, you would ask for a chain of custody for any evidence you were analyzing, if you can get it?

A. I think having a chain of custody is good practice.

Q. All right.

On page -- what page did I tell you to go to? 90? I think I told you page 90.

A. Page 90, yes.

Q. That is, if I am correct, page 2 -- no, I'm sorry, page 1 of the StreetFax contract as you identify it in your report; true?

MR. SOUTHWELL: I'm going to object to the document that's before the witness, which is, as we stated yesterday, is different than what was actually filed in the Stroz report, so I just want to make that clear.

MR. BOLAND: Very well.

Q. So it's a smaller than 8-1/2-by-11 size print of the TIFF image that is page 1 of the StreetFax contract, as you identify in your

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2 report; is that true on that page?

3 A. On this page, yes, what you have handed  
4 me is a smaller version of it.

5 Q. And page 2, I think, is another exhibit  
6 in your attachments there, I think it's Exhibit  
7 F, I thought it was.

8 A. Okay.

9 Q. Perhaps I'm wrong.

10 Let's look at Exhibit F, see if that's  
11 page 2.

12 A. Right, Exhibit F, yes.

13 Q. You would agree with me that that TIFF  
14 image is an image of a paper document, that's the  
15 contention that's being made in your report,  
16 that's an image of a paper document?

17 A. It appears to be yes. This is -- I'm  
18 pausing because the version that you are showing  
19 me is much smaller than the version of the  
20 StreetFax contract that I am accustomed to seeing  
21 in print.

22 Q. But you don't dispute -- we already got  
23 your testimony earlier -- that's the actual size,  
24 physical size of that file, the measurements are  
25 in Mr. Broom's report and you conceded those

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2 measurements were accurate.

3 MR. SOUTHWELL: Objection,  
4 mischaracterizes.

5 Q. Do you disagree with me that that's the  
6 actual size, physical size of that file as you  
7 found it?

8 A. I think to be clear here we're talking  
9 about -- there's a couple of different things,  
10 there's the size of the original, there's the  
11 size of the TIFF image and then there would be  
12 the size when printed out, so the measurements  
13 pertain to the dimensions of the TIFF image, the  
14 TIFF image as it's displayed, as it's displayed  
15 electronically.

16 Q. Right. I'm talking about do you  
17 disagree that the size of this TIFF image is 2.4  
18 by 3.2 inches?

19 Is there some other measurement for  
20 this TIFF that you think, a different size that  
21 you determined it was?

22 A. I think it's -- so the measurements,  
23 they are going to depend on -- the size is  
24 measured in pixels and how that appears, for  
25 example, the size that appears on your laptop



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monitor versus a big screen versus a CRT, all of that is going to depend on the dots-per-inch that your monitor is set for.

Q. No, sir, we're going to go back --

MR. SOUTHWELL: He was not finished with his answer.

Q. Go right ahead, but -- we'll clear this up.

Go ahead.

A. So that size, the physical size is going to be dependent both upon -- I mean, the size of a TIFF image is measured in pixels. If you want to translate into dimensions it's going to depend on what the pixels are and also the dots per inch that it's presently being displayed at.

Q. Do you disagree with me, sir, that the metadata associated with these two TIFF images indicates that they were 480 by 646 pixels at 200 DPI? Do you disagree with that?

A. I think one of them was smaller than the other, I don't think they were both the same size.

Q. Okay.

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What's your basis for that?

A. I think just that area that you're speaking of right there, I've been -- the place we have it most handy is the Broom report on page 21 where Scan0001 was 480 by 646 and Scan0002 was 480 by 657, so they are slightly different size.

Q. Do you disagree with those numbers that Mr. Broom put in his report?

A. I do not disagree with those numbers.

Q. And the 200 DPI, do you disagree with that, as embedded in the metadata?

A. No. The 200 DPI is the resolution of the TIFF image.

Q. Of the TIFF image, right.

So I don't care what a monitor resolution is for this question.

The resolution of the TIFF image is 200 DPI; correct?

A. Of the TIFF image, yes.

Q. And you previously testified you do not disagree with Mr. Broom's conversion from pixels to inches; correct?

A. From that measurement, no, I do not disagree.

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Q. Right. These are the pixels, we just acknowledged, we agreed these are the pixels, the measurements of those two TIFF images and he converted them to 2.4 by 3.2 inches, which is the physical size of that file, you would agree with that?

A. It's an electronic file.

Q. Right.

A. That would be the size at the -- that would be the size of the image without any -- that would be the size of the image --

Q. At a hundred percent resolution?

A. -- at a hundred percent resolution at 200 DPI.

Q. Right.

So anything else, if that image is printed out in any other size other than 2.4 by 3.2 inches, that's not a hundred percent resolution, is it?

A. Well, printing is something -- is something different.

Q. Listen to my question.

If you printed it at exactly a hundred percent resolution, so I don't care what printer

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you use, what monitor, it's irrelevant. If you print this image at a hundred percent resolution, when you measure it with a ruler on that printed page, that image is going to be 2.4 by 3.2 inches in dimension; is it not, sir?

A. I'm not sure it is because it's the pixels, pixels is defined, it's the smallest addressable unit.

Q. But it's already been converted to inches and you've agreed to the conversion to inches, so if you print the image at a hundred percent resolution, that image measured with a ruler on the printed page is going to be 2.4 for scan 1, 2.4 by 3.2 inches, is it not?

And sir, if you don't know, it's an acceptable answer. If you don't know, you don't know.

A. So if you print -- if you print the image --

Q. At a hundred percent resolution.

A. And leaving aside differences between printer size pixels and the images of the digital pixels and then add a hundred percent resolution, it would be -- if you were using a program and

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2 were able to -- and printed it at that it would  
3 be those, it would be those measurements.

4 Q. All right.

5 So for scan 1 the measurement of the  
6 printed image of scan 1 TIFF printed at a hundred  
7 percent resolution would be 2.4 by 3.2 inches;  
8 true?

9 And I'm reading right from page 21 of  
10 Broom's report, I'm not trying to trick you with  
11 the numbers.

12 Is that correct, sir, that's what you  
13 just said?

14 A. No, I -- that's if you print it at a  
15 hundred percent resolution --

16 Q. Yes.

17 A. -- which there's, by default wouldn't  
18 be how an image would be printed. Windows  
19 provides the ability, when you print, the options  
20 you get are to expand it, so the TIFF images  
21 would generally be -- printed TIFF images would  
22 generally be expanded to fit the size of a page.

23 Q. Right.

24 But I'm not talking about that, I'm  
25 talking about a hundred percent resolution.

1 M. McGowan

2 So you'd agree with me the hundred  
3 percent resolution, the first Scan0001.tif, if  
4 printed, would be 2.4 inches by 3.2 inches as you  
5 measure it on the page?

6 A. If printed at 100 percent resolution.

7 Q. And then Scan0002.tif, if printed at a  
8 hundred percent resolution, would measure 3.23  
9 inches by 2.4 inches?

10 MR. SOUTHWELL: Where are you getting  
11 that from?

12 MR. BOLAND: I'm just asking him the  
13 question.

14 Q. It would measure 2.4 inches by 3.23  
15 inches?

16 MR. BOLAND: Actually, let me withdraw  
17 that question.

18 Q. Since the Scan002.tif is slightly  
19 larger --

20 A. Right.

21 Q. -- by it looks like 11 pixels, you  
22 would expect the printed size of that image at a  
23 hundred percent resolution to be fairly close to  
24 2.4 times 3.2 inches; wouldn't you agree? 11  
25 pixels isn't that much.

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M. McGowan

A. Yes, if printed at a hundred percent resolution.

Q. Right.

You can print TIFF images at larger resolution: 200 percent, 300 percent and so forth; correct? You can set your printer to print it at a larger resolution?

A. Either your printer or the software, for example, but generally it's oftentimes not just by percentages, but if you used the default program in Microsoft Windows, you'd hit Print, your first two options, the options presented to you will be to scale to fit the size of the page.

Q. Okay.

The two printed versions of the TIFF images, Exhibit F, I think, and then the one on page 90, whatever that was, Exhibit --

A. Exhibit H is the one that's on.

Q. Right.

Do those appear to be approximately 2.4 by 3.2 inches?

I'm not asking you to say exactly, but do they appear to be about 2-1/2 inches and a little over three inches tall, as printed?

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A. Not having a ruler here, but it appears to be approximately those dimensions to me.

Q. Fair enough. And I'll note, of course, you don't have a ruler and I'm not asking you to say exactly.

So this is an image of a paper document.

You are not a paper document expert; correct?

A. I am not, yes.

Q. So you have nothing to say about the authenticity of any paper documents in this case; correct?

A. I haven't examined any paper documents in this case.

The only thing that, as we discussed earlier, it's only to the extent that it's -- the only inferences I have are to the extent that it's a paper document of -- it's a paper copy of a document which I examined electronically and reached opinions about it that way.

Q. I'm asking about the paper document of which this is an image of a paper document.

You don't have any evidence to offer,



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M. McGowan

you don't have any qualifications to testify about the authenticity of the paper document from which this image was made; correct, sir?

A. Does that paper image, does that paper document exist?

I am not aware of --

Q. Please just answer the question.

You have nothing, no testimony to offer about the paper document from which this image was created because you are not a paper document expert; correct?

A. I don't have any -- I don't have any opinions to offer. I don't believe that document, I am not aware of that document existing, but I don't have any opinions to offer about it.

Q. Very good.

And likewise, if I gave you a picture of the Brooklyn Bridge --

Are you familiar with the Brooklyn Bridge?

A. Yes.

Q. If I gave you a picture of the Brooklyn Bridge, I think you would agree with me you are

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M. McGowan

not qualified to talk about, based on that picture, the structural integrity of the Brooklyn Bridge?

A. That's correct, I am not qualified to talk about the structural integrity of the Brooklyn Bridge.

Q. And have you ever seen the paper document -- you've never seen the paper document from which that image was made?

A. Yes. It's my understanding that it doesn't exist.

Q. You've never seen it?

A. I have never seen it.

Q. So your testimony, your conclusions in your report are solely about the TIFF image that's contained in your report, not about the underlying paper document from which the TIFF image was created; right?

A. Could I clarify one thing?

We were speaking -- I mentioned I am not aware of it existing. We were actually speaking about the second page. I believe the second page of the Work For Hire, the Work For Hire document and the StreetFax contract are the

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M. McGowan

same.

When I was speaking about I'm not aware of it having existed I was talking specifically about the first page of the StreetFax contract which I'm not aware of, I'm not aware of it existing in print format.

Q. So it's your opinion, based on your analysis, that the second page of the StreetFax contract is the same as the second page of the paper contract which the paper experts have evaluated in this case; is that true?

A. I haven't conducted a paper -- I haven't conducted a paper document analysis of it. From my review of the text I believe that the content is the same on the second page.

Q. Did you review the signatures that appear on the second page of the TIFF, the StreetFax contract, and the second page of the paper contract, at least if you have seen a scan of it, did you review those signatures? Do you think those look the same to you?

A. I -- earlier on, I think when it was first identified in August of 2011 I recall looking at the two of them together. I don't

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recall, but it's been a while, so I don't recall details, the details of how the two appear.

Q. Is it your belief, your opinion, your expert opinion, that page 2 of the StreetFax contract is a TIFF image created from page 2 of the paper contract that was evaluated by the paper experts?

A. I don't have an expert opinion on that.

Q. And we already went through earlier you don't know how -- you can't conclude with any certainty how that TIFF image was actually created; correct?

A. Correct, I cannot conclude how the TIFF image had been created and whether, for example, it was scanned directly onto the Seagate hard drive or whether it had been introduced from another media.

Q. And do you know -- and you don't know if that TIFF image from the moment of its creation to the time it was placed onto the media where you found it was altered at any point during that time, before it got onto the location where you found it, you can't say whether it was altered at all?

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A. I can't say that -- I can't say, I can't speak to whether it was altered prior to it having arrived on the media on the Seagate hard drive.

Q. And then how, sir, can you say that that's an authentic contract between the parties if you do not know whether it was altered before it ended up where you found it? How is that possible?

A. The basis of why I believe it's an authentic contract is it exists on -- it exists on Mr. Ceglia's media, there's an independent copy that was made, that was sent to you and maintained by Sidley & Austin, it's referred to in contemporaneous e-mails between Mr. Ceglia and Mr. Kole.

The payment terms of that contract are consistent, they are consistent with the payment terms, they are consistent with the payment terms of the discussions between Mr. Ceglia and Mr. Zuckerberg in subsequent e-mail correspondences and in my review I didn't identify any anomalies concerning the metadata of that digital image, those are the reasons why we

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M. McGowan

believe that the StreetFax contract is an authentic document.

Q. I'm asking just about the TIFF image.

You can't authenticate the paper contract, because you are not a paper expert; true? We already went over that.

A. Again, apart from -- I can evaluate it in the digital form.

Q. So you can't authenticate the paper document from which the image was made and you don't know if the TIFF image was altered before it landed where you found it, so how can you say the TIFF image is authentic?

You have no way of knowing whether it's authentic or not, it could have been vastly manipulated in all kinds of software we went over before you saw it; isn't that true, sir?

A. It's possible that -- I can't speak to what happened to the TIFF image before; however, that's not uncommon for this kind of digital authentic -- authentication case. We don't have a camera sitting over the shoulder of the people involved and oftentimes we are called to examine and opine upon documents as they exist, and

1 M. McGowan

2 that's what we did here, and so the reasons I  
3 believe it to be an authentic contract are the  
4 ones I just went over, the fact that there's an  
5 independent copy in a third party's possession  
6 that it's referenced in contemporaneous  
7 correspondence at that time and that the terms of  
8 it are consistent with e-mails between Ceglia and  
9 Zuckerberg, the authenticity of which is not  
10 being challenged here.

11 Q. The authenticity of what, sir, what  
12 part of that?

13 A. Of the e-mail messages.

14 Q. Between whom and whom are not being  
15 challenged?

16 A. The e-mail messages between Mr. Ceglia  
17 and Mr. Zuckerberg that reference the payment  
18 terms, there are e-mail messages that are in both  
19 Mr. Zuckerberg's Harvard account as well as in  
20 Mr. Ceglia's files that reference the payment  
21 term, that reference the amount of monies owed to  
22 Mr. Zuckerberg and reference it as 18,000, which  
23 is the, if you sum up the fees listed in section  
24 3, I believe, of the StreetFax contract, that's  
25 the payment, the payment provision.

1 M. McGowan

2 Q. And who told you those are not being  
3 challenged by Mr. Ceglia?

4 A. I'm not aware -- I've reviewed the --  
5 I've reviewed the reports of the digital forensic  
6 examiners that Mr. Ceglia has retained; I haven't  
7 seen any -- I haven't seen any challenges to  
8 those, any discussions that suggests that they  
9 are inauthentic.

10 Q. I am asking who told you that those  
11 e-mails are not being challenged by Mr. Ceglia.

12 A. No one told me that.

13 Q. So you determined that the StreetFax  
14 contract is authentic based on things other than  
15 the TIFF image itself; fair to say?

16 A. It was through an examination of the  
17 TIFF image as well as, as you say, other things,  
18 factors, but both.

19 Q. So the TIFF image could be altered, you  
20 have no way of knowing; true?

21 A. The TIFF image, I can't speak to what  
22 happened to the TIFF image before it arrived on  
23 this computer. However, the TIFF image on this  
24 computer is the same that's in Sidley Austin's  
25 possession, so there's no -- I haven't seen any



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2 evidence through my examination of both the  
3 images found on the Ceglia -- excuse me, the  
4 Seagate hard drive and the Sidley Austin copy  
5 that there's been subsequent alterations.

6 Q. If I give you a TIFF image right now of  
7 anything, a TIFF image of the New York skyline,  
8 would you be able to sit here and look at it and  
9 authenticate it, assure the Court that it's not  
10 been altered in any way?

11 A. Not by sitting here and looking at it.  
12 I am a digital forensic examiner, that's how I --  
13 it is through that that I proffer opinions.

14 Q. You listed --

15 MR. BOLAND: Scratch that.

16 Q. There's four people's names associated  
17 with the report; correct?

18 A. In the initial part of the report  
19 there's biographies for four people, yes.

20 Q. And there was one other person you  
21 mentioned earlier who had done some work with  
22 some of the evidence related to this report, I  
23 forget the person's last name.

24 A. Ms. Forness.

25 Q. Forness, that's it.

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M. McGowan

Anyone else that you know of that also contributed to some of the analysis or whatever but is not listed in the report?

A. Not to the analysis, no.

Q. And are you aware that Mr. Zuckerberg has not declared that the StreetFax contract is the authentic contract between him and Mr. Ceglia? Are you aware of that fact?

A. I'm not aware one way or another what Mr. Zuckerberg has said about it.

Q. And are you aware that Stroz Friedberg is the only expert in this entire case to claim that the StreetFax contract is the authentic contract between the parties?

A. I'm not sure, I'm not sure on that, I haven't reviewed all of the other expert, all the paper document expert reports in detail.

Q. And have you ever testified in any deposition or in court regarding the authenticity of a digital image other than today, of course?

A. Let me think.

I've certainly testified about digital files. I'm trying to think if they --

Q. Not digital files. I'm being specific,

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digital images.

A. I realize, I am just trying to process, go through the past cases.

I've analyzed digital images, I've written reports about them, but in terms of deposition and trial testimony, I don't believe I've testified about digital images specifically prior to this matter.

Q. Have you ever been qualified as an expert in any field by a court?

A. Yes, I've been qualified as an expert in digital forensics.

Q. And when you said you've analyzed digital images, what does that mean?

A. It's come up in at least several respects of my work, there have been questions about what is the metadata that this image shows, there have been questions about when digital images have arrived on, have been used on a computer, the usage, the usage pattern related to them.

To a limited degree there's been, I have conducted analyses of the content, the pictorial content of digital images as well, so

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2 those are, I think, the three main ways in which  
3 digital images have come up and I've analyzed  
4 them in my work.

5 Q. Have you ever been qualified by a court  
6 to provide an opinion as to whether a digital  
7 image is altered or not?

8 A. No. As I said, it hasn't come up in  
9 any of the deposition or trial testimony, so I  
10 haven't had an occasion to.

11 Q. Have you had any training on how to  
12 detect manipulation in digital images, the  
13 content of digital images?

14 A. Much of my work is focused on the  
15 files, the metadata, the content themselves of  
16 digital images, it's an area that I have attended  
17 a few lectures and conducted some research, but  
18 the analysis of the content of digital images is  
19 not an area that has come up much in my work.

20 Q. Did you bring your own copy of your  
21 report to the deposition today?

22 A. Yes. There's a -- I have a copy in my  
23 briefcase.

24 Q. Is the briefcase in the room?

25 A. Yes.

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M. McGowan

Q. Can you pull out your copy that you brought with you of the report?

A. Sure.

Q. I'm talking about the filed version of the report, the one that's got the file stamp across the top.

Is that the one you have?

A. It is, yes.

Q. Okay. Great.

A. All right. I have that in front of me.

Q. Can you look on your page of your copy of the report that you have in front of you there that correlates to these two TIFF images that I just showed you.

A. Okay.

Looking at what would be page 86 or Exhibit F and page 90 of Exhibit H.

Q. Right.

So let's start with your page 90 on your copy of the report you have in front of you there.

A. Yes.

Q. Do you see the size of the printed version of page 1 of the TIFF image as it exists

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in your report?

A. I do, yes.

Q. You would agree with me it's larger than the printed size of that same TIFF image as it appeared in Rose Exhibit 1, which you looked at before?

A. It is, yes.

Q. Does that page that you're looking at have the court information across the top, the document number and the court name and all that?

A. It appears to be truncated, but yes, it does appear to have a portion of the court's, I guess, legend, for lack of a better term, on the top.

Q. So it's true that the court-related sort of stamp that goes across every page -- I'm looking at what you are looking at in there -- that text is considerably larger than what's on the other pages, would you agree?

A. Yes.

Q. And that text is also, as you said, truncated, it's not even all present on the page; right?

A. That's right, yeah.

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M. McGowan

Q. The first portion of the designation that goes across the top of the page is missing, in fact, the first two letters that appear on the top of the page look to be G and F of that designation.

A. I believe there's an L in there.

Q. Oh, L, G, and F; right?

A. Or strictly -- and partially cut off A, but yes.

Q. And then at the far right of that much larger text is the word "file" and then the number zero and it appears the rest is cut off; would you agree?

A. I would agree.

Q. Isn't that consistent, the print of that exhibit with that image from the Rose exhibit, Rose number 1, being magnified probably two, four, five times the size of what it was in the other exhibit? Doesn't it look like that thing was magnified from the originally filed page to consume that entire page like it is now?

A. I'm not familiar with the process that affixes the caption, but based upon the size, yes, it does appear to be, appear to be

1 M. McGowan

2 magnified.

3 Q. And that TIFF image was not that size  
4 at a hundred percent resolution as you found it  
5 on the Ceglia media; right? It wasn't -- that's  
6 not a hundred percent resolution printout of that  
7 image; agreed?

8 A. This is not a 100 percent resolution  
9 printout of this image, correct.

10 Q. And without quibbling about how much  
11 larger it is, you would agree with me it's beyond  
12 a hundred percent resolution that that's being  
13 printed at so it can fit most of that 8-1/2-by-11  
14 page?

15 A. That's correct, it appears to be  
16 printed in the default manner to fill a page, as  
17 you said.

18 Q. And the other page 2 of that TIFF which  
19 appears in your copy of the report, if you can go  
20 lead to that and that is Exhibit F; right?

21 A. Right.

22 Q. All the same answers to my questions  
23 related to that printed version of that exhibit  
24 as well, it does appear magnified well beyond a  
25 hundred percent magnification as it's printed



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M. McGowan

there?

A. Correct, it appears to be printed to fill the page.

Q. And the information across the top is much larger font and is cut off at the beginning and the end from the typical information that gets placed as a header across filed documents?

A. Yes.

Q. So that would not be an accurate rendering of the size of that TIFF image or the previous TIFF image at a hundred percent resolution as you found it; true?

A. I think there's a couple, couple things there. One is I found an electronic copy, it's not a -- this is not an accurate representation of what it would appear if you printed it at a hundred percent resolution. It is, I think, an accurate representation of what happens if you hit Print and just use the defaults.

Q. All right.

And if you could look at the text starting in the left-hand column at the top of that document, would you say that that text is legible?

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M. McGowan

A. I would say it's difficult to read.

Q. How much of it's difficult to read? Is it just a few words here and there that are hard to read or 50 percent of the words or the majority of the words that you can't read?

A. Well, leaving aside the embossed court thing, I can -- I would say most words are difficult to read; I believe that I could make out what it's saying, though, in spite of that.

Q. And could you flip to the other TIFF image as well and answer that same question.

A. Sure.

Yes, I'd say that apart from the headers, there's more difficulty, probably all of that is more difficult to read than an ordinary document, I think. I could make out -- that said, I could make out with some time what it was saying.

Q. What do you mean, with some time?

A. Meaning I can't read it, I can't read it as quickly to you as quickly as I could, for example, the wording in the Broom report, which is quite larger, but I think if I went slowly and squinted at it I could figure out what it was

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saying.

Q. Every word, you think?

A. I haven't tried every word. One of my colleagues, as part of this, did go through and prepare a transcription, so I personally haven't tried every word, but based upon that I believe that either every word or almost every word could be made out from this.

Q. Who did the transcription?

A. One of my colleagues Karol Pacan was presented with the TIFF images and made an internal transcription for us to review.

Q. So that's like a sixth person now involved in some work in preparing the report, is that fair to say, we are up to six now?

A. I wouldn't say that this was involved in the preparation of the report. It was one of the things we did in our analysis, but I would say that the people who were involved in the preparation of this report -- I'm not sure how we are up to six either. Ms. Forness' work was subsequent to it, so I'd say that Jason, Mr. Novak, and myself are the two individuals who were primarily -- who were the individuals

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M. McGowan

performing the digital forensic analysis, the technical analysis, and then Mr. Friedberg and Mr. Rose assisted with the day-to-day supervision as well as the higher-level analysis.

Q. What percentage of the report would you say you wrote?

A. I think it's difficult for me to say. The drafting, the drafting process was collaborative, so I don't know that I can point to specific sentences.

Q. 50 percent would you say?

A. I'd say Mr. Rose was more involved in the initial drafting than I was, he probably wrote more of the words that initially appeared here, but then with the back and forth of the editing process to refine it and wanting to make sure we got it right, I can't really say at the end of the day how many are his, how many of -- sort of the division of labor, but as a general matter I would say I was more involved in the forensic analysis and that he took -- he took the primary pass at writing it, drafting it into the narrative form.

That said, I do -- I've reviewed and

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M. McGowan

contributed and I agree with the opinions offered here.

Q. Did you retain copies of drafts of the report?

A. We worked -- we just worked off one document, we had it up on a file on our server, and so we would make changes as we went along and red lined and worked off that, accept them, so we have that version, but we didn't separately save intermediary drafts.

Q. Does the software you used or the process you use to do that contain versioning itself, kind of click buttons and go back and look at prior versions?

A. No, it would just have whatever was in the final draft.

Q. And the person who did the transcription of the two TIFF images, did they do that accurately or did they make any errors in that transcription, if you know?

A. I'm not aware of any errors.

Q. Did you review the transcription for errors?

A. I did not conduct a line-by-line

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review. The purpose of the transcription was as an aid, an aid as we were conducting this to be able to more easily refer to it.

I did look, I did compare the two together, it appeared to be -- it appeared to be accurate to me, but I did not conduct a line-by-line review of the two.

MR. BOLAND: I am going to take about a five-minute break and then I think I'm going to wrap up.

(Recess taken.)

THE VIDEOGRAPHER: The camera is rolling.

BY MR. BOLAND:

Q. All right, Mr. McGowan, we are back on the record.

What was -- can you describe Mr. Rose's involvement in the analysis of those 28 computers? 28 devices, I will use your term.

A. Yes. Mr. Rose -- I was not physically present for the analysis, and but -- and I believe that it was actually sometime during the course of the examination that he began to be more involved in the day-to-day supervision, up

1 M. McGowan

2 until that point in time it had been  
3 Mr. Friedberg, but I consulted with both of them  
4 in terms of the approach, discussed the keywords,  
5 and they would have been involved in  
6 communications with Gibson, Dunn.

7 Q. Did Mr. Rose know who was involved in  
8 that examination of those 28 devices?

9 A. Did Mr. Rose know?

10 I'm not sure one way or another. He  
11 began -- he got involved at some point in the  
12 process, so I'm not -- it was -- Mr. Rose got  
13 involved after my first trip to -- after my trip  
14 to -- my trip to San Jose, so I'm not sure one  
15 way or another if he knew specifically everyone  
16 that was involved in that.

17 Q. How many trips did you make to San Jose  
18 to analyze these 28 devices?

19 A. Just one.

20 Q. Did you make any trips anywhere else to  
21 analyze these 28 devices?

22 A. No.

23 Q. And other than those 28 devices and the  
24 list of items in the report, Rose Exhibit 1 for  
25 this deposition, were there any other electronic

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M. McGowan

assets that anyone from Stroz Friedberg analyzed related to this case?

A. In the Harvard e-mails that we mentioned earlier that were discussed in the several Rose declarations.

I believe that's it, I believe that's the full accounting for them.

Q. And were you in consultation with Mr. Rose about the analysis of these 28 devices when you were in San Jose as well as when you returned?

A. I don't believe I was in consultation with Mr. Rose. I can't recall speaking to him when I was in San Jose.

Q. When you returned from San Jose did you have conversations with him about the analysis of those devices, those 28 devices?

A. Yes.

Q. How many conversations?

A. I don't recall.

Q. Would it surprise you to learn that Mr. Rose, when I asked him questions about analyzing these electronic assets, didn't know anything about who worked on them? Would that



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M. McGowan

surprise you?

MR. SOUTHWELL: Objection.

A. No. As I mentioned, Mr. Rose began his day-to-day involvement in the supervision after -- after the trip to San Jose, so that doesn't, it doesn't surprise me.

Q. Is it your testimony that you made him aware of what your findings were regarding the analysis of these 28 devices?

A. We had discussions about -- certainly we discussed the analysis, we discussed -- some of it -- some of it continued after he began his involvement.

Sitting here, I can't think of a conversation where we sat down and specifically went over findings.

Q. When would those discussions have taken place?

A. In the fall of, fall of 2010.

Q. So does it surprise you that Mr. Rose, when asked questions about these devices, didn't know anything about anything regarding these? In fact, he even -- would it surprise you to know that he even indicated there were 15 to 20

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M. McGowan

devices, not 28, so he was way off on the number as well?

MR. SOUTHWELL: Objection to form.

Q. Does it surprise you that he doesn't accurately know how many devices were analyzed?

MR. SOUTHWELL: Objection to form.

A. Not necessarily.

Again, it was -- he began his involvement after, after the initial searches had been conducted and then we prepared -- as I said, we documented, documented this in a spreadsheet.

I don't know one way or another if he had reviewed it, if he -- I don't -- I guess I don't expect him to have a detailed understanding of the exact devices that we searched.

MR. BOLAND: Okay. I don't have any further questions for him, Mr. Southwell.

MR. SOUTHWELL: I just have a couple, and I just need to take a two-minute break to get a document for that purpose, so just hold on for a sec.

MR. BOLAND: I will stay right here.

(Recess taken.)

THE VIDEOGRAPHER: Camera is rolling.

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EXAMINATION BY

MR. SOUTHWELL:

Q. Mr. McGowan, you were asked by Mr. Boland some questions about the StreetFax, what we referred to as the StreetFax contract and the size of that file, the size of the actual TIFF file.

Do you recall that?

A. Yes.

Q. And do you recall the process by which that item was produced in this case, generally speaking?

A. Yes. That item would have been produced -- there's an Electronic Asset Inspection Protocol in place in this case that governs the production, so after we identified the TIFF files, among other things on the StreetFax, on the Seagate hard drive, we provided them to counsel for Mr. Ceglia at the time, specifically to Mr. Lake, there was a period of time which he had a chance to review them, object to them as privileged, identify them as confidential.

I think these were identified as

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confidential and they were produced to you, produced to you first with a legend identifying them as confidential in early August 2011, I believe, and then subsequently the privilege, the confidentiality designation was removed, I don't recall the circumstances, and an original copy was provided.

MR. SOUTHWELL: I would ask that this be marked as McGowan Exhibit 1, please, Mr. Court Reporter.

(McGowan Exhibit 1, declaration of Alexander H. Southwell, marked for identification, as of this date.)

MR. SOUTHWELL: Here's a copy for you, Mr. Boland.

Q. I'm showing you what has been marked as McGowan Exhibit 1, which is document 111 as filed in this litigation. This is a declaration from myself submitted in support of defendants' cross-motion to compel compliance with the July 1st order.

Do you see this document in front of you?

A. I do, yes.

1 M. McGowan

2 Q. I am going to direct your attention  
3 to --

4 MR. BOLAND: Alex, if you could just  
5 speak up a little, I was having trouble  
6 hearing the last part of what you said.

7 MR. SOUTHWELL: Okay.

8 MR. BOLAND: Thanks.

9 Q. Directing your attention to the Exhibit  
10 A, which is the sixth page in to McGowan Exhibit  
11 1; do you see that?

12 A. I see it, yes.

13 Q. What do you recognize this as?

14 A. It appears to be a printed copy of  
15 the -- printed copies, rather, of the two images  
16 of what we are referring to as the StreetFax  
17 contract which were found on the hard drive, the  
18 Seagate hard drive attached to e-mail messages  
19 as -- the names were Scan0001.tif and  
20 Scan0002.tif.

21 Q. And is this the same StreetFax contract  
22 that we've been talking about that Mr. Boland was  
23 asking you questions about and showing you a  
24 small version of and a larger version of it?

25 A. It appears -- yes, it appears to be a

1 M. McGowan

2 copy of the same document.

3 Q. Can I direct your attention to the  
4 upper right corner of this page that we're  
5 looking at, the second to last page in McGowan  
6 Exhibit 1, and you see some writing there that is  
7 actually upside down.

8 A. Yes.

9 Q. Do you see that?

10 A. Yes.

11 Q. Could you read what that says?

12 A. Yes.

13 It's oriented upside down, but it says  
14 "Ceglia Media Item Number 2."

15 Q. Are you aware of who affixed -- well,  
16 are you aware of what that signifies?

17 A. Yes. I believe it refers to the  
18 numbers, number 2 and number 4 referred to on the  
19 items, the items as listed in the presumptive  
20 materials log that we would have provided to  
21 Mr. Lake along with his -- at the time of these  
22 documents were provided to him.

23 Q. Are you aware of whether Mr. Lake or  
24 someone working with him affixed the label  
25 "Ceglia Media Item Number 2" to this page?

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M. McGowan

A. I'm not certain.

Q. Are you aware of whether anyone at Stroz Friedberg affixed that note?

A. I'm not fully certain one way or another. I know that we had to label the documents when they were originally provided with the confidential label; I'm not sure if we did or not, sitting here.

Q. And what is the -- how would you describe the size of these words that you are referring to, "Ceglia Media Item Number 2," in relation to the other text on the document?

A. The size of the designation Ceglia media item 2 and 4, it appears to be approximately the same size, approximately slightly larger than the text of the document, than the text in the document.

Q. And referring you back to the questions Mr. Boland asked about an image of the StreetFax contract that had cut off the court legend that was in a larger size and cut off, how would you compare the size on this document where it says "Ceglia Media Item Number 2" to that size?

A. This is significantly smaller, the

1 M. McGowan

2 legend "Ceglia Media Item Number 4" is  
3 significantly smaller in size than the court  
4 caption or the writing at the top of the document  
5 on the other one that I looked at, it was  
6 discussed with Mr. Boland that was included in  
7 Rose Exhibit 1.

8 Q. Directing your attention to these last  
9 two pages to the left of the legend "Ceglia Media  
10 Item Number 2" and "Ceglia Media Item Number 4,"  
11 do you see that court legend there?

12 A. I see the court legend there, yes, to  
13 the left, yes.

14 Q. And as compared to the court legend on  
15 the page that Mr. Boland asked you about, how  
16 would you describe this court legend on this page  
17 of McGowan Exhibit 1?

18 A. This is -- the legend on the two pages  
19 that we are looking at here are significantly  
20 smaller in size. They appear to be of a normal,  
21 normal typewritten font size as compared to Rose  
22 Exhibit 1, which was considerably larger and  
23 truncated.

24 Q. And the overall size of page 1 and page  
25 2 of the StreetFax contract in this exhibit is



1 M. McGowan

2 what, roughly speaking?

3 MR. BOLAND: Let me just, I think the  
4 witness is confused on something. He just  
5 referred to Rose Exhibit 1 as having the  
6 much larger font truncated across it. He  
7 was actually looking at the report you  
8 brought with you when you had the larger  
9 font truncated, he wasn't looking at the  
10 Rose exhibit, just to clarify, and I don't  
11 think you meant to try and mislead it, but  
12 just we had a lot of different copies of the  
13 same thing, we're getting confused.

14 THE WITNESS: Thank you for  
15 clarification. Yes, I was referring to the  
16 filed copy of the report which was not Rose  
17 1 but my copy of the filed report which is  
18 much larger in size.

19 Q. Right.

20 And then the overall appearance of page  
21 1 and page 2 of the StreetFax contract here,  
22 roughly speaking, what is the size?

23 A. It appears to be approximately the size  
24 of a piece of paper.

25 Q. Of what size paper?

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A. 8-1/2-by-11 piece of paper.

Q. And you mentioned a court label here on the top of these last pages.

Do you have any specific knowledge about how those court legends are affixed to documents that are filed with the court?

A. No, I don't.

Q. Now, you were asked some questions about the file size of the TIFF image that we're referring to here.

Are there different ways that a paper document would have been scanned that would result in the file size?

A. The file size or the image size?

Q. The image size, I guess, is what I mean.

A. Yes. There are several ways. For example, if one scanned a document, a full-size 8-1/2-by-11 document and used settings on the scanner to reduce the size of the image, that's one way in which a smaller, a smaller size TIFF image could result.

Another way is subsequent to the scanning, if in the -- after the paper had been

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fed in full size, an 8-1/2-by-11 piece of paper, if the scanning software offered the option to save it as a smaller size, that's another way.

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Q. And what are some of the reasons why a paper document would be scanned in a smaller size?

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MR. BOLAND: Objection to the form of the question.

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A. There are several possibilities. One is when we're running out of space on the media that it was being saved on, for example, the hard drive, if one wanted to, for example, instead of having a 12-megapixel image have a smaller one. It's also possible if one needed to transport it, a media such as a floppy disk that only had limited capability, if one were to send it via an e-mail message and wanted a smaller size either because there was a hard limit on what could be sent out or it would just take longer to upload, send out, transmit a large size.

If one were posting it to a Web site oftentimes the sizes of images are reduced, and I guess also just inadvertently as well, if someone in saving it clicks an option and chooses to save

1 M. McGowan

2 it as a smaller size.

3 Q. And you were asked some questions about  
4 whether the paper documents that resulted in the  
5 scan was in the two-inch by three-inch size or a  
6 larger size.

7 Do you have an opinion about which is  
8 the more likely possibility?

9 MR. BOLAND: Objection.

10 A. Yes.

11 Q. What is that?

12 A. It's more likely that a full-size piece  
13 of -- a full-size document, 8-1/2-by-11 document  
14 was scanned and subsequently reduced in size as  
15 opposed to an essentially postcard-size piece of  
16 document being scanned and not subsequently  
17 changed in size.

18 MR. SOUTHWELL: Nothing further.

19 BY MR. BOLAND:

20 Q. Just on that, Mr. McGowan, the two  
21 examples of the TIFF images that Mr. Southwell  
22 just had you look at from that, I guess it's  
23 McGowan Exhibit 1, those are magnified from the  
24 actual size of those TIFF images; right?

25 A. The printed version appears to be

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M. McGowan

printed and the option to scale to the size that would fit the paper, it does not appear to be printed at the electronic resolution which would be smaller in size.

Q. So it's larger than a hundred percent resolution, that printing right there?

A. This resolution is smaller than a hundred percent resolution of the two images.

Q. And Mr. Southwell asked you a bunch of questions about why a person might scan a document at a smaller size.

A. Yes.

Q. But it's your testimony that you can't say for sure how this TIFF image came into being, there's a variety of ways that image could have been created; true?

A. There are, yes, several ways the TIFF image could have been created.

Q. And you and Mr. Rose both testified that your opinion is this image was created somewhere and then placed onto the Seagate hard drive where you found it; right?

A. No. That's -- that's not my testimony. I can't speak for Mr. Rose's, but, as

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M. McGowan

we discussed, the image, as I went over earlier, the forensic evidence is that the TIFF image was created on this computer on the morning of March 3rd, 2004, I can't say whether it was scanned directly onto this computer or if it had been created from another media, transferred from another media.

Q. Right.

So there's no evidence it was scanned directly to the Seagate hard drive?

A. There's no evidence one way or another in terms of whether it was scanned directly to the Seagate hard drive or transferred from elsewhere.

Q. Okay.

So you don't know which one of those is the case here, the origin of this TIFF image?

A. Right. There's not sufficient forensic evidence to know.

(Continued on following page.)

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MR. BOLAND: Okay.

No further questions, that's it.

Thank you.

MR. SOUTHWELL: Nothing further.

(Time noted: 1:46 p.m.)

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MICHAEL F. MCGOWAN

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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Notary Public

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C E R T I F I C A T E

STATE OF NEW YORK )  
: ss.  
COUNTY OF NEW YORK )

I, CARY N. BIGELOW, Court Reporter,  
a Notary Public within and for the State of  
New York, do hereby certify:

That MICHAEL F. MCGOWAN, the witness  
whose testimony is hereinbefore set forth,  
was duly sworn by me and that such  
testimony given by the witness was taken  
down stenographically by me and then  
transcribed.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage, and that I am  
in no way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 23rd day of July, 2012.

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CARY N. BIGELOW



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----- I N D E X -----

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