3. A decision from the U.S. District Court for the Middle District of Pennsylvania granting a request to conduct an independent forensic examination of Defendants' computer server after a subpoena to a third party unearthed documents that Plaintiff claimed should have been produced by Defendants.

In *Stevens v. Sullum*, 2022 WL 4122195 (M.D. Pa. Sept. 9, 2022), Chief U.S. Magistrate Judge Karoline Mehalchick granted a request to conduct an independent forensic examination of Defendants' computer server after a subpoena to a third party unearthed documents that Plaintiff claimed should have been produced by Defendants.

Plaintiff in this case brought pursuant to 42 U.S.C. § 1983 filed a letter motion seeking "the opportunity to have an independent forensic computer expert conduct a search of Defendants' server using the same terms previously propounded" earlier in discovery. *Id*. at *8. Defendants objected to the request.

Chief Magistrate Judge Mehalchick first surveyed the applicable rules regarding the proper scope of discovery, which she noted are consigned to the court's "far-reaching discretion" that extends to rulings by United States magistrate judges. *Id*. at *1. But she noted that the exercise of this discretion is guided by certain basic principles, including Rules 26 and 37 of the Federal Rules of Civil Procedure. *Id*. at *1-2.

Chief Magistrate Judge Mehalchick began her analysis by noting that while federal courts have broad discretion in managing discovery, a "forensic investigation of a litigant's computer is a non-routine intrusion that may be ordered as a sanction after a litigant has failed to preserve evidence, equivocally responded to discovery or otherwise resisted discovery." *Id*. at *8. She noted that courts have ordered forensic investigations to be performed to determine whether ESI was deleted or withheld.

Plaintiff argued that a forensic examination was appropriate because Defendants produced only a single email in response to a request for certain communications sent to or from two of the Defendants (the district attorney and assistant district attorney) that referenced the Plaintiff. The single email Defendants produced was with a public relations firm, and when Plaintiff subpoenaed the public relations firm, he obtained additional responsive emails. Plaintiff argued that this revealed that Defendants had intentionally withheld emails and that the district attorney used his private email account in connection with Plaintiff's case.

Defendants claimed in response that "a formal electronic search for the documents was performed in good faith and completed utilizing the search 'terms' that were selected by [Plaintiff]. All of the documents that were found were produced to counsel."

Based on the fact that additional emails were acquired pertaining to Plaintiff's prior discovery requests only after the public relations firm was subpoenaed, Chief Magistrate Judge Mehalchick granted Plaintiff's request to obtain an independent forensic computer expert to conduct a search of Defendants' server to search and produce emails from all accounts used in connection with Plaintiff's case. *Id*. at *9. However, she also ruled that Plaintiff must limit the temporal and term scope of the independent expert's search to maintain privacy and confidentiality and that Plaintiff was responsible for payment of the fees and costs charged by the independent computer forensics expert.