

## Proving Conspiracies with Electronically Stored Information

There is no shortage of people utilizing technology to facilitate illicit or questionable actions. Below are two recent examples.

### Price Fixing Conspiracy



In *In re Static Random Access Memory Antitrust Litigation*, the Plaintiffs alleged the Defendants engaged in a ten year conspiracy to fix and maintain artificially high prices for Static Random Access Memory (SRAM). *In re Static Random Access Memory Antitrust Litig.*, 2009 U.S. Dist. LEXIS 110407 (N.D. Cal. Nov. 25, 2009).

For those not familiar with SRAM, it is a memory device that cannot retain data without a power supply. *In re Static Random Access Memory Antitrust Litig.*, at \*28. SRAM is used in many electronic devices, including the following:

- (1) The communications market in cell phones and Voice Over Internet Protocol (VOIP) technology;
- (2) The computer market in servers, mainframes, high-end computer workstations, and personal digital assistants (PDAs) and smart phones; and
- (3) The networking communications market in routers, switches, proxy and gateway devices, modems, storage area networks and firewalls.

*In re Static Random Access Memory Antitrust Litig.*, at \*28.

The Plaintiffs claimed the Defendants, who controlled sixty to seventy percent of the market share of total SRAM sales, engaged in price fixing through email, phone and in person communications. *In re Static Random Access Memory Antitrust Litig.*, at \*28-29.

The recent opinion certified the case as a class action. This will be an interesting case to watch for the technology involved and what emails appear as evidence supporting the Plaintiff's claims.

### Another Text Message Helping Prove a Drug Dealing Conspiracy

In a factually protracted drug enforcement case, the Court found enough circumstantial evidence to support the Defendant's conspiracy conviction. *United States v. Alejandro*, 2009 U.S. App. LEXIS 25271, 7-8 (5th Cir. Tex. Nov. 17, 2009)

One trial exhibit was a text message that stated: "Pat knows where I can find a dub?" *Alejandro*, at \*7.

The Court went on to define "Pat" was short for Patrick, the Defendant's first name. Additionally, the Court explained "dub" was a code word for \$200 worth of crack. *Alejandro*, at \*7.



While there was other evidence, such as drug scales and a co-conspirator's purse with a large amount of cocaine, the text message obviously was damaging evidence. *Alejandro*, at \*7.

### **Bow Tie Thoughts**

Civil discovery and criminal prosecutions will continue to find text messages, emails or social networking status messages as the smoking gun evidence. Lawyers must consider the broader scope of discovery that includes these highly transitory forms of electronically stored information.