

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE KIMBERLY J. MUELLER, JUDGE

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. 2:13-CR-00082

MATTHEW KEYS,

Volume 3

Pages 186 through 304

Defendant.

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL

VOLUME 3

WEDNESDAY, SEPTEMBER 30, 2015, 1:30 P.M.

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(Appearances continued next page...)

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GOVERNMENT'S EXHIBITS RECEIVED IN EVIDENCE

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DEFENDANT'S EXHIBITS RECEIVED IN EVIDENCE

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1 SACRAMENTO, CALIFORNIA

2 WEDNESDAY, SEPTEMBER 30, 2015, 1:37 P.M.

3 ---o0o---

4 (Jury not present.)

5 THE CLERK: All rise.

6 Calling criminal case 13-82, the United States versus
7 Matthew Keys. This is on for jury trial, and today is day
8 three.

9 THE COURT: Good afternoon. We're back on the record.
10 All counsel are present. Mr. Keys is present. Agent Cauthen
11 is present.

12 We're going to continue with cross-examination of
13 Mercer. How much longer do you believe you need?

14 MR. EKELAND: Not that long, Your Honor. Perhaps like
15 15, 20 minutes probably --

16 THE COURT: All right.

17 MR. EKELAND: -- if that.

18 THE COURT: And after that, you'll be calling?

19 MR. SEGAL: I don't think the redirect will last much
20 longer than the remaining time of the cross. And after that,
21 we'll be calling -- it's Gaines, Dan Gaines, and then Comings
22 and Hanrahan.

23 THE COURT: All right. Getting through all of them
24 this afternoon?

25 MR. SEGAL: Based on what the defense -- the defense

1 just informed me their cross on those witnesses are anticipated
2 to be brief, so we are hoping to get through them. And maybe
3 halfway into the afternoon, if people really are being fast,
4 we -- there's another witness who is local and who we could
5 call to come into the courthouse because we don't want to lose
6 any time.

7 THE COURT: Exactly. We should be prepared to use all
8 the time available.

9 Did you have any housekeeping?

10 MR. SEGAL: Yes, please.

11 THE COURT: All right.

12 MR. SEGAL: Yesterday -- I think we were on the record,
13 but I'm not sure -- the Court asked if we could give the Court
14 our witness list, and the defense said that that was all right
15 with them, they wouldn't view that as a waiver of our all the
16 rest of the witnesses.

17 THE COURT: Is that what happened? I wasn't clear on
18 that. Ms. Schultz did receive a list. I didn't look at it,
19 though.

20 MR. EKELAND: We haven't received any witness list.

21 MR. SEGAL: We didn't --

22 THE COURT: That's what I -- I didn't want to engage in
23 any ex parte contact.

24 MR. SEGAL: What I thought happened, and excuse me if I
25 misunderstood, was the Court wanted to know for its own

1 planning who we really thought we were going to call among the
2 thirty --

3 THE COURT: I did, but I wasn't asking for any one on
4 one without the defense knowing.

5 So if you're not prepared to identify -- I understand
6 it's a shorter list than that. I'm just trying to make certain
7 we're on track with the schedule.

8 MR. SEGAL: Yeah.

9 THE COURT: If not, I need to think about scheduling.

10 MR. SEGAL: I think we're on track.

11 THE COURT: You think we're on track, too?

12 MR. SEGAL: Yes.

13 THE COURT: All right. At this point, when would you
14 estimate the government will be done with its case in chief?

15 MR. SEGAL: Monday. If we're lucky, Friday. It really
16 depends how long the crosses are on some of these IT and L.A.
17 Times people.

18 THE COURT: All right. Well, let's just keep moving.
19 And to the extent we can do this kind of housekeeping before
20 the start time with the jury, that would be ideal.

21 MR. SEGAL: That's one.

22 THE COURT: Anything else?

23 MR. SEGAL: Yes.

24 Yesterday Brandon Mercer was asked if he wanted to see
25 the defendant convicted, and that's a legit bias question. I

1 intend in redirect to ask him why that is, and I anticipate
2 that he will answer -- you know, he'll say what his reasons
3 are. But the reasons may include Keys -- the response that
4 Keys had when Mercer informed him of what had happened when one
5 of his e-mails was received by that elderly woman.

6 MR. EKELAND: Well --

7 THE COURT: Is that --

8 MR. EKELAND: -- I don't think --

9 THE COURT: Just tell Mr. Mercer that's out.

10 MR. SEGAL: Well, but that's his reason.

11 THE COURT: Are you saying you have previously had this
12 discussion, and he's rattled off a bunch of reasons, and that's
13 one of them?

14 MR. SEGAL: Before his direct, yes. And that was out
15 on 403 bases, but now they've interrogated him about bias, and
16 even extrinsic evidence of bias is admissible. Bias is
17 extremely important, and the relevancy balance for that --
18 for --

19 THE COURT: Is that the primary -- is that the only or
20 the primary reason he wants to see him convicted?

21 MR. SEGAL: Oh, you'll have to listen to him. I don't
22 know.

23 THE COURT: Tell Mr. Mercer not to raise that. It just
24 opens up a whole little side issue. I -- there could be back
25 and forth in a way that I believe is unnecessary.

1 MR. SEGAL: I'll lead him --

2 THE COURT: So instruct Mr. Mercer not to volunteer
3 that. If, after I hear whatever else he has to say, I think
4 you're being deprived or he's being deprived of a full
5 explanation --

6 MR. SEGAL: Well, I will instruct him not to -- if
7 there's cross-examine that elicits it -- he's on the stand now,
8 and I'm not going to tell him how to answer. But --

9 THE COURT: Has he been advised of the Court's ruling?

10 MR. SEGAL: Yes. Yes.

11 THE COURT: All right.

12 MR. SEGAL: And he's been told we do not intend to
13 elicit it. If the defense elicits it, that's their problem
14 essentially.

15 THE COURT: All right. Anything else?

16 MR. SEGAL: Well, I intend -- no. I will lead him --
17 in that part of my redirect, I will be leading so that I can
18 keep within the Court's ruling.

19 THE COURT: I'd allow some of them, but please advise
20 him not to volunteer that.

21 MR. SEGAL: Yep.

22 THE COURT: All right. Mr. Leiderman, any
23 housekeeping?

24 MR. LEIDERMAN: No. I'm saying that's fine, the
25 leading won't be objected to.

1 THE COURT: All right. I also understand Mr. Mercer
2 had approached Ms. Schultz because the government is being
3 careful not to, I gather, interact with him. I don't know the
4 details. All I can tell you is that I understand from
5 Ms. Schultz that Mr. Mercer approached her. He has a concern,
6 based on what I understand, that given his vision, he often is
7 shaking his head this way in reviewing documents, and he
8 doesn't want that to be construed as a no or be misread as body
9 language by the jury.

10 So any objection -- I'll leave it up to you, but if you
11 see that happening, Mr. Ekeland, and want to clarify that with
12 the jury, that would be fine. Or if the government wants to
13 clarify that when they re-call him, I have no problem with
14 that. I'm not going to clarify it, but I'll allow you to
15 address that.

16 Anything else?

17 MR. SEGAL: No, Your Honor. Thank you.

18 THE COURT: All right. Let's bring Mr. Mercer in
19 first.

20 (Pause in proceedings.)

21 (Jury present.)

22 THE COURT: You may be seated.

23 Welcome back, Ladies and Gentlemen. It's good to see
24 you again. This afternoon we do have a short session. We'll
25 go until 4:30. We had a bit of housekeeping.

1 Just so you know what I know, I believe there will be
2 about 15 or 20 more minutes of cross-examination of Mr. Mercer,
3 then a little bit of redirect from the government, and then
4 we'll move on to other witnesses this afternoon. We'll take
5 one midafternoon break.

6 BRANDON MERCER, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

7 THE COURT: Mr. Mercer, you were sworn yesterday. I'm
8 not going to re-swear you, but you understand you continue to
9 testify subject to that oath?

10 THE WITNESS: Yes, I do.

11 THE COURT: All right. Mr. Ekeland, you may continue
12 your cross-examination.

13 MR. EKELAND: Thank you, Your Honor.

14 CROSS-EXAMINATION (Continued)

15 BY MR. EKELAND:

16 Q. Good afternoon, Mr. Mercer.

17 A. Good afternoon.

18 Q. If you could -- do you have the defense exhibit book there?

19 A. Yes.

20 Q. Could you take a look at tab 13.

21 A. Okay.

22 Q. Do you see that that's an e-mail from you to John Cauthen
23 on April 25th, 2013; is that correct?

24 A. Yes. That's correct.

25 Q. And do you -- you have no reason to believe that that's not

1 an e-mail that you sent to Mr. Cauthen; is that correct?

2 A. Yes.

3 Q. Okay.

4 MR. EKELAND: Your Honor, at this point in time, the
5 defense would like to move what's been marked for
6 identification as Defendant's Exhibit M into evidence.

7 THE COURT: Any objection?

8 MR. SEGAL: No, Your Honor.

9 THE COURT: M is admitted and may be displayed.

10 MR. EKELAND: Yes. Thank you.

11 (DEFENDANT'S EXHIBIT M, Brandon Mercer e-mail,
12 ADMITTED INTO EVIDENCE.)

13 MR. SEGAL: Is that -- I think that was M as in Mike?

14 THE COURT: Yes.

15 MR. EKELAND: M as in Mike, yes.

16 May I publish, Your Honor?

17 THE COURT: You may.

18 Can everybody see that?

19 BY MR. EKELAND:

20 Q. And then in this e-mail you sent to John Cauthen, you say
21 that the hours calculated so far add up to \$3,583.91, correct?

22 A. Yes.

23 Q. Okay. I just have one more line of questioning here.

24 You recall the phone conversation that you recorded with
25 Mr. Keys that was played in court yesterday, correct?

1 A. Yes.

2 Q. Okay. And I'd like to just direct your attention to tab 8
3 in the defense exhibit binder. It should be Exhibit No. I.

4 THE COURT: I believe that's 9.

5 MR. EKELAND: My apologies.

6 It should be a December 12th, 2010 e-mail at 7:50 p.m.

7 THE WITNESS: Okay.

8 BY MR. EKELAND:

9 Q. So that's an e-mail from you to Jerry Del Core, John
10 Cauthen at the FBI, and Jason Jedlinski, correct?

11 A. Yes.

12 Q. And the subject line is Matthew Keys, correct?

13 A. Yes.

14 Q. And do you have any reason to believe that that's not an
15 e-mail you sent to Mr. Cauthen and Mr. Del Core?

16 A. No.

17 MR. EKELAND: Your Honor, at this point in time, the
18 defense would like to move into evidence what's been marked as
19 Defendant's Exhibit I.

20 THE COURT: Any objection?

21 MR. SEGAL: No, Your Honor.

22 THE COURT: Exhibit I is admitted.

23 (DEFENDANT'S EXHIBIT I, Brandon Mercer e-mail re:
24 phone call with Keys, ADMITTED INTO EVIDENCE.)

25 MR. EKELAND: May I publish to the jury, Your Honor?

1 THE COURT: You may.

2 BY MR. EKELAND:

3 Q. And this e-mail is just saying you just got off the phone
4 with Matthew Keys, he really doesn't appear to have any
5 involvement in the Fox Mulder e-mails, correct?

6 A. I'm sorry. You're asking which --

7 Q. I'm just reading the first two sentences in the e-mail.
8 And they say: I just got off the phone with Matthew Keys. He
9 really doesn't appear to have any involvement in the Fox Mulder
10 e-mails, correct?

11 A. When you say is that correct, what are you --

12 Q. Is that what you wrote in the e-mail?

13 A. Yes, that is what I wrote in the e-mail.

14 MR. EKELAND: No further questions, Your Honor.

15 THE COURT: All right. So my estimate was short, which
16 is not a bad thing in these circumstances.

17 Mr. Segal, do you have any redirect?

18 MR. SEGAL: I do, Your Honor. Thank you.

19 THE COURT: All right.

20 REDIRECT EXAMINATION

21 BY MR. SEGAL:

22 Q. So I want to -- Mr. Mercer, I want to start by asking you
23 about some of the answers you gave yesterday on
24 cross-examination.

25 Do you recall being asked whether some of the time in your

1 25 hours was time that you sent responding to viewer phone
2 calls?

3 A. Yes, I believe I was asked that. Yes.

4 Q. Okay. And was time in the 24 hours or 25 hours time spent
5 responding to viewer phone calls?

6 A. Yes.

7 Q. On these phone calls, were you guys conveying information
8 or seeking information or some mix of both?

9 A. I would say some mix of both.

10 Q. Why is that?

11 A. We were both trying to calm the viewers down because they
12 were frankly terrified, and we were trying to learn more about
13 what -- how exactly they were being contacted. We weren't sure
14 when the e-mails arrived to viewers, in what format, ah, what
15 they looked like, so we were trying to get a little more
16 information.

17 Q. What other information had viewers who signed up for the
18 rewards program given the station?

19 A. What other information had they given the station?

20 Q. Yes.

21 A. When they signed up for rewards, they probably would have
22 given a credit card number. Many of them did, it wasn't
23 required, but if you gave them a credit card, there was more
24 things you could do. So we got credit card information.

25 There were other facts as well, I believe addresses,

1 telephone numbers. I don't have the comprehensive list, but I
2 know generally we got all of the personal information you would
3 need to establish some kind of rewards like you would at the
4 grocery store.

5 Q. At the time that the phone calls were happening, did you
6 know how much of that information had been breached?

7 MR. EKELAND: Objection.

8 THE COURT: Just answer yes or no. Overruled.

9 THE WITNESS: No.

10 BY MR. SEGAL:

11 Q. What, if any, questions were you asking the viewers to
12 learn more information? Just questions, not what they said.

13 A. I didn't handle all the phone calls myself. I handled a
14 few of them.

15 In the calls that I handled, ah, really viewers volunteered
16 a lot of information, and then I reacted to what they asked
17 about. Some of them asked about the safety of their bank
18 accounts.

19 MR. EKELAND: Objection.

20 THE COURT: What's the objection?

21 MR. EKELAND: Hearsay.

22 MR. SEGAL: It's a question.

23 THE COURT: Overruled. Wait for next question at this
24 point.

25 MR. SEGAL: Okay.

1 Q. What did viewers want to know?

2 A. They wanted to know if their bank accounts were secure, if
3 they needed to change all of their passwords, whether their
4 credit cards could be compromised. They pretty much started
5 asking those questions right away. I didn't have a list of
6 questions I asked the viewers. I tried to calm them down. I
7 didn't want to bring up some of that, ah, because I didn't want
8 to scare them or face a lawsuit. But they brought it up, and
9 we tried to get information.

10 Q. What were you trying to learn -- what, if anything, were
11 you trying to learn about the breach when you were having these
12 conversations?

13 A. I guess we were trying to learn what was being done with
14 any data that the incursion could have had access to.

15 Q. So what data was breached?

16 A. What data was breached and whether there was anything being
17 done with that data.

18 Q. Okay.

19 MR. SEGAL: All right. Now I want to ask you a little
20 bit about your time keeping.

21 May we have defense Exhibit M up, please.

22 MR. EKELAND: You have to -- can I get the --

23 MR. SEGAL: Is it going to work that way? That's all
24 right.

25 THE COURT: Can you use the Elmo?

1 MR. SEGAL: I think I can refer to it, and people will
2 remember.

3 THE COURT: All right.

4 BY MR. SEGAL:

5 Q. Do you remember looking at your e-mail that said that the
6 expenses were about \$3,100?

7 A. The one just a minute ago?

8 Q. Yes. You saw that today?

9 A. Yes.

10 Q. Okay. I want to ask you how you came to that number.

11 Who did you discuss that number with before you said that
12 the loss for -- well, let me back up.

13 What loss does that count in personnel --

14 MR. EKELAND: Objection, Your Honor.

15 THE COURT: What's the objection?

16 MR. EKELAND: Personal knowledge. And also the
17 government is characterizing it as loss. That's a legal issue
18 at stake here.

19 THE COURT: Fair enough, but -- so sustained. You can
20 lay the foundation, and then avoid the use of the word "loss."

21 MR. SEGAL: Let's put up the exhibit, then.

22 THE COURT: I think the fastest might be to use the
23 overhead projector. We sometimes refer to the overhead as an
24 Elmo.

25 Just so it's clear, I will be giving you an instruction

1 on loss because that is a legal term that needs to be carefully
2 defined. So if you hear that in a more casual manner, just be
3 alert to the fact that you're going to get instructions --

4 MR. SEGAL: I'd ask --

5 THE COURT: -- on loss.

6 MR. SEGAL: I'd ask that the Court give the same
7 instruction for the word "damage."

8 THE COURT: The same is true of damage. I might have
9 alluded to that yesterday. You'll be getting an instruction at
10 the end of trial on what damage means.

11 BY MR. SEGAL:

12 Q. So here, Mr. Mercer, you wrote that the hours calculated so
13 far add up to \$3,583.91. Do you see that?

14 A. Yes.

15 Q. Okay. Whose hours?

16 A. That number refers to the total amount in wages that, ah,
17 came from the database I made of the hours from my employees
18 and the ones I got from my boss.

19 Q. Okay.

20 A. I --

21 MR. SEGAL: Now let's come off the Elmo and -- are we
22 table 1 or 2 -- and look at Government Exhibit 127.

23 127 is in evidence, isn't it?

24 THE COURT: It is.

25 MR. SEGAL: Okay. Let's look at page 2 of that,

1 please.

2 Q. What does Exhibit 127 have to do with Defense Exhibit M
3 that you just saw?

4 A. Those were the hours that we used to calculate that number.

5 Q. That's how you got to \$3,500?

6 A. Yes. Again, this was from my team and then a few that I
7 got from my boss.

8 Q. Okay. Is there anybody in -- is Tom Comings on this list?

9 A. No.

10 Q. Is Dylan Kulesza on this list?

11 A. I don't know who that is, and no.

12 Q. Is anybody named -- is Dan Rodriguez on this list?

13 A. No.

14 Q. Dan Gaines?

15 A. No.

16 Q. Anybody named Hanrahan?

17 A. No.

18 Q. Any L.A. Times employees at all?

19 A. No.

20 Q. Okay. Anybody in Tribune IT responding to the defacement
21 of the Los Angeles Times?

22 A. Ah, this list includes a few hours from Ray Nelson, who
23 worked for KTXL in IT. I don't know if he had any role in
24 investigating the L.A. Times.

25 Q. Okay. Who is that?

1 A. Ray Nelson was the local IT manager who would handle
2 passwords and databases at Fox 40. I believe he had half an
3 hour included in the department head meeting here.

4 Q. So nobody --

5 A. I'm sorry. There are two listings in here.

6 Q. Nobody from Tribune IT besides Ray Nelson?

7 A. That's correct.

8 Q. Did you make this list when you're -- we had talked about
9 this a little bit the first day, but can you just briefly
10 explain to the jury your process for building this list?

11 A. Yes. I had started recording hours from my staff and
12 myself when we realized that we would have to record hours, and
13 I started putting this into a file. I don't remember when I
14 started this file. It was probably when I sent that e-mail out
15 to the newsroom about tracking hours.

16 Q. Okay. And the next thing -- so, again, \$3,500 does not
17 include anything to do with the Los Angeles Times?

18 MR. EKELAND: Objection.

19 THE COURT: Sustained.

20 MR. SEGAL: Okay.

21 Q. Let's ask who was in this department head meeting on
22 December 8th.

23 A. The department head usually would have been myself, Jerry
24 Del Core, Ray Nelson, Ann Pastel, Greg Saunders, Candace
25 Shropshire, Bill Gee. I can't remember when all the different

1 people were there in 2010. Some of them left after 2010, and
2 some of them left before, but they were likely to be in there.

3 Ah, Karen Hoffman was probably in there.

4 Do I need to keep going?

5 Q. Until you get to 12, if you can.

6 A. Let's see who I'm missing.

7 Traffic, Misty DeVoll would have been there for sure. Our
8 engineer Jack Davis would have been there.

9 I'm not keeping count, so let me know when I can stop.

10 Q. Okay. If that's -- if you think --

11 A. Sam Cohen was probably in that meeting. Ah, I don't recall
12 for certain.

13 Q. Okay. Most importantly you were there?

14 A. I was there.

15 Q. Okay.

16 A. We had them every week.

17 Q. This says four people, Jerry Del Core, Jack Davis, Ray
18 Nelson and Brandon Mercer on 12/6. Was that a single meeting
19 that lasted an hour and had all of you, this meeting to figure
20 out how it happened?

21 A. Yes.

22 Q. Okay. All right. Now -- thank you.

23 You remember looking at Defense Exhibit I, which is your
24 e-mail right after you spoke to Matthew Keys?

25 A. Yes.

1 Q. You gave a very careful -- you gave a particular answer to
2 that. You wanted to know if the question related to whether it
3 was correct what the e-mail said.

4 What -- I'm having trouble.

5 Is that easier, Mr. Mercer?

6 A. I haven't found it yet, so it's easier.

7 Q. You said here in -- on December 12, it says that Keys
8 doesn't appear to have any involvement in the Fox Mulder
9 e-mails?

10 A. That's what I wrote.

11 Q. Do you believe that today?

12 A. No, I do not.

13 Q. Why did you believe it then?

14 A. I didn't listen, I don't recall listening to the recording
15 after I did it. I checked it for quality to make sure it was
16 there. I didn't listen to the whole thing. I just forwarded
17 it and figured people who know how to investigate things are
18 the right ones to listen to the words.

19 I probably shouldn't have wrote down my thoughts on it,
20 but -- repeat the question, please.

21 Q. Why did you think that Keys had not done it?

22 A. He had denied --

23 MR. EKELAND: Objection, Your Honor, speculation and
24 improper opinion.

25 THE COURT: Overruled, but just -- I'll allow you to

1 answer the question just explaining what you meant by what you
2 put in the e-mail at that time.

3 THE WITNESS: Yeah.

4 THE COURT: If you have more to say.

5 THE WITNESS: I do. Thank you.

6 I wrote that he didn't appear to have involvement based
7 on what he told me, and I wanted to discuss it with the FBI.

8 BY MR. SEGAL:

9 Q. So you believed the denials that we played on the recorded
10 call yesterday?

11 A. At first I did.

12 Q. Okay. Just yes or no, did that change?

13 A. Yes.

14 Q. Okay. Now yesterday you were also asked if you want to see
15 Mr. Keys convicted, and you answered yes. Do you remember
16 that?

17 A. Yes.

18 Q. Okay. Now do you have in mind the reasons why? Yes or no.

19 A. Yes.

20 Q. Have you explained those to me?

21 A. Yes.

22 Q. Okay. There are -- yes or no, does one reason have to do
23 with an e-mail to a particular viewer?

24 A. Yes.

25 Q. Okay. I don't want you to talk about that. It's not

1 admissible.

2 What other reasons besides that do you want to see a
3 conviction?

4 A. Well, there are -- there are two reasons why I answered yes
5 to that question yesterday.

6 Q. If one of them has to do with that e-mail, you should not
7 answer it.

8 A. The reason it doesn't have anything to do with a -- a
9 viewer who received an e-mail and my call with that viewer is
10 because of the First Amendment. I feel if someone can hijack
11 the means of publication, the means of communicating with the
12 public, the means of doing our job as the press, if someone can
13 hijack that and do what they will with it, the First Amendment
14 is in jeopardy and the freedom of the press is in jeopardy, and
15 that cannot be done with impunity.

16 MR. SEGAL: May I have a moment, Your Honor?

17 THE COURT: You may.

18 (Government counsel conferring.)

19 MR. SEGAL: Thank you, Your Honor.

20 THE COURT: All right. Any recross?

21 MR. EKELAND: No, Your Honor.

22 THE COURT: All right. Is this witness excused?

23 MR. SEGAL: On behalf of the United States, yes, Your
24 Honor.

25 THE COURT: Excused, Mr. Ekeland?

1 MR. EKELAND: Yes, but subject to re-call, Your Honor.

2 THE COURT: All right. You may step down for now. You
3 are subject to re-call. Thank you, Mr. Mercer.

4 THE WITNESS: Thank you.

5 THE COURT: The government's next witness?

6 MR. SEGAL: Your Honor, may this witness -- he lives
7 out of town. May he return?

8 THE COURT: Well, he's subject to re-call. We're not
9 going to work out those details right now. The defense has not
10 permanently excused him.

11 THE COURT: So the government's next witness?

12 MR. SEGAL: Dan Gaines, Your Honor.

13 THE COURT: All right.

14 During any break like this, if you want to stand and
15 stretch, feel free. It seems as if the reports increasingly
16 tell us we need to be moving every 20 minutes or so. I don't
17 want to stand in the way of that, if you need it.

18 THE CLERK: Mr. Gaines, please come forward.

19 Sir, I need to take your photograph. If you can stand
20 with your back against this wall here facing me, please.

21 Thank you. Please step into the witness stand behind
22 you and remain standing. Raise your right hand.

23 DANIEL GAINES, GOVERNMENT'S WITNESS, SWORN

24 THE WITNESS: Yes, I do.

25

1 THE CLERK: Thank you. You may be seated.

2 Will you please say and spell your first and last name
3 for the record.

4 THE WITNESS: Daniel Gaines. D-A-N-I-E-L, G-A-I-N-E-S.

5 THE COURT: You may proceed.

6 DIRECT EXAMINATION

7 BY MR. SILVER:

8 Q. Good afternoon, Mr. Gaines.

9 What line of work are you in?

10 A. I am an editor at the Los Angeles Times.

11 Q. How long have you worked in journalism?

12 A. I have been in journalism for roughly 35 years.

13 Q. How did you get started in journalism?

14 A. I was a very curious person, and I was a good writer in
15 school, and I didn't know if I wanted to specialize in
16 anything. So I thought journalists cover news about all kinds
17 of things, and that's how I got involved in college.

18 Q. Was college your first experience in journalism?

19 A. I actually wrote for my high school newspaper, but I became
20 the editor of my college newspaper.

21 Q. Editor of your college newspaper you said?

22 A. Yes.

23 Q. Did you study journalism in college?

24 A. Yes. My school offered a journalism minor, and I completed
25 that.

1 Q. So starting after college, and if you would walk us through
2 to the present day, what have been your positions in the field
3 of journalism?

4 A. After -- I was an intern for a newspaper, News Day, and
5 then I came out to California to work for the Riverside Press
6 Enterprise as a reporter.

7 And then at the Riverside Press Enterprise in Southern
8 California, I had a lot of positions. I was a reporter, a copy
9 editor, a wire editor, a line editor, ah, assistant graphics
10 editor, assistant copy editor. And ultimately at the end of my
11 career, I was assistant managing editor at Riverside.

12 And then I -- when my father died, I took a little break
13 and taught at Cal State Fullerton, but then I got a job at the
14 Los Angeles Times.

15 Q. What did you teach at Cal State Fullerton?

16 A. Journalism 101, intro. A civics class where students each
17 went to cover a different city. And feature journalism.

18 Q. With regard to the L.A. Times, specifically can you walk us
19 through the first position you had there up until your present
20 day position?

21 A. Sure.

22 I started at the Los Angeles Times as a part-time copy
23 editor. And after a few months, I became assistant business
24 editor for personal finance and stock market coverage. That
25 was in the '90s.

1 And around -- well, in 2000, I had been already working a
2 little bit with our website people, and they suggested I move
3 over, and I did. And then I was the business editor for the
4 website, and then I was home page editor. And then -- my title
5 changed several times, but I was the deputy to the head of the
6 website. They called me a couple different things, but for the
7 last six years it's been deputy online editor, recently senior
8 deputy online editor.

9 Q. And am I correct your current title is senior deputy online
10 editor?

11 A. Correct.

12 Q. Listening to your testimony, a lot of your positions had
13 the word "editor" in them.

14 What is the importance of editing to a newspaper?

15 A. Editing is a crucial element in the process of providing
16 information, which is what media organizations do in general
17 and certainly newspaper and newspaper websites. Depending on
18 the position, you know, working to decide what to cover, ah,
19 reviewing what the decisions were, and then producing it in a
20 clear way so that readers can understand it are all editor
21 roles.

22 And in my more recent roles, I play the role of helping the
23 newsroom understand things and be a liaison between the
24 newsroom and other departments of the newspaper.

25 Q. Can you describe your current duties as the senior online

1 deputy?

2 A. I'm essentially the person in charge of everything other
3 than the news of the day for the website from an editorial
4 standpoint, which is administrative, budget, dealing with
5 advertising or -- and then referring problems to other people,
6 sort of a gatekeeper role.

7 Q. You mentioned advertising. What -- what have been your
8 experiences with regard to handling advertising specifically?

9 A. Well, since I've been at the website for the last 15 years,
10 there's a whole new kind of advertising that takes place on the
11 Internet. There's odd things that get in the way of readers
12 and other things that have to be clearly shown to be different
13 and editorial. So I play an initial role of helping
14 advertising understand what they can and can't do or what might
15 be an issue for top editors to discuss with the advertising
16 department and what could be allowed.

17 So sometimes I just approve stuff, and sometimes I refer it
18 up the chain.

19 Q. On the online side at the L.A. Times, how is a news story
20 created?

21 A. So our newspaper's online operations are essentially
22 integrated. So stories are created, you know, anytime during
23 the day, and they go on -- and they may go online right away on
24 the Internet. And then other stories might appear online and
25 in print at the same time. Occasionally a story will appear in

1 print first.

2 Q. Is there any editing that happens along the way?

3 A. Yes. So the role of editor is, initially when the reporter
4 hears about things or thinks that a story would be good or
5 they're a line editor -- there's different kinds of editors.
6 So there are the editors who work with the reporters directly
7 and supervise them. And either those editors have ideas and
8 tell the reporter what to do, or sometimes the reporter has
9 ideas and says I can do that to their editor. That's what we
10 call a line editor, an assignment editor. I did that in
11 Riverside, as financial editor in Riverside and in Los Angeles.

12 And then there's the next step. Sometimes, you know, the
13 editor of a section might also be involved in reviewing these
14 things, the sports editor, the business editor or something
15 like that.

16 And then once everyone is happy, the reporter has written
17 the story, the initial set of editors have reviewed it, it goes
18 onto what we call the copy desk. And the copy desk, ah, are
19 both fact checkers, grammar reviewers and -- and represent the
20 reader. Like, sometimes they'll say, gee, this doesn't make
21 sense, and they'll bounce it back to the first set of editors
22 and to the reporter. And sometimes the story gets changed a
23 lot in that process.

24 And then of these copy editors, the second check, there is
25 usually -- although it depends on the story -- what we call a

1 slot or a chief copy editor, who is like the last eyes on the
2 story.

3 So the L.A. Times is a major operation, and we generally
4 run all of our stories through at least a couple levels of
5 that.

6 Q. Taking you back to December 2010, do you recall an incident
7 involving the name Chippy?

8 A. Yes.

9 Q. Do you recall how you first learned about this incident?

10 A. My -- my memory is that someone was alarmed about something
11 on the site that shouldn't be there, and then there was a
12 flurry of conversation about what had happened. By the --
13 because I sit away from the news operation, they -- the copy
14 editor in this case, because we have a copy editor for Internet
15 stuff specifically during the day, was -- had both fixed it and
16 told Tribune technology about it, I believe, within the first
17 half hour of noticing it. And then there was, you know,
18 buzzing around the newsroom.

19 I guess I don't remember exactly --

20 THE COURT: Why don't you give a short answer, and then
21 wait for the next question.

22 THE WITNESS: Okay.

23 THE COURT: All right.

24 THE WITNESS: Sorry.

25 BY MR. SILVER:

1 Q. Who did you talk to about that incident that day over the
2 course of your response to it?

3 A. I talked to at least the copy editor who discovered it, the
4 editor of the website at the time, the editor of the paper at
5 least briefly, the editor of the home page. I'm sure I talked
6 to other people in the newsroom because several people were
7 asking about it.

8 Q. Anyone in Chicago?

9 A. Oh, yes. I talked to the Tribune technology team.

10 Q. And who was the Tribune technology team?

11 A. At that time, there was a group called market services,
12 which were a group of people that help us figure out who in
13 technology we needed to talk to. And Jason Jedlinski was the
14 head of that team, and I remember talking to him. And he had
15 assistants, and I'm sure I talked to them, too.

16 Q. Why did you call the folks in Chicago?

17 A. Well, we were very alarmed. Ah, the website had these --
18 there was -- I think suck it up also was in there, there was a
19 couple of different things on the website. And, you know, our
20 bread and butter is providing accurate information, so
21 obviously it seemed like somebody had hacked the site.

22 So I was alarmed, my boss was alarmed, and I needed to find
23 out whether they were on it to fix it, to prevent it from
24 happening again.

25 Q. How did this impact your normal duties that day?

1 A. Well, it took over the rest of the day pretty much. I
2 think this was early afternoon, so I -- it was one of those
3 days that I worked late.

4 Q. What was most concerning to you about the episode, the
5 incident?

6 A. Well, the idea that our site wasn't necessarily under our
7 control and, therefore, the information we're providing might
8 be changed. Mistakes are like the worst thing that happens to
9 us. We have a whole process, you know, to prevent mistakes and
10 then to correct them when they occur. So I was -- do we have
11 control of the website? That was the problem.

12 Q. Why is it important for a newspaper to have control of its
13 website?

14 A. It's -- the essence of journalism is to provide useful,
15 correct, accurate information to the public. That's what our
16 business is built around. It's the core reason we exist. And
17 that information needs to be reliable.

18 If people come to our website, and they see it messed up
19 for that or any other reason, they're going to not trust it.
20 Trust is all we've got. That's what the business is.

21 Q. How important was it to you that day to stop the attack?

22 A. Ah, it was -- the most important thing of the day, of the
23 week, probably the month and the year was making sure that we
24 had control over our website.

25 Q. How important was it to identify the responsible actor or

1 actors?

2 A. Well, it was important to figure out where this was coming
3 from so we could stop it. So I had to -- I think I looked at
4 who had touched that story in our -- in the technology of our
5 system, and that person seemed to -- was not somebody at the --
6 working at the L.A. Times. And so I wanted to know who it was
7 and asked Tribune to remove their privileges.

8 Q. What actions did you take to figure out who was responsible
9 for the attack?

10 A. Our system allows you to see who has made changes to a
11 story. So I'm very familiar with that system because I look at
12 it all the time to figure out what's wrong or how things
13 changed. So I looked at it. I could see from the history of
14 who touched the story that there was a name that does not
15 normally touch stories at the Los Angeles Times.

16 Q. What about Chippy? Did you do any research into what or
17 who Chippy is?

18 A. I'm virtually certain I searched the Internet for the term
19 "Chippy." Chippy¹³ I think as well.

20 Q. How much --

21 A. Go ahead.

22 Q. No, I didn't mean to interrupt you, sir.

23 A. No. It seemed like it was associated with hacks, so I
24 suspected this was a hacking attack.

25 Q. How much time did you spend responding to the hacking

1 attack?

2 A. Oh, the rest of that day, most of the day, which was
3 probably, you know, four to six hours. And I continued to
4 follow up the next day, the next couple of days probably, with
5 a couple of conversations with Jason and making sure everything
6 was okay.

7 And then there were meetings in the ensuing weeks to
8 basically -- from our end, Tribune technology was taking care
9 of it, but we needed to be assured that it was being taken care
10 of and that our website was under our full control.

11 Q. As far as the follow up the next day and the meetings in
12 the ensuing weeks that you just mentioned, can you estimate the
13 number of hours associated with those?

14 A. It was probably another 20 or -- 20 or -- you know, 20 or
15 30 hours over the ensuing weeks after the initial four to six.

16 Ah, my memory is that it inspired, you know, a general
17 concern about security. So I may be conflating that with
18 general meetings about making sure that permissions are proper
19 and access to the system are under control.

20 Q. Did the attack have any effect on the credibility of the
21 Los Angeles Times?

22 A. Yes. There was a little bit of press about it. And --

23 Q. You said there was a little bit of press about it?

24 A. Yeah. I -- at the moment I'm not remembering, but some
25 people noticed. You know, Twitter wasn't active then or wasn't

1 very active then, but there was a couple of mentions on the
2 blogs if my memory serves correctly.

3 Q. And what effect did the attack have on the Times?

4 MR. EKELAND: Objection.

5 THE COURT: What's the objection?

6 MR. EKELAND: It assumes facts -- it assumes that it
7 had an effect. It's a leading question, Your Honor.

8 THE COURT: Given the testimony already given, I'm
9 overruling that objection, but can you clarify what you mean?

10 MR. SILVER: Certainly.

11 Q. Mr. Gaines, can you specify the nature of the effect that
12 this attack had on the credibility of the Times?

13 MR. EKELAND: Objection, Your Honor, leading. It
14 assumes that there was an effect on the credibility.

15 THE COURT: Given the testimony already given, I'll
16 allow it.

17 THE WITNESS: Can you repeat the question?

18 MR. SILVER: Yes. I may not phrase it exactly the same
19 way, but --

20 Q. Can you specify the nature of the effect that the attack
21 had on the credibility of Los Angeles Times?

22 A. Well, it's hard to judge what, you know, people outside of
23 the Los Angeles Times thought about it. But, you know, there
24 was -- I would say that, ah, some people noticed that we were
25 hacked, and so there was some buzz about that.

1 How did it affect our credibility, the single incident
2 itself? Ah, a little bit that day, you know. It -- you know,
3 it makes you wonder if hacking goes on often. Some people
4 asked me about it informally.

5 MR. EKELAND: Objection, Your Honor, speculation.

6 THE COURT: Sustained. Next question.

7 MR. EKELAND: Move to strike, Your Honor.

8 THE COURT: That's granted. The last part of the
9 answer after the first sentence is stricken.

10 I think the key for you, Mr. Silver, is to be ready
11 with your next question.

12 MR. SILVER: Which I am, Your Honor.

13 THE COURT: All right.

14 BY MR. SILVER:

15 Q. Mr. Gaines, if the entire front page of the Los Angeles
16 Times website had been replaced with --

17 MR. EKELAND: Objection, Your Honor, calls for
18 speculation.

19 THE COURT: Sustained.

20 BY MR. SILVER:

21 Q. Mr. Gaines, you referred earlier to your experience
22 handling advertising in the newspaper business.

23 And does that experience include handling advertising on
24 the digital side?

25 A. Yes. Yes, involved with new ideas for advertising and when

1 there are problems with advertising. I am the person people
2 ask about first, ask questions to first in the newsroom.

3 Q. Mr. Gaines, are you involved in the sale of advertisements
4 on the L.A. Times website?

5 A. No.

6 Q. Have you been involved in that line of work before for the
7 publication?

8 A. No, I haven't sold advertising or -- I've done lessons for
9 the salespeople is --

10 Q. Are you familiar with the going rates, the prevailing rates
11 in the market for the sale of advertising for the publication?

12 A. Yes.

13 MR. EKELAND: Objection, Your Honor.

14 THE COURT: Well, there's no question pending. What's
15 the next question?

16 MR. SILVER: I was going to ask him questions about
17 those rates based on his stated familiarity with them, Your
18 Honor.

19 MR. EKELAND: Your Honor, the witness has testified
20 he's got no experience with the advertising or the sales of
21 advertising at the L.A. Times.

22 THE COURT: Sustained. Sustained.

23 BY MR. SILVER:

24 Q. Mr. Gaines, you --

25 (Government counsel conferring.)

1 BY MR. SILVER:

2 Q. Mr. Gaines, you just stated that you were familiar with the
3 rates. How did you get that familiarity with the advertising
4 rates?

5 A. Ah, because I deal with the advertising people routinely on
6 these matters at a high level. You know, we try and keep the
7 news separate from advertising, but I'm one of the few people
8 in the newsroom who are aware how much money is involved. So
9 that when the editors say -- you know, ask how much -- you
10 know, top editors ask how much money is involved, I can answer
11 that question.

12 Q. What is the rate for a prominent ad on the home page of the
13 website?

14 MR. EKELAND: Objection, Your Honor, relevance.

15 MR. SILVER: It goes to loss, Your Honor.

16 MR. EKELAND: Your Honor --

17 THE COURT: Sustained. Not at this point. If you can
18 lay more of a foundation, we might come back there, but --

19 MR. SILVER: I could lay a foundation. I'm thinking
20 about a particular count, Your Honor, which I could explain
21 perhaps at side bar if the Court --

22 THE COURT: Why don't you ask other questions you have
23 of this witness.

24 MR. SILVER: Very well, Your Honor.

25 Q. Mr. Gaines, looking back at the actions you took to respond

1 to the incident, was your response reasonable in your view?

2 MR. EKELAND: Objection, Your Honor.

3 THE COURT: Sustained.

4 BY MR. SILVER:

5 Q. Mr. Gaines, do you recall your annual salary in December of
6 2010?

7 A. Yes.

8 Q. What was it?

9 A. 99,000.

10 Q. Did you receive a bonus that year?

11 A. Yes.

12 Q. How much was that, if you don't mind my asking?

13 MR. EKELAND: Objection, Your Honor, relevance.

14 THE COURT: Sustained.

15 MR. SILVER: If I may have one moment to --

16 THE COURT: You may.

17 MR. SILVER: Thank you, Your Honor.

18 (Government counsel conferring.)

19 MR. SILVER: Your Honor, could we have a side bar at
20 this point to sort out the remaining field --

21 THE COURT: Are there no other questions at this point
22 for this witness?

23 MR. SILVER: There are other questions pending the
24 resolution of the side bar.

25 THE COURT: There are no other questions you can ask

1 without resolution of those questions? My instruction is to
2 ask every question you can --

3 MR. SILVER: Understood, Your Honor.

4 THE COURT: -- without those side bars.

5 MR. SILVER: Yes, Your Honor. I've exhausted
6 everything except for what would be possible after the side
7 bar.

8 THE COURT: All right.

9 I rarely do this, but in order to try to keep this
10 moving, I'm going to have a brief side bar. So during the side
11 bar, you may stand and stretch. Please don't talk amongst
12 yourselves because the Court Reporter will be trying to get the
13 record. We'll make this brief.

14 (Side bar conference, reported.)

15 THE COURT: The two issues are advertising and the
16 bonus?

17 MR. SILVER: Yes.

18 THE COURT: So advertising, why is that at all relevant
19 here?

20 MR. SILVER: Because, Your Honor --

21 THE COURT: You need to speak directly into this
22 microphone.

23 MR. SILVER: Because, Your Honor, the government has
24 exhibits showing that the conspirators were trying to replace
25 the entire front page of the Los Angeles Times. Sharpie said

1 as much in the Internet chat with AEScracked, who is Keys.
2 This is the basis for Count Three. There were specific
3 attempts to get back into the system to replace the entire
4 front page.

5 Sharpie's exact words were I have a whole front page
6 layout of the L.A. Times. Keys then tried to get back in and
7 was unsuccessful because --

8 THE COURT: I understand all of that. Make the link to
9 advertising.

10 MR. SILVER: Because, Your Honor, in order to have a
11 reliable loss figure for the front page of the entire -- the
12 home page of the Los Angeles Times, it would be relevant to
13 determine what the advertising revenue would be, what someone
14 would pay for that content in the free market to place ads on
15 that piece of digital real estate, Your Honor.

16 THE COURT: And there were ads on the front page?

17 MR. SILVER: Yes. There always are.

18 THE COURT: So is it conceded that attempted loss could
19 be relevant here, Mr. Ekeland?

20 MR. EKELAND: No, we don't, Your Honor. And we also
21 don't believe that the evidence will show that there actually
22 was an attempt to, quote/unquote, hack the front page of the
23 L.A. Times.

24 Also, the witness is not competent to testify to this
25 because he testified he has no experience with the advertising

1 department at the L.A. Times.

2 THE COURT: He did testify he has high level knowledge.

3 Bonus, bonus at the end of the year?

4 MR. SILVER: It is still part of his compensation,
5 still part of the amount of money that was associated with his
6 work that year and part of what Tribune paid for his work on
7 this incident in relation to the salary. His benefits may have
8 also been relevant as well, Your Honor.

9 THE COURT: You can ask about standard benefits. You
10 can ask all the other questions that Mr. Segal asked of
11 Mr. Mercer, but not the bonus.

12 MR. SILVER: I'll stick to the benefits, Your Honor.

13 THE COURT: All right. At this point, I'm not
14 persuaded by the advertising argument, so I'm sustaining that
15 objection. This witness remains available. If you have
16 authority for me, we can talk about it on the break.

17 MR. SILVER: The charge is attempt. The guideline
18 refers to --

19 THE COURT: I'm going to look at that, but I'm not
20 going to take more time given that the jury is waiting. So you
21 can ask about the benefits, explore other things in his
22 compensation package.

23 MR. SILVER: All right.

24 THE COURT: All right.

25 (Side bar conference concluded.)

1 THE COURT: All right. Thank you for your patience.

2 Mr. Silver has a few more questions.

3 BY MR. SILVER:

4 Q. Mr. Gaines, just going back to your compensation in 2010.

5 Did you receive any benefits from Tribune Company at that
6 time?

7 A. Yes. We usually calculate benefits as roughly 30 percent
8 on top of your salary.

9 Q. So that would be 30 percent of your annual salary that
10 year?

11 A. Yes, is considered the value by most companies.

12 MR. SILVER: At this time, nothing further, Your Honor.

13 THE COURT: All right. Mr. Ekeland, you're doing
14 cross?

15 MR. EKELAND: Yes, Your Honor.

16 THE COURT: Do you have any cross?

17 MR. EKELAND: Yes, I do, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. EKELAND:

20 Q. Good afternoon, Mr. Gaines. My name is Tor Ekeland. I
21 represent the defendant Matthew Keys along with Jay Leiderman
22 and Mark Jaffe over at the table there.

23 I'm just going to ask you a few questions about your
24 experience as an editor at the L.A. Times. Forgive me if the
25 government has already asked some of these. I just want to

1 make sure I've got it right.

2 First of all, I believe you testified that you've been in
3 journalism for 35 years; is that correct?

4 A. Well, you know, there was the break in there where I taught
5 at Cal State Fullerton. But if you want to do the math,
6 it's -- do you count college? Do you count my internship?

7 Q. Roughly 35 years?

8 A. Yeah. You could say 40 really if you include some of the
9 pre --

10 Q. And most of that time it's been in some form or other as an
11 editor, whether a copy editor or a line editor?

12 A. The majority of the time I was an editor of some sort. I
13 was a reporter for a little while.

14 Q. Oh, you were a reporter.

15 So you also have written articles as well --

16 A. Yes.

17 Q. -- as a journalist?

18 So it's fair to say you're thoroughly familiar with the
19 process of writing a news article, turning it into an editor,
20 having it revised until it's actually published, if it is
21 published; is that correct?

22 A. Yes.

23 Q. And as part of that -- I'm sorry.

24 How long have you been at the L.A. Times?

25 A. 22 years.

1 Q. So in that 22 years, you've gained a familiarity with how
2 the newsroom at the L.A. Times works?

3 A. Yes.

4 Q. And the reporters and the editors at the L.A. Times, they
5 use computers when they write their stories; is that correct?

6 A. Correct.

7 Q. And do you -- I'm assuming you use some sort of writing
8 software like Microsoft Word or something like that when you
9 write the stories; is that correct?

10 A. The software people use varies, but a lot of people use the
11 internal system, the system --

12 Q. The internal system. Would that be the content management
13 system?

14 A. Yes.

15 Q. And so when people write stories for the L.A. Times, they
16 save their story to the content management system, correct?

17 A. Correct.

18 Q. And so -- and when it's saved to the content management
19 system, I'm assuming that that -- the content management
20 system, ah, has sort of a form of version control, if that
21 makes sense?

22 A. Yes, I'm familiar with that term.

23 Q. So could you just explain what version control is to the
24 jury.

25 A. Version control is that every time the story is saved, a

1 copy is made, and then you can go back and look at earlier
2 editions.

3 Q. So it's -- so when you have version control on a story,
4 what do you -- I just want to make sure I understand your
5 testimony correctly.

6 That means that every time an alteration to a story is
7 made, a new version of it is saved in the content management
8 system, correct?

9 A. Correct.

10 Q. And so that allows you to go back and look at prior
11 versions of the story that's been saved in the content
12 management system, correct?

13 A. Our ability to do that in 2010 was a little limited, I
14 think. But basically yes.

15 Q. Yes.

16 So it's your testimony that you could go look at prior
17 versions of a story and --

18 MR. SILVER: Objection, vague as to time.

19 THE COURT: Sustained.

20 MR. EKELAND: I'm sorry. I didn't hear the objection.

21 THE COURT: Vague as to time. Clarify the time frame.

22 MR. EKELAND: Okay.

23 Q. So in 2010, it's your testimony that there was -- that you
24 did have version control on the content management system,
25 correct?

1 A. I'm not -- I don't -- I'm not sure of that actually. It
2 was around the time we added it, and I think it -- I'm not -- I
3 actually can't tell you if I could look at previous versions,
4 ah, in 2010.

5 Oh, yeah, I guess -- I guess we could. I'm just a little
6 fuzzy on whether -- like, whether -- because I was focused on
7 who touched the story that day.

8 Q. But as an editor at a paper like the L.A. Times, it's
9 important for you to be able to get to prior versions of the
10 story just in case there's been some sort of change that the
11 reporter made that you didn't agree with; is that correct?

12 A. Yeah. That's a routine part of --

13 Q. That's a normal part of --

14 MR. SILVER: Objection, vague as to time.

15 THE COURT: We're talking about 2010?

16 MR. EKELAND: Yes.

17 Q. So my questions -- just to clarify, all of my questions I'm
18 asking you about the CMS and everything at the L.A. Times refer
19 to December 2010.

20 A. Yeah, I got -- I have to say I'm not sure --

21 Q. Uh-huh.

22 A. -- of that.

23 Q. But the -- I'm sorry.

24 A. Of the ability to look at previous versions of the story in
25 2010.

1 Q. But reporters at the L.A. Times were using computers in
2 2010, correct?

3 A. Yes.

4 Q. And they would save a version of their stories to their
5 computers as well as the CMS, correct?

6 A. I'm sure some reporters did. I'm not sure that was always
7 done.

8 Q. But you would -- as an editor, you would get sent a version
9 of a reporter's story, correct?

10 A. Ah, yes.

11 Q. And then you would mark up that version of the story and
12 maybe save up another version, correct?

13 A. I actually didn't do a lot of that directly in 2010, but
14 that is what editors normally do.

15 Q. Right.

16 So that's a normal part of the practice, is to get a story
17 from a reporter that they've sent you either by e-mail as an
18 attachment or by saving it on the content management system,
19 and either you or maybe an editor working for you would mark it
20 up and save another version? Is that accurate?

21 A. Well, there's multiple content -- you know, there's a print
22 content management system as well, and then some things are
23 done by e-mail. There's multiple versions of what you're
24 talking about.

25 Q. Right.

1 Because it's very important to the L.A. Times to have
2 version control of a story, correct?

3 A. Yeah, oh, yeah. I mean, we were anxious to get it. That
4 does not --

5 Q. And in December of 2010, the L.A. Times didn't habitually
6 delete prior versions of a story that a reporter would have
7 written, correct?

8 A. Habitually?

9 Q. Yes.

10 A. No. I think habitually is the wrong word to use there.

11 Q. Okay.

12 A. I'm not sure -- again, it depends which of these many
13 versions -- which way the writer was writing. If they were
14 writing it in Word and then sent it in an e-mail, that version
15 might be different than what was in the CMS.

16 Q. And given -- well, it's important to the L.A. Times, as you
17 said, to have -- to keep accurate stories, correct?

18 A. Oh, it is very important to have accurate stories.

19 Q. And part of that process in maintaining the integrity is
20 backing up the data in the newspaper?

21 A. Backing up the data that appears in the newspaper?

22 Q. Yes.

23 A. Yeah, there's an archiving system.

24 MR. EKELAND: No further questions, Your Honor.

25 THE COURT: All right. Any redirect on the scope of

1 that cross?

2 (Government counsel conferring.)

3 MR. SILVER: No, Your Honor.

4 THE COURT: All right. Ladies and Gentlemen, I want to
5 take a quick break now to follow up on something, so let's go
6 ahead and take our midafternoon break a little bit early.

7 During that break, please as always remember my
8 admonitions. Don't talk amongst yourselves about the case.
9 Don't think about where the case is going. Don't do any
10 research of any kind. If anyone does attempt to contact you
11 during the break, let me know.

12 I would say this would be a 15-minute break and our
13 break for the afternoon. Thank you very much.

14 You can stay right there.

15 (Jury not present.)

16 THE COURT: All right. Just briefly -- you may be
17 seated if you'd like.

18 My intention, unless you tell me otherwise, would be to
19 allow some very brief voir dire of Mr. Gaines. I want to just
20 see what the government could elicit on the advertising so I'm
21 clear on that question.

22 On the attempted, I do think, looking at Count Three
23 and double-checking the statute, that an attempt -- if the
24 government -- if it can prove an attempt, loss associated with
25 an attempt could be considered by the jury.

1 MR. EKELAND: Your Honor, we --

2 THE COURT: Just reading the statute on its face.

3 MR. EKELAND: Your Honor, we would just object on the
4 grounds that in order -- Mr. Gaines is not the proper witness
5 to establish what sort of revenue loss that the L.A. Times
6 would have. That would actually require expert testimony. The
7 government has not noticed an expert in that area.

8 THE COURT: Well, that's my question, I'm not certain.
9 But I'm going to allow a few questions, up to five questions
10 from the government, five questions on cross, just to help me
11 understand if this witness can really testify about that.

12 So, Mr. Silver?

13 MR. SILVER: Yes, Your Honor.

14 Would you prefer me to go from the podium, Your Honor,
15 or is this sufficient?

16 THE COURT: For the Court Reporter, what's best for
17 you?

18 THE COURT REPORTER: The podium would be better.

19 THE COURT: The podium.

20 VOIR DIRE EXAMINATION

21 BY MR. SILVER:

22 Q. Mr. Gaines, taking us back again to December of 2010, what
23 familiarity did you have with advertising pricing for the Los
24 Angeles Times online newspaper?

25 A. I had seen our price sheets, so I knew what they charged.

1 And I talked to ad planners regularly about how much money -- I
2 mean, I didn't ask --

3 MR. EKELAND: Objection, Your Honor.

4 THE WITNESS: I'm sorry.

5 THE COURT: Well, this is voir dire, so next question.
6 So he had seen the price sheets.

7 BY MR. SILVER:

8 Q. What was on the price sheets, Mr. Gaines?

9 A. Well, a range of prices from campaigns that would go
10 anywhere from 3,000 to 50,000 a day. The home page itself, a
11 takeover in 2010 was about -- could be as high as 50,000. The
12 home page today is probably less than -- is definitely less
13 than that. I'm aware of that being, like, 35,000 today.

14 In 2010, we were able to get that much money for premium
15 home page advertising which was usually in conjunction with
16 other units. They would sell impressions. So a package might
17 be, you know, ten -- you know, 10,000 impressions as well as
18 the home -- placement on the home page for the day. Or
19 actually more like 100,000 impressions plus placement or
20 something like that.

21 THE COURT: Next question, if any.

22 MR. SILVER: If this is sufficient for the Court --

23 THE COURT: I'm just giving you both a chance, and then
24 I'm going to make a decision.

25 MR. SILVER: Thank you, Your Honor. I think his review

1 of those sheets provides adequate foundation for his testimony
2 on the pricing regime.

3 THE COURT: All right. Mr. Ekeland?

4 VOIR DIRE EXAMINATION

5 BY MR. EKELAND:

6 Q. So, Mr. Gaines, I just want to get some clarity.

7 When you're talking about thirty -- the numbers 30 to
8 50,000, are you talking about clicks, clicks through on the
9 page, in the advertising on the page, or are you talking about
10 revenue?

11 A. That was revenue.

12 Q. That was revenue.

13 But you didn't work on a daily basis with the advertising
14 department, correct?

15 A. No. Days would go by where I didn't talk to them, that's
16 true.

17 Q. And the spreadsheet that you saw was a summary compiled by
18 the advertising department?

19 A. I saw those, too. Yeah, I did see summaries, but -- as
20 well as -- what I was referring to before was the price sheet.

21 Q. It was a price sheet?

22 A. For -- for advertisers.

23 Q. So you don't actually know how much revenue the front page
24 of the L.A. Times generated in 2010?

25 A. I -- I can come pretty close. I could guess. But, no, I

1 don't know --

2 Q. So you'd have to guess what the revenue was.

3 And you can't name any of the advertisers on the front page
4 of the L.A. Times in December 2010, can you?

5 A. No.

6 Q. And when you saw those spreadsheets, you didn't check any
7 of the calculations for accuracy, did you?

8 A. No, I didn't.

9 Q. And you don't know what the basis for those numbers were
10 besides the fact you got the spreadsheet, you just assumed it
11 was accurate, correct?

12 A. Correct. I mean, the planners might say we met our goals
13 and things like that afterwards.

14 Q. And it wasn't a primary responsibility of your day to check
15 the accuracy of those numbers, correct?

16 A. Correct.

17 Q. Because you were an online editor for the L.A. Times, and
18 your primary responsibility was dealing with the content that
19 was published in the newspaper, correct?

20 A. Well, my primary responsibility is dealing with everything
21 else that involves the newsroom other than, you know, the
22 content. In other words, as I explained before, I'm in charge
23 of the budget and dealing with advertising and dealing with
24 technology and all those other things that involve the
25 newsroom, but are not the day-to-day production of content and

1 editing.

2 Q. But on a daily basis, you weren't dealing in any managerial
3 role with the advertising department?

4 A. Well, every week I probably had some contact with the
5 metrics people and with the advertising people and the
6 technology people and, you know, the marketing people. And,
7 you know, I was the go-to person for anything that they were
8 going to ask the newsroom. They would ask me, and I would --
9 or I would be representing the newsroom at meetings with other
10 departments of the newspaper.

11 Q. But that was just one of your many responsibilities?

12 A. Correct.

13 MR. EKELAND: No further questions, Your Honor.

14 THE COURT: All right. Any final questions,
15 Mr. Silver?

16 MR. SILVER: No, Your Honor.

17 THE COURT: Okay. Just so I'm perfectly clear, sir,
18 are you in a position to say what the advertising on the front
19 page of the L.A. Times would have yielded on any given day in
20 December of 2010?

21 THE WITNESS: Any given day, no. I can just give you a
22 range of what it goes for.

23 THE COURT: From three to 50,000?

24 THE WITNESS: Right.

25 THE COURT: All right.

1 MR. SILVER: Your Honor, if I can just clarify. We're
2 interested in the going rate for the ads, what they were sold
3 for, the price.

4 THE COURT: Have you asked that question?

5 MR. SILVER: I believe that he stated that was what was
6 contained in the pricing sheets that he reviewed.

7 THE COURT: And for the front page, it's anywhere from
8 three to 50,000?

9 MR. SILVER: Correct, Your Honor.

10 THE COURT: All right.

11 MR. EKELAND: Your Honor, may I be heard briefly?

12 THE COURT: Well, at this point, I don't think -- this
13 is, you know, no disrespect to Mr. Gaines. I don't think he's
14 your witness on this issue.

15 So I'm going to take a break. You can let me know if
16 he's excused.

17 You may take a break, sir. Just stand by in case we
18 need to re-call you. All right?

19 THE WITNESS: In the hallway?

20 THE COURT: Yes, in the hallway.

21 MR. SEGAL: Actually we have to show you the evidence
22 that this connects up with.

23 Because in the chat logs, what the --

24 THE COURT: Well, it's this witness. The question
25 is --

1 MR. SEGAL: I know.

2 THE COURT: Okay. We're not going to talk about this
3 in front of him any more. If you want to take a break -- this
4 is Mr. Silver's witness, so he can argue when I come back in
5 about five minutes.

6 (Recess taken.)

7 THE CLERK: Come to order. Court is back in session.

8 THE COURT: All right. Back on the record. I'm just
9 going to stand to give myself a break here.

10 So are you saying Mr. Gaines can testify, Mr. Silver,
11 to the value of an operation payback logo; is that --

12 MR. SILVER: If it's on the front page of the Los
13 Angeles Times website in 2010, then, yes, Your Honor.

14 THE COURT: You can come to the podium.

15 So what based on what he said gives you that
16 confidence?

17 MR. SILVER: His review of the sheets containing the
18 prices of advertisements that would have been on that same
19 page. So, for example, Your Honor, if they sold a prominent
20 advertisement to Toyota in December of 2010 to be on the home
21 page, that is a reliable and relevant figure to approximate
22 the -- the placement of another logo on the same page.

23 THE COURT: Well, what's he going to say? Does he know
24 the price for that kind of ad?

25 MR. SILVER: Yes. I believe the sheet he described,

1 ah, contained a variety of different kinds of advertisements
2 categorized, as I understand it.

3 THE COURT: And what -- so does the big blankety blank
4 operation payback logo, does that tell you how big?

5 MR. SILVER: Well, Your Honor, the -- I believe it's
6 Exhibit 506, the other exhibit, mentions -- Sharpie mentions an
7 entire new home page layout for, he later clarifies, the Los
8 Angeles Times. So I think that the answer to Your Honor's
9 question how big is the whole home page, the whole front page.
10 That is what -- that's the scope of the conspiracy. That's
11 what they -- for the attempt, that's what they planned, and so
12 that's the scope of the relevant advertisement cost.

13 THE COURT: So you think by saying to stick a big logo
14 on it that he means that's going to be -- the logo will take up
15 the whole of the page?

16 MR. SILVER: That's one exhibit. The other exhibit we
17 referred to Your Honor is the screen shot, and I'm happy to
18 come point out the individual line. That's where Sharpie says
19 I had an entire home page layout ready --

20 THE COURT: I know that. That doesn't mean the whole
21 home page is the logo.

22 MR. SILVER: It goes to -- it goes to weight, Your
23 Honor.

24 THE COURT: Well, what if Mr. Gaines testified that the
25 least amount of advertising that the L.A. Times would have made

1 off the home page was \$3,000?

2 MR. EKELAND: Your Honor, we're still --

3 THE COURT: Avoiding the prejudice of this massive
4 range.

5 MR. EKELAND: Your Honor, the issue we have is that
6 Count Three is an inchoate crime. It's attempt.

7 THE COURT: Which crime?

8 MR. EKELAND: This is Count Three, which is the
9 attempt --

10 THE COURT: All right.

11 MR. EKELAND: -- which is what the government is basing
12 this whole argument.

13 They're essentially saying that, okay, if these hackers
14 got in and they did something to the front page of the L.A.
15 Times, it would cause some sort of revenue loss. Now, that's
16 entirely speculative. It's not as if, say in Count Two
17 something had happened, they could point to concrete numbers
18 and say, okay, because of the loss -- you know, the
19 interruption of service I believe is what they say in
20 1030(e)(11) as it's defined, we have consequential damages of
21 X. Because if you look at our revenue stream for that day, we
22 can compare the metrics from what we had for, like, the month
23 before, the month afterwards, and the time during.

24 What they're saying --

25 THE COURT: I understand all that, but hasn't Congress

1 provided for the attempt?

2 MR. EKELAND: I'm not aware -- the problem is that we
3 need an expert to testify to what the revenue is. These
4 numbers are hearsay also because he's gotten them from another
5 source. And the government is trying to admit them for the
6 truth of the matter. He's not in the advertising department.

7 And the fact of the matter is it's my understanding,
8 Your Honor, that their traffic on the website may increase
9 because of the hack because people will be curious about what
10 happened. And when they go -- and when the L.A. Times quickly
11 restores their front page, a ton of people will go to their
12 front page and click through their advertising there. Their
13 revenue may increase because of the hack. It's pure
14 speculation they're going to lose money or revenue because of
15 the hack. They may get more traffic because of the publicity.

16 That's why we need an expert to testify not just to the
17 revenue from any given day, but what the metrics and the
18 revenue would be for this given situation. And the problem is
19 it's, again, an inchoate charge. So everything that the
20 government is trying to put in is pure speculation, and they
21 cannot make a connection between what the daily -- you know,
22 what the revenue was on a given day, on a normal day and what
23 would happen if they got a bunch of publicity based on what
24 happened.

25 MR. SILVER: Your Honor, if I may briefly.

1 THE COURT: You may briefly. Just finally preserve
2 your record.

3 MR. SILVER: Thank you, Your Honor.

4 The government's not concerned here with the revenue
5 numbers. It's instead what Anonymous would have
6 misappropriated to itself an ad buying flat rates of any
7 legitimate business. We're not seeking revenue information.
8 We're seeking the -- Mr. Gaines, a decades long employee at the
9 L.A. Times who has seen the documents, we are seeking his
10 views, and the jury can weigh that for itself.

11 THE COURT: All right. I'm sustaining the objection.
12 Your record is preserved.

13 Can Mr. Gaines be excused?

14 MR. SEGAL: Yes.

15 MR. SILVER: Yes, Your Honor.

16 THE COURT: All right.

17 MR. EKELAND: Thank you, Your Honor.

18 THE COURT: All right. You can let him know that, and
19 then the government should be prepared to call its next
20 witness.

21 Let's bring the jury back in.

22 (Jury present.)

23 THE COURT: All right. Welcome back, Ladies and
24 Gentlemen. We have excused Mr. Gaines. The government is
25 prepared to call its next witness.

1 THE COURT: Mr. Hemesath, you're going to handle this
2 witness?

3 MR. HEMESATH: Yes, Your Honor. The government now
4 calls Mr. Tom Comings to the stand.

5 THE COURT: All right.

6 (Pause in proceedings.)

7 THE CLERK: Mr. Comings, please come forward. I need
8 to take your photograph. If you can stand here against the
9 wall facing me, please. Thank you.

10 Great. Step into the witness stand behind you, remain
11 standing and raise your right hand.

12 THOMAS COMINGS, GOVERNMENT'S WITNESS, SWORN

13 THE WITNESS: I do.

14 THE CLERK: Thank you. You may be seated.

15 Will you please say and spell your first and last name
16 for the record.

17 THE WITNESS: Sure. Thomas Comings, T-H-O-M-A-S. Last
18 name is C-O-M-I-N-G-S.

19 THE COURT: You may proceed.

20 DIRECT EXAMINATION

21 BY MR. HEMESATH:

22 Q. Good afternoon, Mr. Comings.

23 A. Good afternoon.

24 Q. For whom do you work at this moment?

25 A. I work for Tribune Publishing Company.

1 Q. How long have you worked for Tribune Publishing Company?

2 A. For Tribune Publishing, just over a year after -- it's a
3 newly formed company a year ago.

4 Q. And for whom did you work before -- well, before we get to
5 that, what is your current title at Tribune Publishing Company?

6 A. Currently I'm an enterprise architect.

7 Q. And for whom did you work a year ago as you described?

8 A. For Tribune Company.

9 Q. And what was your title with Tribune Company?

10 A. At the time of the split, it was enterprise architect.

11 Q. Could you describe the circumstances of how you came to
12 work for Tribune Publishing Company as opposed to Tribune
13 Company?

14 A. Sure.

15 Tribune Company, a year ago, spun off the newspaper
16 industry and left the broadcast business as part of Tribune
17 Company, and I believe they re-branded as Tribune Media
18 Company. So there was a split of the company to two companies.

19 Q. Okay. Could you describe -- well, I'm sorry. Let me back
20 up.

21 What did you do before that with Tribune Company? Or how
22 long have you been with Tribune Company?

23 A. I've been with Tribune Company and Tribune Publishing for
24 just over 20 years.

25 Q. Okay. Do you -- and so that includes 2010; is that

1 correct?

2 A. It does.

3 Q. Do you remember what your title was in 2010?

4 A. I believe I was senior engineer at that time.

5 Q. And you started with Tribune Company -- do you remember the
6 year?

7 A. 1995.

8 Q. Could you describe your duties as they were in 2010 for
9 Tribune Company?

10 A. Sure.

11 I've only worked, mostly worked on the digital side of the
12 house, which supports the websites of the company, both -- at
13 that time, both newspaper publishing and broadcast. And I did
14 more on the admin design work and architecture, how our sites
15 were developed, set up and scaled.

16 Q. When you say news and broadcast, could you explain more
17 about what you mean by that?

18 A. Sure.

19 So Tribune Publishing is the newspapers that Tribune
20 Company owned at the time and now Tribune Publishing owns. I
21 believe we're -- at that time, I believe it was around eight
22 newspapers, but I could be wrong. And also at that time in
23 2010, we owned somewhere between 20 and 30 TV stations across
24 the country. And we ran websites for both the media companies
25 and the -- and the newspaper publishing.

1 Q. What were some of the names of the bigger newspapers that
2 Tribune Company owned at that time?

3 A. Sure.

4 L.A. Times, Chicago Tribune, Baltimore Sun, Orlando
5 Sentinel, Sun Sentinel. Those are some of the larger
6 newspapers.

7 Q. And how many broadcast TV stations did you say that they
8 owned?

9 A. I think it was between 20 and 30. I think it was around
10 26, but I don't -- the number would change from time to time.

11 Q. Were there any in Sacramento that you recall?

12 A. There was.

13 Q. What were those?

14 A. I believe it was the Fox affiliate, but I don't recall the
15 station. I think it's Fox 40.

16 Q. Fox 40.

17 What relationship did those entities have that you just
18 described, the broadcast and the news stations, have with each
19 other within the system that you worked on, the computer
20 system?

21 A. Sure.

22 Their websites shared a same -- they were published through
23 the same system. We have a system that, through the web
24 servers and application servers and database servers, they all
25 shared a common database. Stories could be shared across

1 markets. So it was common for a story written by a newspaper
2 to appear on a TV station site or vice versa, or a video from a
3 TV station site to appear on a newspaper site.

4 So basically the system that would host the sites was
5 shared amongst the newspapers and the broadcast stations.

6 Q. Did that system have a name?

7 A. It had different names. The producer tool that people used
8 at the time, it was called P2P. That was replaced with the
9 CMS, which is the content management system. And that was in
10 the -- at the time replacing the previous CMS that we had that
11 we called internally Assembler.

12 But then there were releases that products would be on that
13 would also have different names. So there were names on the
14 consumer facing side of the website as well as on the producer
15 side. So there were producer tools that could create and edit
16 content, and then there was a display side that consumers would
17 see.

18 Q. So the CMS is a general way of referring to that type of
19 system?

20 A. Yes. CMS is our standard across most web publishing
21 systems. There's typically a CMS which will allow you to edit
22 a website. The majority of websites will have some sort of CMS
23 system if it's application driven and database driven to
24 present data.

25 Q. And P2P and Assembler, is that kind of like the brand name

1 of the CMS?

2 A. It was an internal name that was used mostly internally.
3 Most consumers wouldn't know that name.

4 Q. Okay. So why would a company like Tribune Company, with
5 its TV stations and its newspapers, need something like
6 Assembler slash P2P?

7 A. Sure. That's how the news stories would get published,
8 edited, ah, and modified as needed.

9 Q. So is the P2P system something that anybody can get access
10 to?

11 A. No. You had to be an employee of one of the sites that was
12 hosted with the system.

13 Q. Why wouldn't access be available to anyone, even
14 non-employees?

15 A. We had separate systems that we would call user generated
16 content, but that would go through a modification or a
17 moderation process. So consumers could submit photos from
18 something, but generally we don't want the public producing the
19 news that's going to appear on your site. You want the
20 journalists to do that.

21 Q. Did users have any ability or access to edit or access
22 the --

23 A. No.

24 Q. -- reporter sites?

25 A. No. Users --

1 Q. I'm sorry?

2 A. Users don't have a way to edit the online sites.

3 Q. And why was that restricted?

4 A. Because you want the data there to be what the journalist
5 wrote and published.

6 Q. I see.

7 So if someone had a password from a particular news
8 station, what kind of access would they have --

9 MR. JAFFE: Objection, calls for speculation.

10 THE COURT: Well, sustained, but you can lay the
11 foundation if you're able.

12 BY MR. HEMESATH:

13 Q. Would you know whether someone with a password from a
14 particular --

15 MR. JAFFE: Objection.

16 MR. HEMESATH: -- news station -- is it the word
17 "would"?

18 MR. JAFFE: Calls for speculation.

19 THE COURT: Overruled. Answer yes or no.

20 Are you clear on the question, though?

21 THE WITNESS: No.

22 THE COURT: Let the question be framed in full,
23 Mr. Jaffe, before you pose an objection.

24 BY MR. HEMESATH:

25 Q. Would you know, in your position as a senior engineer,

1 whether someone that was an employee of, for example, a
2 broadcast company would have access to the parts of the CMS
3 controlled by -- that pertained to, say, a newspaper?

4 A. In certain cases, yes. In certain cases, no.

5 There were permission --

6 THE COURT: Wait for the next question.

7 THE WITNESS: Sure.

8 BY MR. HEMESATH:

9 Q. So is your answer that you know in certain cases yes, in
10 certain cases no? My question is just do you know or would you
11 know?

12 A. It's possible, yes.

13 Q. It's possible that you know?

14 A. No, it's possible that --

15 Q. Let's start with do you know.

16 A. Okay. Do I know what?

17 Q. I'm sorry.

18 A. Start over.

19 Q. Do you know whether someone with access as a result of
20 being an employee of a broadcast station would have access to
21 other parts of the CMS?

22 A. Yes, it's possible.

23 Q. And how would you know whether or not that is true?

24 A. How would I know if it's true?

25 Q. Yeah.

1 A. We -- that particular user would have, ah, access
2 permissions set for different features. I don't know what
3 those features were back in 2010, I don't recall. But
4 certain -- you know, we -- the system was built around sharing
5 content among our properties.

6 Like I mentioned before, this was a way to help a TV
7 station have more content on their site by being able to get
8 content that, like, the L.A. Times was publishing, for example.
9 It helped us create synergy to bring content or video that the
10 TV stations were posting into the newspapers that didn't have
11 as much video. So the way that it was architected was in a
12 sharing methodology so producers from one property could access
13 content from another property.

14 Q. In 2010, were there distinctions between permissions
15 between different users from different places within the
16 organization?

17 A. I don't recall. I didn't work on the permissions that
18 much.

19 Q. Okay. So with regard to this system that you call
20 Assembler or P2P, did you ever review records that were
21 generated by Assembler or P2P?

22 A. Yes, I've reviewed records for both systems.

23 Q. And why were you reviewing records for both those systems
24 in your capacity as what you were doing with your job?

25 A. It could be for looking for performance issues. It could

1 be for a number of reasons. We -- we reviewed it, reviewed
2 records looking for intrusions as well.

3 Q. How would those records show intrusions?

4 A. They would show when items have been modified. And
5 sometimes they don't show directly, but sometimes it's
6 correlated with other evidence.

7 Q. What do you mean when you say intrusions, by the way?

8 A. Like you said before, asking if somebody who wasn't
9 supposed to have access to a system gained access to a system.
10 Looking for outside people that should not have access to the
11 system.

12 Q. So if you were to look at an Assembler record, what would
13 indicate to you, for instance, whether there was an intrusion,
14 intrusion on a particular day?

15 A. That on its own might not show the intrusion, ah, but it
16 could. We'd have --

17 Q. You would need more information?

18 A. And we'd have to analyze the log data to see what it's
19 showing. Sometimes seeing IP addresses that are coming from
20 geographic areas that we don't have properties in is an
21 indication.

22 Q. So is one of the parts of the Assembler log that you're
23 referring to the IP address?

24 A. Yes. So the logs -- we log IP address standardly,
25 normally.

1 Q. What would be some of the other elements of an Assembler
2 log?

3 A. Our web server logs were typical, so they would include a
4 time stamp. Ah, it would show the request that was made. So
5 what that would look like, if you were requesting the home page
6 of a site, it would look like get space slash meaning the home
7 page or the home directory. Like, if you were going to the
8 sports section, it would say get space slash sports.

9 It would show any referring URL. So an example there is if
10 you search for something on Google and then followed a link to
11 the L.A. Times, the referring URL will show the Google address
12 that you came from. So the referring URL is very helpful
13 because it shows the chain of events that happened.

14 It would show the browser user agent string. This would
15 identify if you were on a browser such as Firefox or Internet
16 Explorer, for example, at that time.

17 Q. So if someone changed a story, would there be an Assembler
18 log generated as a result?

19 A. If somebody modified a story, there would be a log entry in
20 one of our two CMS systems, either Assembler or P2P.

21 Q. And those were the things you reviewed in your professional
22 capacity?

23 A. That's some of them, yes.

24 Q. Do you recall reviewing records in reaction to a security
25 incident at the L.A. Times?

1 A. I do.

2 Q. Was that in 2010?

3 A. In December of 2010.

4 Q. Okay. Could you describe the circumstances of your review
5 of those logs on that day.

6 A. Sure.

7 I was asked to look into an intrusion that happened on a
8 particular story on December 14th. When we looked into it,
9 when I looked into it, I looked at the update history in our
10 CMS system of P2P. Within that system, it shows the update
11 history of the story.

12 I was given a time frame that the story had been modified,
13 and I was able to identify the time stamp from the update log
14 from our P2P system that showed when that story had been
15 modified.

16 Q. Could you take a look at Exhibit 504 in the binder that you
17 have in front of you there.

18 A. 504?

19 Q. Yes.

20 A. All right.

21 Q. Do you recognize that document?

22 A. I do.

23 Q. How do you recognize it?

24 A. The following day on -- after the intrusion had been
25 detected and fixed on our primary website, we had discovered

1 that our mobile site still had the modifications on it.

2 Q. You know, I'm going to ask you to take a look at a
3 different exhibit actually for right now. Could you take a
4 look at Exhibit 301.

5 A. Yes.

6 All right. I have 301.

7 Q. Yes. Do you recognize that?

8 A. I do.

9 Q. How do you recognize it?

10 A. This is the e-mail I put together on the 14th outlining the
11 intrusion that was detected. So the top section, the graphic
12 that is included is a screen capture of -- from our P2P system
13 that shows the update log for the item itself.

14 Q. I'm sorry. If I may interrupt you.

15 A. Sure.

16 MR. HEMESATH: Your Honor, the government moves Exhibit
17 301 into evidence.

18 THE COURT: Any objection?

19 MR. JAFFE: No objection.

20 THE COURT: All right. And this is 11 pages, all 11
21 pages, correct?

22 MR. HEMESATH: All 11 pages.

23 THE COURT: Understood, Mr. Jaffe?

24 MR. JAFFE: Yes, Your Honor.

25 THE COURT: All right. 301 is admitted and may be

1 displayed.

2 (GOVERNMENT'S EXHIBIT 301, Tom Comings Assembler
3 log report, ADMITTED INTO EVIDENCE.)

4 BY MR. HEMESATH:

5 Q. So you were saying that you reviewed logs with regard to an
6 incident at the L.A. Times in 2010.

7 Can you describe what relationship this chart had to that
8 review of Assembler logs that took place on that day?

9 A. Sure.

10 The URL at the top of the page, that begins with Assembler,
11 shows -- the URL at the top shows the URL and the content item
12 ID of the item in question.

13 MR. HEMESATH: Your Honor --

14 THE COURT: I think it's -- even though a portion has
15 been expanded, it's safe to say the exhibit itself is blurry
16 and very fine print.

17 MR. HEMESATH: I can zoom in a little bit more if Your
18 Honor --

19 THE COURT: All right. Let's see if we can zoom in.
20 The Court's copy is blurry. So I -- all right.

21 MR. HEMESATH: Is that better?

22 THE COURT: All right. So you can see at least the
23 general idea and see some dates? All right. Okay.

24 BY MR. HEMESATH:

25 Q. So you were saying?

1 A. And at the top of this highlighted part right now, that is
2 showing what we call the slug of the story. A slug is a unique
3 identifier for the story itself so we can pull it up to edit
4 it, modify it and edit it. So this was a slug of the story in
5 question that had been compromised the day before.

6 Q. Okay.

7 A. And then if you read the update history, it goes from
8 bottom up in terms of the timeline. So the bottom entry came
9 from a process that we call feeds. So this just means that the
10 story was fed into the online system probably from the print
11 system. So the story was written to be in print. It was then
12 put in a feed that went into the digital system.

13 And under comments, it says edited by Hopper. Hopper does
14 business rules to put different fields, custom fields into the
15 story, so that logic would have been applied.

16 Then the next two entries are typical producer entries that
17 happened. It's tough for me to read the names, too, but M.
18 Farr was the one at 1:27 p.m. central time. So my office is in
19 Chicago. So when I go into the system, it shows me the time
20 stamp as being in central standard time. But the logs that are
21 underneath when we expand those will be in Pacific time because
22 the servers were in California.

23 Q. So -- I'm sorry.

24 When that says, for instance, for M. Farr 1:27, was that
25 1:27 central time?

1 A. That was 1:27 central time.

2 Q. Okay.

3 A. So if I had looked at this in a computer in California, it
4 would have said PST and would have been adjusted down to 11:27
5 at that point.

6 Q. But this is a document that you generated?

7 A. This is a document I generated.

8 Q. Okay. So what else can you tell us about the entries on
9 this page here?

10 A. Sure.

11 The next entry by N. Garcia as the log-in user was at 3:49
12 p.m. We had looked, and that user was a bogus user that had
13 been created in our system according to what I've been told.

14 MR. JAFFE: Object and move to strike the last part.

15 THE COURT: Sustained and granted. The jury shall
16 disregard that last answer.

17 BY MR. HEMESATH:

18 Q. So what does the line above that indicate?

19 A. The next two lines are the editor who went in and corrected
20 the modified story. So those -- the next three lines, those at
21 4:29 p.m., 4:29 p.m. and 4:30 p.m.

22 Q. So on that day, what did you understand with regard to the
23 N. Garcia entry at 3:49?

24 A. The N. Garcia entry was the time frame that the story had
25 been modified. So I was asked to look into what happened

1 with it from who created that -- what I could find out about
2 that entry.

3 Q. Now you said that a story was modified. What story are you
4 talking about?

5 A. So at the top, it's a little cut off in the expansion, the
6 slug that I talked about, it's going to be -- so if you can
7 zoom in on the slug right there.

8 So it would be that L-A hyphen -- is it easier to read
9 here? Basically it's -- that slug identifies the story in
10 question. That slug appears in the online version of the story
11 as well.

12 Q. Did you --

13 A. In the URL.

14 Q. Did you become familiar with the content of that story?

15 A. I'd become familiar at that time with the content of that
16 story.

17 Q. And can you describe in general what the story was?

18 A. I believe it was a political story --

19 Q. Okay. Could I have --

20 A. -- about a tax vote.

21 Q. A tax vote.

22 Could you take a look at Exhibit 504 in your binder now.

23 A. Yep.

24 Q. Do you recognize that?

25 A. I do.

1 Q. How do you recognize it?

2 A. That is the online -- the mobile version of the story in
3 question.

4 Q. And that's what it is?

5 A. That's how it looked before it was fixed.

6 MR. HEMESATH: Your Honor, at this time, the government
7 moves Exhibit 504 into evidence.

8 THE COURT: Any objection?

9 MR. JAFFE: No objection, Your Honor.

10 THE COURT: 504 is admitted.

11 (GOVERNMENT'S EXHIBIT 504, screenshot from Keys
12 computer, ADMITTED INTO EVIDENCE.)

13 MR. HEMESATH: Okay.

14 Q. So was it your understanding that this was the content that
15 you were asked to fix that day?

16 A. On Wednesday, this content was discovered, just still not
17 fixed online. The desktop version I did not fix. I was just
18 asked to investigate what happened.

19 Q. Okay. So let's talk about that. Could we go back to
20 Exhibit 301, please.

21 So when this chart indicates that a story, in your words,
22 was fixed at 3:29, what does that mean to the mobile version of
23 the story?

24 A. Sure.

25 This chart indicates at 4:29 is when it was fixed, not

1 3:29. But that's central time, so 2:29 California time.

2 But this only indicates the story was fixed on the main
3 desktop version of the site. It doesn't indicate when the
4 story was fixed in other areas.

5 Along with the mobile site, we also have an archive site
6 that stories are fed to. So generally when a story is first
7 created and published online, that version of the story is sent
8 to those -- those areas.

9 Q. So do you know whether or not as of 4:29 that this story
10 was fixed in the mobile and the archive sites?

11 A. This would have been fixed only in the desktop version of
12 the site, and it could still take another five or ten minutes
13 before end users would see it fixed.

14 This indicates when it was fixed in the database and
15 online. But even our desktop site has caching where the story
16 is cached in servers all over the world for a certain length of
17 time before an update would be seen.

18 Q. Does this fix indicate whether or not that the same fix
19 occurred on the mobile version?

20 A. It does not.

21 Q. It does not. How do you know that?

22 A. Because this is -- this doesn't indicate the process that
23 would update the mobile story.

24 Q. And what process is that?

25 A. I don't know the exact mechanics that happened at that

1 time, but we used a third party vendor at that time to host our
2 mobile site. So they received a feed probably through an RSS
3 feed. So when a new RSS feed story was available, they would
4 grab it, the content that was available on the story at that
5 time, and publish it.

6 Q. So you couldn't just hit a button to fix it?

7 A. Typically it would get fixed with time. But in this case
8 it wasn't -- the content had not reverted to the update --

9 MR. JAFFE: Objection, move to strike as beyond the
10 scope of the question asked.

11 THE COURT: Sustained, and that's granted. The jury
12 shall disregard the last part of the answer.

13 THE WITNESS: We could not just update it with a
14 button.

15 THE COURT: Wait for the next question. And make
16 certain that the question is done before you start answering.

17 THE WITNESS: Sure.

18 BY MR. HEMESATH:

19 Q. So why couldn't you simply hit a button and have it
20 updated?

21 A. They were different systems, and the P2P system wasn't
22 driving the content that was on the mobile system directly. It
23 would -- content would come in, and newer content would go out
24 quicker apparently than edited content. And there could be a
25 glitch where they wouldn't be the same.

1 The desktop version of our sites shared the same database
2 that our CMS systems used.

3 Q. So do you know when it was fixed on the mobile site?

4 A. I do know it was fixed by 4:00 p.m. central time on
5 Wednesday the following day after it had been edited.

6 MR. JAFFE: Move to strike as not within his testifying
7 knowledge.

8 THE COURT: Overruled given the content of the answer.
9 BY MR. HEMESATH:

10 Q. So it was up for about a day, is that your testimony?

11 A. Yes.

12 Q. With regard to your review of those Assembler records, what
13 else did you do?

14 A. We looked for other items from the same IP address in the
15 log files to see what other activity had happened.

16 Q. So -- well, first of all, you did obtain the IP address?

17 A. Yes. So based on that time stamp of the N. Garcia user, I
18 looked through our CMS system log files, and I found only two
19 entries at that time stamp, and both of them had a post
20 command.

21 So typically when you visit a website, your web browser --

22 THE COURT: Let's wait for the next question.

23 BY MR. HEMESATH:

24 Q. Could you describe the commands and the nomenclature for
25 how you were able to determine N. Garcia accessing what you

1 just described with an IP address on that day?

2 A. Sure.

3 So, with nomenclature, I discovered two line entries in our
4 CMS system that related to what happened during that one-minute
5 period. And they both had a post command and came from the
6 same IP address.

7 Q. Okay. So let's stop right there.

8 What is a post command?

9 A. So a post command for a web server is when you are
10 submitting data. So if you visit a site and fill out a form
11 and click submit, it's going to do a post to where it sends
12 data to the web server. If you are visiting a site and just
13 displaying like the front page of a news site, it's going to
14 use a command called get where it's going to get the data from
15 the web server.

16 So post, the end user is sending data to the computer or
17 the server. And a get, the end user is retrieving data from
18 the server.

19 Q. And you said before I interrupted you that you saw a post
20 command; is that correct?

21 A. Yes. So I identified two post commands that are in the
22 exhibit.

23 Q. Can you tell us what an IP address is.

24 A. Yeah.

25 An IP address is a way -- is on every device that's

1 connected. So if you're at home on your browser, you have an
2 IP address. If you are posting a server, it has an IP address.
3 So any connection between two devices uses IP addresses to go
4 between them.

5 Q. Okay. And why would that have been significant to your
6 analysis at that time?

7 A. An IP address can generally be traced to a geographic area
8 or possibly even an end user, ah, where the post commands came
9 from.

10 Q. And so why would you have done that sort of analysis at
11 that time with regard to this Assembler log entry?

12 A. Sure. This IP address in these two log entries that we
13 found, we looked them up in an online database to see where
14 they came from, and we discovered these particular -- this
15 particular IP address came from Ireland.

16 Q. From Ireland.

17 And how is it that you could be sure that the IP address
18 was coming from Ireland?

19 A. We're relying on the accuracy of the look-up that we
20 performed, which is in the exhibit as well.

21 Q. Okay. So it took time to do that?

22 A. Yeah, it took some time to do that.

23 Q. Can you tell me how much time starting on the 14th that you
24 spent specifically on December 14th?

25 A. On December 14th, I spent probably two hours working on

1 this.

2 Q. How do you know it was two hours?

3 A. The time of day we resolved the issue temporarily, and we
4 decided we were going to look at -- look at it more in the
5 morning.

6 Q. Okay. Do you recall specifically what you spent those two
7 hours doing on the 14th?

8 A. Specifically it was looking through both of our CMSs' logs
9 and looking for a way to identify the intrusion that had been
10 reported.

11 Q. So why was it important to you to determine the identity of
12 who was getting into your logs? Or, I'm sorry, getting into
13 the CMS?

14 A. Right.

15 Because we take security very seriously. We don't want
16 anyone to be able to come in and edit our logs. We want to
17 make sure that we're preventing, umm, outside intruders from
18 gaining access to our controlled systems.

19 We have integrity as journalists to make sure that only
20 journalists are posting content and not -- and outsiders aren't
21 modifying it.

22 Q. But you knew that N. Garcia had made the change to the
23 story, correct?

24 A. That was discovered, ah, in my analysis the following day.
25 Or --

1 Q. And to be clear, N. Garcia is someone who must have had
2 credentials at L.A. Times. Or I'm sorry --

3 MR. JAFFE: Objection to the question, Your Honor.

4 THE COURT: Sustained.

5 BY MR. HEMESATH:

6 Q. What did you -- what could you -- what did the log-in name
7 N. Garcia tell you about who N. Garcia was?

8 A. Yeah, I didn't look into the credentials of N. Garcia that
9 much. That was given over to our -- our market services group.

10 Q. Could N. Garcia have been a user from the Internet?

11 MR. JAFFE: Objection.

12 THE COURT: Sustained.

13 BY MR. HEMESATH:

14 Q. Were you able to tell -- describe to me what N. Garcia, the
15 fact that there was an N. Garcia user name appearing here, what
16 that indicated about the status of a user purporting to be N.
17 Garcia.

18 A. So the correlation of the time stamp of the N. Garcia edit
19 in our P2P system here, along with the P2P logs that I
20 provided, shows that the IP address that made the edit came
21 from Ireland.

22 We don't have any sites or markets outside of the U.S., so
23 it would be reasonable to assume that this was not an
24 authorized --

25 MR. JAFFE: Objection.

1 THE COURT: Sustained. Stop there.

2 MR. JAFFE: Move to strike.

3 THE COURT: The jury shall disregard the last clause.

4 BY MR. HEMESATH:

5 Q. So what did you conclude about the geolocation of the IP
6 address?

7 MR. JAFFE: Asked and answered.

8 THE COURT: Sustained.

9 BY MR. HEMESATH:

10 Q. Do you know whether the user name N. Garcia was
11 terminated -- whether the privileges were terminated as a
12 result of this incident?

13 MR. JAFFE: Objection. He testified this is not within
14 his knowledge.

15 THE COURT: Just answer yes or no.

16 THE WITNESS: Yes.

17 BY MR. HEMESATH:

18 Q. Do you know that?

19 A. I do.

20 Q. Would terminating N. Garcia's privileges have resulted in
21 an end to this incident?

22 Or I'm sorry. Did it result in an end to the response to
23 the incident?

24 A. There were no further edits from the N. Garcia user
25 possible when the N. Garcia account had been locked out.

1 Q. Did that mean that there was no further threat?

2 A. It did not mean there was no further threat.

3 Q. Tell me why it didn't mean that there was no further
4 threat.

5 A. Because there could be other, ah, unauthorized log-ins or
6 log-in information --

7 MR. JAFFE: Move to strike as irrelevant.

8 THE COURT: Overruled.

9 MR. HEMESATH: I'm sorry. Repeat the answer.

10 THE COURT: Denied.

11 MR. HEMESATH: Could you repeat the answer?

12 THE WITNESS: Yes. It's possible that there is other
13 log-in information that was still compromised.

14 MR. JAFFE: Move to strike as speculation without
15 foundation.

16 THE COURT: Denied.

17 MR. HEMESATH: I'm sorry. Could you repeat the answer?

18 THE COURT: No, the answer is out now. So next
19 question.

20 BY MR. HEMESATH:

21 Q. Could you describe why that that was a threat, that there
22 were more -- that there could have been more usernames out
23 there?

24 A. Because if there's other usernames available that we're not
25 in control of, we want to make sure that we find those and

1 identify them and lock them down as well --

2 THE COURT: So now wait for the next --

3 THE WITNESS: -- so our site is not modified.

4 THE COURT: All right.

5 BY MR. HEMESATH:

6 Q. Could you -- are you familiar with the term "super user"?

7 A. Yes.

8 Q. What is a super user?

9 A. A super user is the equivalent of an admin and has the
10 ability to make almost any kind of change on a system.

11 Q. Does that kind of change include changes to passwords?

12 A. It does.

13 Q. Does it include the creation of usernames?

14 A. It does.

15 Q. Describe to me the security effect on a system to be aware
16 of a super user that is unauthorized.

17 A. Ask it one more time.

18 Q. Could you describe to me the effect on the security of your
19 system to have a super user who is --

20 MR. JAFFE: Objection, calls for speculation.

21 THE COURT: Sustained at this point. If there's
22 foundation you're going to lay, you can try.

23 BY MR. HEMESATH:

24 Q. Are you familiar -- do there exist in the CMS system, the
25 CMS system we're talking about, super users?

1 A. There does.

2 Q. And what can those super users do that other users can't?

3 A. A super user within our CMS systems can create users, can
4 delete users, can go across permissions. Some users might not
5 be allowed to edit content in all markets, but a super user
6 would be able to do that. A super user can basically do all
7 functions that are available through the system.

8 Q. Does everyone have super user access who is a member of a
9 system?

10 A. No.

11 Q. Why not?

12 A. Because you want to limit the number of people that are
13 able to create accounts for accountability.

14 THE COURT: How much longer do you think you have? Are
15 you trying to get one other witness on this afternoon? That's
16 the only reason I ask. We have 45 minutes.

17 MR. HEMESATH: Yes, I think maybe another 10 minutes.

18 THE COURT: All right. Well, I'm not going to cut you
19 off, but --

20 MR. HEMESATH: Okay.

21 THE COURT: All right.

22 BY MR. HEMESATH:

23 Q. So given your knowledge of super users and their effect on
24 the system, can you describe to me the security impact of an
25 unauthorized super user?

1 A. An unauthorized super user could basically go and delete
2 all the content on a site. They could, umm, rebrand the site.
3 They could change the page layout. They could create their own
4 content.

5 An unidentified super user could create content and put it
6 deep inside the site. Our sites have content going back for
7 years, and it's possible to modify an older story that people
8 wouldn't notice, and it could sit there longer.

9 We take intrusions very seriously because if somebody
10 gained that access and used it maliciously --

11 MR. JAFFE: Beyond the scope of the question asked,
12 Your Honor.

13 THE COURT: Sustained.

14 MR. JAFFE: Move to strike.

15 THE COURT: Well, at this point, just ask the next
16 question.

17 I'm assuming this is going to get tied up at some
18 point?

19 MR. HEMESATH: Ah, yes. Yes.

20 THE COURT: All right.

21 BY MR. HEMESATH:

22 Q. Can super users create accounts?

23 A. In our system, yes.

24 Q. So could you be sure with the deletion of one account that
25 all rogue accounts were deleted?

1 A. No.

2 Q. So let's get back to the number of hours that you were
3 spending on this particular subject.

4 You said two hours on the 14th. Do you recall the number
5 of hours you spent in response to this incident the next day?

6 A. On Wednesday I spent most of my day, close to around six
7 hours.

8 Q. What were you doing during those six hours?

9 A. We were -- I was doing both the log analysis that is in
10 Exhibit -- whatever the number -- 301. And then we were doing
11 further follow-up to look to see if there were other
12 intrusions.

13 Q. So that's six hours?

14 A. And then also identifying the modification on the mobile
15 site and verifying that our archive site was showing the proper
16 content.

17 Q. Okay. So that was six hours the next day. What about the
18 day after that?

19 A. Spent two to four hours over the next two days directly on
20 this.

21 Q. And, once again, can you tell us roughly what you were
22 doing?

23 A. Still looking for other possible users that may be coming
24 in. So we were looking for IP addresses that seemed out of the
25 norm that might be in geographic areas we don't have sites.

1 Q. After that day, do you recall spending any time in relation
2 to this incident?

3 A. There -- there would have been some time spent, but others
4 within the company picked up and continued on this, too.

5 Q. Did you spend any time on securing the future security of
6 the site?

7 A. We did spend significant time on securing the future of the
8 site. We made some immediate changes that week as well. I
9 believe we reset every password on the site with e-mail going
10 to people's corporate e-mail addresses to guarantee that they
11 were still an employee because their corporate e-mail was tied
12 to the payroll system. So we locked all the accounts and sent
13 a way to reset their password to them that way.

14 Q. Did you install any new software as a result of this
15 incident?

16 A. I didn't personally.

17 Q. What -- do you know -- why did you decide to undertake
18 these actions?

19 A. When we discovered there was a breach on our site, we take
20 that very seriously and want to make sure that the breach has
21 been contained. If you discover a leak in a pipe, you're going
22 to want to check all of your plumbing to make sure it's in
23 order. You're not going to want to just put a piece of duct
24 tape on it and hope it doesn't leak. The same here.

25 Our -- our sites are vast, and, you know, we didn't know

1 how long an intrusion had been available, so we want to make
2 sure that the integrity of our sites is -- is up to date.

3 Q. This system that you described, the CMS, did it exist --
4 was it accessible for more than one state in the United States?

5 A. It was.

6 Q. Okay. May I ask you if you recall what your salary was in
7 2010?

8 A. It was around a hundred thousand a year.

9 Q. Was it less than a hundred thousand?

10 A. It would have been more.

11 Q. Okay.

12 MR. HEMESATH: One moment, Your Honor.

13 (Government counsel conferring.)

14 BY MR. HEMESATH:

15 Q. Do you know how many users were affected by the system-wide
16 password reset that you described?

17 A. It would have been all of the users.

18 Q. And do you know how many that is roughly?

19 A. I don't.

20 Q. Was it more than ten?

21 A. It would have been in the -- in the hundreds or thousands.

22 Q. Because when you say users, are you talking --

23 MR. JAFFE: Objection.

24 BY MR. HEMESATH:

25 Q. When you say users, are you talking about all of the

1 employees of the entities that you described with regard to
2 L.A. -- the newspapers and all of the television broadcast
3 entities?

4 A. It would have been everyone that edits and works on the
5 online version of the sites in all of our markets. So that
6 would have been all of our newspapers which have much larger
7 newsrooms. It would have been all of the broadcast sites as
8 well.

9 Q. Okay. With regard to your general workweek, you work a
10 regular workweek; is that -- is that about right?

11 A. Uh-huh.

12 Q. Okay.

13 A. Yes.

14 Q. Is that 40 hours a week?

15 A. Yep.

16 Q. But your hundred thousand dollars is a salary; is that
17 correct?

18 A. Yes, a salary. So I will work longer on some weeks, then
19 short or forty on others.

20 Q. If this hadn't happened, do you know what you would have
21 been doing on that day?

22 A. We would have been working --

23 MR. JAFFE: Objection, calls for speculation.

24 THE COURT: Just answer yes or no.

25 MR. HEMESATH: I'm sorry?

1 Q. Do you know what you would be doing on that day had you not
2 been responding to this?

3 THE COURT: Just yes or no.

4 THE WITNESS: Not specifically I don't.

5 BY MR. HEMESATH:

6 Q. Would you --

7 THE COURT: So next question.

8 MR. HEMESATH: Yes.

9 Q. Generally speaking, what do you do on a typical day that
10 you're not responding to this kind of thing?

11 A. My day-to-day duties would deal with, ah, scaling our
12 sites, making sure that we can absorb traffic loads coming in,
13 making sure that our systems are running smoothly, working on
14 update projects. We're -- we have been in constant changes
15 where we're improving our sites, so I'll work on teams that are
16 actually doing improvements for our sites.

17 Q. And describe the effect that this incident had on those
18 duties on those days.

19 A. This -- this incident happened shortly before the holidays.
20 I was getting ready to go on vacation, so I did have to try to
21 do what I could on my day-to-day responsibilities.

22 MR. JAFFE: Objection, move to strike as not responsive
23 to the question asked.

24 THE COURT: Overruled. Wait for the next question,
25 though.

1 BY MR. HEMESATH:

2 Q. You get paid vacation; is that correct?

3 A. I do.

4 MR. HEMESATH: Thank you.

5 THE COURT: All right. Cross-examination, Mr. Jaffe?

6 (Defense counsel conferring.)

7 MR. EKELAND: May we have one moment, Your Honor, just
8 to confer?

9 THE COURT: You may.

10 (Pause in proceedings.)

11 THE COURT: Are you ready, Mr. Jaffe?

12 CROSS-EXAMINATION

13 BY MR. JAFFE:

14 Q. Good afternoon, Mr. Comings.

15 A. Good afternoon.

16 Q. All right. Mark Jaffe, counsel for defendant.

17 The day that you were asked to investigate into the CMS
18 system that you testified -- you recall?

19 A. Yes.

20 Q. It was -- the CMS itself was functioning normally; is that
21 correct?

22 A. The CMS was functioning normally, yes.

23 Q. And you mentioned that the CMS is a web -- is a shared
24 system of multiple websites; is that correct?

25 A. Yes. It allows you to edit multiple websites.

1 Q. Okay. But an edit to one website would not necessarily
2 create any edits to all the other websites; is that correct?

3 A. No, it would. If a story was used across sites, which I've
4 already talked about -- so if an L.A. Times story is included
5 in another market, which is done all the time, if you edit the
6 content of that story, that same story will be edited across
7 all sites that are displaying that site.

8 Q. But you have no knowledge that other websites were edited
9 on that day; is that correct?

10 A. I don't know if the story was included in any of the
11 collections of other sites on that day, but it's possible.

12 Q. Okay.

13 MR. JAFFE: No further questions.

14 THE COURT: All right. Any redirect?

15 MR. HEMESATH: One brief redirect question, Your Honor.

16 THE COURT: All right.

17 REDIRECT EXAMINATION

18 BY MR. HEMESATH:

19 Q. Do you know -- I should say, is it possible that, given the
20 circumstances of what you testified about, super users and N.
21 Garcia, that other changes were made to other stories?

22 MR. JAFFE: Objection, calls for speculation, beyond
23 the scope of his testifying knowledge.

24 THE COURT: Sustained.

25 BY MR. HEMESATH:

1 Q. Is it within your knowledge to know what users are capable
2 with credentials of doing on the system?

3 A. I could look up a user to see what their access rights
4 were.

5 Q. So if you didn't know the full scope of the rogue users, N.
6 Garcia --

7 MR. JAFFE: Objection to the characterization, Your
8 Honor.

9 THE COURT: Sustained.

10 MR. HEMESATH: I can pick a different word.

11 THE COURT: Just --

12 BY MR. HEMESATH:

13 Q. Given your knowledge at the time, could you say for certain
14 at that time if it's within the scope of your knowledge that no
15 other changes were made to websites during this time period?

16 A. I cannot say that no other changes were made to websites at
17 that time.

18 MR. HEMESATH: Thank you.

19 THE COURT: Any recross, Mr. Jaffe?

20 MR. JAFFE: No further questions, Your Honor.

21 THE COURT: All right. Is Mr. Comings excused?

22 MR. HEMESATH: Yes, Your Honor.

23 THE COURT: Excused, Mr. Jaffe?

24 MR. JAFFE: Excused, Your Honor.

25 THE COURT: All right. You're excused. You may step

1 down.

2 THE WITNESS: Thank you.

3 THE COURT: The government's next witness.

4 MR. SEGAL: The United States calls Brian Hanrahan,
5 Your Honor.

6 THE CLERK: Mr. Hanrahan, please come forward. I need
7 to take your photograph this afternoon. If you can stand with
8 your back against the wall facing me, please.

9 THE WITNESS: Okay.

10 THE CLERK: Thank you.

11 Please step into the witness stand, remain standing and
12 raise your right hand.

13 BRIAN HANRAHAN, GOVERNMENT'S WITNESS, SWORN

14 THE WITNESS: I do.

15 THE CLERK: Thank you. You may be seated.

16 Will you please say and spell your first and last name
17 for the record.

18 THE WITNESS: My name is Brian Hanrahan. It's spelled
19 B-R-I-A-N, H-A-N-R-A-H-A-N.

20 THE COURT: You may proceed.

21 MR. SEGAL: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. SEGAL:

24 Q. Have you ever worked for the Los Angeles Times, sir?

25 A. Yes, I have.

1 Q. Okay. In what years?

2 A. Excuse me. I worked there from 1990 to 2013.

3 Q. What jobs did you hold at Los Angeles Times when you were
4 there?

5 A. I was primarily a copy editor. I also did some page
6 design, and I did some writing also.

7 Q. What did you do between 1980 and 1990 -- how long have you
8 been -- how long were you a journalist?

9 A. I worked in the business for about 33 years.

10 Q. Okay. In 2010, what was your job at the Los Angeles Times?

11 A. I was chief of the morning copy desk. Ah, that was my
12 title, which meant that I was in charge of a group of people
13 who edit the stories for the website latimes.com.

14 Q. What were your -- can you describe what those duties
15 involved, please.

16 A. There's a lot of things involved in it. One was, you know,
17 editing stories and writing headlines or checking headlines.
18 Also had to track editing requests and work requests throughout
19 the day. And basically, you know, helped place corrections and
20 was sort of a liaison between the website producers and the
21 newsroom.

22 Q. And how important was editorial control to the newspaper in
23 2010?

24 A. Very important.

25 Q. Why is that?

1 A. Our reputation, the reputation of a newspaper depends on
2 what we publish. And we, you know, need to be in charge and
3 aware of what's going up on our website just as much as we
4 do -- you know, just as we did going into the print edition.

5 Q. That was essentially your job, to edit what went up on the
6 website?

7 A. That was -- I tried to oversee that group. I oversee that,
8 and I had a group of editors who did that.

9 Q. What was your job on headlines?

10 A. Ah, many headlines would be written by reporters or
11 bloggers. Sometimes we would -- you know, in that case we
12 would have to check those online headlines to make sure they
13 were accurate, make sure that they were search engine optimized
14 so that things like Google would find the story. Other times,
15 we would write headlines from scratch. I mean, a story would
16 come over with no headline, and we would write it

17 Q. Okay. Can you explain to the jury what the work flow is
18 for a news story, how it gets from, you know, a reporter all
19 the way up to publication, please, and how many hands it goes
20 through.

21 A. Well, at the time for the website, generally there were a
22 couple of different ways it might happen. But one way was that
23 a reporter would write something and send it directly to my
24 desk or make a request for website copy editing, in which case
25 my group or some other editors around the building would --

1 somebody would grab it and edit the story and publish it.

2 Another way is that a reporter would write the story, give
3 it to his section editor, somebody who was -- worked in that
4 section of the paper that he was writing -- he or she was
5 writing for, and the section editor would give it a read and
6 then send it to my group.

7 Q. So it doesn't publish either way -- it doesn't publish on
8 the website without you?

9 A. Ah, no. No.

10 Q. Correct?

11 A. That's correct. We would -- we would be the ones to push
12 the button and publish it.

13 Q. Okay. What was the system that the Los Angeles Times used
14 to publish stories on the Internet in 2010?

15 A. Ah, the software?

16 Q. Yes.

17 A. We had several, two of them that were -- two main software
18 programs. One was called CCI or CCI Newsgate. I forget which
19 version it was back then. And then there was another program
20 that was called Assembler, which itself later was renamed P2P.

21 Q. Would you turn in your exhibit book, please, to Government
22 Exhibit 503 in that binder there.

23 A. 503? Okay.

24 MR. SEGAL: May I approach, Your Honor?

25 THE COURT: It looks like he's got it.

1 THE WITNESS: Yeah, got it.

2 MR. SEGAL: Okay.

3 Q. Do you -- do you recognize that?

4 A. Yes. Yes, I do.

5 Q. When is the first time that you ever saw that?

6 A. Ah, I saw it on the afternoon that the original story was
7 published. I saw it probably between 2:30 and 3:00 p.m. L.A.
8 time.

9 Q. And where was it published?

10 A. It was on the website. Ah, part of our -- it was in the
11 nation section, probably was also linked from the home page.

12 MR. SEGAL: Offer 503 into evidence, Your Honor.

13 MR. EKELAND: No objection.

14 THE COURT: All right. 503 is admitted.

15 (GOVERNMENT'S EXHIBIT 503, screenshot from Keys
16 computer, ADMITTED INTO EVIDENCE.)

17 BY MR. SEGAL:

18 Q. How is it that you came to see this story? Why were you --
19 you said you come on at 6:00 a.m. What were you doing in the
20 afternoon that you read this?

21 A. I actually started around 7:30, but --

22 Q. Okay. I wouldn't want to --

23 A. Later in the day, usually at about 2:30, the work flow
24 changed a little bit. We had more people in the building, so I
25 had a chance at that time to sort of go back and review some of

1 the stories that we had published during the day. And so
2 sometimes I would go just make spot checks of articles that I
3 wanted to give a second look to or I hadn't looked at at all,
4 somebody else from my group had edited and published it. So I
5 was going through some things that we had published earlier in
6 the day.

7 Q. When you saw it, what effect, if any, did it have on your
8 emotional state?

9 A. I was very distressed.

10 Q. Why is that?

11 A. Seeing something that I don't know where it came from is
12 distressing to me. Obviously it was something that was wrong,
13 and it was something that we had not intended to publish. And,
14 you know, I didn't know how this got onto the website. It was
15 sort of my job as a supervisor to make sure that, ah, nothing
16 bad or inaccurate got onto the website.

17 Q. So you were a supervisor. If an insider at the Los Angeles
18 Times had put this up on the website, what would you have
19 recommended with regard to their employment?

20 A. I would have recommended that a strong hard look needed to
21 be taken at their continued employment.

22 Q. Okay. Are you putting it mildly?

23 A. No. I mean, you know, it could have been inadvertent.

24 Q. Okay.

25 A. But, you know, if anybody had done this intentionally, you

1 know, it would have been a very, very serious offense.

2 Q. So who did you go to once you -- once you found this?

3 A. When I saw it, I believe the first person that I went to
4 was one of our website producers named Tenny Tatusian.

5 Q. Uh-huh.

6 And what was your objective in talking to that person
7 first?

8 A. Well, I asked her if anyone had seen this, had anybody else
9 seen this, you know, what had happened to this story. And as I
10 recall, this was --

11 Q. You mean anybody in the news --

12 A. Anybody else in the newsroom, yes. Anybody else on the
13 website or, like --

14 Q. Insiders?

15 A. Yeah. Yeah. Insiders and also if anybody from the
16 Washington bureau -- you know, did anybody who worked for the
17 L.A. Times, you know, flag this and complain about it?

18 And I also -- you know, as I recall, this story was linked
19 from our home page at the time, and I wanted it to be taken off
20 the home page of the L.A. Times --

21 Q. Why is that?

22 A. -- website.

23 I wanted it to be less visible. I mean, I didn't -- if
24 it's on the home page, more people are going to be able to find
25 it more quickly. And I wanted it to be taken off of there, ah,

1 so fewer people would see it while we could go about the
2 process of restoring it.

3 Q. All right. What were your -- what, if anything, did you do
4 to fix it? Let's talk about the story first.

5 A. I took a number of steps. One of the things that I did was
6 that I took a screen grab of the -- of the story in its current
7 state. Because I knew that this was a big problem, and I knew
8 that there would be a lot of people wanting to know how this
9 happened, and there would be questions asked. And when I --
10 you know, when I go in and fix it on the website, ah, that
11 would actually erase, you know, things like the words "Chippy
12 1337" would no longer appear there. So I wanted to have some
13 sort of, you know, record of what this was.

14 Q. Is a screen grab like a photograph?

15 A. Like a photograph of your computer screen, yeah.

16 Q. Okay. What did you do next?

17 A. Next I went -- next I probably went into the Assembler or
18 P2P system and called it up. I may have done a history at that
19 point just to see where this had happened or -- but I know at
20 some point I did that.

21 Q. Why would you have done a history?

22 A. Ah, because I was curious to see when did this change get
23 made and who did it? Was it somebody, you know, that I
24 recognized or just -- you know, when did this happen and who
25 did it?

1 Q. Why was that important to you?

2 A. Well, it's important to know who's going in and -- and
3 playing with our published articles. I mean, if it was
4 somebody -- if it was somebody that I knew, if it was somebody
5 in the building, somebody who worked for the Times, that's
6 someone who would have to be spoken to.

7 Q. Did you search for a username?

8 A. I searched for usernames. I saw a list of names of, you
9 know, various people who had touched the Assembler file. They
10 may have just been to the link to the home page. It may have
11 been to add a photograph. And I saw some name -- I saw
12 something in there that I didn't recognize. I mean, it was
13 like a -- I don't remember what it was, but it was a name, a
14 username that I had never seen or heard of before.

15 Q. Was it N. Garcia?

16 A. I don't remember.

17 Q. Okay. What did you do to investigate whether that username
18 was associated any real person at the Los Angeles Times?

19 A. We have a -- we had a directory of all Tribune employees,
20 so I could go and look at the directory of Tribune employees
21 and see if there was someone whose name matched the username
22 that was in Assembler that seemed to be at the time this change
23 was made.

24 Q. Okay. And did it?

25 A. I didn't see anybody. I didn't see any names that matched,

1 no.

2 Q. So let's get back to what you did to fix the text now
3 because I diverted you for a minute.

4 What was -- can you explain the difference between CCI
5 Newsgate and the CMS and what you did to fix the story?

6 A. CCI Newsgate is a system that was used, it was, you know,
7 primarily used for publication of the newspaper, of the print
8 edition. And in that system, people would write their stories,
9 the stories would be edited, and copy editors would continue
10 editing and write headlines for it. And from there, you know,
11 page designers would then, you know, specify it with a headline
12 and how long the type and text should run. And all of that was
13 geared toward the print newspaper edition. But we were also
14 able to use it for website publication, too.

15 Q. And how did you do that?

16 A. Ah --

17 Q. What system would it export to?

18 A. It would -- we could do something that we called export
19 from CCI. When we were done with -- when we were done editing,
20 written the headlines, everything was we hoped correct, we
21 would then export it to the website, which meant that digitally
22 the story would be transmitted into the Assembler or P2P
23 software. And then it would also automatically at that point
24 be published, ah, on the website.

25 Q. All right. Can you look at 305, please, three zero five.

1 A. 305. Okay.

2 305 is --

3 THE COURT: Wait for a question. Do you have it there?

4 THE WITNESS: I have it, yes.

5 THE COURT: Okay.

6 BY MR. SEGAL:

7 Q. Do you recognize that?

8 A. Yes.

9 Q. Okay. How do you recognize it?

10 A. This looks like, ah, the version of the story that I
11 restored. This is the version of the story that -- I believe
12 this is the version that I had gone through and --

13 Q. Fixed?

14 A. -- fixed.

15 MR. SEGAL: Offer 305 into evidence, Your Honor.

16 THE COURT: Any objection?

17 MR. EKELAND: No, there is not.

18 THE COURT: All right. 305 is admitted.

19 (GOVERNMENT'S EXHIBIT 305, screenshot of L.A. Times
20 story, ADMITTED INTO EVIDENCE.)

21 BY MR. SEGAL:

22 Q. So how did you take the Chippy story and turn it back into
23 this?

24 A. Well, this article had originated, ah, in our Washington
25 bureau, and they had put the story in the CCI system and then

1 sent it to Los Angeles. So my group -- you know, they sent an
2 editing request. My group picked it up, we read the story,
3 somebody on my desk read the story and wrote a headline
4 probably with -- at that point they said to me, hey, you know,
5 I'm done with this. Do you want to look at the headline? And
6 I'd go over to their desk and look over their -- go over their
7 shoulder and look at the headline and say, yeah, this is good.
8 Or I might may make a change or two, something like that.

9 So --

10 Q. All right.

11 A. -- the story should have still been in CCI then because it
12 was written in CCI before we exported it.

13 So I went back to the CCI system to -- to double-check the
14 wording to, like, you know, find the text that was there. And
15 then I would be able to type it into or cut and paste it into
16 the Assembler system.

17 Well, it was later in the afternoon at this point, and it
18 was at a time of day when other editors had come in to start
19 working, and they were working on the print edition for the
20 next day. When I went back to find this story in CCI, I
21 discovered that somebody had picked it up and was starting to
22 work on it for the next day's newspaper. And in so doing, I
23 think that they -- as I remember, they might have erased the
24 web headline or made some changes to the web headline so it
25 would be better adapted for newspaper use.

1 Q. What is the difference between the conventions for web
2 headlines and print headlines?

3 I guess print headlines have to be shorter; is that --

4 A. Well, they may be. Print headlines need to fit a certain
5 space in the newspaper.

6 Q. Okay.

7 A. It might be two columns wide or three columns. It could be
8 one or two or three lines long, and there's a number of other
9 differences, too.

10 Q. About how much of your own time did you spend on this
11 incident? Not your own time, but the Los Angeles Time's time.

12 A. I think that probably, you know, noticing it, bringing it
13 to people's attention, looking through the history file, all of
14 that, fixing it, probably took me about -- I probably spent
15 about an hour on that.

16 Some of that was after I had republished it --

17 Q. Right.

18 A. -- because that was -- and then I was spending more time on
19 the history file.

20 Q. Figuring out what was going on?

21 A. Yeah.

22 Q. Okay. And I hate to -- so what was your salary in 2010 at
23 the L.A. Times?

24 A. Oh, it was approximately a hundred thousand a year.

25 Q. Was it -- you say approximately. Was it six figures or

1 not?

2 A. You know, it was either -- it was -- I don't remember
3 exactly what it was in 2010. It was probably close to that.

4 I --

5 Q. What was it no less than?

6 A. It was no less than, ah, 102,000.

7 Q. No less than one oh two? Okay.

8 And were you expected to work kind of an ordinary workweek?

9 A. Well, I worked -- I worked a lot of hours, yeah. I worked
10 a five-day week.

11 Q. Did you get -- did you get benefits?

12 A. Ah, yeah. We had -- you know, we were offered health
13 benefits and 401(k).

14 Q. Okay. So if this had happened -- you had responsibility
15 for the web front page? You said you took the headline off of
16 it here?

17 A. No, not on the -- not on the web front page, no.

18 Q. You said you removed the link?

19 A. Well, I asked them to take the link down. I asked them to
20 please take this story off the home page so that there is no
21 link to the story page from the -- from the website home page.

22 Q. In things that have happened, security incidents at the
23 newspaper in the time that you were at the Los Angeles Times,
24 how does this one compare?

25 MR. EKELAND: I'm going to object, speculation,

1 relevance.

2 THE COURT: Ask a foundational question first.

3 BY MR. SEGAL:

4 Q. Can you compare this to any other incident, security
5 incident that occurred at the paper in the 33 years you were
6 there?

7 A. In terms of, you know, publishing content, I can't think of
8 anything -- I can't think of anything to compare to.

9 Q. And, finally, would the posting of an entire front page
10 layout have raised -- would that have been even more serious?

11 MR. LEIDERMAN: Objection, calls for speculation. This
12 isn't the right witness.

13 THE COURT: Well, on this I'll overrule. You can
14 answer that one question.

15 THE WITNESS: Can you repeat the question?

16 MR. SEGAL: Sure.

17 Q. Would changing the entire front page of the website be even
18 more serious?

19 A. Yes.

20 MR. SEGAL: Thank you, Your Honor. Nothing further.

21 THE COURT: All right. You have cross-exam?

22 MR. LEIDERMAN: I do. May I approach the podium?

23 THE COURT: You may. Can you do this in five minutes
24 or less?

25 MR. LEIDERMAN: I believe I can.

1 THE COURT: All right.

2 CROSS-EXAMINATION

3 BY MR. LEIDERMAN:

4 Q. Good afternoon, sir.

5 You are not from the Sacramento area, correct?

6 A. Correct.

7 Q. You were flown up here?

8 A. Yes.

9 Q. Did the government pay for your ticket?

10 A. Yes.

11 Q. Did the government put you up in a hotel?

12 A. Yes.

13 Q. Okay.

14 MR. SEGAL: Objection, relevance. That's required by
15 the subpoena, Your Honor. This is known.

16 THE COURT: I'll sustain that. The jury shall
17 disregard.

18 BY MR. LEIDERMAN:

19 Q. Did you come up with Mr. Gaines and Mr. Comings?

20 A. No.

21 Q. Did you discuss your testimony with Mr. Gaines or
22 Mr. Comings?

23 A. No.

24 Q. Did you discuss your testimony with the government?

25 A. Yes.

1 Q. How many times?

2 A. I would think three times maybe.

3 Q. Who did you discuss it with?

4 A. I discussed it with FBI Agent John Cauthen. With, ah,
5 Mr. Segal. And I guess then a second time with Mr. Segal and
6 Mr. Cauthen.

7 Q. Okay. Now you testified you rewrote the headline to the
8 Chippy 1337 article?

9 A. I tried to restore it to what we had originally said.

10 Q. Okay. Do you have any idea how close you got?

11 A. I think I was pretty close. I think I came, you know, if
12 not totally word for word, substantively it was the same.

13 Q. I'm not going to ask you to look at the exhibits, but it's
14 fair to say the Chippy 13 37 article, compared with the either
15 original or restored copies, the verbiage was very close in
16 that the Chippy 1337 article didn't rewrite the headline and
17 the -- I think it's called the byline, the part under the
18 headline?

19 A. Well, I believe it did rewrite the headline because it put
20 Chippy 1337 in it.

21 Q. But it said something like pressure builds to lack of --
22 something?

23 A. Some of the words were -- some of the words from the
24 original version that I recall and the restored version. Some
25 of the words were the same.

1 Q. Okay. That's what I was asking.

2 And that made it's easier to restore the original version?

3 A. Yes.

4 Q. And this modification in the story, this was something you
5 found yourself?

6 A. Yes.

7 Q. Because it was part of your job to read everything on the
8 site to make sure the headlines were --

9 A. Well, I couldn't read everything on the site, but I tried
10 to go back and see as much of it as I could.

11 Q. I understand.

12 MR. LEIDERMAN: All right. That's it. Thank you.

13 THE COURT: Any redirect?

14 MR. SEGAL: No, Your Honor. Thank you. He may be
15 dismissed.

16 THE COURT: Is this witness excused?

17 MR. SEGAL: Yes, Your Honor.

18 THE COURT: You agree, Mr. Leiderman?

19 MR. LEIDERMAN: Yes.

20 THE COURT: All right. You're excused, sir. You may
21 step down.

22 That brings us to the end of our time for today. We
23 have a few minutes left. I don't think we can reasonably fill
24 that with a witness, so I'm going to excuse the jury at this
25 point with thanks for your service today.

1 Tomorrow we have one of those short, but really full
2 days, 8:30 to 1:30 with two short breaks. If you need
3 something to sustain yourself until 1:30 when we'll adjourn,
4 please feel free to bring snacks or whatever you need along
5 those lines.

6 And as we adjourn, please remember, as always, my
7 admonitions not to discuss the case, to do any research, to
8 think about where it's going. If anyone attempts to contact
9 you in any way or if you learn of any juror not complying with
10 my instructions, please let me know.

11 We'll see you tomorrow morning. Have a good evening.
12 Thank you.

13 (Jury not present.)

14 THE COURT: All right. Just a brief review. Who does
15 the government plan to call tomorrow?

16 MR. SEGAL: I think we're going to call Armando Caro,
17 Tim Rodriguez and Dylan Kulesza.

18 THE COURT: And you think they'll take the day?

19 MR. SEGAL: Yes. If not, these are --

20 THE COURT: Give me those names again.

21 MR. SEGAL: Sure. Armando Caro, C-A-R-O.

22 THE COURT: I have him.

23 MR. SEGAL: Tim Rodriguez.

24 THE COURT: Is he on the defense -- where is he on the
25 list?

1 MR. SEGAL: You know, we filed an amended witness list,
2 and that was a name that we added. Is that right, Paul?

3 MR. HEMESATH: Yes.

4 MR. EKELAND: They added that.

5 THE COURT: I understand.

6 MR. EKELAND: I noticed it wasn't on the first witness
7 list. They definitely put it on the second.

8 MR. SEGAL: Everybody knows this guy is important.

9 THE COURT: All right. All right. And then --

10 MR. SEGAL: Dylan Kulesza with a K.

11 THE COURT: You think that will take all the time
12 tomorrow?

13 MR. SEGAL: I think it will. So these witnesses are
14 all from either Texas or Illinois. We're planning to run them
15 through tomorrow. And if we run out of -- if we finish with
16 them, we will fill in with somebody local, and it depends on
17 their schedule who that is.

18 So Samantha Cohen's time has been pretty flexible, and
19 it's not long testimony, so we're kind of -- she's just been --
20 she's outside right now. We were going to put her in if we ran
21 out today. That's --

22 THE COURT: And Del Core is available? Just the key is
23 to have someone available.

24 MR. SEGAL: We're on it.

25 THE COURT: It will count against a party if they don't

1 have someone to fill out the time, if we have time, and then I
2 will let the jury know.

3 MR. SEGAL: Got it.

4 THE COURT: That's the reason, we want to be able to
5 use the time.

6 MR. SEGAL: On that point, we may be seeking to add
7 another Los Angeles Times witness in order to prove what
8 Anonymous was seeking to misappropriate from the Los Angeles
9 Times, what we know they were seeking to misappropriate from
10 the Los Angeles Times. It was front page space, and I
11 understand that there was a problem with the personal knowledge
12 of Daniel Gaines, an editor, with --

13 THE COURT: All right. If you're going to add someone,
14 then I give the defense notice and, if there's an objection,
15 we'll argue that.

16 MR. SEGAL: Okay.

17 MR. EKELAND: I just have a comment. This is not a
18 misappropriation case. This is --

19 THE COURT: I think that's not the right word.

20 MR. SEGAL: Well, they were stealing -- what L.A. Times
21 was losing was something that they sell for a particular price.

22 THE COURT: I understand that argument, yeah. That's
23 semantics. I think I understand.

24 MR. SEGAL: Well, the substance of it, we will find
25 someone with personal knowledge to make those facts.

1 THE COURT: All right. Anything else today?

2 MR. EKELAND: No, Your Honor.

3 MR. SEGAL: No.

4 THE COURT: All right. We'll see you in the morning.

5 Thank you.

6 MR. EKELAND: Thank you, Your Honor.

7 THE CLERK: Court is in recess.

8 (Proceedings were adjourned at 4:32 p.m.)

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1 I certify that the foregoing is a correct transcript from
2 the record of proceedings in the above-entitled matter.

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4
5 /s/ Kathy L. Swinhart
KATHY L. SWINHART, CSR #10150
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