

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 1

Pages 1 through 22

Defendant.

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REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

JURY TRIAL

VOLUME 1

MONDAY, SEPTEMBER 28, 2015, 9:00 A.M.

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(Appearances continued next page...)

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1 SACRAMENTO, CALIFORNIA

2 MONDAY, SEPTEMBER 28, 2015, 4:04 P.M.

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4 \* \* \* \* \*

5 (Other trial proceedings reported, not transcribed.)

6 (Jury impaneled and sworn.)

7 \* \* \* \* \*

8 (Jury present.)

9 THE COURT: All right. And now Ladies and Gentlemen,  
10 we do have about 25 minutes. Here's how we're going to use  
11 that time.

12 I need to read you some preliminary instructions to  
13 give you initial guidance -- I'm going to do that now -- and  
14 then the government is going to provide its opening statement.  
15 The defense has agreed to -- I don't think there's enough time  
16 for the defense opening statement today, so the defense will  
17 start with its opening statement tomorrow morning, and then  
18 we'll begin with the presentation of evidence.

19 Just so you know, you ultimately will receive a copy of  
20 these instructions. I see Ms. Schultz already provided  
21 notebooks. You are welcome to take notes. I'll give you some  
22 instructions about notes as we go forward.

23 So, Ladies and Gentlemen, you are now the jury in this  
24 case. I do want to take these few moments to tell you about  
25 your duties as jurors and to give you some instructions. At

1 the end of the trial, I will give you more detailed  
2 instructions. Those instructions will control your  
3 deliberations.

4 It will be your duty to decide from the evidence what  
5 the facts are. You and you alone are the judges of the facts.  
6 You will hear the evidence, decide what the facts are, and then  
7 apply those facts to the law which I will give to you. That is  
8 how you will reach your verdict. In doing so, you must follow  
9 the law whether you agree with it or not.

10 The evidence will consist of the testimony of  
11 witnesses, documents and other things received into evidence as  
12 exhibits, and any facts on which the lawyers agree or which I  
13 may instruct you to accept.

14 You should not take anything I may say or do during  
15 trial as indicating what I think of the evidence or what your  
16 verdict should be.

17 Now, during trial, you may hear me use terms you may  
18 not have heard before. I will try to stay alert to that and  
19 provide you with definitions as we go along. Let me briefly  
20 review some common ones for you.

21 The party charging an individual with committing a  
22 federal offense is the plaintiff. In this action, the  
23 plaintiff is the United States. A party being accused of  
24 committing a federal offense is a defendant. The defendant  
25 here, as you've heard, is Matthew Keys.

1           Plaintiff is represented by assistant United States  
2           Attorneys Matthew Segal, Paul Hemesath, and James Silver. The  
3           defendant is represented by Jason Leiderman, Tor Ekland and  
4           Mark Jaffe.

5           The trial lawyers are not allowed to speak with you one  
6           on one during this case. When you see them at a recess or pass  
7           them in the halls and they do not speak to you, be aware they  
8           are not being rude or unfriendly. They are simply following  
9           the law.

10          You will sometimes hear me refer to counsel. You've  
11          already heard that. Counsel is another way of saying lawyers  
12          or attorneys. I will sometimes refer to myself as the Court in  
13          an attempt to underscore my neutrality.

14          There are rules of evidence that control what can be  
15          received into evidence. From time to time during the trial, I  
16          may make rulings on objections or motions made by the lawyers.  
17          When I sustain an objection, I'm excluding that evidence from  
18          trial. If I sustain or uphold an objection to a question that  
19          goes unanswered by the witness, you should not draw any  
20          inferences or conclusions from the question. When I overrule  
21          an objection, I'm permitting the evidence to be admitted.

22          It is a lawyer's duty to object when the other side  
23          offers testimony or other evidence that the lawyer believes is  
24          not admissible. You should not be unfair or partial against a  
25          lawyer or the lawyer's client because the lawyer has made

1 objections.

2           You should not infer or conclude from any ruling or  
3 other comment I may make that I have any opinion on the merits  
4 of the case favoring one side or the other. I do not favor one  
5 side or the other.

6           Now, to help you follow the evidence, I'll review a  
7 brief summary of the charges against the defendant. I shared  
8 this with you earlier today. This is really a case brought by  
9 the United States against the defendant Matthew Keys. The  
10 indictment charges defendant Keys with three counts. The  
11 following is a very general summary of the indictment.

12           The first count alleges conspiracy to cause damage to a  
13 protected computer. The indictment alleges that, after Keys  
14 was terminated from his position at television station Fox 40,  
15 he kept usernames and passwords to a computer system. Fox 40  
16 and the Los Angeles Times used this computer system to publish  
17 stories on the Internet. The indictment alleges that Keys gave  
18 at least one username and password to a group of hackers called  
19 Anonymous. He then told the group to use that username and  
20 password to vandalize the websites of Fox 40 and the Los  
21 Angeles Times.

22           The second count alleges transmission of a malicious  
23 code to a protected computer. The indictment alleges that Keys  
24 kept and used usernames and passwords for malicious purposes to  
25 help another person alter a story on the website of the Los

1 Angeles Times.

2 The third count alleges attempt to transmit malicious  
3 code to a protected computer. The indictment alleges that,  
4 after the Los Angeles Times restored the altered news story,  
5 Keys and another person tried to get back into the computer  
6 system so they could change the whole front page for the Los  
7 Angeles Times website.

8 The defendant has pleaded not guilty to the charges.  
9 The indictment is not in evidence. All persons stand equal  
10 before the law and are to be treated as equals.

11 The evidence you are to consider in deciding what the  
12 the facts are consists of the following: The sworn testimony  
13 of any witness; the exhibits which are received into evidence;  
14 and any facts to which the lawyers agree.

15 The following things are not evidence, and you must not  
16 consider them as evidence in deciding the facts of this case:  
17 Statements and arguments of the attorneys; questions and  
18 objections of the attorneys; any testimony I instruct you to  
19 disregard; and anything you may see or hear when court is not  
20 in session, even if what you see or hear is done or said by one  
21 of the parties or one of the witnesses.

22 Some evidence may end up being admitted for a limited  
23 purpose only. When I instruct you that an item of evidence  
24 will be or has been admitted for a limited purpose, you must  
25 consider it only for that limited purpose and for no other.



1           Now, evidence may be direct or circumstantial. Direct  
2 evidence is direct proof of a fact such as testimony by a  
3 witness about what that witness personally saw or heard or did.  
4 Circumstantial evidence is proof of one or more facts from  
5 which you could find another fact. Inferences are deductions  
6 or conclusions which your reason and common sense lead you to  
7 draw from facts which have been established by the evidence in  
8 the case.

9           You should consider both kinds of evidence. The law  
10 makes no distinction between the weight to be given to either  
11 direct or circumstantial evidence. It is for you to decide how  
12 much weight to give to any evidence.

13           In deciding the facts in this case, you must decide  
14 which testimony to believe and which testimony not to believe.  
15 You may believe everything a witness says or part of it or none  
16 of it.

17           In considering the testimony of any witness, you may  
18 take into account the following:

19           No. 1, the opportunity and ability of the witness to  
20 see or hear or know the things testified to; No. 2, the  
21 witness's memory; No. 3, the witness's manner while testifying;  
22 No. 4, the witness's interest in the outcome of the case and  
23 any bias or prejudice; No. 5, whether other evidence  
24 contradicted the witness's testimony; No. 6, the reasonableness  
25 of the witness's testimony in light of all the evidence; and,

1 No. 7, any other factors that bear on believability.

2 The weight of the evidence as to a fact does not  
3 necessarily depend on the number of witnesses who testify. The  
4 test is not which side brings the greater number of witnesses  
5 or takes the most time to present its evidence, but which  
6 witnesses and which evidence appeal to your minds as being  
7 accurate and otherwise trustworthy.

8 At the end of the trial, you will have to make your  
9 decision based on what you recall of the evidence. You will  
10 not have a transcript of the trial. I urge you to pay close  
11 attention to the testimony, of course, as it is given.

12 If at any time you cannot hear the testimony, evidence,  
13 questions or arguments or see the witnesses or any evidence  
14 being displayed, please let me know immediately so I can  
15 correct the problem. Raise a hand or speak up so we can take  
16 care of that.

17 Now, if you wish, you may take notes to help you  
18 remember what witnesses said. If you do take notes, please  
19 keep them to yourself until you and your fellow jurors go to  
20 the jury room to decide the case. Do not let note-taking  
21 distract you so that you do not hear other answers by witnesses  
22 or observe witnesses or evidence. When you leave during trial,  
23 you should leave your notes on your chair in the courtroom.  
24 They'll be safe there. They'll be there until you ultimately  
25 retire to deliberate.

1           Whether or not you take notes, you should rely on your  
2           own memory of what was said. Notes are only to assist your  
3           memory. You should not be overly influenced by your notes.

4           From time to time during trial, it may become necessary  
5           for me to talk with the attorneys out of your hearing either by  
6           having a conference at the bench, as you saw earlier today,  
7           while you are still present in the courtroom or by calling a  
8           recess. Please understand that while you are waiting, we are  
9           working. The purpose of any conferences is not to keep  
10          relevant information from you, but to decide how certain  
11          evidence is to be treated under the rules of evidence and to  
12          avoid confusion and legal error. We will, of course, do what  
13          we can to keep the number and length of these conferences to a  
14          minimum.

15          I may not always grant an attorney's request for a  
16          conference. Do not consider my granting or denying a request  
17          for a conference as any indication of the case or of what your  
18          verdict should be.

19          Here now are just a few words about your conduct as  
20          jurors.

21          First, keep an open mind throughout the trial. Do not  
22          decide what the verdict should be until you and your fellow  
23          jurors have completed your deliberations at the end of the  
24          case.

25          Second, because you must decide this case based only on

1 the evidence received in the case and on my instructions as to  
2 the law that applies, you must not be exposed to any other  
3 information about the case or to the issues it involves.  
4 During the course of your duty, therefore, until the end of the  
5 case, unless I tell you otherwise, these are the essential  
6 ground rules.

7 Do not communicate with anyone in any way and do not  
8 let anyone else communicate with you in any way about the  
9 merits of the case or anything to do with it. This includes  
10 discussing the case in person, in writing, by phone or  
11 electronic means, by e-mail, text messages or any Internet chat  
12 room, blog, website or other feature. This also applies to  
13 communicating with your fellow jurors until I give you the case  
14 for deliberation. And it applies to communicating with  
15 everyone else, including your family members, your employer,  
16 and the people involved in the trial. You may, though, notify  
17 your family and your employer that you have been seated as a  
18 juror in the case, but that's it.

19 If you are asked or approached in any way about your  
20 jury service or anything about this case, you must respond that  
21 you've been ordered by me not to discuss the matter and then  
22 report that contact to the Court immediately.

23 Because you will receive all of the evidence and legal  
24 instruction you properly may consider to return a verdict, do  
25 not read, watch or listen to any news or media accounts or

1 commentary about the case or anything to do with it. Do not do  
2 any research, such as consulting dictionaries, searching the  
3 Internet or using other reference materials, and do not make  
4 any investigation or in any other way try to learn about the  
5 case on your own.

6 Just so it's clear, the law requires these restrictions  
7 to ensure the parties have a fair trial based on the same  
8 evidence that each party has had an opportunity to address here  
9 before you. A juror who violates these restrictions  
10 jeopardizes the fairness of these proceedings. If you learn  
11 that any juror has been exposed to any outside information,  
12 please let me know immediately.

13 Third, if you do need to communicate with me, you may  
14 simply give a signed note, as I said earlier, to Ms. Schultz.

15 And, fourth, do not make up your mind about what the  
16 verdict should be until after you've gone to the jury room to  
17 decide the case, and you and your fellow jurors together have  
18 discussed the evidence. Keep an open mind until then.

19 Now, as I indicated, the next phase of the trial will  
20 begin. Each side may make an opening statement. I'm informed  
21 each side will. An opening statement is not evidence. It is  
22 simply an outline to help you understand what the party expects  
23 the evidence will show. A party is not required to make an  
24 opening statement.

25 The plaintiff will then present evidence, and counsel

1 for the defendant may cross-examine. Then the defendant may  
2 present evidence, and counsel for the plaintiff may  
3 cross-examine.

4 After the evidence has been presented, the attorneys  
5 will make closing arguments, and then I will instruct you on  
6 the law that applies to the case. Then you will go to the jury  
7 room to deliberate on your verdict.

8 So that's a bit of a road map and your preliminary  
9 instructions.

10 Mr. Segal, are you making the opening?

11 MR. SEGAL: No, Your Honor. Mr. Silver will be doing  
12 that.

13 THE COURT: Mr. Silver. All right. I'm going to  
14 acknowledge Mr. Silver for opening statement. I'm advised it's  
15 about 15 minutes, so we will run just past 4:30, but we're  
16 pretty close to adjourning on time.

17 Do I have that right, Mr. Silver?

18 MR. SILVER: That's correct, Your Honor.

19 THE COURT: All right.

20 MR. SILVER: Good afternoon.

21 This case is about online anonymous revenge. The  
22 defendant, Matthew Keys, was a web producer at TV station KTXL  
23 Fox 40 here in Sacramento, so he knew a lot about the computer  
24 system that the station used to communicate with its viewers.  
25 So when Keys got fired, he didn't get his revenge in person.

1 He snuck back into the system, and he got it online. He  
2 downloaded their whole e-mail list and used it for himself.  
3 And he got back not only at Fox 40, but another publication  
4 that used the same system, the Los Angeles Times newspaper.

5 You'll hear that Keys partnered with a computer hacker  
6 to actually change a news story on the Los Angeles Times  
7 website. And after that, they tried to change its entire front  
8 page.

9 You'll hear that Keys stole the e-mail list within a  
10 week of being fired. Two months later, Fox 40 employees  
11 started receiving anonymous e-mails with lines like watch  
12 yourselves, Fox 40. You'll hear that these e-mails got people  
13 at the station worried.

14 The e-mails made a specific threat as well. They came  
15 from nicknames like Fox Mulder, Cancer Man, and other  
16 characters from the X Files TV show. And they claimed to have  
17 stolen a list of e-mail addresses belonging to Fox 40's most  
18 loyal viewers and customers who signed up to get messages from  
19 the station. And they threatened to send those viewers a  
20 series of e-mails with different theories about how bad Fox 40  
21 was. And then Keys went ahead and wrote to the viewers, and  
22 then he bragged to Fox 40 how easy it was for us to access its  
23 data.

24 But Keys wanted to do more, so next he targeted Tribune  
25 and the L.A. Times. He found a way to get a log-in and

1 password for the computer called the content management system,  
2 also known as the CMS. This controls the content of the L.A.  
3 Times.

4 In an Internet chat room, he gave computer hackers that  
5 password, and he told the hackers -- and pardon my French --  
6 to, quote, go fuck some shit up. And they did. With Keys'  
7 help, a hacker managed to change a story on the L.A. Times  
8 website.

9 But Keys still wanted to do more, so then he and the  
10 hacker who used the nickname Sharpie attempted to change the  
11 entire front page of the L.A. Times. But by then, Tribune's  
12 computer security staff had figured it out. Keys tried to get  
13 Sharpie back into the CMS, but they locked Keys out.

14 The Court will instruct you on the elements of the  
15 charges. Right now I just want to briefly describe them.

16 The indictment has three counts. The first is  
17 conspiracy to cause damage to a computer. That count is based  
18 on Keys' agreement with Sharpie to attack the L.A. Times.

19 The second count is transmitting a program code,  
20 information or command to a computer intending to cause damage.  
21 This count is based on Keys' own attack against Fox 40 and the  
22 Times and sending the password to the hackers.

23 The third and last count is attempt based on Keys  
24 trying to regain access to the L.A. Times after he was locked  
25 out to do more damage.



1           After finding Keys guilty of each of these counts,  
2 we'll ask you to find that he caused loss or intended to cause  
3 loss to Tribune, the parent company of both Fox 40 and the L.A.  
4 Times, of at least \$5,000. Loss includes responding to the  
5 attack and the time that took up.

6           Now let me tell you about the evidence and the  
7 witnesses that you'll hear and see in this case. It will take  
8 a week or so.

9           First you'll hear from Keys' direct supervisor at Fox  
10 40, Brandon Mercer. He'll testify that he fired Keys in  
11 October 2010. Mercer will testify about the e-mails he started  
12 receiving a few weeks later from Fox Mulder, Cancer Man, Walter  
13 Skinner and other nicknames. The e-mails said it would be a  
14 long and painstaking process to find out who was behind them  
15 and that Fox 40's secrets were at risk.

16           Mercer will testify about all the time he spent trying  
17 to figure out how it happened, who was behind it, how to  
18 respond, and how to make it stop, and how all of these things  
19 took him away from his normal duties as Fox 40's news director.

20           You'll hear a phone call between Mercer and Keys on  
21 December 12th in which Mercer asks Keys if he is Fox Mulder and  
22 Cancer Man. Keys denies it.

23           Then Keys tells Mercer he's infiltrated a group of  
24 highly skilled hackers, and he predicts that they will attack  
25 L.A. Times. What Keys didn't tell him is that Keys was giving

1 the hackers the password, and Keys was the one who had urged  
2 them to target the Times. Keys' prediction came true. Two  
3 days later, the Times was in fact attacked.

4 You'll hear from other Fox 40 employees, including its  
5 station manager, who will testify about the hours he spent  
6 responding to the attack and the attention it got from Tribune  
7 executives at corporate headquarters in Chicago.

8 You'll hear from the Fox 40 employee who replaced Keys  
9 after he was fired. She'll testify about how she kept getting  
10 locked out of the online account she needed to do her job and  
11 that, as a result, she couldn't do her work. Later you'll see  
12 an entry from the Tribune CMS showing that at the same time she  
13 was being locked out of her account, Keys was logging into the  
14 CMS and changing her user profile.

15 Now back to Keys for a moment. He sent these e-mails  
16 to Fox 40, and he hasn't been stopped although people have  
17 spent time trying. He had stolen the e-mail list, sent e-mails  
18 to Fox 40 viewers and locked his replacement out of the account  
19 she needs to do her job. But he wanted more, so now he targets  
20 the L.A. Times.

21 You'll hear from the Tribune employees who first  
22 discovered the attack and who rushed to respond to it. It  
23 turns out they were very good at their jobs. You'll hear from  
24 four computer specialists who were in Chicago and two editors  
25 in Los Angeles, and they'll each testify about the time they

1 spent trying to figure out how this happened, who did it, and  
2 re-securing their computer system. One of them will also  
3 explain how a particular kind of Internet chat works. It's  
4 called Internet relay chat or IRC.

5 And you'll hear from FBI Special Agent John Cauthen,  
6 who did the digital detective work that led to Keys. He'll  
7 explain how Keys used something called a virtual private  
8 network or VPN to cover his tracks on the Internet by appearing  
9 to come from a computer in Switzerland or other countries  
10 instead of his own computer here in Sacramento. But Keys' VPN  
11 provider kept records, and you'll see that Keys' name was on  
12 them.

13 The agent will focus on computer logs, which are  
14 records computers keep automatically about who is connecting to  
15 them and what activities are taking place. He'll testify about  
16 how IRC chat logs obtained by the FBI pointed to Keys as being  
17 behind the attack on the Times.

18 You'll hear that Keys used yet another nickname for  
19 IRC, AEScracked, because he thought it would help him fit in  
20 with the hackers he chatted with on IRC. Those hackers are  
21 part of a collective called Anonymous. You'll see an IRC  
22 posting by AEScracked that says, quote, the Times must be  
23 demolished.

24 You'll see particular IRC logs between Keys and  
25 Sharpie, and you'll see how Keys used his knowledge of the L.A.

1 Times computer system to help Sharpie find his way around in  
2 order to pull off the attack. You'll also see the particular  
3 lines of code, malicious code that Keys sent.

4 The chat logs will also show that, after Sharpie  
5 finished his attack, Keys wanted to do even more damage. After  
6 all, the Times hadn't been demolished yet, and Keys still  
7 hadn't been caught, so he tried to get back into the system,  
8 but then he was locked out.

9 And after this computer evidence, you'll hear Keys' own  
10 words because Agent Cauthen interviewed him. You'll hear Keys  
11 in his own voice say that he was, quote, an angry former  
12 employee. And you'll hear Keys say, quote, I did it. And  
13 there will be no doubt about what he said because it was a  
14 recorded interview, and you'll hear it for yourself.

15 And after that, you'll see a confession that Keys wrote  
16 in his own handwriting.

17 So, Ladies and Gentlemen, that's the case. Keys was in  
18 a hacking partnership with Sharpie on attacks against Fox 40  
19 and the L.A. Times and his attempt to keep attacking the Times  
20 even after he was locked out of the system.

21 Ladies and Gentlemen, we'll present to you the  
22 witnesses, documents and recordings to prove these things  
23 beyond a reasonable doubt. And when we have, we'll ask you to  
24 find the defendant guilty, guilty of conspiracy, guilty of  
25 computer hacking, and guilty of attempt.

1           Thank you for your jury service.

2           THE COURT: All right. Ladies and Gentlemen, that  
3 concludes the government's opening statement. Again, opening  
4 statements are not evidence. You'll hear an opening statement  
5 from the defense in the morning. We'll start at 8:30, as I  
6 told you, and then we'll move to presentation of evidence.

7           As we adjourn for the evening, I just want to emphasize  
8 some of those essential ground rules I shared with you earlier  
9 today. And then you'll retire to the jury room, and  
10 Ms. Schultz will give you any additional information you need  
11 before you leave the building this evening.

12           So until trial is over, you are not to discuss this  
13 case with anyone, including your fellow jurors, members of your  
14 family, people involved in the trial or anyone else. Nor are  
15 you allowed to permit others to discuss the case with you.  
16 Again, if anyone does approach you and tries to talk with you  
17 about the case or approach you in any way, in person or  
18 electronically or otherwise, please let me know immediately in  
19 the morning. Do not read or listen to any news reports. And,  
20 finally, please keep an open mind until all the evidence has  
21 been received, you've heard the arguments of the attorneys at  
22 the end, my instructions, and the views of your fellow jurors.

23           If you need to speak with me about anything at any  
24 time, you may give a note to Ms. Schultz. She'll give that to  
25 me.

1           Pretty soon you'll be able to repeat these admonitions  
2     on your own. I won't repeat them every time, but they will  
3     apply every time we're adjourning because they are so important  
4     to preserve the integrity of the trial. So thank you in  
5     advance for observing them.

6           Thank you for your service today. I know it's been a  
7     long day. We'll see you ready to go at 8:30 tomorrow morning,  
8     and we'll be done by 3:00 taking a full lunch break tomorrow.

9           Have a good evening. We'll see you in the morning.  
10    You may now follow Ms. Schultz to the jury room.

11           THE CLERK: Leave your notes on your chairs, and then  
12    you may follow me to the jury room.

13           (Jury not present.)

14           THE COURT: All right. You may be seated.

15           Once the defense concludes its opening, who do you  
16    expect to call?

17           MR. SEGAL: Brandon Mercer.

18           THE COURT: And how long do you expect him to take?

19           MR. SEGAL: He will take a few hours. And we're going  
20    to play a one-hour tape with him, maybe three hours.

21           THE COURT: And are there any issues with that tape  
22    that we haven't already addressed?

23           MR. LEIDERMAN: One thing sanitized out of it is a  
24    discussion of a restraining order. I --

25           MR. SEGAL: The restraining order is not referred to in

1 the recording.

2 THE COURT: All right. Well, meet and confer on that  
3 to make certain the defense knows what is being played.

4 MR. LEIDERMAN: Is that right?

5 MR. SEGAL: They have the recording. It's not in  
6 there. He --

7 THE COURT: Again, meet and confer to make certain the  
8 defense has an exact copy of what you're planning to play and  
9 knows what you're talking about. If there are any issues in  
10 the morning, let me know. All right?

11 And then after Mr. Mercer?

12 MR. SEGAL: After Mercer, it will be Jerry Del Core.

13 THE COURT: And how long would that witness --

14 MR. SEGAL: Actually, Your Honor, I think the direct  
15 with Mercer will take three hours. I don't know how long cross  
16 is.

17 THE COURT: I understand.

18 MR. SEGAL: Okay. Del Core I don't think is much  
19 longer than an hour. These are estimates, of course, but --

20 THE COURT: All right. So I think that will fill  
21 tomorrow one way or the other with -- assuming significant  
22 cross.

23 Anything else I need to know before we adjourn for the  
24 evening?

25 There's some housekeeping. You have some thoughts

1 about how to clean up 104R, Exhibit E for the defense? Agent  
2 Cauthen won't be on for some time yet, but be thinking about a  
3 dual role instruction, if I need to consider that possibility.

4 And you're clear on instructions for your power point  
5 for your opening, Mr. Leiderman?

6 MR. LEIDERMAN: I believe so. Just to -- the Court has  
7 the sheet up there. I have stricken the -- just working from  
8 backwards to forwards, I have stricken the attempt to commit  
9 journalism slide. I have taken the -- I have taken the -- I've  
10 left in the Mercer e-mails.

11 I've taken the snippet --

12 THE COURT: The story online for 40 minutes?

13 MR. LEIDERMAN: The story online for 40 minutes, out.  
14 And I'm not sure --

15 THE COURT: The loss slide that was subject to a  
16 privilege claim, that does not need to be altered.

17 MR. LEIDERMAN: Yes. Okay. So we're all on the same  
18 page then, Your Honor.

19 THE COURT: All right. It's Exhibit E that does need  
20 to be redacted before it's used during trial.

21 MR. EKELAND: Yes.

22 THE COURT: All right. All right. Anything else?

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

24 MR. LEIDERMAN: Nothing from the defense. Thank you,  
25 Your Honor.



1           THE COURT: All right. Then we'll see you ready to go  
2 at 8:30. I don't think we need to meet in advance. I'll be  
3 here five or ten minutes early if we need to discuss anything  
4 further.

5           All right. Thank you very much.

6           (Proceedings were adjourned at 4:36 p.m.)

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1 I certify that the foregoing is a correct partial  
2 transcript from the record of proceedings in the  
3 above-entitled matter.  
4

5  
6 /s/ Kathy L. Swinhart  
KATHY L. SWINHART, CSR #10150  
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