

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 4

Pages 471 through 624

Defendant.

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL

VOLUME 5

FRIDAY, OCTOBER 2, 2015, 8:30 A.M.

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(Appearances continued next page...)

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14
15
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17
18
19
20
21
22
23
24
25

INDEX

<u>GOVERNMENT'S WITNESSES:</u>	<u>PAGE:</u>
SAM COHEN	
DIRECT EXAMINATION (Cont'd) BY MR. HEMESATH	474
CROSS-EXAMINATION BY MR. JAFFE	475
REDIRECT EXAMINATION BY MR. HEMESATH	482
RE-CROSS-EXAMINATION BY MR. JAFFE	483
JASON JEDLINSKI	
DIRECT EXAMINATION BY MR. SEGAL	486
CROSS-EXAMINATION BY MR. EKELAND	521
REDIRECT EXAMINATION BY MR. SEGAL	526
ALAN SCHMIDT	
DIRECT EXAMINATION BY MR. SILVER	529
JOHN CAUTHEN	
DIRECT EXAMINATION BY MR. SILVER	556

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

GOVERNMENT'S EXHIBITS RECEIVED IN EVIDENCE

<u>NO.:</u>	<u>DESCRIPTION:</u>	<u>PAGE:</u>
128	E-mail dated 12/14/10	514
130	E-mail, 12/14/10, 10:22 p.m.	552
131	E-mail, 12/14/10, 10:23 p.m.	552
204	Keys written statement	573
205	Keys annotation of logs	578
206	Portions of Keys statement dated 10/04/12	563
thru		
232		
307	Assembler log entries	588
503	Screenshot from Keys computer	588
504	Screenshot from Keys computer	588
505	Screenshot from Keys computer	588
507	Screenshot from Keys computer	588
508	Screenshot from Keys computer	588
602	IRC chat	588
603	IRC chat	588
605	IRC chat	588
606	IRC chat	588
607	IRC chat	588
608	IRC chat	588
609	IRC chat	588
610	IRC chat	588
611	IRC chat	588
614	IRC chat	588
615	IRC chat	588
616	IRC chat	588
901	Records from Yahoo	588
903	Records from AT&T	588
904	Records from Overplay	588

1 SACRAMENTO, CALIFORNIA

2 FRIDAY, OCTOBER 2, 2015, 8:39 A.M.

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4 (Jury not present.)

5 THE CLERK: Calling criminal case 13-82, the United
6 States versus Matthew Keys. This is on for jury trial, and
7 today is day five.

8 THE COURT: Good morning.

9 MR. SEGAL: Good morning, Your Honor.

10 MR. EKELAND: Good morning, Your Honor.

11 THE COURT: All counsel are present. Agent Cauthen is
12 present. Mr. Keys is present.

13 Just a few questions from the Court. Is the power
14 point now in a form that it's eliminated all objections?

15 MR. EKELAND: Yes, Your Honor.

16 THE COURT: All right.

17 MR. EKELAND: Except for --

18 MR. SILVER: There is an extending Cancer Man objection
19 from the defense I think still.

20 THE COURT: All right. All right. So I'll allow you
21 to note that objection, but otherwise the power point can be
22 used during Agent Cauthen's exam.

23 MR. SILVER: Yes, Your Honor, and with one note. I
24 think the defense has objected to it going back to the jury, so
25 I would ask the Court to advise the jury of that, and then I

1 can make notes of which exhibits are being referenced in the
2 power point if the jury would wish to take notes to help them
3 with their deliberations.

4 THE COURT: Got it. So it's a demonstrative
5 essentially.

6 MR. EKELAND: Yes.

7 MR. SILVER: And there's one animation within the power
8 point as well.

9 THE COURT: All right. And the defense has had a
10 chance to review that?

11 MR. EKELAND: Yes, Your Honor, we're fine with it.

12 THE COURT: All right. In terms of excerpts, is the
13 defense requesting additional portions of that recording be
14 played?

15 MR. LEIDERMAN: Under the rule of completeness, we're
16 requesting the whole recording be played.

17 THE COURT: All right. So we'll need some time to talk
18 about that. We won't do that now, but we'll do it on a break
19 today.

20 Agent Cauthen will go on today you think?

21 MR. SILVER: It's likely, Your Honor, very likely.

22 THE COURT: All right. Well, that portion won't be --
23 you can work with the power point, but not the excerpts until
24 we resolve the completeness objection.

25 MR. SILVER: Your Honor, it was our plan to use the

1 audio first before the power point.

2 THE COURT: Well, we need to resolve the objections
3 first.

4 MR. SILVER: All right.

5 THE COURT: So you just need to be flexible.

6 Anything else we need to discuss before we bring the
7 jury in? Mr. Segal? Mr. Ekeland?

8 MR. SEGAL: Samantha Cohen -- there's just one thing
9 that may help shorten things a little bit. Samantha Cohen gave
10 us, and the defense has marked, a chat conversation between
11 Samantha Cohen and Matthew Keys that occurred in December 2012.
12 In it, Keys talks about, you know, the event and -- and other
13 hackers and prosecutions and media reports about it. We're not
14 offering it, and if offered by the defendant, it's hearsay and
15 not subject to any, you know, relevancy certainly when he's
16 talking about things two years after the fact.

17 So I don't know if the defense is planning on offering
18 that exhibit, but --

19 THE COURT: What's the exhibit identifier?

20 MR. SEGAL: It's defense --

21 THE COURT: Is it now added --

22 MR. JAFFE: Your Honor, I could save the time. The
23 defense was not planning on introducing that, Your Honor.

24 THE COURT: All right. Let's bring Ms. Cohen in, and
25 we'll bring the jury in.

1 (Jury present.)

2 THE COURT: You may be seated. Welcome back, Ladies
3 and Gentlemen of the jury. We're ready to go again this
4 morning. We had a little bit of housekeeping this morning.

5 So at this point we will continue with the direct
6 examination of Ms. Cohen.

7 SAM COHEN, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

8 THE COURT: Ms. Cohen, you were sworn yesterday. You
9 continue to testify subject to that oath. Understood?

10 THE WITNESS: Yes.

11 THE COURT: All right. Mr. Hemesath.

12 MR. HEMESATH: Thank you, Your Honor.

13 DIRECT EXAMINATION (Continued)

14 BY MR. HEMESATH:

15 Q. Good morning. Could you turn to Exhibit 505, please.

16 A. Okay.

17 Q. You testified about this briefly yesterday, but to get us
18 back on track, do you recognize this?

19 A. Yes.

20 Q. And what are these line items?

21 A. They would be, ah, permission settings within our CMS
22 system.

23 Q. Is this something you would see on the CMS?

24 A. Yes.

25 Q. That's how you recognize it?

1 A. Yes.

2 Q. Thank you.

3 You spoke yesterday about the iPad giveaway contest e-mail
4 list. Could you walk me through on the CMS how you accessed
5 viewer e-mail addresses from that list on the CMS?

6 A. If I needed to find an e-mail address for somebody who had
7 entered the contest, when I logged into the CMS, there was a
8 tab that said UGC, user generated content, and that's where --
9 when you enter the contest, that's where your information went.
10 By clicking on that tab, it then opened up a database within
11 the CMS that I could search for a person's name.

12 Q. Okay. Thank you very much.

13 MR. HEMESATH: Thank you, Your Honor. No more direct.

14 THE COURT: All right. Mr. Jaffe.

15 MR. JAFFE: Could I have just one moment, Your Honor?

16 THE COURT: You may.

17 CROSS-EXAMINATION

18 BY MR. JAFFE:

19 Q. Good morning, Ms. Cohen. My name is Mark Jaffe. I'm
20 counsel for the defendant.

21 A. Hello.

22 Q. Ms. Cohen, you testified --

23 MR. JAFFE: I beg your pardon. I have to bring one
24 more thing up.

25 THE COURT: All right.

1 BY MR. JAFFE:

2 Q. You testified that there was a period of time around
3 December of 2010 where you didn't have access to the CMS; is
4 that correct?

5 A. Correct.

6 Q. All right. But you have no knowledge that the CMS wasn't
7 working properly at the time; is that correct?

8 A. It was not working for me.

9 Q. Right. But it was working -- it was your understanding it
10 would have been working; is that correct?

11 A. Correct.

12 MR. HEMESATH: Objection, speculative.

13 THE COURT: Overruled.

14 BY MR. JAFFE:

15 Q. But other individuals that you worked with had access to
16 the CMS; is that correct?

17 A. Correct.

18 Q. And those other individuals would have access to the same
19 information that you had; is that correct?

20 A. Not necessarily.

21 Q. Did you lose any documents as a result of your not having
22 access to the CMS?

23 A. I didn't lose any documents.

24 Q. Did you lose any e-mails?

25 A. Not to my knowledge.

1 Q. When you were given new access, you testified that your
2 access was restored; is that correct?

3 THE COURT: I don't think there's been an answer yet.

4 THE WITNESS: I'm sorry. Could you ask the question
5 again?

6 BY MR. JAFFE:

7 Q. You testified that after you were unable to get in with
8 your password, you were given a new username and password; is
9 that correct?

10 A. Yes.

11 Q. And when you did that, you had access to the same
12 information that you had prior; is that right?

13 A. To the best of my knowledge.

14 Q. To the best of your knowledge.

15 And you would -- and during a period of time where you did
16 not have access to your e-mail with your username and password,
17 you could have used someone else's username and password to get
18 into the CMS; is that correct?

19 A. Ah, yes.

20 Q. Yes.

21 And you worked closely with other people who had access to
22 the system; is that right?

23 A. They were my co-workers.

24 Q. And you worked in the same office with people who had
25 access to the same CMS?

1 A. Not the same level that I did.

2 Q. Ms. Cohen, you testified yesterday that, due to your lack
3 of access to the CMS, you were out for approximately 40 hours;
4 is that right? Was that your testimony?

5 A. Yes.

6 Q. And I'd like to call your attention to what was previously
7 introduced as Government Exhibit 112.

8 MR. JAFFE: That was in evidence, yes.

9 MR. LEIDERMAN: Okay.

10 THE WITNESS: Okay.

11 MR. JAFFE: Are you reviewing that? If you could start
12 on page 6 because that would be -- if you can start on page 6,
13 please.

14 Q. That would be the beginning of the series of these e-mails,
15 correct?

16 A. Correct.

17 Q. They go backwards chronologically.

18 And Mr. Pollyea was in a different time zone at the time;
19 is that right?

20 A. Correct.

21 Q. And so when we see for instance here 8:15 a.m., it would
22 have to be really two hours ahead? It would be 10:15 a.m.?

23 A. Correct.

24 Q. Otherwise -- otherwise he wouldn't have responded to you
25 before you asked the question, right?

1 A. Correct.

2 Q. Okay. And so what it appears here is that you reported
3 that you didn't have access to the system at 10:15 a.m. on
4 December 6th; is that right?

5 A. Correct.

6 Q. And that Mr. Pollyea responded to you approximately 10
7 minutes later that you were given a new password; is that
8 right?

9 A. Correct.

10 Q. And the next time that you contacted him, I believe on page
11 5, was 10:50 a.m. You requested your password be reset again?

12 A. Yes.

13 Q. And again at 11:08, your password was reset?

14 A. Yes.

15 Q. Okay. And at 11:09, you reported that you reset it again;
16 is that right?

17 A. Yes.

18 Q. Okay. And then according to this, the next time that you
19 reported it was two days later; is that right?

20 A. Yes.

21 Q. At 11:19, you said your access wasn't working?

22 A. Yes.

23 Q. And then 11:40, again you said it wasn't working; isn't
24 that right? Is it 11:40?

25 A. Yes.

1 Q. That starts on page 3.

2 MR. HEMESATH: Page 3, Mark?

3 MR. JAFFE: Yes, the bottom of page 3.

4 THE WITNESS: Yes.

5 BY MR. JAFFE:

6 Q. And then at 1:28, Mr. Pollyea reset your password that same
7 day; isn't that right?

8 A. Yes.

9 Q. You reported several hours later it appears, in the middle
10 of page 3, that your password was working again; isn't that
11 right?

12 A. Yes.

13 Q. Okay. Moving on, I believe we're on page 2 now.

14 It appears to be six full days before the next time that
15 you report that you didn't have access to the system; is that
16 right?

17 A. Yes.

18 Q. Okay. And that's at 11:05 a.m.?

19 A. Yes.

20 Q. Your access was restored at 11:18 a.m.; isn't that right?

21 A. Ah, yes.

22 Q. Okay. Thank you, Ms. Cohen.

23 You reported that you were frustrated based on your lack of
24 access to the system; isn't that right?

25 A. Yes.

1 Q. Okay. If I may call your attention to what has already
2 been introduced as Defense Exhibit F and what may be in your
3 binder as No. 6 in the defense exhibits.

4 THE COURT: Do you have the defense exhibits there?
5 There's a binder behind you. I believe that is the defense
6 exhibits.

7 BY MR. JAFFE:

8 Q. Do you see that?

9 A. I'm sorry. You said which number?

10 Q. I believe in your binder it would be Defense Exhibit 6.
11 Are they numbered or lettered?

12 A. Numbers.

13 Q. Okay. It would be No. 6.

14 A. Okay.

15 Q. Are you reviewing it?

16 Do you recall receiving this e-mail, Ms. Cohen?

17 A. I don't recall it, but it looks like an e-mail I sent.

18 Q. And if you look below the e-mail that you sent, if this can
19 refresh your recollection, did you receive an e-mail from
20 Brandon Mercer that said that they cannot prosecute unless you
21 reach \$5,000 in damages?

22 A. I don't remember it, but it appears so.

23 Q. Ms. Cohen, did you work at all for the L.A. Times around
24 December of 2010?

25 A. I did not.

1 Q. Did you edit any content for the L.A. Times around December
2 of 2010?

3 A. I did not.

4 Q. Did you ever have access to articles from the L.A. Times in
5 December of 2010?

6 A. I had permissions within the CMS, but because I never
7 touched their content, I do not know to what level my access
8 would have granted me access.

9 MR. JAFFE: Thank you, Ms. Cohen. No further
10 questions.

11 THE COURT: All right. Any redirect?

12 MR. HEMESATH: Briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. HEMESATH:

15 Q. Ms. Cohen, Mr. Jaffe asked you whether you lost any
16 documents or e-mail with regard to this incident; is that
17 correct?

18 A. Yes.

19 Q. And you didn't; is that correct?

20 A. To the best of my knowledge.

21 Q. Did you lose the ability to do your job during this period
22 of time?

23 A. I did.

24 Q. Mr. Jaffe showed you a series of e-mails with time stamps
25 indicating access restored, access lost.

1 Does that -- do those e-mails reflect all of the
2 difficulties that you had during that week?

3 A. No.

4 Q. With regard to Exhibit F that Mr. Jaffe showed you with the
5 prosecution reaching \$5,000, did that have any effect on your
6 reporting of your password difficulties and your ability to do
7 your job?

8 MR. JAFFE: Compound question, Your Honor.

9 MR. HEMESATH: I'll rephrase.

10 THE COURT: All right.

11 BY MR. HEMESATH:

12 Q. Did that \$5,000, the knowledge of that have any effect on
13 your reporting of your e-mail difficulties?

14 A. No.

15 Q. Did it have any effect on whether or not you were able to
16 do your job during that period of time?

17 A. No.

18 MR. HEMESATH: Thank you.

19 MR. JAFFE: May I, Your Honor?

20 THE COURT: Pardon me?

21 MR. JAFFE: May I redirect, Your Honor -- recross?

22 THE COURT: You may within the scope.

23 RE CROSS-EXAMINATION

24 BY MR. JAFFE:

25 Q. Ms. Cohen, you testified earlier that you could have access

1 to the CMS through other usernames and passwords of people that
2 you worked with, correct?

3 MR. HEMESATH: Objection, beyond the scope.

4 MR. JAFFE: That was not beyond the scope, Your Honor.

5 THE COURT: Overruled.

6 MR. JAFFE: Okay.

7 Q. You testified yesterday that your job responsibilities
8 include managing the website; is that correct?

9 A. Correct.

10 Q. If you had logged on --

11 THE COURT: That's yesterday, Mr. Jaffe.

12 MR. JAFFE: Yes.

13 THE COURT: So this is just -- stay within the scope of
14 the most recent redirect.

15 MR. JAFFE: I beg your pardon?

16 THE COURT: Stay within the scope of the recent
17 redirect.

18 MR. JAFFE: Okay. This -- okay.

19 Q. Would you be able to manage the website using another
20 employee's username and password?

21 MR. HEMESATH: Asked and answered and beyond the scope.

22 THE COURT: Overruled given the testimony about the
23 effect on the job.

24 BY MR. JAFFE:

25 Q. The question is would you be able to manage the website

1 using another username and password during that time,
2 Ms. Cohen?

3 A. Not to the level that my access with my username and
4 password gave me.

5 Q. And would you be able to write stories during this time?

6 A. If I had wanted to use someone else's log-in. I didn't.

7 Q. And you would be able to produce content during that time?

8 A. If I had wanted to use someone else's log-in. I didn't.

9 Q. And you would be able to operate the social media during
10 that time?

11 A. The social media I still had access to, I just couldn't
12 share content, which was my job.

13 MR. JAFFE: Okay. No further questions.

14 THE COURT: All right. Mr. Hemesath?

15 MR. HEMESATH: No. Thank you, Your Honor.

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

17 MR. HEMESATH: Yes, Your Honor.

18 THE COURT: Mr. Jaffe?

19 MR. JAFFE: No further questions. Excused subject --

20 THE COURT: All right. But subject to re-call?

21 MR. JAFFE: Yes, Your Honor.

22 THE COURT: All right. Ma'am, you may step down. You
23 may be re-called.

24 THE COURT: The government's next witness?

25 MR. SEGAL: Your Honor, the United States calls Jason

1 Jedlinski.

2 THE COURT: All right.

3 THE CLERK: Mr. Jedlinski, please come forward. I need
4 to take your photograph this morning. If you can stand with
5 your back against the wall facing me. Thank you.

6 Step into the witness stand behind you, remain
7 standing, and raise your right hand.

8 JASON JEDLINSKI, GOVERNMENT'S WITNESS, SWORN

9 THE WITNESS: I do.

10 THE CLERK: Thank you. You may be seated. Will you
11 please say and spell your first and last name for the record.

12 THE WITNESS: Yes, Jason Jedlinski, J-E-D-L-I-N-S-K-I.

13 THE COURT: Mr. Segal, you may proceed.

14 MR. SEGAL: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. SEGAL:

17 Q. Good morning, sir.

18 A. Good morning.

19 Q. In what industry -- well, what's the company that you've
20 worked for for the most time in your career?

21 A. Tribune Interactive.

22 Q. Okay. And have you had other jobs at Tribune Company or
23 just Tribune Interactive?

24 A. I've had several positions elsewhere in the company.

25 Q. Okay. Can you summarize your experience at Tribune,

1 please.

2 A. Sure.

3 I began as a journalist in newsrooms at WGN. Moved into
4 the corporate world in 2006 running content on TV station
5 websites, taking on operations, product development, and
6 revenue responsibility, and ultimately running the digital
7 business for a number of TV stations and newspapers.

8 Q. Okay. What was WGN?

9 A. Producing, writing, investigative work. It was content.

10 Q. What was WGN?

11 A. WGN television, a TV station in Chicago.

12 Q. Okay. And what kind of stories -- what kind of reporter
13 were you for them?

14 A. I was a producer, started general assignment and got into
15 special projects, which means things other than day-to-day
16 fires, shootings, news stories, but original reporting.

17 THE COURT REPORTER: I need you to slow down, please.

18 MR. SEGAL: You're in California now.

19 THE WITNESS: People in New York tell me I go too slow.

20 BY MR. SEGAL:

21 Q. Where do you work now physically?

22 A. Chicago.

23 Q. All right. In what year did you make the transition from
24 reporting to the business side?

25 A. 2006.

1 Q. Okay. And by December of 2010, what was your title and
2 your responsibility?

3 A. Vice president of products for Tribune Digital.

4 Q. Okay.

5 A. My responsibility was the web hosting platform or content
6 management system as it's called in the industry for Tribune's
7 newspaper, television, radio station properties as well as
8 external customers, other media companies who paid us to use
9 that software to run their websites.

10 Q. Okay. So this was a single system for all of those content
11 producers?

12 A. Correct.

13 Q. Okay. And if somebody out at a station or a newspaper had
14 a problem with CMS, who was their first line office that they
15 would call or e-mail?

16 A. My team. Ah --

17 Q. And if you had a problem, to whom would you escalate it?

18 A. The technology managers, the technology support teams.

19 So the best way to think of my group was a bridge between
20 the newsrooms that use the software and the technology -- the
21 IT folks who operated and managed the infrastructure. We were
22 the translators between the users and the people who worked
23 under the hood.

24 Q. Okay. And did you have business responsibilities also?

25 A. Yes.

1 Q. Okay. And explain those, please.

2 A. Most significantly negotiating, supporting and bringing
3 other media companies to use our software. Ah, we extended our
4 software, our platform as a commercial business to other
5 newspaper and TV companies, and I was solely responsible for
6 that revenue and those customers' satisfaction.

7 Q. All right. And did you talk to the Tribune stations and
8 newspapers about sort of what their business needs were and how
9 CMS could support that?

10 A. Absolutely. So, election night, if something was running
11 slowly, my team, myself would be someone who an editor or a
12 publisher or a station manager would call saying, you know,
13 this doesn't meet our needs. Or we need a product to compete
14 with Craigslist for classifieds. We need something that let's
15 us have traffic times on our mobile app. Any digital product,
16 anything that they wanted to offer, that they wanted to sell,
17 that they wanted to extend to advertisers, they would bring
18 that to my group. We would work with the corporate office to
19 get it done or project the idea.

20 Q. Okay. So geographically can you explain to us what, as
21 best you can recall, stations and newspapers within the Tribune
22 family were served by your CMS?

23 A. Yes.

24 Q. Please do.

25 A. We had, give or take one or two, about 23 television

1 stations, one radio station, 14 to 15 daily newspapers. And I
2 would generally characterize it as from WPIX in New York City
3 in the far northeast down to KSWB in San Diego in the
4 southeast, KCPQ in Seattle in the Pacific northwest down to the
5 Sun Sentinel in Miami in the southeast. So all four corners of
6 the U.S. give or take 60 or so primary websites with many other
7 smaller hangers on.

8 Q. Okay. So among those, who -- what Tribune property in
9 Sacramento used the CMS?

10 A. Fox 40 KTXL television.

11 Q. And what Tribune property in Los Angeles used the CMS?

12 A. The Los Angeles Times, KTLA television, and about six daily
13 newspapers that were regional properties, as well as Calendar
14 Live, which did the Emmy and Oscar entertainment coverage, L.A.
15 Times Deals. There were a host of ancillary products and
16 websites beyond just the core flagship news sites.

17 Q. All right. Do you recall having any problems with the CMS
18 in December of 2010?

19 A. Yes.

20 MR. SEGAL: Let's look at Government Exhibit 114, which
21 is already in evidence, so let's put it up, please.

22 May I have a moment, Your Honor?

23 Q. Can you -- can you read that on your screen, sir?

24 A. Yes.

25 Q. Okay. What was your relationship with Brandon Mercer at

1 this time?

2 A. I thought of Brandon as a customer. So the news directors
3 or editors in the newsrooms, I provided a service to them, the
4 software that ran their websites. So I considered Brandon one
5 of, you know, several hundred customers as the department head
6 at the station.

7 Q. Okay. All within the same corporate -- all Tribune?

8 A. Internal customer, yeah.

9 Q. Okay. What was happening on December 1st of 2010 that you
10 were personally involved in that led to Brandon Mercer sending
11 this e-mail to you?

12 A. As I recall, Brandon had received e-mails from an
13 individual with e-mail addresses of Fox 40 viewers and some
14 threat to take action in contacting those individuals. So
15 Brandon relayed the e-mails to me saying -- prior to this
16 e-mail, saying where did these come from, who could have had
17 them, et cetera. So he presented me with that viewer
18 information asking how would this get out, where would it come
19 from.

20 Q. Okay. And let's look at your -- so here he's asking you
21 for logs; is that right?

22 A. He's saying who from my station has been in the system?

23 Q. Okay. Let's pull out and look at your reply.

24 MR. EKELAND: Your Honor, we're just going to object
25 and restate our relevancy objection on the basis of the Cancer

1 Man e-mails at this point.

2 THE COURT: All right. That objection is recorded.
3 It's overruled. It can serve as a standing objection to any
4 questioning with respect to those e-mails.

5 MR. SEGAL: All right.

6 Q. Is 7:18 p.m. within your sort of regular work hours?

7 A. I would generally be heading home by that time.

8 Q. Okay. Who was on your team?

9 A. At the time, I had six individuals, six or seven
10 individuals reporting to me that answered questions from the TV
11 stations and newspapers. But the word you highlighted there,
12 when I said I have gathered a team, I'm referring to my support
13 folks in the technology division, the people I go to with
14 issues.

15 So I had engaged several system admins, you know --

16 Q. So Armando Caro kind of people?

17 A. Not him directly. Tom Comings was the first person I went
18 to, but folks who could tell me who had logged into the system.
19 That wasn't something I could see on my own, so I called folks
20 who could answer Brandon's question of who had logged into the
21 system recently.

22 Q. Okay. Who is Marques?

23 A. He worked for me. His title was market liaison, which
24 meant -- markets are how we defined L.A. Times, Fox 40. He was
25 the person they would call with questions, so a customer

1 service person.

2 Q. What did you direct him to do?

3 A. To reset the passwords of individuals who had access to the
4 information that was in the e-mail Brandon received.

5 Q. Why did you order that on December 1st?

6 A. In case one of those users had an easy to guess password or
7 had their password compromised, it was the quickest first step
8 I could take to secure the viewer information that was in the
9 system. Here's the universe of Fox 40 employees who have
10 access to it, and I have now forced their passwords to be
11 changed. So if someone had it that shouldn't, they no longer
12 would have access to the system.

13 Q. Okay.

14 MR. SEGAL: And can we put up 119, please, which is in
15 evidence already.

16 THE COURT: 119?

17 MR. SEGAL: Yes, it is in --

18 THE COURT: I'm not showing that's in evidence. If you
19 can please kill the screen.

20 MR. SEGAL: Would you look in the white book, please,
21 at Government Exhibit 119. I apologize, Your Honor, I thought
22 that was in.

23 THE WITNESS: 119. Yes.

24 BY MR. SEGAL:

25 Q. Who is that a reply chain between?

1 A. This is me responding to a message from Brandon where
2 Brandon is asking his department heads and others at Fox 40 to
3 please document the time you spent investigating this issue.

4 Q. Okay. And who is replying to Brandon?

5 A. In this case, I'm replying to Brandon.

6 Q. Okay. Did you type that at or about the time of -- well,
7 what's the date on your reply?

8 A. December 2nd, 9:13 p.m.

9 Q. Okay. And did you type this at or about the time that you
10 were doing this work?

11 A. Yes, that aligns with my recollection.

12 Q. Okay. I'd ask you to read it to the jury, please.

13 A. I wrote, you can put me down for the two hours yesterday
14 and an hour today.

15 Q. All right. Now can you look in your book at Exhibit 137,
16 please.

17 A. Yes.

18 Q. Do you see that?

19 A. I do. That's another e-mail.

20 Q. At what time was that e-mail -- well, who sent that e-mail?

21 A. I sent the e-mail to Andy Friedman.

22 Q. Who is Andy Friedman?

23 A. He ran a central content team that produced national news
24 stories for Tribune's newsrooms.

25 Q. What was the reporting relationship between you and

1 Friedman?

2 A. We were colleagues.

3 Q. Okay. Were you working on this project together?

4 A. This project?

5 Q. Were you both involved in the X files e-mail incident?

6 A. Yes, we were.

7 Q. Okay. And what time did you send this e-mail?

8 A. 9:35 p.m.

9 Q. Is that outside your ordinary work hours?

10 A. Yes. Well, it was unusual for me to be at the office at
11 9:35 p.m.

12 Q. Okay.

13 MR. EKELAND: I'm sorry. What exhibit are you on right
14 now?

15 MR. SEGAL: 137.

16 THE COURT: In the binder, not on the list.

17 MR. EKELAND: It's in this one. Okay.

18 (Counsel conferring.)

19 THE COURT: It's in the binder, not on the list.

20 MR. SEGAL: Right. These were -- I can explain that
21 with this witness or if the --

22 THE COURT: Well, just keep asking your questions.

23 MR. SEGAL: We need to submit a new list.

24 THE COURT: Well --

25 BY MR. SEGAL:

1 Q. Sir, have you refreshed your recollection with some e-mails
2 about this case?

3 A. Yes.

4 Q. Okay. When's the first time that you and I ever talked?

5 A. We spoke on Wednesday evening.

6 Q. Okay. And after we talked, did you call us back?

7 A. I did.

8 Q. Okay. What did you tell us about what you had in your
9 possession?

10 A. I said that when we had spoken two hours earlier, I had
11 vague memories of the incidents from five years ago. I
12 remembered it happening. I remembered being involved. I
13 remembered working late at night and ordering pizza with people
14 who were digging into the issue with me, but I didn't remember
15 the exact sequence of what happened when to confidently answer
16 your questions.

17 I retrieved a disk, one of several on which I had archived
18 e-mails over the years that I worked at Tribune, and I reviewed
19 e-mail I sent from December of 2010.

20 Q. Okay. And those were e-mails from Tribune?

21 A. E-mails I sent from my Tribune account in the month of
22 December of 2010.

23 Q. So who did you talk to before you -- did you end up giving
24 those to us?

25 A. I did.

1 Q. Okay. And at what time -- when did that happen?

2 A. 3:30 yesterday afternoon.

3 Q. Okay. And who did you need to talk to first?

4 A. My attorney from Tribune who represented the company when I
5 was an employee there.

6 Q. Okay.

7 MR. SEGAL: And, Your Honor, these have been disclosed,
8 and the defense has them.

9 THE COURT: Disclosed when?

10 MR. EKELAND: Last night, Your Honor.

11 MR. SEGAL: Last night.

12 MR. EKELAND: We got access to them last night after we
13 figured out the technical issues about --

14 THE COURT: All right. So we may need to talk more
15 about this outside the presence of the jury --

16 MR. SEGAL: Okay.

17 THE COURT: -- just because there are some evidentiary
18 questions that may be raised. But we'll do that on a break, a
19 regular break.

20 MR. SEGAL: All right.

21 Q. So at 9:35 p.m. on December 1st, what was the incident you
22 were still working on?

23 A. The messages to Brandon Mercer from an individual
24 threatening to contact Fox 40 viewers.

25 Q. All right. And did you make any communications about what

1 your plan for the rest of the evening was at 9:35?

2 A. I did.

3 Q. Okay. Is it in this e-mail?

4 A. Yes.

5 Q. Okay.

6 MR. SEGAL: Your Honor, I offer Government Exhibit 119
7 into evidence.

8 THE COURT: Any objection?

9 MR. EKELAND: We're going to object on the basis of
10 hearsay, Your Honor.

11 THE COURT: Sustained.

12 MR. SEGAL: Then existing state of mind or plan.

13 THE COURT: Sustained at this point.

14 BY MR. SEGAL:

15 Q. At 9:35 p.m., what did you plan to do?

16 A. Leave the office and go home.

17 Q. To see whom?

18 A. My family.

19 Q. And to whom did you communicate that?

20 A. My colleague Andy Friedman.

21 Q. Through what medium did you communicate that you were going
22 home to your family?

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

24 THE COURT: Overruled.

25 THE WITNESS: E-mail.

1 MR. SEGAL: Okay. Offer 137 into evidence, Your Honor.

2 THE COURT: Does the objection stand?

3 MR. EKELAND: Same objection, Your Honor.

4 MR. SEGAL: That's fine.

5 THE COURT: I'm deferring a final ruling. We'll talk
6 about this on a break.

7 MR. SEGAL: Okay.

8 Q. Would you look at Government Exhibit 138, please, sir.

9 A. Yes.

10 Q. What precautions did you take with regard to KTXL in light
11 of the X files e-mails?

12 A. We reset user passwords and deleted accounts that were not
13 clearly tied to a current employee.

14 Q. Okay. And is that what you were doing that night of
15 December 1st?

16 A. That as well as further investigation of what happened.

17 Q. Okay. Can you look at Government Exhibit 136, please.

18 A. Yes.

19 Q. Now what did Mr. Mercer ask you to cross-reference against
20 your CMS?

21 MR. EKELAND: Objection, leading.

22 THE COURT: Overruled.

23 Actually that is sustained. You can ask a foundational
24 question.

25 MR. SEGAL: Okay.

1 Q. So you explained earlier that there were these threats to
2 send out some e-mails.

3 What -- did Mercer send you any e-mail addresses?

4 A. Brandon shared the viewer e-mail addresses that were sent
5 to him within the threats, yes.

6 Q. Okay. And what did you do to investigate those e-mail
7 addresses?

8 A. I confirmed that the addresses as well as the sequence of
9 those addresses matched what was available through our content
10 management system.

11 Q. Okay. Was this -- now you said customer, internal customer
12 technical support was kind of the regular business of your
13 office; is that right?

14 A. Correct.

15 Q. Okay. And was e-mail -- how did you guys get requests from
16 your internal customers for things like technical support?

17 A. Largely e-mail.

18 Q. Largely e-mail. Okay.

19 And were these e-mails then automatically generated on your
20 server and saved when people sent you e-mails?

21 A. I don't have direct knowledge of that. That's how I
22 understand e-mail operates.

23 Q. Okay. Well, did it show up in your Outlook?

24 A. Yes.

25 Q. Okay. And you saved it?

1 A. Yes.

2 Q. And did it show up at about the time that it happened?

3 A. Yes.

4 Q. Okay.

5 MR. SEGAL: And, Your Honor, when we get to the
6 break --

7 Q. So these were ordinarily generated in the regular course of
8 your business supporting your internal customers for the CMS
9 system?

10 A. Yes.

11 Q. Okay.

12 MR. SEGAL: On that basis, Your Honor, I offer 136 into
13 evidence and understand we'll get to it.

14 THE COURT: All right.

15 MR. SEGAL: All right.

16 Q. Now I'd like you to look please at 135.

17 A. Okay.

18 Q. What time was this -- who sent this e-mail?

19 A. It was an e-mail I sent.

20 Q. At what time?

21 A. 7:47 p.m. on Thursday, December 9th, 2010.

22 Q. What were you being asked, what is the subject matter that
23 you're being asked about before you reply?

24 A. The subject matter was what information about Fox 40
25 viewers was available in the system I managed.

1 Q. Okay. Why was that important?

2 A. Fox 40 wanted to determine if other information, presumably
3 things like phone numbers or addresses, would be available to
4 whoever had obtained these e-mail addresses.

5 Q. Physical addresses you mean?

6 A. Correct.

7 Q. Okay. And what did you do to answer that question?

8 A. Used my knowledge of the system that I ran.

9 Q. Okay. But what could -- what possibility could you not --
10 well, what did you answer about the CMS system? And what was
11 the truth about the CMS system more importantly?

12 MR. EKELAND: Objection, vague, compound.

13 THE COURT: Sustained. Sustained.

14 BY MR. SEGAL:

15 Q. What information was available on the CMS system that you
16 ran?

17 A. A Fox 40 user could access the screen name, e-mail address
18 and the date that a viewer had entered a contest or submitted a
19 form on the website. That was the only information available
20 through this system.

21 Q. Okay. Now for you guys at this time, what is still the
22 uncertainty about what was available to Fox Mulder?

23 MR. EKELAND: Objection.

24 MR. SEGAL: Goes to the --

25 THE COURT: What's the objection?

1 MR. EKELAND: It's vague. Uncertainty?

2 THE COURT: Sustained.

3 BY MR. SEGAL:

4 Q. Did you add any provisos to your answer, sir?

5 A. I did.

6 Q. Why did you add that proviso?

7 A. Because I'm thorough.

8 Q. And how did you qualify your answer?

9 A. I said this is what someone could get through this software
10 program. I can't speak to what they could or could not have
11 gotten elsewhere.

12 In other words, there are other systems that have phone
13 numbers, home addresses, et cetera. And I was telling Brandon
14 I'm answering your literal question, here's what they can get
15 in this piece of software. There are other ways to get
16 information.

17 Q. Okay. Would you turn --

18 MR. SEGAL: And, Your Honor, I offer 135 into evidence
19 and understand.

20 THE COURT: All right.

21 BY MR. SEGAL:

22 Q. Would you turn, please, in your book to Exhibit 134.

23 A. Yes.

24 Q. Did you receive a warning about any other attack on --
25 relative to your CMS?

1 A. One was relayed to me, yes.

2 Q. Okay. By whom?

3 A. By Brandon at Fox 40.

4 Q. What Tribune property -- well, what internal CMS customer
5 did Brandon refer to?

6 A. Brandon sent me an article that referred to the L.A. Times
7 as a target.

8 Q. Okay. Sent you an article. Okay.

9 And what was your relationship as the -- I'm sorry. Can
10 you tell me your title again?

11 A. Vice president of product.

12 Q. What was your relationship as VP of product to the L.A.
13 Times?

14 A. The way Tribune was set up, if the L.A. Times wanted to
15 build, offer, develop, sell anything pertaining to their
16 websites, mobile apps, they had to come through my group in
17 corporate to get that done. So anything they wanted to build
18 or offer was coordinated through my division of the company.

19 Q. And you hosted their web content or you ran their web
20 content? Ran is vague.

21 What was your relationship to the L.A. Times web content?

22 A. We hosted and operated the latimes.com website. The
23 advertising, the news content, the availability of the site
24 were all run through Tribune Interactive, Tribune Digital.

25 Q. Same as Fox 40?

1 A. Yes.

2 Q. Okay. So next I want to show you Government Exhibit 133.

3 A. Okay.

4 Q. Do you recognize that?

5 A. Yes.

6 Q. Okay. Now you told us that e-mails were ordinarily
7 generated. Is this the kind of support e-mail that would
8 happen between you and the internal customers?

9 A. The incident was not typical. The e-mail was very typical.

10 Q. Okay. And to whose e-mail are you responding?

11 A. Dan Gaines.

12 Q. What did Dan Gaines consult you about on December 14th,
13 2010, in the after -- well, in the early evening, late
14 afternoon?

15 MR. EKELAND: Objection, calls for hearsay.

16 THE COURT: What's the exception?

17 MR. SEGAL: This is a business record, and I'm moving
18 it in pursuant to the testimony that he says these are business
19 records. I understand you want to rule on that at the break.
20 For now, I think the important part is just that this is what
21 gives impetus to this witness's next action where he's spending
22 a lot of time.

23 MR. EKELAND: Your Honor, e-mails are not business
24 records.

25 THE COURT: That's a separate question. I asked for

1 the hearsay exception apart from the business records.

2 MR. SEGAL: Gaine's --

3 THE COURT: Testimony.

4 MR. SEGAL: Right. Gaine's report at this time will
5 not be offered for the truth. I believe it's subject to the
6 business record exception, and we can argue that later, I
7 understand.

8 THE COURT: All right. Well, the content of what the
9 witness may say was communicated to him is not being offered
10 for the truth of the matter, but for its effect on him.

11 So you may answer the question.

12 BY MR. SEGAL:

13 Q. Did you hear anything that got you working on the night of
14 December 14th?

15 A. Yes.

16 Q. What did you hear that got you working or read in an
17 e-mail?

18 A. Dan Gaines reported that someone had made an unauthorized
19 edit to a story on the L.A. Times website.

20 Q. Now, what kind of a reaction at Tribune did that trigger?

21 A. Panic.

22 Q. Can you compare the emotion -- panic you said. Okay.

23 Who was your boss?

24 A. Don Meek, president of the digital.

25 Q. Who is Steve Gable?

1 A. Our chief technology officer for the company.

2 Q. How many people were between you and Steve Gable?

3 A. Steve and Don, my boss, were roughly counterparts.

4 Q. Okay. Were you present -- did you see Steve Gable that
5 night?

6 A. Yes.

7 Q. Were you there when he made any reports to anybody else?

8 A. Yes.

9 Q. How did he make that report?

10 MR. EKELAND: Objection.

11 THE COURT: Ask the threshold question.

12 BY MR. SEGAL:

13 Q. Who did he report to?

14 A. Steve Gable reported to Randy Michaels, who is president or
15 CEO of the company.

16 Q. You were there for that conversation?

17 A. I was present when Steve used his cell phone to call Randy
18 Michaels about the vandalism on L.A. Times.

19 Q. How did that reaction -- okay. Thank you.

20 And what did you do for the rest of the night?

21 A. Looked for opportunities for individuals to get access to
22 the system and close those off. I would compare it to, ah,
23 closing the windows and locking the doors of your house.

24 Q. Would you look at Government Exhibit 132.

25 A. Yes.

1 Q. Did you have dinner that night? Did you have dinner with
2 your family that night?

3 A. No.

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

5 THE COURT: Sustained.

6 BY MR. SEGAL:

7 Q. Where did you have dinner that night?

8 MR. EKELAND: Objection.

9 MR. SEGAL: The hours are --

10 THE COURT: The hours are, yes, so ask about that.

11 BY MR. SEGAL:

12 Q. Did you work past dinner?

13 A. Yes.

14 Q. With how many colleagues did you have to -- well, did you
15 have to make dinner arrangements with other colleagues?

16 A. I did.

17 Q. Okay. You did. All right.

18 About how many?

19 A. At least a dozen.

20 Q. Okay. What did you guys eat?

21 A. Pizza.

22 MR. EKELAND: Objection.

23 THE COURT: That objection is sustained.

24 MR. SEGAL: Okay.

25 THE COURT: I don't know if you can get the image of

1 pizza out of your mind, but if you can, please do.

2 MR. SEGAL: He actually said it about 10 minutes ago,
3 too.

4 Q. And so would you look at Government Exhibit 130 and 131,
5 please.

6 A. Yes.

7 Q. Is there a difference between those two e-mails, please?

8 A. There is.

9 Q. What is the difference?

10 A. Exhibit --

11 MR. EKELAND: Objection.

12 THE COURT: What's the objection?

13 MR. EKELAND: Calls for speculation, and it also calls
14 for opinion.

15 THE COURT: We're looking at 130 and 131? You're
16 asking him to look at 130?

17 MR. SEGAL: Yeah.

18 Q. Look at 130 and 131. Who wrote those e-mails,
19 Mr. Jedlinski?

20 A. I did.

21 THE COURT: You may look at those e-mails. Just so
22 it's clear, this witness is not being offered as any kind of
23 expert, so he's providing lay testimony.

24 MR. SEGAL: Yeah.

25 Q. You wrote them?

1 A. I wrote them.

2 Q. Okay. They're to different distribution lists; is that
3 right?

4 A. Correct.

5 Q. Can you explain the difference between the distribution
6 lists?

7 A. The distribution list in Exhibit 130 are users at Tribune
8 newspaper newsrooms, so Tribune's daily newspapers across the
9 country, people who use the web content management system to
10 post articles, photo galleries, update headlines.

11 In 131, the distribution list are newsroom workers at
12 properties owned by a company called Schurz Communications. So
13 these are newspapers, radio, TV stations not owned by Tribune,
14 but they used the same software to run their websites.

15 Q. And what are you telling them the plan is to do?

16 MR. EKELAND: Objection.

17 MR. SEGAL: This is incident response.

18 THE COURT: What's the objection?

19 MR. EKELAND: Relevance, and it also calls for hearsay
20 and lack of foundation.

21 MR. SEGAL: Your Honor?

22 THE COURT: Overruled.

23 MR. SEGAL: Offer 130 and 131 into evidence, Your
24 Honor.

25 THE COURT: We'll again talk about these on the break.

1 MR. SEGAL: Okay.

2 Q. What are you telling users of the CMS at this point that
3 you're going to do?

4 A. I'm notifying them that we are reviewing log-in accounts
5 that can access the system, that we are taking action on
6 accounts that haven't logged in recently, accounts that we
7 can't connect to an identifiable person or accounts that don't
8 have a corporate or official e-mail address with them.

9 So I'm telling these users and newsrooms across the country
10 you might not be able to log in because we're tightening our
11 security. If you have problems, here's a toll free number to
12 call, here's an e-mail address, and we'll help get back in if
13 you're an employee that has a legitimate need to access the
14 system.

15 Q. Go ahead. Sorry.

16 A. So I'm saying that was typical in the course of my job to
17 notify people there's been a change of status to something
18 you're used to, here's what's going on, here's what you can do
19 about it. That was the nature of my employment.

20 Q. Okay. So you sent this to the Tribune print properties, to
21 this outside customer. Who else received this notification?

22 A. The Tribune broadcast companies and the newsrooms of the
23 company called Local TV LLC, that was based out of Ohio.

24 Q. All right. So any Tribune print property like L.A. Times
25 would have -- was on this list; is that right?

1 A. The newsroom users.

2 Q. Newsroom users. Okay.

3 And any Tribune broadcast company like KTXL newsroom users
4 were on this list, too?

5 A. Correct.

6 Q. Okay. Would you turn in that book to Government Exhibit
7 128, please.

8 A. Yes.

9 Q. Did you -- around what time did you get back into the
10 office on the morning of December 15th?

11 A. About 9:00 a.m.

12 Q. Okay. Did you -- what, if anything, did you do to keep Dan
13 Gaines in the loop?

14 A. I would have been sending him e-mails more than phone
15 calls.

16 Q. Okay. Have you found anything -- during the previous
17 night -- let me ask you this.

18 Do you know what a super user account is?

19 A. In the context of our system, yes.

20 Q. Okay. What is a super user? How do you know what a super
21 user account is?

22 A. Because I was responsible for helping determine access
23 levels for employees, who needed what level of access to the
24 system. And I trained my team on how to understand those
25 access levels and teach the newsrooms what those access levels

1 were. So --

2 Q. Please explain to the jury what a super user account was on
3 the CMS, the Tribune CMS system in 2010.

4 A. In the context of our system, a super user account could
5 edit content, delete content, edit or delete users, change
6 permissions of users within the content application itself.
7 Regardless of where you worked, regardless of your job duties,
8 you could change anything in the application and in the
9 software.

10 Q. All right. That night of December 14th, what did you do to
11 investigate what credentials had super user level access or
12 permissions?

13 A. Access the list of super users in the program.

14 Q. Okay. Did any stick out to you?

15 A. Yes.

16 Q. Do you recall any of them?

17 A. Yes.

18 Q. Okay. Which ones did you report back to Dan Gaines?

19 A. Anon1234 and arseface were two super user accounts that we
20 deleted that had no legitimate purpose in the system.

21 Q. Okay.

22 MR. SEGAL: Actually, Your Honor, I offer Government
23 Exhibit 128 into evidence. This one has been in the book for a
24 long time.

25 THE COURT: Any objection?

1 MR. EKELAND: No objection, Your Honor.

2 THE COURT: All right. 128 is admitted.

3 (GOVERNMENT'S EXHIBIT 128, e-mail dated 12/14/10,
4 ADMITTED INTO EVIDENCE.)

5 BY MR. SEGAL:

6 Q. What did that mean to your work that there were super user
7 accounts anon1234 and the other one?

8 MR. EKELAND: Objection.

9 THE COURT: What's the objection?

10 MR. EKELAND: Sorry. I didn't hear Your Honor.

11 THE COURT: What is the objection?

12 MR. EKELAND: It's vague and overbroad. What does it
13 mean to your work?

14 THE COURT: It's also compound if I understand, so
15 sustained.

16 BY MR. SEGAL:

17 Q. How important to your next few days -- how important to
18 your work planning was it and your incident response -- how
19 important to your incident response was it that you had found a
20 user ID called anon1234?

21 MR. EKELAND: Objection, same objection, Your Honor.

22 THE COURT: You're characterizing in the question.

23 BY MR. SEGAL:

24 Q. What is the significance of your finding a super user
25 account arseface?

1 MR. EKELAND: Objection, same objection, Your Honor,

2 THE COURT: Well, you can answer that. If there's any
3 significance, you can answer that.

4 THE WITNESS: By discovering these super user accounts,
5 it told us that a level of access that was supposed to be
6 reserved for a handful of central corporate employees had
7 accounts we didn't recognize. So that was a significant
8 security breach.

9 BY MR. SEGAL:

10 Q. You say security breach. Why is that?

11 A. They were accounts with enormous power in our system that
12 we could not recognize and appeared to have no legitimate
13 purpose. We didn't understand why they were there, how long
14 they had been there, and that's incredibly concerning.

15 Q. And what did you have to spend the next several days
16 accomplishing with regard to accounts like that?

17 A. Deleting them.

18 Q. Okay. Sir, how many people reported to you?

19 A. At this time -- I know earlier I said six to eight. That
20 was in the context of the market services team. At this time,
21 I had about 35 directly to me.

22 Q. Can you look, please, at Government Exhibit 129.

23 A. Yes.

24 Q. Do you recognize that?

25 A. I do.

1 Q. That's one of your e-mails as well?

2 A. Yes.

3 Q. Who is Robin Ross or who was she?

4 A. She was the manager of the unix server team.

5 Q. And what's being tallied as of December 16th of 2010?

6 MR. EKELAND: Objection.

7 THE COURT: Overruled.

8 THE WITNESS: She provided a list of hours that her
9 team spent responding to this security incident and tightening
10 our security controls.

11 BY MR. SEGAL:

12 Q. And what did break fix hours mean?

13 A. Break fix hours were -- I would compare --

14 THE COURT: Hold on. What's the objection?

15 MR. EKELAND: Calls for speculation.

16 THE COURT: Sustained.

17 MR. EKELAND: I don't know if he's got --

18 BY MR. SEGAL:

19 Q. Do you know what break fix hours mean?

20 A. Yes.

21 Q. How do you know?

22 A. From the context of operating and supporting the software
23 for four years of my career.

24 Q. Were you personally involved in the break fix in mid
25 December of 2010?

1 A. Yes.

2 Q. What does break fix hours mean?

3 A. Break fix I would compare to locking a door, closing a
4 window. It is taking action as a result of an incident. Be it
5 a bug, be it a crash, be it an outage, it is stopping the
6 bleeding.

7 Q. Who is Brian --

8 A. Heusinkveld.

9 MR. SEGAL: I'll spell that for the reporter.

10 H-E-U-S-I-N-K-V-E-L-D.

11 Q. Who is that?

12 A. One of the best system administrators I've ever worked
13 with.

14 Q. Did you personally observe him working on this project?

15 A. I did.

16 Q. Who is Sabrina Downard?

17 A. Another system admin.

18 Q. Conor Casey?

19 A. System admin.

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

21 THE COURT: Overruled.

22 BY MR. SEGAL:

23 Q. Craig Hancock?

24 A. They may not all have the title, but their functions were
25 unix server administrators, everyone on this list.

1 Q. Satish -- can you pronounce that?

2 A. I can't help you with that. Brian I can help with.

3 MR. SEGAL: I'm going to spell it for the reporter.

4 S-A-H-A-S-R-A-B-U-D-H-E.

5 THE WITNESS: Same team, same job.

6 BY MR. SEGAL:

7 Q. Computer guy?

8 Joe Bazooka?

9 A. Bezouska, but we called him Bazooka Joe.

10 Q. Okay.

11 A. Same team, unix server admin.

12 Q. And Robin Ross you already described?

13 A. Manager of that team.

14 Q. Okay. This is a yes or no. Do you know if these people
15 worked the break fix hours indicated in this e-mail?

16 A. No.

17 Q. Okay. Do you know if they worked the incident?

18 A. Yes.

19 Q. How do you know they worked the incident?

20 A. I worked it with them and observed them firsthand.

21 Q. Okay. In terms of urgency, how does this incident compare
22 to any other security incident that happened on CMS while you
23 were at Tribune?

24 MR. EKELAND: Objection, calls for speculation.

25 THE COURT: Sustained. You can lay a foundation if

1 you're able.

2 BY MR. SEGAL:

3 Q. So when you were at CMS, did you have other security
4 incidents?

5 A. No significant ones outside of December 2010 that I recall.

6 Q. This one?

7 A. I said outside of this incident of December 2010, no.

8 Q. All right. So how does this one compare to any of the
9 other incidents you're thinking about?

10 A. Night and day.

11 MR. EKELAND: Objection, asked and answered.

12 THE COURT: Overruled.

13 MR. SEGAL: All right.

14 Q. How much time did you personally spend on this incident?

15 A. This incident being --

16 Q. Good point. I'm sorry. Let's start with the X files
17 e-mail list.

18 Is that specific -- with the KTXL piece, how much did you
19 spend on that?

20 A. I spent -- with these e-mails refreshing my recollection
21 and the distance of five years, I would say I spent about five
22 hours on the initial investigation, probably 20 hours helping
23 direct the, what I call, remediation afterwards. The analogy
24 would be putting a deadbolt on your door, you know, just better
25 protecting the house.

1 Q. Okay.

2 A. So 25 hours on the Fox Mulder e-mails.

3 Q. Okay. So -- but five hours on incident response; is that
4 right?

5 A. Yes.

6 Q. Okay. And on L.A. Times with -- for that internal customer
7 on the same CMS system, how much time did you spend on incident
8 response?

9 A. 15 hours.

10 Q. 15 hours. Okay.

11 Did you have a lower -- did you once give us a slightly
12 lower estimate for KTXL?

13 A. When we spoke on Wednesday I did.

14 Q. Okay. And what changed?

15 A. Reviewing these e-mails and seeing how much work went
16 into -- we did more than I remembered before the L.A. Times
17 incident.

18 Q. Okay. So that's a total of 20 hours?

19 A. Yes.

20 Q. Okay. And, I mean, everybody has heard everyone ask this
21 already of everyone. What was your salary in December of 2010?

22 A. I don't recall my salary, but I looked at my tax statement
23 for 2010, and Tribune reported paying me 170,000 for the year.

24 Q. That's 170 on your W-2?

25 A. Correct.

1 Q. And that's for calendar year 2010?

2 A. Yes.

3 Q. Okay. And that's -- well, it's your W-2 so that's
4 compensation for your personal services?

5 A. Yes.

6 Q. Okay. Were you -- for that you were expected to work 52 --
7 can we assume a 52-week year?

8 A. Yes.

9 Q. Okay. And we saw that you sometimes worked late, but can
10 we assume a 40-hour week?

11 A. If you'd like.

12 Q. Technically what were they paying you for?

13 A. 40 hours a week.

14 Q. Okay. But you're a hard worker when you have to be?

15 A. Yes.

16 Q. Okay.

17 MR. SEGAL: All right. That's all I have on direct.

18 Thank you.

19 THE COURT: All right. Cross-exam.

20 MR. EKELAND: Yes, Your Honor. It's going to take a
21 second because we have -- we've just got all these exhibits.

22 (Pause in proceedings.)

23 CROSS-EXAMINATION

24 BY MR. EKELAND:

25 Q. Good morning, Mr. Jedlinski. Am I saying that right?

1 A. Yes.

2 Q. My name is Tor Ekeland. I represent defendant Matthew Keys
3 over there at the table. And that's Jay Leiderman and Mark
4 Jaffe, my co-counsel. I'm going to ask you a few questions
5 about what you just testified to.

6 I want to just go to the subject area of the hours that you
7 spent working on the responses to -- we call them the Cancer
8 Man e-mails. I believe Mr. Segal was calling them the X files
9 e-mails.

10 As a normal part of your job, did you log your hours?

11 A. No, I did not.

12 Q. Did you use any kind of timer when you recorded your time
13 that you spent on these e-mails?

14 A. No, I did not.

15 Q. Okay. Turning your attention to the December 14th edit of
16 the L.A. Times website article, you didn't use a timer to
17 record your time for that?

18 A. No.

19 Q. Okay. Now just turning to the L.A. Times edit, your
20 response to it. I just got -- I just got your e-mails late
21 last night, and I scanned them, so I'm hoping I'm understanding
22 what I'm reading in them from, you know, my quick read of them.
23 Maybe you can correct me if I'm wrong.

24 But as part of your response, when you looked at the
25 accounts that were able to access the CMS, you discovered that

1 there were a number of old accounts for employees that were no
2 longer at Tribune, correct?

3 A. Yes.

4 Q. And you went about -- part of your response was actually
5 cleaning up the system and removing a bunch of users that
6 shouldn't have been there because they left the company?

7 A. Yes.

8 Q. And you found additional accounts and whatnot that you
9 needed to remove as well, correct?

10 A. Yes.

11 Q. So it's fair to say that a good portion of your time was
12 just spent actually cleaning up the system because there were
13 all sorts of users who shouldn't have had access to the CMS
14 system; is that correct?

15 A. Correct.

16 Q. Then I just want to go real quick to what -- your
17 understanding of what happened on December 14th with the L.A.
18 Times edit.

19 Now it's correct that a user named N. Garcia is what was
20 used to access the CMS system, correct?

21 A. Username N. Garcia edited that story, correct.

22 Q. Right.

23 So it was a username N. Garcia with a password accessed the
24 system, and then they edited the story; is that correct?

25 A. Yes.

1 Q. So -- okay. And so essentially when the CMS, you know, got
2 the N. Garcia username and got the password, the system
3 basically let N. Garcia in as if it was a valid username and
4 password combination. And whoever was using that username N.
5 Garcia was able to edit the L.A. Times article exactly as any
6 other authorized user on the CMS would be able to do?

7 A. I'll say yes. May I qualify that?

8 Q. Sure.

9 A. I don't have direct knowledge that that's what happened in
10 this incident. It is by far the most likely scenario. That's
11 how the system is designed to work, but I couldn't testify that
12 that is how that person or any person on that day made that
13 change.

14 Q. Right. But --

15 A. What you described is exactly how it's supposed to work,
16 yes.

17 Q. Right.

18 And that's your understanding of what happened, correct?

19 MR. SEGAL: Asked and answered.

20 THE COURT: Overruled.

21 THE WITNESS: I have no knowledge either way.

22 But I would expect it to have worked that way because
23 that's how it's supposed to work, but I don't know yes or no.
24 I have no facts either way. I never -- I was never involved in
25 looking at how did that person do that. I was focused on

1 making sure it didn't happen again.

2 BY MR. EKELAND:

3 Q. And as you testified, part of that response was basically
4 cleaning up the CMS system because it's fair to say that it was
5 full of accounts that were no longer active or shouldn't have
6 been on there, correct?

7 A. I wouldn't characterize it as full, but there were many
8 accounts that did not belong, yes.

9 Q. Okay. So there were many accounts that didn't belong on
10 there.

11 And do you recall -- you reviewed all these e-mails that
12 you turned over to the government yesterday at 3:30, right?

13 A. Yes.

14 Q. And do you recall saying in your e-mails that the CMS
15 system -- I'm sorry. Let me back up.

16 As part of your response, it's my understanding that as you
17 were looking at all these unauthorized accounts or old
18 accounts, you essentially reset the usernames and passwords for
19 the system; is that correct?

20 A. For accounts that we could not confirm, yes. Not for every
21 account.

22 Q. Okay. So -- okay. So there were a certain number -- and
23 then you sent out e-mails to those accounts saying, hey, we
24 need confirmation that you're an actual account, and we'll let
25 you back in?

1 A. We reset suspicious or unknown accounts and then told all
2 users, the whole universe, if you can't get in, here's why.

3 Q. Right.

4 A. So we didn't just notify the people who we reset. We reset
5 the ones we couldn't vouch for and then told everyone, if
6 you're having trouble getting in, please do these steps.

7 Q. Right.

8 And do you recall writing in these e-mails that I saw last
9 night that the CMS was functioning normally at this time?

10 A. The content management -- the content management system was
11 functioning normally. What I said in the e-mail was, on the
12 night of December 14th, as we were removing so many accounts,
13 users could not log in to the content management system.

14 Q. Right.

15 A. The software was working, but journalists in several
16 newsrooms had problems logging in because we were cleaning up
17 so much.

18 Q. Okay.

19 MR. EKELAND: Well, thank you very much. No further
20 questions.

21 THE COURT: Any redirect?

22 MR. SEGAL: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. SEGAL:

25 Q. So this process of killing passwords, is that a fair way

1 to -- do you know what I mean when I say that?

2 A. Yes.

3 Q. Okay. This process of killing user accounts, can you
4 explain how it fits into the burglarized house, the analogy
5 that you used before? What's its function?

6 MR. EKELAND: Objection.

7 THE COURT: Overruled.

8 THE WITNESS: Changing the locks so people that had a
9 key that shouldn't have a key couldn't get back in.

10 BY MR. SEGAL:

11 Q. And what concerned you about the way that the N. Garcia key
12 had been used?

13 A. It was used to deface a story on latimes.com.

14 MR. EKELAND: Objection.

15 MR. SEGAL: Within the house analogy.

16 THE COURT: You may answer.

17 THE WITNESS: It would be as if someone was in the
18 house writing on the walls.

19 BY MR. SEGAL:

20 Q. And was this all part of your restoring the integrity of
21 your systems?

22 A. What are you referring to by this?

23 Q. Thank you.

24 Finding unauthorized user accounts and killing them.

25 A. That was the most important thing we could do at that

1 moment.

2 Q. Okay.

3 MR. SEGAL: Thank you, Your Honor.

4 THE COURT: Anything further, Mr. Ekeland?

5 MR. EKELAND: No, Your Honor.

6 THE COURT: All right. This witness is excused,

7 Mr. Segal?

8 MR. SEGAL: Yes, Your Honor. Thank you.

9 THE COURT: Mr. Ekeland?

10 MR. EKELAND: Yes, Your Honor.

11 THE COURT: All right. You may step down, sir. You're
12 excused.

13 The government's next witness? We have about 20 more
14 minutes. If you want to stretch while this witness is coming
15 in, feel free.

16 Who is the government calling now?

17 MR. SILVER: The government calls Alan Russell Schmidt.

18 THE COURT: All right.

19 (Pause in proceedings.)

20 THE CLERK: Mr. Schmidt, please come forward. You can
21 set your boxes on the counter there, and then I need to take
22 your photograph.

23 You can just set them on the counter in front of where
24 you'll sit. If you can stand here in front of the wall, sir.

25 I need to take your photograph this morning.

1 Judge, can I do the photo at the end?

2 THE COURT: That's fine.

3 THE CLERK: If you'll step into the witness stand,
4 remain standing and raise your right hand.

5 ALAN SCHMIDT, GOVERNMENT'S WITNESS, SWORN

6 THE WITNESS: I do.

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

8 Will you please say and spell your first and last name
9 for the record.

10 THE WITNESS: Alan Schmidt. A-L-A-N, S-C-H-M-I-D-T.

11 THE COURT: You may proceed.

12 MR. SILVER: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. SILVER:

15 Q. Good morning.

16 A. Good morning.

17 Q. Where do you work, sir?

18 A. For the Federal Bureau of Investigation.

19 Q. And how long have you worked there?

20 A. Since June 2003.

21 Q. And what are your current duties?

22 A. I am a computer analysis response team forensic examiner.

23 Q. And what does that mean?

24 A. That means I am a digital forensic examiner. I take apart,
25 umm, computers or take data off of anything that really stores

1 data, cell phones, computers, hard drives.

2 Q. What training have you received for this position?

3 A. I started training in February '05 and was certified by the
4 Federal Bureau of Investigation in June '06 to do, ah,
5 forensics on what's called Wintel, which is the Windows
6 operating system on the Intel platform. And then later on, I
7 was certified in Mac for Mac operating system forensics.

8 Q. Have you worked on the investigation of Matthew Keys?

9 A. Yes.

10 Q. Can you describe how your involvement in that investigation
11 started?

12 A. Yes. The case agent submitted a -- the computer analysis
13 response team, we use the term CART in the FBI.

14 So he --

15 Q. I'm sorry. CART stands for something?

16 A. Computer analysis response team.

17 And so the case agent submits a CART service request
18 requesting that evidence that, ah, we obtain in the case be
19 processed and available for review.

20 Q. And what did you do in response to that request?

21 A. I checked the evidence out of our evidence control room and
22 proceeded to follow our standard operating procedures to make
23 an exact duplicate image of the media, ah, that was obtained in
24 the case.

25 Q. What's in the boxes?

1 A. This is the evidence that I checked out and processed and
2 prepared for the case agent. It's the original evidence.

3 Q. You said earlier an exact forensic copy; is that right?

4 A. Yes.

5 Q. Can you explain to the jury what that means.

6 A. That means I take the hard drive -- in this case, there was
7 a laptop and two external hard drives. I took the hard drive
8 out of the laptop. I plugged it into one of my systems that
9 had a piece of hardware attached to it that prevented anything
10 from my computer writing to the original evidence hard drive.
11 And then, in addition, my computer is installed with software
12 that prevents -- that mounts to the piece of evidence or the
13 hard drive as read only. So nothing changes on the original
14 evidence.

15 And --

16 Q. Let me interrupt you there.

17 You said it's read only?

18 A. Read only.

19 Q. What does that mean exactly?

20 A. Well, that means that, umm, I can see the data, but I can't
21 write anything to the -- to the piece of media, to the hard
22 drive.

23 Q. I see. So this is a -- I think you said it's a write
24 blocker?

25 A. That's correct.

1 Q. Please continue.

2 A. And then I run some software that makes a forensic -- an
3 image or a bit-for-bit copy.

4 Q. I'm sorry. Let me stop you there again.

5 You said image?

6 A. Image.

7 Q. And bit-for-bit copy?

8 A. Yes, it's a bit-for-bit duplicate of the original.

9 Q. What do you mean by bit for bit?

10 A. Every user-accessible piece of the hard drive, ah, in
11 evidence is copied to an image file, and that is actually our
12 working copy. That's what we're going to be working with going
13 forward instead of working with the original evidence, so that
14 nothing happens to the original evidence.

15 Q. So after you make the forensic image copy, do you check it?

16 A. I do. There's -- as part of the tool that we use, there is
17 a mathematical algorithm and a computation, if you will, that
18 provides a unique value or identifier. And it compares -- it
19 creates that for the hard drive, and it creates it for the
20 image, and then it compares the two to make sure that they're
21 identical.

22 Q. Let's say that on the original one letter was changed on
23 one Word document. Would that change this value that you just
24 described?

25 A. Yes.

1 Q. And so if the two values are the same, what does that mean?

2 A. If the two values are the same, then it's an identical
3 copy.

4 Q. What was the relationship of the two values here?

5 A. They were verified as an exact duplicate. My -- my image
6 files were verified as an exact duplicate of the original.

7 Q. And what did you do with the exact duplicate copy? Where
8 did it end up?

9 A. It ended up -- at the FBI, we have a system that we upload,
10 ah, images to. It's a network attached storage system, and
11 that's where we do all of our processing and that's where the
12 images ended up for processing.

13 Q. And after uploading it, what was your next step in the
14 investigation?

15 A. So, after that was completed, I put all of the evidence
16 back together, and I resubmit it to evidence control for
17 storage. And then I begin processing the image and preparing
18 it for the case agent to review.

19 In this case, we used Access Data Lab, ah, Version 3.

20 Q. Do you have training -- what is Access Data Lab?

21 A. Access Data Lab is a software tool that is -- it basically
22 takes our image file and looks through it. It actually starts
23 finding files and categorizing those files and putting them
24 into a format that the case agent can more easily look through
25 and -- and locate things that he's looking for in his case.

1 Q. Have you received any training on this Access Data tool?

2 A. I have.

3 Q. What training is that?

4 A. The FBI sends us to regular training. I've been to -- when
5 each of the new versions comes out, there's some training that
6 goes along with that. There is -- I went through training the
7 trainer, so I'm able to train people on, ah, the actual tool,
8 the use of the tool. And so a lot of training, I guess.

9 Q. Can you show the jury what's in those boxes?

10 A. I can.

11 Q. Please do.

12 THE COURT: Are you asking the witness just to remain
13 on the stand --

14 MR. SILVER: Yes, Your Honor.

15 THE COURT: -- and open the boxes? All right.

16 MR. SILVER: Unless the Court has another preference to
17 approach.

18 THE COURT: No, that's the best practice at this point.

19 THE WITNESS: So, in this --

20 THE COURT: If you need to move binders to the cart
21 behind you to allow a little more stability --

22 THE WITNESS: Thank you.

23 THE COURT: -- you may do that.

24 (Off-the-record discussion with Courtroom Deputy.)

25 THE WITNESS: In this first box, I have -- so in this

1 first box, I have two envelopes, ah, that contain two brown
2 paper bags that contain the -- this is one of the hard drives I
3 was examining and one of the external hard drives I was
4 examining. This is the other hard drive that was examined.
5 And I have -- on both of them, I have written the case number,
6 the evidence item that we give it, which is -- this particular
7 one is 1B2, hard drive zero -- and the date I examined it and
8 my initials.

9 This one is the same. It's got the case number, 1B3,
10 hard drive zero, and the date 12/19/2012 and my initials.

11 The documents inside the box are our chain of custody
12 and description of the items.

13 In the larger box, I have a brown paper bag that the
14 actual evidence did get shipped in and then MacBook Pro laptop
15 and power supplier to power the MacBook Pro. And I also put
16 the case number, the date and initialed it as well.

17 MR. SILVER: Thank you, sir.

18 At this time, Your Honor, nothing further with this
19 witness.

20 THE COURT: All right. Any cross?

21 MR. LEIDERMAN: No cross.

22 THE COURT: All right.

23 MR. LEIDERMAN: Did we fill 20 minutes?

24 THE COURT: Pardon me?

25 MR. SEGAL: Your Honor, this might be a good time for a

1 break because we've got to put on Agent Cauthen.

2 THE COURT: Well, we'll let Mr. Schmidt gather up his
3 items, and then Ms. Schultz still needs to take your photo.

4 Are you ready for that now, Ms. Schultz?

5 THE CLERK: Fingers crossed.

6 THE COURT: All right. And then we will plan on taking
7 our break.

8 But just to -- I think the best choreography is to
9 allow the witness to complete his work and leave before you
10 leave, so just hold on a minute or two.

11 THE CLERK: Sorry. Let's try the picture again.

12 THE WITNESS: Sure.

13 THE CLERK: Thank you. We'll all set. Thank you.

14 THE WITNESS: Thank you.

15 THE COURT: All right. Ladies and Gentlemen of the
16 jury, we have come to a good time for the morning break. I
17 think this will be at least a 20-minute break given some of the
18 housekeeping we have to do.

19 During the break, as always, please remember my
20 admonitions not to discuss the case or do any research. If
21 anyone attempts to reach out to you, let me know.

22 Have a good break. We'll be back as soon as we can.

23 (Jury not present.)

24 THE COURT: All right. Two things really. One is the
25 e-mail set. My exhibit list, just so you know, jumps from 127

1 to 201.

2 MR. SEGAL: May I approach, Your Honor?

3 THE COURT: Yes.

4 MR. SEGAL: Okay. There's a reason for that, which is
5 that we got these e-mails yesterday.

6 THE COURT: Well -- okay. I see that. So the exhibit
7 list you meant to give the Court did stop at 127 leaving the
8 possibility of an additional 100 series.

9 MR. SEGAL: Yes.

10 THE COURT: All right. So -- but you had said at one
11 point that 128 had always been in the binder.

12 MR. SEGAL: I must have been wrong about that. I know
13 we added 128 before last night.

14 THE COURT: And there was no objection, so I'm just
15 trying to get clear on any disconnect.

16 MR. SEGAL: No, it's been -- you know, I mean, it's
17 hard on Friday, Judge. I'm sorry.

18 MR. HEMESATH: Your Honor, there were two sets of
19 additional exhibits. They've all been discussed with defense
20 counsel. 128 was added to everyone's binder yesterday, I
21 believe.

22 THE COURT: All right. Well, the --

23 MR. EKELAND: That's correct. We had it in your
24 binder. So --

25 MR. HEMESATH: So what I can do is get you a new

1 exhibit list as soon as I possibly can that reflects those
2 changes.

3 THE COURT: You can do that. Obviously the key is --
4 I'm just trying to figure out timing here.

5 So the set covered with -- I'm sorry --

6 MR. SEGAL: Jedlinski.

7 THE COURT: -- Jedlinski is really 133 to 138?

8 MR. SEGAL: I'll have to go back and -- I didn't move
9 every one of them in either, so --

10 MR. LEIDERMAN: I see 129 is the table.

11 THE COURT: All right.

12 MR. HEMESATH: It would have started at 129, I believe.

13 MS. WALDROP: To 138.

14 MR. HEMESATH: There were 10 additional exhibits. And
15 to be exceedingly clear about what else was added, there was an
16 additional exhibit that we also handed over last night with
17 regard to the power point slides, the Assembler logs.

18 THE COURT: What exhibit numbers are those?

19 MR. HEMESATH: And that was in light of the meet and
20 confer.

21 THE COURT: What was that?

22 MR. HEMESATH: 307 was added last night, and 303 was
23 added the day before that.

24 THE COURT: 303 is in.

25 MR. HEMESATH: It's in, but it's probably not on your

1 exhibit list.

2 THE COURT: I handwrote it in.

3 MR. HEMESATH: Okay. So 307 was added last night. Not
4 controversial, just not on your list.

5 THE COURT: I just want to talk about Jedlinski at this
6 point. Some of the e-mails are e-mails covered with Brandon
7 Mercer with additional material. So the government's
8 representation is it did not have these until Wednesday.

9 MR. SEGAL: Representation with witness testimony.

10 MR. EKELAND: And we don't dispute that, Your Honor.

11 THE COURT: All right. So --

12 MR. LEIDERMAN: We had them very late last night. I
13 don't think we got them until after 9:00 o'clock.

14 MR. SEGAL: Well, there's a little bit --

15 MR. EKELAND: Just to clarify, the government, when we
16 met to talk about the power point slide show, gave me a disk of
17 these e-mails. I went back to the hotel to work, and when I
18 went to go open the disk, I couldn't open it up. We spent a
19 little bit of time figuring out how to get these e-mails open.
20 I got them probably open about 9:30 last night.

21 MR. LEIDERMAN: To be fair, the government was rather
22 helpful.

23 MR. EKELAND: Yeah, this is not -- I don't see any bad
24 faith there on the part of the government. I think this stuff
25 just showed up at the last minute, and now we're dealing with

1 it.

2 MR. SEGAL: If you want more complexity, we --

3 THE COURT: Well, the defense has had a chance now to
4 ask questions. My main question was about 137, which I don't
5 believe any portion of the Mercer e-mail came in or was
6 reviewed with Mr. Mercer.

7 MR. SEGAL: I don't need 137 in. I'll just withdraw
8 it.

9 THE COURT: All right.

10 MR. SEGAL: I mean, he's testified to -- the importance
11 of this e-mail -- well, you don't care. I just said I withdraw
12 it.

13 THE COURT: All right. Which other -- is the
14 government attempting to introduce in that series between 129
15 and 138?

16 MR. SEGAL: Could I have one minute with co-counsel to
17 answer that question?

18 THE COURT: Why don't you meet and confer during the
19 break and just be clear which ones does the government want in
20 and which ones is the defense objecting with 137 withdrawn.

21 MR. EKELAND: Okay.

22 MR. SEGAL: And then --

23 THE COURT: And then on the completeness, so help me
24 understand the defense argument. It is the case as a general
25 rule, is it not, that a defendant, if he doesn't testify,

1 doesn't have the right to get in exculpatory testimony through
2 a back door. So that's a guiding principle.

3 MR. LEIDERMAN: That's true unless, of course, it helps
4 understand the testimony in light of what's given. And there
5 were a lot of -- there were a lot of answers that were
6 revisited. And, you know, as you go through the transcript, it
7 becomes, well, what I told you before about this -- and I don't
8 remember -- I have specifics.

9 THE COURT: I understand that, and I've read -- I've
10 read most of -- but it seems to me there are portions that
11 don't need to be played, at least certain portions that just
12 are truly tangential or don't provide necessary context.

13 MR. LEIDERMAN: Okay.

14 THE COURT: Have you gone through and pinpointed where
15 the essential context is?

16 MR. LEIDERMAN: No, I have not.

17 THE COURT: All right. I think that's -- without that,
18 unless your argument really is the whole --

19 MR. LEIDERMAN: I think the whole -- I think the whole
20 tape should come in because it shows the whole manner of what
21 goes on.

22 You have a repetitive theme from Agent Cauthen that
23 we're the government, we're your friends, we're not here to
24 hurt you, we're here to help you, we need you to tell the
25 truth, and that informs his testimony in each regard. I mean,

1 it is said -- as you look at, for example, the beginning
2 portions, it is said in repetition before any substantive or
3 important question is asked.

4 THE COURT: No, I understand all of that.

5 And the prosecutor isn't -- is expressly not seeking to
6 have the testimony or the statement of Agent Cauthen that
7 prosecutors are people, too, which --

8 MR. SEGAL: All I want --

9 THE COURT: Here it's an agent, and the agent concedes.

10 So here are my questions just looking at what I've
11 looked at. First of all, the second recording, is that just a
12 change of tape?

13 MR. SEGAL: He was wearing two devices just to make
14 sure.

15 THE COURT: But -- so that's my question. Are there
16 two recordings?

17 MR. SEGAL: There are two recordings of the same
18 conversation

19 THE COURT: Are they identical?

20 MR. SEGAL: You know, one of them was in his -- they're
21 identical in that --

22 THE COURT: Mr. Hemesath just shook his head.

23 MR. SEGAL: It's because one starts a little later than
24 the other.

25 MR. LEIDERMAN: There you go.

1 MR. SEGAL: It starts at different times. Other than
2 that, yeah, it's the same conversation.

3 THE COURT: So is this the most inclusive --

4 MR. SEGAL: The transcript is a composite of where the
5 agent kind of listened to both recordings and did the best he
6 could to convey what happened. We've got -- our snippets are
7 not both recordings. Our snippets are from the device that
8 best captured that point in the conversation.

9 MR. LEIDERMAN: Which, of course, didn't capture the
10 beginning where they woke him up out of bed.

11 THE COURT: Well, that's -- at least there's reference
12 to that in what I have. But -- so this is a cut and paste?

13 MR. SEGAL: No. No. The --

14 THE COURT: My -- is there something that would
15 represent the most inclusive transcript that has everything?

16 MR. SEGAL: That's it.

17 THE COURT: This is it?

18 MR. SEGAL: Yes.

19 THE COURT: You agree with that?

20 MR. LEIDERMAN: I do agree with that, yes.

21 THE COURT: All right.

22 MR. SEGAL: Now --

23 THE COURT: Do we know the start time?

24 MR. SEGAL: It's probably on the -- it's probably on
25 the warrant, on the return. I don't know exactly.

1 THE COURT: All right.

2 MR. LEIDERMAN: Is it?

3 THE COURT: So then, I mean, I think one contextual
4 would be to identify the date and the time of the recording.
5 But then -- here's -- there are some examples where I think
6 there is context that has not been included based on what's
7 highlighted to provide some clarity --

8 MR. SEGAL: For example, Your Honor?

9 THE COURT: -- of what Mr. Keys is saying.

10 MR. SEGAL: Okay.

11 THE COURT: Well, on page 15, I understand the
12 recording says -- starts with Mr. Keys' statement, "Just wanted
13 to get that out." None of that is included.

14 MR. SEGAL: Is the Court looking at ECF document 72
15 or --

16 THE COURT: I'm looking at what I was handed as a
17 transcript --

18 MR. SEGAL: Last night?

19 THE COURT: -- the most -- whatever you provided
20 Ms. Schultz, who gave to me the current set --

21 MR. SEGAL: Okay.

22 THE COURT: -- of the excerpts.

23 MR. SEGAL: Okay.

24 THE COURT: So just -- it's minor, but on page 15, it
25 would appear that some of the lines above "Just wanted to get

1 that out" should come in for context.

2 MR. SEGAL: Okay.

3 THE COURT: On page 19 --

4 MR. SEGAL: I need to catch up with you, Your Honor.

5 THE COURT: I'm just giving you some examples here,
6 because I think the problem is, in terms of timing, either I'm
7 going to give you back a copy of this transcript indicating
8 additional material that needs to be added -- and I don't know
9 how quickly you can move to do that. So there are at least
10 certain cases where I believe context needs to be added.

11 So the question for the government would be would you
12 simply want to play the whole tape or wait for preparation of
13 something that includes context? If you're looking at page 19,
14 as I understand it, the recording begins "I didn't want to do
15 the logging."

16 I think that requires going back to page 18 --

17 MR. SEGAL: Okay.

18 THE COURT: -- to clarify what the logging refers to.

19 MR. SEGAL: So I think we're looking at different
20 versions actually. We plan --

21 THE COURT: Well, I'm looking at what you represented
22 to me is --

23 MR. HEMESATH: I believe what I sent Ms. Schultz
24 yesterday, and I'm reading directly from that attachment, has
25 all of the 19 highlighted. Is that what you're looking at?

1 THE COURT: It does have all 19 highlighted. My point
2 is, at the top, it says "I didn't want to do the logging." So
3 I do think for context -- I believe the last excerpt doesn't
4 say anything about logging.

5 MR. HEMESATH: The last excerpt?

6 THE COURT: Which is on page 17.

7 MR. HEMESATH: Okay.

8 THE COURT: Right? So if you're going to make sense of
9 logging, you really need to start on page 18.

10 MR. SEGAL: We're not just going to play these in a
11 single stretch.

12 THE COURT: Well, that's my next question.

13 MR. SEGAL: So we can explain, you know, did you ask
14 him about logging, what is logging, and then play -- and then
15 play that recording. But it's not just going to be like a --

16 THE COURT: No, I understand that's your plan.

17 MR. SEGAL: Okay.

18 THE COURT: There's still the question of context.

19 MR. SEGAL: If the context is the meaning of that word,
20 we can explain it without, you know, finding some part of the
21 tape. Because this is a conversation between --

22 THE COURT: Even if Mr. Keys' statements are not just
23 exculpatory but provide meaning to his answers, isn't there a
24 possibility that there is non-exculpatory text that you have
25 not included that provides -- that explains what he is saying?

1 MR. SEGAL: So here's the thing. I don't know. I'm
2 not here to make the defendant's argument. They haven't argued
3 that there's a single piece -- they have not attempted to do
4 what you're doing, which is to go hunt around for six lines of
5 text --

6 THE COURT: Well, where is the burden? I have a duty
7 as a gatekeeper to ensure --

8 MR. SEGAL: Right.

9 THE COURT: -- fundamental fairness.

10 MR. SEGAL: Right. And your duty -- and this is not
11 hearsay. That is -- it's in, right? The question is just --

12 THE COURT: Yeah, it's not hearsay.

13 MR. SEGAL: Oh, sure. And so then the next question
14 is, if they want to offer some other piece of evidence on the
15 argument that we opened the door, this is evidence that -- that
16 will come in in their cross as part of their effort to show
17 that what we played is misleading or incomplete.

18 THE COURT: So are you going to object to their playing
19 any portion?

20 MR. SEGAL: Yes, unless they can show the foundational
21 showing that what we showed -- what we selected was incomplete.

22 THE COURT: I understand all that. But on rule of
23 completeness, who has the burden?

24 MR. SEGAL: They do. They --

25 THE COURT: But then they're saying the entire -- their

1 fundamental position is the entire recording.

2 MR. SEGAL: Right.

3 THE COURT: So does that not then obligate me to
4 considerate the entire recording and whether or not they have a
5 point?

6 MR. SEGAL: I think what you have to -- what you have
7 to answer is the argument that they have made, which is that
8 you need to know -- the jury needs to be made to understand
9 the -- kind of the idea that the agent is, you know, engaging
10 in this sort of ordinary rapport building. Hey, we're two
11 professionals, I'm a nice guy, blah, blah, blah, that makes
12 people confess.

13 And that is precluded by United States versus Vallejos,
14 which is Ninth Circuit 742 F.3d 902, where the Ninth Circuit
15 expressly rejected this idea that a defendant can bring in his
16 own cross-examine -- his own cross-examined, out-of-court
17 statements to give the flavor of the interview. Flavor of the
18 interview is actually the Ninth Circuit's -- the exact language
19 of the argument --

20 THE COURT: It's not -- I don't care about flavor of
21 the interview. I'm talking about essential context.

22 MR. SEGAL: Right, but he is. That's the only argument
23 they're making.

24 What the Court, if I understand correctly, is worried
25 about is I, as the Court -- you, as the Court, cannot let in

1 some defendant's statement absent some showing -- absent some
2 idea that it's been kind of previewed for the jury as complete,
3 and that's not how it works.

4 The way it works is we put in something. They try to
5 make an argument that we have opened the door to more testimony
6 or -- I'm sorry -- a larger part of that statement, and it
7 would come in during cross-examination. But that's -- they
8 have not -- but the way that they're --

9 THE COURT: So, at most, your position is it doesn't
10 matter, you get to play these, and then the only debate is do
11 they get to play additional portions during cross?

12 MR. SEGAL: Right. And their bet is all or nothing
13 right now.

14 THE COURT: That's what they've argued.

15 MR. SEGAL: Yes.

16 THE COURT: So, Mr. Leiderman, response to that
17 argument? I mean, I have been here before.

18 MR. LEIDERMAN: Right.

19 THE COURT: But I'm just trying to --

20 MR. LEIDERMAN: Well, let's start with the practical
21 matter is I don't believe we have the software to cut it up.
22 So, as a practical matter, we wouldn't be able to do such a
23 thing, number one.

24 Number two -- well, maybe we could find somewhere to
25 buy it and download it this weekend, I don't know.

1 But, number two, what the Court is talking about are
2 small portions that place context into what the government is
3 saying, which, of course, would be out of context in
4 cross-examination or in our part of Agent Cauthen's
5 presentation.

6 THE COURT: Does the transcript give you what you need
7 for effective cross?

8 MR. LEIDERMAN: The transcript does, yes.

9 THE COURT: For impeachment?

10 MR. LEIDERMAN: Yes. I can certainly ask questions out
11 of the transcript.

12 THE COURT: So is there -- what's the essential
13 prejudice if that's the way we proceed, the government plays
14 its cherry-picked portions, and your cross using the
15 transcript?

16 MR. LEIDERMAN: What's the essential prejudice?

17 THE COURT: Uh-huh.

18 MR. LEIDERMAN: I don't know that there is.

19 THE COURT: All right. Well, that may be the end of
20 it. But -- I'll let you know if I'm -- if I reach any other
21 conclusion during the break. You're going to meet and confer
22 about the exhibits.

23 MR. LEIDERMAN: I mean, I think the problem is going to
24 be is that I'm going to want to ask questions on larger areas
25 than the government is going to want to allow questions on.

1 We're going to come to loggerheads consistently on that
2 portion -- on that issue.

3 THE COURT: And then I would resolve on an
4 objection-by-objection basis --

5 (Counsel conferring.)

6 THE COURT: All right. I'm still in court. I'm still
7 here, Mr. Segal.

8 MR. SEGAL: I was trying to save the Court time. I
9 apologize.

10 THE COURT: If you want to meet and confer to see if
11 you can figure this out. Pardon me?

12 MR. LEIDERMAN: I'd like to hear the Court.

13 MR. SEGAL: I'm sorry, Your Honor. I was trying to
14 save time, but it didn't. I'm sorry.

15 THE COURT: Well, I'm going to ultimately rule on the
16 objection. The objection is, I believe, that the whole thing
17 should be played during the government's case in chief. That
18 objection is overruled. And given what I've heard, I don't
19 think there's anything more I need to do at this time except
20 think about what happens on cross and be ready for objections.

21 MR. LEIDERMAN: I mean, I think it's going to be a
22 storm of objections.

23 THE COURT: I understand that, but that's where I may
24 try to provide some guidance and just allow a standing
25 objection.

1 MR. SEGAL: Thank you, Your Honor.

2 THE COURT: All right. I'll be back at this point in
3 about 10 minutes.

4 (Recess taken.)

5 (Jury not present.)

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

7 THE COURT: All right. Can we just talk about the
8 exhibits at the end of the day?

9 Do you have an agreement?

10 MR. EKELAND: We have an agreement, Your Honor.

11 THE COURT: If you have an agreement, quickly tell me
12 what it is.

13 MR. SEGAL: The United States moves in Government
14 Exhibit 130 and Government Exhibit 131.

15 MR. EKELAND: No objection, Your Honor.

16 MR. SEGAL: And it's my understanding that 128 is
17 already in.

18 THE COURT: Yes.

19 MR. SEGAL: That's all. Thank you, Your Honor.

20 THE COURT: All right. I'll let the jury know that.

21 (GOVERNMENT'S EXHIBIT 130, e-mail, 12/14/10, 10:22 p.m.,
22 ADMITTED INTO EVIDENCE.)

23 (GOVERNMENT'S EXHIBIT 131, e-mail, 12/14/10, 10:23 p.m.,
24 ADMITTED INTO EVIDENCE.)

25 THE COURT: And I understand that if we get to cross,

1 Mr. Ekeland would begin the cross.

2 Any objection, given Mr. Ekeland's schedule, then,
3 having another attorney pick up on Monday?

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

5 THE COURT: All right. That's --

6 MR. EKELAND: Your Honor, if it's just a half hour of
7 cross, Mr. Leiderman may do it.

8 MR. LEIDERMAN: If we're stuck with a real short time
9 period where it's just the beginning, I'll just go ahead and
10 go.

11 THE COURT: All right. Anyway, you have the
12 flexibility.

13 MR. EKELAND: Yeah. That's not the way we prepared it
14 initially. Trials move as they do. Thank you, Your Honor.

15 THE COURT: All right. And the jury is asking about
16 the schedule. I will let them know certainly before they leave
17 today. But it looks as if we're on track to conclude with
18 evidence on Monday.

19 MR. SEGAL: Yes.

20 THE COURT: They may be instructed on Monday or Tuesday
21 morning. Once they begin deliberating, I let them set their
22 own schedule. Ms. Schultz has let them know that. So if they
23 want to continue deliberating, for instance, on Tuesday all
24 day, that's fine with me. And also they could deliberate
25 through my criminal calendar on Wednesday morning, and I would

1 just take breaks as needed.

2 MR. SEGAL: Your Honor?

3 THE COURT: Yes.

4 MR. SEGAL: Does this court instruct before or after
5 our argument?

6 THE COURT: After.

7 MR. LEIDERMAN: Is there a way we can request the Court
8 to instruct before?

9 THE COURT: You can request.

10 MR. LEIDERMAN: The defense would greatly prefer that
11 and makes that request, Your Honor.

12 THE COURT: I do allow -- you'll have the final
13 instructions before closing, and you may use the final
14 instructions and the verdict form in your closings.

15 MR. LEIDERMAN: That's fair enough. Okay.

16 THE COURT: All right.

17 MR. LEIDERMAN: We're allowed to tell them that this is
18 what they're going to be instructed?

19 THE COURT: Yes.

20 MR. LEIDERMAN: All right. That will allay my
21 concerns.

22 THE COURT: All right.

23 MR. LEIDERMAN: Thank you.

24 THE COURT: All right. Let's bring the jury back in.

25 MR. LEIDERMAN: We should be closed certainly Tuesday

1 by noon and maybe even early Tuesday morning or, in a miracle,
2 late Monday afternoon.

3 THE COURT: Before we leave today, you can tell me how
4 long you think you need for closing. All right.

5 (Jury present.)

6 THE COURT: You may be seated. Welcome back, Ladies
7 and Gentlemen. We'll proceed now with the next government
8 witness.

9 Just so you know, I'll tell you more as we go forward,
10 but it does appear we're on track to conclude with the
11 presentation of evidence sometime on Monday. We still will
12 have closing arguments, and I need to instruct you. I'll give
13 you a further update first thing Monday morning. But I think
14 we're on track with the original schedule. And as Ms. Schultz
15 let you know, once you start deliberating, we let you set your
16 own schedule as long as you let us know so we can be on call.

17 All right. Next witness for the government.

18 MR. SILVER: The United States calls Special Agent John
19 Cauthen.

20 THE CLERK: If you can stand against the wall facing me
21 so I can take your picture, I would appreciate it.

22 I think we have it. Judge, we may have to do it again
23 at the end, but I'll try.

24 If you'll step into the witness stand, remain standing,
25 and raise your right hand.

1 JOHN CAUTHEN, GOVERNMENT'S WITNESS, SWORN

2 THE WITNESS: I do.

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

4 Will you please say and spell your first and last name
5 for the record.

6 THE WITNESS: My name is John Cauthen, spelled
7 C-A-U-T-H-E-N.

8 THE COURT: You may proceed.

9 MR. SILVER: Thank you.

10 DIRECT EXAMINATION

11 BY MR. SILVER:

12 Q. Good morning, sir.

13 A. Good morning.

14 Q. Where do you work?

15 A. I work at the FBI.

16 Q. What do you do there?

17 A. Currently I'm an FBI agent in Tampa, where I do computer
18 forensic examinations. I'm a CART examiner. CART stands for
19 computer analysis and response team.

20 Q. What is a computer forensic examination?

21 A. A computer forensic examination entails taking digital
22 media, like a computer or a hard drive that we saw earlier, and
23 we need to identify that media as digital media. Then our job
24 is to get the data off of that media, and then we examine it
25 trying to find what's relevant in that vast amount of stuff,

1 what's interesting. And then we present it in such a way that
2 the jury or lay people can understand it.

3 Q. In addition to being a CART examiner, are you also a
4 special agent?

5 A. That's correct, I'm a special agent.

6 Q. And were you the case agent on the investigation of Matthew
7 Keys?

8 A. Yes, I was.

9 Q. What does it mean to be a case agent?

10 A. In 2010, I was a case agent or an investigator, a special
11 agent here in Sacramento. I was on the cyber squad, and my job
12 then was to investigate criminal acts and, ah, collect the
13 evidence and turn my findings in to the U.S. Attorney's office.

14 Q. How long have you been with the FBI?

15 A. I've been an FBI agent since 1996.

16 Q. Have you received any training related to computer forensic
17 examinations?

18 A. Yes, I have.

19 Q. What training have you received?

20 A. I've been a cyber agent since about 2002 when the FBI
21 started the cyber division, and I've received a lot of training
22 regarding computer examinations and cyber investigations. The
23 FBI has a lot of courses on that, of course. I can't highlight
24 all the courses I've taken, but I have taken a number of
25 external classes outside of the FBI as well pertaining to cyber

1 investigations, pertaining to digital forensics.

2 Some of those courses involve testing provided by outside
3 vendors. I've taken the tests, passed them, achieved a variety
4 of certifications in the area of cyber investigations, computer
5 security and digital forensic.

6 Q. You said outside vendors?

7 A. Yes, sir.

8 Q. Outside vendors of what?

9 A. These are companies, third party companies, not government
10 agencies, that provide training and provide testing that
11 validate knowledge in certain areas pertaining to computers.

12 Q. Roughly how many hours of training have you received?

13 A. Ah, hours of training. I would say roughly hundreds, but I
14 can't specify specifically how many hours over the past ten
15 years.

16 Q. Roughly how many computer forensic examinations have you
17 performed?

18 A. Again, I've been doing computer forensics for -- at least
19 since 2008 as a certified examiner. I don't have a specific
20 number, but it's fair to say that I've examined thousands,
21 hundreds if not thousands of computers.

22 Q. Do you have any FBI certifications in forensics for certain
23 kinds of computer systems?

24 A. I do.

25 Q. Are you FBI certified in Linux?

1 And can you spell Linux for the Court Reporter, please.

2 A. Linux is spelled L-I-N-U-X.

3 Q. What about Macintosh?

4 A. I am certified to examine Macintosh, but only limited to
5 certain types of forensics software. I'm not considered the
6 FBI's expert in Macintosh computers.

7 Q. Have you ever taught computer forensics to others?

8 A. I have.

9 Q. Where have you done that?

10 A. At University of California, Davis. I taught computer
11 forensics in the forensic science department to graduate
12 students.

13 Q. Have you taught computer forensics anywhere else?

14 A. Other FBI agents, other interns, but not in a formal
15 classroom setting. Although, let me correct that. I just
16 thought of -- I have been sent out to do additional training
17 actually in two foreign governments, to learn about computer
18 forensics, and I've done that on a couple of occasions.

19 Q. Can you describe your formal education?

20 A. Yes.

21 Q. Did you go to college?

22 A. Yes.

23 Q. Where?

24 A. I went to undergraduate at the University of Wisconsin,
25 Madison, Wisconsin.

1 Q. Did you receive a degree?

2 A. Yes.

3 Q. What was it?

4 A. Accounting, a Bachelor in business administration.

5 Q. Any graduate school?

6 A. I did.

7 Q. Where?

8 A. University of Tampa, Tampa, Florida.

9 Q. What degree?

10 A. I have a Master's in business administration with an
11 accounting concentration.

12 Q. Any military service?

13 A. Yes.

14 Q. What branch?

15 A. U.S. Navy.

16 Q. Final rank?

17 A. Commander.

18 Q. You said earlier you worked on the investigation of Matthew
19 Keys?

20 A. Yes.

21 Q. Could you identify Mr. Keys if you saw him?

22 A. I can.

23 Q. Do you see him now?

24 A. I do.

25 Q. Where is he sitting?

1 A. Mr. Keys is sitting at farthest to the left at the defense
2 table wearing glasses and a black jacket.

3 MR. SILVER: May the record reflect the witness has
4 identified the defendant?

5 THE COURT: It shall.

6 BY MR. SILVER:

7 Q. Did you obtain a search warrant for Mr. Keys' residence
8 during the course of your investigation?

9 A. I did.

10 Q. Where was Mr. Keys' residence at that point in time?

11 A. Secaucus, New Jersey. I think it's spelled --

12 MR. SILVER: I can give the Court Reporter a spelling
13 later, if that's convenient.

14 THE COURT: The Court can take judicial notice of the
15 spelling of Secaucus or we can have a spelling bee. It's
16 spelled S-E-C-A-U --

17 MR. SILVER: S-E-A, I believe. I believe it's sea like
18 the ocean and the sea, and then caucus like a political caucus.

19 THE COURT: C-A-U-C-U-S.

20 MR. SILVER: I'm pretty sure. I was a local spelling
21 champion.

22 THE COURT: All right.

23 BY MR. SILVER:

24 Q. Agent Cauthen, did you execute the search warrant?

25 A. Yes.

1 Q. When you executed the warrant, did you give it to Mr. Keys?

2 A. I did.

3 Q. What, if anything, did Mr. Keys do with it?

4 A. He read it.

5 Q. Did you talk to Mr. Keys during the execution of the search
6 warrant?

7 A. Yes, I did.

8 Q. Did you record that conversation?

9 A. I did.

10 Q. Please turn to Government Exhibits 206 through 232 in the
11 binder.

12 Do you recognize those items?

13 A. Yes. These are -- yes.

14 Q. And what are they?

15 A. These are portions of the audio recording that I did in the
16 interview back on October 4th, 2012.

17 Q. And you were wearing a recording device during the
18 interview?

19 A. I had two recording devices.

20 Q. And you provided the contents of those recording devices to
21 the staff here handling the audio for the courtroom?

22 A. I did.

23 MR. SILVER: Your Honor, I move to admit Government
24 Exhibits 206 through 232.

25 MR. LEIDERMAN: I'm going to object based upon -- well,

1 I'm going to renew my objections that we discussed during the
2 break.

3 THE COURT: You are admitting audios?

4 MR. SILVER: Yes, Your Honor.

5 THE COURT: All right.

6 MR. LEIDERMAN: It's incomplete.

7 THE COURT: With no transcript? I mean, that's -- that
8 is the Court's understanding.

9 MR. SILVER: That's the Court's understanding.

10 THE COURT: That is the plan. Nothing will be
11 displayed. We're going to hear something?

12 MR. SILVER: Yes, Your Honor. I guess we didn't
13 discuss the transcript this morning.

14 THE COURT: Well, it's the audio that's being admitted.

15 MR. SILVER: The audio is being admitted.

16 THE COURT: All right. The objection is overruled.
17 The audio recordings are admitted.

18 (GOVERNMENT'S EXHIBITS 206 through 232, portions of
19 Keys statement dated 10/04/12, ADMITTED INTO EVIDENCE.)

20 MR. SILVER: May we show the transcript solely for the
21 purpose of facilitating understanding what the --

22 THE COURT: No. It's the audio that is being admitted.

23 MR. SILVER: If we could play Government Exhibit 206.

24 THE COURT: Hold on one second. What's your question,
25 Madam Court Reporter?

1 (Off-the-record discussion with Court Reporter.)

2 THE COURT: Is it acceptable that the Court Reporter
3 not take down --

4 MR. SILVER: Yes, Your Honor.

5 THE COURT: All right. Thank you.

6 MR. SILVER: Let me pause first.

7 Q. Agent Cauthen, trying to set the scene there, you are there
8 in Mr. Keys' residence with Mr. Keys; is that right?

9 A. Yes, I was.

10 Q. And was there anyone else in the room with you during this
11 recording?

12 A. Yes.

13 Q. Who was that?

14 A. My colleague, Gabe Andrews. He was another FBI agent.

15 MR. SILVER: If we could play 206, please.

16 (Exhibit 206 played, not reported.)

17 THE COURT: That's the loudest you can play it,
18 correct?

19 MR. SILVER: I hit the volume up several times. I can
20 try that again. Perhaps the Court wants to ask the jury if
21 they were able to capture that at all?

22 THE COURT: I'm going there. I didn't see anyone
23 raising their hand. It is the audio recording that is being
24 introduced.

25 UNIDENTIFIED JUROR: It is a little low.

1 THE COURT: If that's the best the government has,
2 that's all we can do. I don't know if there's a way to boost
3 the volume.

4 THE CLERK: I have it.

5 MR. SILVER: I can hit this button several times and
6 play it again.

7 THE COURT: Ms. Schultz, is that the highest? It's at
8 the highest, so --

9 MR. SILVER: And the audio quality does improve over
10 time, I believe. I can ask the witness that if the Court would
11 like, but --

12 THE COURT: Well, no. I'm just -- it is what it is.

13 MR. SILVER: Thank you, Your Honor.

14 THE COURT: All right.

15 MR. SILVER: If we could play Government Exhibit 207,
16 please.

17 (Exhibit 207 played, not reported.)

18 BY MR. SILVER:

19 Q. Agent Cauthen, during the course of that conversation, did
20 you say IRC?

21 A. Yes, I did.

22 Q. What is IRC?

23 A. IRC are initials for Internet relay chat.

24 Q. And we'll discuss that more later.

25 Did you also say colloquy?

1 A. I did.

2 Q. And is that something else that we will get to later on in
3 your testimony?

4 A. We will address it later, yes, I believe.

5 Q. You mentioned the nickname AEScracked; is that right?

6 A. I did.

7 Q. Mr. Keys said that he used that nickname?

8 A. The tape speaks for itself.

9 Q. And what is AES, Agent Cauthen?

10 A. AES stands for advanced encryption standard. It's an
11 algorithm used to encrypt data so that you can't read it unless
12 you have the key or password.

13 Q. And in connection with encryption, what does cracking mean?

14 A. Cracking means being able to break that algorithm, access
15 the data without having the key. Or, correction, without
16 having the password.

17 MR. SILVER: If we could play 208, please.

18 (Exhibit 208 played, not reported.)

19 BY MR. SILVER:

20 Q. Agent Cauthen, you said screen grabs?

21 A. Yes.

22 Q. What are screen grabs?

23 A. A screen grab, what you're doing when you're using your
24 computer and you just want to get a copy of what you see on
25 your screen, you might do something like print screen, and it

1 will save that picture of what's displayed on your screen to a
2 file someplace. You can do it in a variety of ways other than
3 just hitting print screen, but the net result is a file is
4 saved somewhere. That is called a screen grab, which is what
5 you saw on your screen.

6 Q. Do some people call it screen grab, screenshot?

7 A. That would be a similar term for the same thing.

8 MR. SILVER: If we could play 209, please.

9 (Exhibit 209 played, not reported.)

10 MR. SILVER: If you could play 210, please.

11 (Exhibit 210 played, not reported.)

12 BY MR. SILVER:

13 Q. Agent Cauthen, was it Internet Feds that was discussed
14 there?

15 A. Yes.

16 Q. And what is Internet Feds?

17 A. Internet Feds -- I'm sorry. Internet Feds was the name of
18 the IRC chat room.

19 Q. And the term "credentials" was used?

20 A. When we speak of credentials, when I speak of credentials
21 in this context, we're talking about a username and a password.

22 Q. And the term "CMS"?

23 A. The CMS, we're talking about the content management system,
24 Tribune's content management system or CMS.

25 MR. SILVER: If we could play 211, please.

1 (Exhibit 211 played, not reported.)

2 MR. SILVER: If we could play 212, please.

3 (Exhibit 212 played, not reported.)

4 MR. SILVER: 214.

5 (Exhibit 214 played, not reported.)

6 MR. SILVER: 215.

7 (Exhibit 215 played, not reported.)

8 MR. SILVER: 216.

9 (Exhibit 216 played, not reported.)

10 MR. SILVER: Can we pause here.

11 Q. Agent Cauthen, with regard to that last statement by
12 Mr. Keys that somebody at Tribune had to have gone in there and
13 unlocked a lot of doors, did you find evidence to the contrary
14 to that?

15 A. That someone at Tribune had unlocked a lot of doors?

16 Q. Yes.

17 MR. LEIDERMAN: Objection, that misstates the question.

18 THE WITNESS: I'm sorry.

19 THE COURT: Well, I'm going to sustain the objection.

20 You can rephrase.

21 BY MR. SILVER:

22 Q. Agent Cauthen, taking you back to a few of Mr. Keys'
23 statements we've heard so far, at first that the credentials he
24 provided were not working, did you obtain evidence that that
25 statement was not in fact true?

1 A. Yes.

2 Q. He also said that he was not monitoring the progress of
3 those he gave the credentials to. Did you find evidence that
4 that statement was not true?

5 A. Yes.

6 Q. And he said that somebody at Tribune had unlocked a lot of
7 doors. Did you find evidence that that was not true?

8 A. Yes.

9 MR. SILVER: If we could resume the play back, please.

10 (Exhibit 216 played, not reported.)

11 BY MR. SILVER:

12 Q. Agent Cauthen, you mentioned Chippy 1337?

13 A. I did.

14 Q. Is that sometimes also pronounced Chippy leet?

15 A. Yes.

16 Q. Why?

17 A. Ah, computer hackers use leet speak, and they substitute
18 numbers for letters in their text messages and in their
19 defacements. And so the word "elite" would be kind of
20 abbreviated to leet, which would be translated to leet speak as
21 1337 for a computer hacker.

22 MR. SILVER: 217, please.

23 (Exhibit 217 played, not reported.)

24 MR. SILVER: 218, please.

25 (Exhibit 218 played, not reported.)

1 BY MR. SILVER:

2 Q. Did you understand that last word he said there?

3 A. Yes.

4 Q. What was it?

5 A. Hooliganism.

6 MR. SILVER: 219, please.

7 (Exhibit 219 played, not reported.)

8 BY MR. SILVER:

9 Q. Agent Cauthen, you and Mr. Keys were discussing a virtual
10 private network?

11 A. Yes.

12 Q. And that's abbreviated VPN?

13 A. Yes.

14 Q. And a company called Overplay?

15 A. Yes.

16 Q. And we'll discuss those later.

17 MR. SILVER: 220, please.

18 (Exhibit 220 played, not reported.)

19 THE COURT: Can you clarify whether anonymous was used
20 with a capital A or a lower case A in that clip, if you --

21 MR. SILVER: That particular clip is the lower case A
22 and the adjective form of the word, Your Honor.

23 THE COURT: All right. The witness agrees with that?

24 THE WITNESS: Bear with me one moment.

25 Yes, anonymous with a little A.

1 THE COURT: All right. You may proceed.

2 MR. SILVER: 221, please.

3 (Exhibit 221 played, not reported.)

4 MR. SILVER: 223, please.

5 (Exhibit 223 played, not reported.)

6 MR. SILVER: 224, please.

7 (Exhibit 224 played, not reported.)

8 MR. LEIDERMAN: Object to this.

9 THE COURT: Please stop the tape. What's the
10 objection?

11 MR. LEIDERMAN: Objection, Officer Cauthen's statements
12 are improper opinion. They're hearsay without any exception.
13 He's relating what other people are telling him. They're not
14 effect on the listener.

15 THE COURT: Well, the objections are overruled. The
16 jury is to understand that the questions being posed by the
17 agent on the tape are not being offered for the truth of the
18 content of what is stated in the questions.

19 MR. LEIDERMAN: If I may, Your Honor, they're not
20 questions. He's making statements about what other people told
21 him.

22 THE COURT: Well, they're a preface to questions.
23 Nothing of the content, including any statements that precede
24 questions, is being offered for the truth of the content.

25 All right. You may proceed.

1 (Exhibit 224 played, not reported.)

2 MR. SILVER: No. 225, please.

3 (Exhibit 225 played, not reported.)

4 MR. SILVER: 226.

5 (Exhibit 226 played, not reported.)

6 MR. SILVER: 227.

7 (Exhibit 227 played, not reported.)

8 MR. SILVER: 228.

9 (Exhibit 228 played, not reported.)

10 MR. SILVER: 229.

11 (Exhibit 229 played, not reported.)

12 MR. SILVER: 230.

13 (Exhibit 230 played, not reported.)

14 MR. SILVER: 231.

15 (Exhibit 231 played, not reported.)

16 MR. SILVER: 232.

17 (Exhibit 232 played, not reported.)

18 BY MR. SILVER:

19 Q. Agent Cauthen, after this conversation with Mr. Keys, did
20 he write anything in front of you?

21 A. Yes.

22 Q. Turning your attention to Government Exhibit 204. Can you
23 take a look at that, please.

24 A. Yes.

25 Q. What is that?

1 A. That's his confession written.

2 Q. Did he write it in front of you?

3 MR. LEIDERMAN: Object to the characterization.

4 THE COURT: Sustained. The jury shall disregard the
5 word "confession."

6 BY MR. SILVER:

7 Q. Did he write that in front of you?

8 A. Yes.

9 MR. SILVER: Move to admit Government's 204.

10 THE COURT: Any objection?

11 MR. LEIDERMAN: Objection, unreliable.

12 THE COURT: Overruled. 204 is admitted.

13 (GOVERNMENT'S EXHIBIT 204, Keys written statement,
14 ADMITTED INTO EVIDENCE.)

15 MR. SILVER: Your Honor, since this is a copy that is
16 hard to read, I would propose either the original be placed on
17 the Elmo or given to the jury for review.

18 THE COURT: Well, put it on the Elmo.

19 MR. SILVER: Try the Elmo first?

20 THE COURT: Uh-huh.

21 MR. SILVER: Very well. May I approach the witness?

22 THE COURT: He has the original? All right. You may
23 approach.

24 MR. SILVER: Would the Court be willing to ask if this
25 is legible to the jury?

1 THE COURT: Can the jury see that?

2 I mean, that's the whole document. The government
3 should be able to zoom in.

4 UNIDENTIFIED JUROR: That's much better. Thank you.

5 THE COURT: It's a one-page document. You've seen the
6 page generally.

7 Do you have questions about it?

8 All right. Do you have questions, any further
9 questions?

10 MR. SILVER: Yes, Your Honor.

11 Q. Agent Cauthen, whose signature is this here?

12 A. That's my signature.

13 Q. And this signature on the bottom left?

14 A. That was the signature of my colleague Gabe Andrews.

15 Q. And finally on the right?

16 A. That is the signature of Matthew Keys.

17 MR. SILVER: I'm returning this to the binder, Your
18 Honor.

19 THE COURT: Unless you need the witness to have it, you
20 can keep it there and return it on a break --

21 MR. SILVER: Very well. Thank you.

22 THE COURT: -- which we'll have fairly soon.
23 How many more questions do you have of this witness?

24 MR. SILVER: Probably in the hundreds, Your Honor.

25 THE COURT: All right. Well, let's take a second

1 break. We have a second break due. Let's take a 15-minute
2 break now. During that break, as always, remember all of my
3 admonitions. We'll see you back in 15 minutes.

4 (Jury not present.)

5 THE COURT: All right. You may step down. Please be
6 back in 15 minutes.

7 Do you believe you'll use the rest of the day going to
8 1:30?

9 MR. SILVER: I would estimate so, yes.

10 THE COURT: All right. All right. Back in 15 minutes.

11 (Recess taken.)

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

13 THE COURT: All right. Let's bring the jury back in.

14 (Jury present.)

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

16 Welcome back, Ladies and Gentlemen. We'll go now till
17 1:30. I'm informed that that may continue to be all direct
18 exam of Agent Cauthen.

19 I forgot to advise you that on the last break I did
20 admit Exhibits 130 and 131 without objection, so that resolved
21 the issue with exhibits. That affects the exhibits you will
22 see in the jury room when you do retire to deliberate.

23 So, Mr. Silver, you may continue.

24 BY MR. SILVER:

25 Q. Agent Cauthen, before the break, we were discussing the

1 letter that Mr. Keys wrote in front of you; is that correct?

2 A. Yes.

3 Q. Did he write anything else in front of you that day?

4 A. Yes.

5 Q. Could you please turn to Exhibit 205.

6 A. I see it.

7 Q. Do you recognize that document?

8 A. Yes, I do.

9 Q. How do you recognize it?

10 A. This was a document that was present when I was
11 interviewing Mr. Keys.

12 Q. And what is the document?

13 A. This is part of his written statement, ah, that has some
14 text that I have supplied and written, which was excerpts from
15 the IRC chat rooms, as well as writing by Matthew Keys on it.

16 Q. And how did it come to be that Mr. Keys was writing on it?

17 A. I gave this document to him and asked him to write on it.

18 Q. And you saw him write on it?

19 A. Yes.

20 MR. SILVER: Move to admit Government's Exhibit 205.

21 THE COURT: How many pages?

22 MR. SILVER: Six.

23 THE COURT: Did the witness just testify to his own
24 handwriting being on the document?

25 MR. LEIDERMAN: He testified to Mr. Keys' handwriting

1 being on the document.

2 THE COURT: There was reference to something that says
3 excerpts.

4 MR. SILVER: I can clean that up, if you like, Your
5 Honor.

6 THE COURT: Is that supposed to be on the document that
7 I'm looking at?

8 MR. SILVER: I believe Mr. Cauthen put excerpts from
9 IRC chat logs on the document. And then, after that, Mr. Keys
10 initialed them in a certain way.

11 THE COURT: I'm trying to understand, did the agent
12 testify that he wrote something by hand on the document?

13 MR. SILVER: I don't believe he did.

14 THE COURT: All right.

15 MR. SILVER: He may have said --

16 THE COURT: All right. Clarify that.

17 MR. SILVER: Sure.

18 Q. Agent Cauthen, this document has typewritten language on
19 it; is that right?

20 A. Yes.

21 Q. And where did that come from?

22 A. That came from me.

23 Q. And how did you put that on there?

24 A. I printed it on there.

25 Q. Where did that come from?

1 A. Computer.

2 Q. And where did that computer come from? What was the source
3 of that information?

4 A. The source of that computer was, ah, these are excerpts
5 from IRC chat logs from a computer that the FBI seized in Ohio.
6 And I printed out these excerpts on blank pieces of paper and
7 gave those excerpts to Mr. Keys.

8 THE COURT: All right. So you're admitting that. I
9 think that clarifies the Court's question. Any objection?

10 MR. LEIDERMAN: Yes, to foundation.

11 THE COURT: Overruled. 205 is admitted.

12 (GOVERNMENT'S EXHIBIT 205, Keys annotation of
13 logs, ADMITTED INTO EVIDENCE.)

14 BY MR. SILVER:

15 Q. Agent Cauthen, did you ask Mr. Keys to initial certain
16 parts of this document?

17 A. Yes.

18 MR. SILVER: Can we zoom in on the left side there, if
19 possible.

20 Q. And did he also write something out on the document?

21 A. Yes.

22 MR. SILVER: Would the Court be willing to ask if this
23 handwriting here is visible to the -- legible to the jury?

24 THE COURT: All right. I see many heads shaking no.

25 MR. SILVER: Perhaps Agent Cauthen could read it.

1 THE COURT: Any objection, Mr. Leiderman?

2 MR. LEIDERMAN: It's Agent Cauthen reading the text?

3 THE COURT: Yes.

4 MR. LEIDERMAN: I still think it lacks foundation, Your
5 Honor.

6 THE COURT: I'd be prepared to pass around the
7 original. You have to pass the original. I'm not certain that
8 it is fully legible, and so I don't know that someone can read
9 it without translating.

10 MR. SILVER: Shall I pull it out of the binder and
11 distribute it to the jury, Your Honor?

12 THE COURT: If that's the original. Why don't you
13 elicit testimony, and then we'll take a moment and pass it
14 around once you're done with this exhibit.

15 MR. SILVER: Very good. Thank you.

16 I'm getting the sense this may be more legible, this
17 version we have now.

18 UNIDENTIFIED JUROR: Yeah.

19 THE COURT: All right.

20 BY MR. SILVER:

21 Q. Did you see Mr. Keys write this in the margins of the
22 document?

23 A. Yes.

24 THE COURT: Can you delete the red marks showing on the
25 screen.

1 MR. SILVER: If we could go back to the whole document.

2 Q. Agent Cauthen, there is a pound target at the top of this
3 page. What does that refer to?

4 A. Pound target refers to an IRC chat room called pound
5 target.

6 Q. And that says AEScracked at the top there?

7 A. Yes.

8 Q. And that's the nickname that Mr. Keys told you that he
9 used?

10 A. Yes.

11 Q. After it says attack Fox News, it says PM me; is that
12 right?

13 A. Yes.

14 Q. What does PM mean in this context?

15 A. PM means private message. It means to go to a separate,
16 more private chat room for one-on-one conversation where
17 everyone else in the chat room can't see it.

18 Q. And just below that, another PM.

19 A. Yes.

20 Q. Same meaning?

21 A. Yes.

22 Q. Do you see the asterisk that is at the end of that -- each
23 end of that statement?

24 A. I do.

25 Q. Do those mean anything?

1 A. I don't know.

2 Q. Where it says operation payback, Agent Cauthen, is that the
3 name of a different chat room?

4 A. Yes.

5 Q. And, again, you see the AEScracked nickname that Mr. Keys
6 said he uses?

7 A. Yes.

8 MR. LEIDERMAN: I'm going to object to the
9 mischaracterization. He said he used.

10 THE COURT: Sustained. The jury shall disregard that
11 answer.

12 BY MR. SILVER:

13 Q. There where it says user/pass, user slash pass, do you know
14 what that is an abbreviation for?

15 A. Yes.

16 Q. What is it?

17 A. Username and password, credentials.

18 Q. There as well?

19 A. Yes.

20 MR. SILVER: If we could zoom back out, please.

21 Could we go to the next page, please.

22 Q. Agent Cauthen, just to the left of that dot, do you
23 recognize those initials?

24 A. Yes.

25 Q. Whose initials are they?

1 A. Matthew Keys'.

2 Q. You saw him write those initials there?

3 A. I did.

4 Q. What did you understand that to mean at the time?

5 A. That he recognized those as being accurate as they were
6 reflected in the chat room that he was in.

7 Q. Another one here?

8 A. Yes.

9 MR. SILVER: If we could zoom back out, please.

10 Q. Agent Cauthen, in the first line in this zoomed-in version,
11 it's a little bit cut off, is that also AEScracked?

12 A. Yes, it is.

13 Q. And what is a super user username and pass code?

14 A. A super user username and pass code is a pass code or are
15 the credentials to a super user. And a super user is an
16 account that has the ability to create and change other
17 accounts.

18 Q. Down by the red mark, do you recognize those initials?

19 A. Yes.

20 Q. Whose initials are those?

21 A. Matthew Keys'.

22 MR. SILVER: If we could zoom back out.

23 Next page, please.

24 Q. Up at the top, that's AEScracked again?

25 A. Yes.

1 Q. Then there's a user colon and then something after that.

2 What does that look like, Agent Cauthen?

3 A. That's a username.

4 Q. The next entry, is that a password?

5 A. That's a password.

6 Q. And are they a pair that go together?

7 A. Yes, forming credentials.

8 Q. Do you recognize the initials to the left of the dot?

9 A. I do.

10 Q. Are those Mr. Keys' initials again?

11 A. Yes.

12 MR. SILVER: If we could go back out, please.

13 Q. Agent Cauthen, is that the same VPN that was being
14 discussed in the conversation?

15 A. I believe it is, but I don't have specific knowledge about
16 that. Oh, I'm sorry.

17 MR. LEIDERMAN: Objection, move to strike.

18 THE COURT: Sustained. That motion is granted. The
19 jury shall disregard that last answer.

20 (Government counsel conferring.)

21 BY MR. SILVER:

22 Q. Agent Cauthen, did you have another observation to add that
23 you wanted to clarify something?

24 THE COURT: Well, let's start over given what the Court
25 has just --

1 MR. SILVER: Very well, Your Honor.

2 THE COURT: -- ordered.

3 BY MR. SILVER:

4 Q. By the arrow, does that say VPN IP addresses?

5 A. Yes.

6 Q. And did the subject of VPNs come up in the recorded
7 conversation?

8 A. Yes.

9 Q. So here is AEScracked. He's saying he has VPN IP
10 addresses?

11 A. Yes.

12 Q. And offering them as a form of assistance to others?

13 A. Yes.

14 MR. SILVER: If we could go back out, please.

15 Next page, please.

16 Q. Are those Mr. Keys' initials again?

17 A. They are.

18 MR. SILVER: If we could zoom back out, please.

19 Q. Agent Cauthen, that's AEScracked again making that
20 statement?

21 A. That is.

22 Q. What does it mean to delete a super user account?

23 A. To render it nonfunctional.

24 MR. SILVER: If we could zoom back out, please.

25 Next page, please.

1 Q. Are those Mr. Keys' initials again to the left of the
2 arrow?

3 A. Yes.

4 MR. SILVER: If we could zoom back out, please.

5 And back out again, please. And the next page, please.

6 Can we zoom in with that text on the left?

7 Q. Did you see Mr. Keys write that on the document?

8 A. I did.

9 Q. In the left margin?

10 A. Yes.

11 MR. SILVER: If we could zoom out, please.

12 Q. Agent Cauthen, on the top there, it says edit web servers.

13 A. Yes.

14 Q. What are web servers?

15 A. Those are computers that provide access to web content,
16 Internet pages. So if you want to go on the Internet and click
17 on a website, you're going to a web server.

18 Q. Next line down, what are DNS names?

19 A. DNS names are names that are assigned to websites. So
20 computers actually don't use English when they're talking.
21 They'll be www dot FBI dot gov. They use numbers. And the
22 system that kind of translates between the name www dot FBI dot
23 gov and that computer gobbledygook that is really happening in
24 the back is called the domain name service or system. And
25 that's what he's referring to here is DNS name, would be the

1 English version of the website name.

2 Q. Do you know what doc roots means?

3 A. Ah, I don't.

4 MR. SILVER: If we could back out of that one, please.

5 Your Honor, at this time I would move to the summary.

6 There's a little bit of housekeeping in terms of stipulations
7 that I wanted to read into the record as I think we agreed to
8 before. I believe there is an oral stipulation with the
9 defense regarding the admissibility of the documents underlying
10 the summary?

11 (Counsel conferring.)

12 MR. LEIDERMAN: Pardon us, Your Honor.

13 THE COURT: Do we have -- there's a reference to -- I
14 understand there's a kind of slide show or power point that's
15 going to be shown to you, so we're figuring out some of the
16 details for that.

17 (Counsel conferring.)

18 THE COURT: So just so I'm clear, you're going to read
19 some of the written stipulations, offer of --

20 MR. SILVER: Yes. If the Court agrees, there are two
21 stipulations that pertain to the documents underlying the
22 summary, and I think the defense and the government have
23 reached an agreement about the admissibility of the other
24 documents underlying the summary. So we can move in the
25 underlying documents en masse, saving some time.

1 And then I would just ask the Court to advise the jury
2 that this summary will not itself be going back with the
3 jury --

4 THE COURT: And I'm prepared to do that. I understood
5 that.

6 MR. SILVER: Okay.

7 THE COURT: So how long is the list of underlying
8 exhibits?

9 MR. SILVER: The list of underlying exhibits, I can
10 move them in with -- just by listing them out. It will only
11 take --

12 THE COURT: That's what I'm --

13 MR. SILVER: -- a minute or so.

14 THE COURT: How long is the list? How many exhibits
15 are identified in the list?

16 MR. SILVER: It is a list of about 20, I would say.

17 THE COURT: All right. So just read the numbers off,
18 and then you can provide to Ms. Schultz a written copy of that
19 list.

20 MR. SILVER: Certainly.

21 Move to admit Government Exhibit 307, 503, 504, 505,
22 506, 507, 508, 602, 603, 605, 606, 607, 608, 609, 610, 611,
23 614, 615, 616, 801, 901, 903 and lastly 904.

24 THE COURT: All right. No objection to those exhibits?

25 MR. LEIDERMAN: They're in by stipulations.

1 THE COURT: All right. So those exhibits are admitted,
2 and they may be incorporated into this presentation.

3 (GOVERNMENT'S EXHIBIT 307, Assembler log entries,
4 ADMITTED INTO EVIDENCE.)

5 (GOVERNMENT'S EXHIBITS 503 through 508, screenshots
6 from Keys computer, ADMITTED INTO EVIDENCE.)

7 (GOVERNMENT'S EXHIBITS 602, 603, 605, 606, 607,
8 608, 609, 610, 611, 614, 615, 616, IRC chats,
9 ADMITTED INTO EVIDENCE.)

10 (GOVERNMENT'S EXHIBIT 901, records from Yahoo,
11 ADMITTED INTO EVIDENCE.)

12 (GOVERNMENT'S EXHIBIT 903, records from AT&T,
13 ADMITTED INTO EVIDENCE.)

14 (GOVERNMENT'S EXHIBIT 904, records from Overplay,
15 ADMITTED INTO EVIDENCE.)

16 THE COURT: Mr. Silver is correct, the slide show
17 itself will not go back to you, but the exhibits will.

18 MR. SILVER: If we can have the PDF, the slide show.

19 Q. Agent Cauthen, in connection with your review of computers
20 and digital evidence in this case, did you create a
21 presentation?

22 A. I did.

23 Q. And does that presentation cover electronic evidence from a
24 number of different places?

25 A. Yes.

1 Q. Can you walk us through these different categories of
2 records and where they come from?

3 A. Yes.

4 Q. Can you start with -- is there some color coding happening
5 here, Agent Cauthen?

6 A. There is.

7 Q. And is it orange for Overplay?

8 A. Yes, it is.

9 Q. Yellow for Yahoo?

10 A. Yes.

11 Q. And it's green for Tribune because turquoise was too hard
12 on the eyes; is that right?

13 A. That's actually true.

14 Q. So starting with No. 1, if you could just summarize for the
15 jury what each type of record here is and where it came from.

16 A. Yes, I can.

17 All right. So No. 1 are the Tribune CMS logs, and that's
18 all of the computer records that the CMS had in terms of the
19 logging that it kept. And I looked at the period from about
20 June of 2010 to sometime in January of 2011, all those records.

21 No. 2 is the Overplay logs, Overplay being the company that
22 provided the VPN services. And they kept logs about who was
23 using these computers, these VPN computers, and what those
24 computers were doing, who was logging in and where they were
25 going to.

1 The Yahoo records were provided to me showing -- relating
2 to the Yahoo e-mail accounts from all of the X Files related
3 e-mails. All right. And so they showed the log-in times, the
4 the IP address where the person was logging into, and so on and
5 so forth, but not the actual content.

6 The AT&T records were the specific records for a particular
7 IP address that I looked up that you'll see in the
8 presentation. You'll also see presentation files that I
9 recovered from the computers that I seized from Matthew Keys
10 during the search warrant.

11 And, finally, a lot of it you will see the Internet relay
12 chat logs, pound Internet Feds being one of them, and I think
13 there's others, showing these IRC chats that we obtained by
14 doing a search of the computer in Ohio.

15 Q. Agent Cauthen, are the IRC chats in No. 6 coming from the
16 same place as the IRC chats we just saw in Exhibit 205?

17 A. They are.

18 Q. How about the CMS logs? Can you tell the jury, how big
19 were those if they had been printed out on paper?

20 A. If you would have printed this out on paper, I can't be
21 specific, but it is -- you're into the realm of not human
22 readable. I think I printed out a portion of them by mistake
23 in PDF format, and this was just a small portion of it, and it
24 worked out to 16,000 PDF pages. And that's just not all the
25 logs that were there. So it is extraordinarily voluminous from

1 a human standpoint.

2 Q. Next slide, please.

3 So where did this screen here come from, Agent Cauthen?

4 A. This is an excerpt from the IRC chat channel pound Internet
5 Feds that was shown to Mr. Keys in our previous exhibits. And
6 it came from a computer that we seized in Ohio that was
7 maintaining logs of that chat channel, that IRC chat channel
8 pound Internet Feds and others.

9 Q. And is this -- this is Exhibit 611 essentially, Agent
10 Cauthen?

11 A. This is Exhibit 611, yes.

12 Q. Agent Cauthen, at the top here, we see the nickname
13 Sharpie, and then a number, and then AEScracked, and then that
14 statement.

15 Can you explain, if you can, the meaning of -- the
16 significance of the number and the fact that there's a nickname
17 and something and then another nickname rather than just a
18 nickname and --

19 A. Yes, I can. To do that, I think it might be helpful if I
20 just go through entire first line.

21 Q. That's quickest.

22 A. Okay.

23 Q. Yes.

24 A. So if we look at the first line, we see December 8th,
25 17:57:19. So you'll notice a little asterisk there, and that

1 asterisk is something I put in there to show you that these
2 logs are actually recording in a different time zone, and I've
3 converted the times to California time so that they're
4 consistent in the presentation.

5 And 17:57 is about 5:57 p.m.

6 MR. LEIDERMAN: I'm going to object in that they're not
7 a true and accurate copy.

8 THE COURT: So you're saying this does not faithfully
9 reproduce the exhibit on which it's based? I'm not -- I
10 thought the content was stipulated.

11 MR. LEIDERMAN: That's fine, Your Honor. I'll withdraw
12 the objection.

13 THE COURT: All right. I should say you rattled off a
14 list of exhibits, and you included 801 on that list. And in
15 double-checking --

16 MR. SILVER: I'm sorry. That's not on there.

17 THE COURT: So 801 is not admitted?

18 MR. SILVER: 801 is not admitted.

19 THE COURT: All right. All right.

20 BY MR. SILVER:

21 Q. Agent Cauthen, you were explaining that you just adjusted
22 for time zones?

23 A. Yes, I did.

24 Q. And that is the -- that is the meaning of -- there's a
25 footnote at the bottom here that we'll get to, but that's a

1 marker to show off the bat that you were adjusting for time
2 zones here?

3 A. Correct. I just wanted to reflect that the only change I
4 made to this log was that asterisk and the times that made
5 it -- to reflect California time.

6 What you'll see here is Sharpie is a user in this Internet
7 Feds chat room, and he's making an announcement to everybody in
8 there, in the room. And what he's doing here, he's copying
9 text from someplace else, another IRC chat channel, where he's
10 pulling the chat of AEScracked, who is saying in this other
11 location -- not in the Internet Feds IRC chat room.

12 AEScracked said someplace else, it takes a while to grant
13 one username permission to every site. So that's not
14 AEScracked in this chat room, but it's what Sharpie has copied
15 into this chat room at that time.

16 And the same thing occurs on the next line down. He's
17 copying into this chat room a statement by AEScracked saying
18 I'm doing that now.

19 Then we go down, and we see participant Sabu says great.
20 And then another user says -- Switch says, I'm talking to him,
21 too. Why can't we just invite him here into this particular
22 chat channel? Sharpie then adds two more comments, referencing
23 chat by AEScracked from another location. And those two
24 comments that AEScracked is saying, in the meantime, there are
25 the URLs to access the CMS.

1 And URLs, like I explained before with DNS, when people
2 talk about URLs, that's kind of the English words you would
3 type in like www dot FBI dot gov. That's a URL.

4 AESCracked passes a URL, and in this case, it's HTTP colon
5 forward slant forward slant Assembler dot Tribune interactive
6 dot com. Sharpie then writes okay.

7 And then we see an asterisk, and we see the comment Switch
8 invited AESCracked into the channel. And that asterisk means
9 that that's not any particular participant talking, that's the
10 the software running this IRC conversation making it kind of a
11 general computer announcement saying that Switch has invited
12 AESCracked into this particular channel.

13 MR. SILVER: If we could zoom out and then zoom in on
14 the lower half, please.

15 Q. Agent Cauthen, so after that message from the server, is
16 everyone now in the same room?

17 A. Yes.

18 Q. And then starting with the statements from AESCracked, can
19 you walk us through this one.

20 A. Yes.

21 So at 5:59 p.m., you have AESCracked saying I'm not a
22 hacker, I'm an ex-employee. And then you have Sharpie again
23 posting comments by AESCracked from not this location, but
24 someplace else, saying that is known as oxygen Assembler. It
25 is their old CMS. You can publish -- I believe the word is

1 content. I can't read it, I'm sorry. Change user settings.

2 And then he publishes other statements by AEScracked
3 showing other URLs, including the URL P2P Tribune interactive
4 dot com. And then another comment by AEScracked, this is their
5 WYSIWYG, which is a kind of a computer term for what you see is
6 what you get, website builder content publisher.

7 MR. SILVER: Next page, please.

8 Q. Is this a continuation of the same chat in the same
9 channel?

10 A. Yes. This is just for the purposes of making it clear to
11 you. This is the same conversation continued in the same chat
12 room in the same session.

13 Now here is AEScracked in this chat room, the Internet Feds
14 chat room, saying finally this is their video CMS. And then he
15 writes or AEScracked writes the HTTP bid off dot Tribune dot
16 com.

17 MR. SILVER: If we can zoom in on the bottom half,
18 please.

19 Q. Agent Cauthen, is that the same username and password pair
20 that you pointed out earlier?

21 A. Yes, it is.

22 MR. SILVER: If we could zoom out, please.

23 Next page, please. If we can zoom in on the top half.
24 Thanks.

25 Q. Agent Cauthen, do you know what the Assembler site refers

1 to here?

2 A. Yes. This refers to the CMS.

3 MR. SILVER: If we can zoom in on the bottom half,
4 please.

5 Q. Agent Cauthen, you've explained that these were -- this
6 conversation was occurring on December 8th at about 5:57 Los
7 Angeles time; is that right?

8 A. Yes.

9 Q. Did you come across records from another computer that had
10 related entries also from 5:57 Los Angeles time?

11 A. I did.

12 MR. SILVER: Next slide, please.

13 Q. I see this is green. This must be the CMS logs?

14 A. Yes, it is.

15 Q. Is there a relationship between this entry and the previous
16 chat conversation we were looking at?

17 A. Yes, there is a relationship.

18 Q. Can you please explain that relationship?

19 A. So, if you recall, at 5:57 p.m. on December 8th, this
20 conversation is going on in the Internet Feds chat room. So I
21 went to the CMS logs to see what was happening there, and what
22 I noticed is actually right at 15:57, we have this particular
23 entry which shows the creation of this account, anon1234, in
24 the CMS.

25 It also shows that this was created by a user who was at IP

1 address 80.74.135.87.

2 Q. What's an IP address?

3 A. As you previously heard, an IP address is like a telephone
4 number, and it's really important to understand the concept in
5 the Internet. Because every computer on the Internet has an IP
6 address assigned to it, just like a telephone call. And
7 they're unique, everybody has a unique number on the Internet,
8 and only one person can have an IP address at a particular
9 time.

10 And when one computer is talking to another computer,
11 they're using these IP addresses to identify each other and
12 send information back and forth, just like a telephone
13 conversation with two telephone numbers.

14 Q. Agent Cauthen, let me just remind you that you have a touch
15 screen up there as well --

16 A. Oh, I'm sorry.

17 Q. -- if that is useful for you.

18 MR. SILVER: Next slide, please.

19 Q. Agent Cauthen, you testified that you reviewed these
20 voluminous logs; is that right?

21 A. Yes.

22 Q. Did you look for instances of the anon1234 username in the
23 logs?

24 A. I did.

25 Q. And when was the first one?

1 A. December 8th is the first time that anon1234 appears in all
2 the logs on the CMS between June of 2010 and January of 2011.

3 Q. Is that significant?

4 A. Yes. That means that when you see that log-in with the
5 edit and the save and the fact that it's the first occurrence,
6 that means that this instance, this log entry is recording the
7 creation of those credentials, anon1234, password whatever.

8 Q. Can you explain, Agent Cauthen, that the IP address -- and
9 I'll just call it the 80.87 IP address, which is the beginning
10 and end of it, that's the IP address associated with that
11 log-in entry?

12 A. Yes, that's correct.

13 There was another point on that log entry I probably should
14 mention as well.

15 Q. Shall we go back to it? One slide, please.

16 A. The last part starting with Mozilla and then a bunch of
17 computer gobbledygook, that is the user agent. And that
18 identifies the type of computer operating system being used by
19 the person using IP 80 -- and I'm going to shorten that, if
20 that's okay. Instead of reading it all out, I'll just say 80
21 and then the last one, 80.87, just to make it go faster, if
22 that's okay.

23 Q. That's fine with me. Actually I suggested it myself just
24 now.

25 A. Okay. So let's talk about IP address 80.87 creating the

1 anon1234 account. And what we know about that particular
2 computer is that they were using an Apple computer, and they
3 were using Firefox as their browser. Firefox is a type of
4 program you put on your computer to help you go to the
5 worldwide web.

6 Q. So if you connect to this server with a Macintosh running a
7 Firefox browser, that's the kind of log entry you're going to
8 get?

9 A. That's correct.

10 MR. SILVER: Next if we could go forward two slides,
11 please. Actually if we can go to -- if we can go to the
12 demonstrative, please.

13 Q. Agent Cauthen, with regard to this 80.87 IP address, did
14 you investigate that IP address specifically?

15 A. I did.

16 Q. Did you learn anything about who controlled it?

17 A. I did.

18 Q. Was there a company involved?

19 A. Yes, there was.

20 Q. What was the company's name?

21 A. Overplay.

22 Q. Overplay?

23 A. Yes.

24 Q. That's the same Overplay that came up during the recorded
25 conversation?

1 A. Correct. Overplay is a company that provides VPN, which
2 stands for virtual private network services.

3 Q. Have you prepared an animation that demonstrates how VPN
4 works?

5 A. Yes.

6 Q. And is this the animation here?

7 A. Yes.

8 MR. SILVER: If we could go ahead and hit the first
9 button.

10 THE WITNESS: All right.

11 BY MR. SILVER:

12 Q. What just happened there, Agent Cauthen?

13 A. When you're using a VPN, what you're doing is that
14 you're -- well, let me first preface it by saying VPN works
15 like call forwarding.

16 You ever make a phone call from another number, and then
17 that number calls you on your phone? And when you pick up your
18 phone, it's the number you made the call forwarding to, right?
19 So there's an extra step in there that it makes the final
20 recipient think that that phone call came from the intermediary
21 phone, right? So I'm going to run you through that and explain
22 how this all works.

23 So, in this example, we're going to have an IP address here
24 in Sacramento, and I've picked this 75.11 IP address here in
25 Sacramento. And he's going to dial into the Overplay server.

1 In this case, I think it's Switzerland where the 80.87 is,
2 right? So he logs in there, says I've arrived, I now want to
3 log into my VPN.

4 And what he sees on the screen when he does that is -- if
5 you're going to Switzerland actually, what probably happens, as
6 when I did it, you get -- your Google page changes. It's not
7 in English any more, it becomes German because the Internet
8 thinks you're in Switzerland. Does that make sense?

9 And what you're doing here is logging into that computer
10 just like you would be remotely dialing into work, and now that
11 computer overseas in Switzerland becomes your computer. And
12 everything you do on the Internet, it looks like it's coming
13 from Switzerland. It's coming from the 80.87 IP.

14 So when you hit a command, it goes from 80.87. And if
15 you're going to be basically using that VPN server to log into
16 a computer and say Los Angeles, like we were doing in this
17 case --

18 Q. Shall we hit the --

19 A. Go ahead and hit it. That sends that command to Los
20 Angeles. And the computer in Los Angeles responds to the
21 command, and it thinks that that command came from that
22 computer in Switzerland. But, in reality, the original command
23 came from Sacramento.

24 Q. So let me see if I can boil this down, Agent Cauthen.

25 After initial connection to the VPN, the VPN gives you a

1 new IP address that from then on becomes your IP address?

2 A. That's correct.

3 Q. Any connections you make from that point on come back to
4 the VPN IP address?

5 A. It is as if you were at that computer, sitting right in
6 front of it, even though you're remotely controlling it from
7 back here in Sacramento.

8 Q. Did you obtain any records from Overplay?

9 A. I did.

10 Q. Did you obtain any records about the particular 80.87 IP
11 address?

12 A. Yes, I did.

13 Q. Did the records say anything about who was using it?

14 A. Yes.

15 MR. SILVER: If we could go to the back to the PDF
16 slide 8, please.

17 Q. Agent Cauthen, is this a record from Overplay?

18 A. Yes.

19 Q. And can you walk us through these different fields and what
20 they mean here.

21 A. Sure.

22 The first name is the Overplay name, the username Overplay
23 gives or selected by their user, whoever logged into their VPN
24 server.

25 The next frame or the next thing, this 80.87, shows that

1 this was the computer that Overplay had that they were
2 connecting to, their computer in Switzerland. You have a start
3 time and a stop time. So you see December 9th at 1:31 in the
4 the morning going to December 9th at roughly 4:00 a.m. in the
5 morning.

6 Now these times are in London, so you have to back out the
7 time zones, which I haven't done here, if you're going to
8 convert to Los Angeles time.

9 The next IP address, that 10.10, that's an internal one
10 that the Overplay network uses. But the final one, the 75.11,
11 shows that is the computer that is in -- remotely controlling
12 that Swiss server. So user Keys JOM is at computer IP address
13 75.11 and is logged into 80.87 on the Internet.

14 And what that means is any computers on the Internet would
15 see the 80.87 IP address is where the computer is, but in
16 reality it's being controlled by Keys JOM from IP address
17 75.11.

18 MR. SILVER: Next slide, please.

19 Q. Did you compare those Overplay records to records from the
20 IRC chat logs and also records from the CMS logs?

21 A. Yes, I did.

22 So what I had here is the three slides all together showing
23 the CMS logs of what's happening on the CMS, showing the log-in
24 by that 80.87 IP, the Overplay logs showing that that log-in is
25 actually coming from Keys JOM from IP 75.11. And it's all

1 occurring during this chat on pound Internet Feds with
2 AEScracked saying that he's logging in.. And providing the
3 anon1234 credentials.

4 Q. So just to boil it down a bit more, these are three things
5 happening at the same time on three different computers?

6 A. All of these computers are independent in the sense that
7 they're doing their own logging.

8 Q. Where are each of these computers, Agent Cauthen?

9 A. The content in green, the Tribune CMS, is in Los Angeles.
10 IP address 75.11 used by Keys JOM is here in Sacramento
11 someplace. And the IRC logs, ah, were in Ohio. And the 80.87
12 IP that IP 75.11 was logged into was in Switzerland.

13 Q. Did you determine who Keys JOM is?

14 A. Yes.

15 MR. SILVER: Next slide, please.

16 Q. What did Overplay records say about who Keys JOM was?

17 A. Overplay, according to their records, said this account,
18 Keys JOM, belonged to Matthew Keys; and that he had signed up
19 for this service in September of 2010, and that he used the IP
20 address 75.53.168.11 to the sign up for the service.

21 Q. And you previously said that the 75.11 IP address did you
22 say geolocates to Sacramento?

23 A. I said it was here in Sacramento but, in fact, that's how I
24 determined that. I geolocated it using Internet tools to
25 identify that regionally it was assigned to a computer here in

1 the Sacramento area.

2 Q. So just to boil this down a bit more, Matthew Keys was Keys
3 JOM at Overplay; is that right?

4 A. Yes, that's correct.

5 Q. And got the 80.87 IP address from Overplay?

6 A. Yes.

7 Q. Which connected to the Tribune CMS logs?

8 A. That's correct.

9 Q. Which created the username anon1234?

10 A. Yes.

11 Q. At the same time, in the chat room, the nickname AEScracked
12 sent the username anon1234?

13 A. Shortly after that was actually created, yes.

14 Q. And Matthew Keys said that he used the nickname AEScracked?

15 A. Yes.

16 Q. Did you come across any mention of VPN IP addresses in the
17 IRC channels?

18 A. Yes, I did.

19 MR. SILVER: Next slide, please.

20 Q. Who was talking about VPN addresses in the IRC channels?

21 A. This is Matthew Keys as AEScracked.

22 Q. And this is also from Exhibit 611; is that right?

23 A. I think it is, yes.

24 MR. SILVER: Slide 13, please.

25 If that's 13, then how about 14? Thank you.

1 Q. Agent Cauthen, you were talking before about the
2 information at the end of the entry that collects the
3 characteristics of the computer on the other side of the
4 connection; is that right?

5 A. Yes.

6 Q. Is there a term for that?

7 A. That's called the user agent string or the user agent.

8 Q. So here we have -- this is green, so it's CMS again?

9 A. Yes.

10 Q. And, in fact, is this also Government's Exhibit 303, based
11 on 303?

12 A. 303, yes.

13 Q. What does this log entry say about the computer that was
14 connecting to the CMS here?

15 A. What it says is that the computer -- the creator of
16 anon1234 was using an Apple computer with a Firefox browser.

17 Q. Apple Computer with a Firefox browser?

18 A. That's right.

19 Q. That's a particular combination of make of computer and
20 browser?

21 A. Yes.

22 Q. But there are other makes of computers, right?

23 A. Of course.

24 Q. PC?

25 A. Windows, Lanix, Apple.

1 Q. And there are other browsers besides Firefox?

2 A. Chrome, Internet Explorer, Safari, Opera.

3 MR. LEIDERMAN: I think they were yes or no questions.

4 THE WITNESS: Oh, I'm sorry.

5 THE COURT: Sustained.

6 BY MR. SILVER:

7 Q. This is one particular combination out of several; is that
8 fair to say?

9 A. Yes.

10 Q. Several possibilities?

11 A. Yes.

12 Q. When you executed that search warrant at Mr. Keys'
13 residence, did you notice what kind of computer and browser --
14 scratch that.

15 Did you notice what kind of computer he had?

16 A. Yes.

17 MR. SILVER: If we can go to the next slide, please.

18 Q. What kind of computer was there at -- when you executed the
19 search warrant?

20 A. He had an Apple computer, a laptop, and he had some
21 removable hard drives that we seized and you saw.

22 Q. Did you -- what is depicted here, Agent Cauthen?

23 A. This is a screenshot that I found on that digital media of
24 a web page.

25 Q. And can you tell by looking at it what browser this is?

1 A. Yes.

2 Q. What browser is it?

3 A. This is a web page -- it's a Firefox browser.

4 Q. Is that the actual Firefox itself over there?

5 A. That's correct. That's the logo for Firefox or the mascot,
6 if you will.

7 Q. If this computer had connected to the CMS logs, what would
8 the user agent string look like?

9 A. Just what we saw previously. This is -- if that had gone
10 to the CMS logs, the records we saw in the CMS logs is what
11 you'd expect to find from a computer with this configuration,
12 using Apple software and a Firefox browser to connect. It
13 would reflect just as we saw in the CMS logs.

14 Q. Is this screenshot representative of Exhibit 508?

15 A. Yes.

16 MR. SILVER: Next slide, please.

17 Q. This is from Exhibit 101, Agent Cauthen; is that correct?

18 A. That's correct.

19 Q. Did you do any work to determine who Fox Mulder was?

20 A. I did.

21 Q. How did you go about doing that, Agent Cauthen?

22 A. Well, the investigative steps that I had were essentially
23 and initially twofold. One is I had the Yahoo records for that
24 e-mail account. And then I could look at CMS and see if there
25 was any potential correlations.

1 MR. SILVER: Next slide, please.

2 Q. Did you pull particular CMS records that you thought were
3 related to the e-mail incident?

4 A. I did.

5 Q. And how did you go about pulling those?

6 A. I did -- I had the entire contents of the CMS logs
7 available to me, and I just did search terms to scrub any
8 references to or identify any references to the e-mail.

9 Q. Do the entries you pulled have anything in common?

10 A. Yes. So the first set of entries I pulled here came up
11 referencing KTXL, which was the call sign for Fox 40, and
12 e-mails showed an IP address of 75.11 and are associated with
13 the date of November 3rd, 2010. And the user agent string for
14 each of these is associated with an Apple computer and a
15 Firefox browser.

16 Q. Agent Cauthen, are there some numbers in these entries that
17 refer to the file size of the particular transaction described
18 in the entry?

19 A. Yes.

20 Q. If you can point on the touch screen to explain to the jury
21 where those are, please.

22 A. All right. Well, on this screen, I think if I press this
23 number -- oops, no. Sorry. You would think I would know this
24 as a computer guy. I'm sorry.

25 But that number there, 178316, refers to the size of the

1 file or the amount of data being transferred. And there's
2 another large one down here, 63795 and then 28689 and 24523.
3 Those are big amounts of data relative to a lot of the other
4 stuff I observed on the CMS.

5 Q. What about the word "get"? I see that -- does the word
6 "get" appear on all of these entries as well?

7 A. Yes.

8 Q. What, if anything, does that mean?

9 A. Get means the data went from the CMS to IP 75.11.

10 Q. So to boil it down, these entries describe the downloading
11 of large files?

12 A. Yes.

13 I shouldn't say files. What it means is it's large amounts
14 of data. It might be one file kind of spread out. It just
15 depends how the packets were moved.

16 Q. Were these all done by a Macintosh running Firefox?

17 A. According to the information supplied to the CMS, it did.
18 It was a -- that was what it was sent to.

19 MR. SILVER: Next page, please.

20 Q. Are these more smaller entries, Agent Cauthen?

21 A. Similar entries, a different date. The date on this is
22 November 22nd, about three weeks afterwards.

23 Again, it's a portion of the logs in the CMS referring to
24 e-mail page. It's also sending data referring to this topic to
25 IP 75.11. It has the same user agent showing an Apple computer

1 with a Firefox browser. And we have, again, a large amount of
2 data moving on that first line.

3 MR. SILVER: Next slide, please.

4 Q. And these entries, Agent Cauthen, are they in the same
5 category?

6 A. That looks like the same slide to me. Ah, there we go.

7 So what I've done here is, looking at just the term "e-mail
8 page," I did a search on everything indicating who could have
9 possibly downloaded e-mail. And the only IP that showed up in
10 the CMS logs is this one right here, 75.11. That was my only
11 hit for that query on e-mail page.

12 And what I've done here is kind of combined them together
13 with the large amounts for November 3rd and November 22nd,
14 indicating that this event, the sending of data related to
15 e-mail page was sent twice to that IP address belonging to --

16 Q. That IP address 75.11 has already come up in our
17 conversation just now, hasn't it?

18 A. Yes.

19 MR. SILVER: Next slide, please.

20 Q. That's orange for Overplay we're looking at?

21 A. That's correct.

22 Q. So the 75.11 IP address was there in the Overplay logs for
23 Keys JOM; is that right?

24 A. Yes.

25 Q. And that's the only IP address in all of the CMS logs

1 associated with the e-mail page?

2 A. That's correct.

3 Q. That was the only IP address in the pages of logs we just
4 saw that was pulling down those large files as you described?

5 A. That's correct.

6 Q. And that was the 75.11 IP address in the Keys JOM Overplay
7 logs which Overplay said was Matthew Keys?

8 A. That's correct.

9 Q. And that IP address geolocates to Sacramento?

10 A. Yes.

11 MR. SILVER: Next slide, please.

12 Q. This is Exhibit 101; is that right, Agent Cauthen?

13 A. That's right.

14 Q. The fourth and fifth pages of Exhibit 101?

15 A. From Exhibit 101.

16 Q. Thank you for the clarification.

17 Did you further investigate who was behind the Fox Mulder
18 e-mails?

19 A. I did.

20 MR. SILVER: The next slide, please.

21 Q. This is yellow for Yahoo?

22 A. Yes.

23 Q. And is Yahoo -- what information is Yahoo giving you here
24 in the yellow? Can you explain to the jury what exactly these
25 dates and numbers are?

1 A. I can.

2 Yahoo is keeping track of the IP addresses of the person
3 who is logging into the Fox Mulder 4009 e-mail account. So
4 when they log in, they keep track of the time and the IP
5 address they're logging into or they're logging from.

6 So what we learned when we went to Yahoo for that
7 particular Fox Mulder e-mail account is we had all of these
8 times here, and these are California time, the person logging
9 into Fox Mulder came from IP address 91.172.

10 MR. SILVER: Next slide, please.

11 THE WITNESS: So I went to the CMS, all of the logs in
12 the CMS, and I said, oh, here's a new IP address, 91.172. Did
13 they log into the CMS? And I found that they did.

14 In fact, they seem to go back and forth. And at least
15 on one occasion, the person is logging into the Fox Mulder
16 e-mail account and just minutes later logs into the Yahoo
17 e-mail account, the Fox Mulder e-mail account.

18 BY MR. SILVER:

19 Q. So some of these entries are very close together; is
20 that --

21 A. Yes.

22 Q. In terms of time?

23 A. So here we have -- let's see if I can find one that is
24 extremely close, within a few minutes.

25 Q. I think -- is the white helpful?

1 A. Yes, I can see that. Okay.

2 So if you can see the white, there's a December 4th entry
3 at 4:28 p.m. And then roughly four minutes later, after
4 logging into the Fox Mulder e-mail account, they log into the
5 CMS e-mail account.

6 Four minutes is very quick, right after it. So they'd have
7 to log out of the Fox Mulder, go over to the CMS log-in or be
8 concurrently logged in. What that tells me is that's the same
9 person using that IP to do both. It's coming from the same
10 computer. That IP address is logging into the CMS, and it's
11 the same person who is logging into the Fox Mulder e-mail
12 account, based on the IPs, based on times and two different
13 services.

14 MR. SILVER: Next slide, please.

15 Q. Agent Cauthen, did you learn during the course of your
16 investigation the username that Matthew Keys was assigned to
17 access the CMS?

18 A. Yes, I did. It was M. Keys, M-K-E-Y-S.

19 Q. As you reviewed the logs, did you notice any patterns with
20 regard to M. Keys in the user agent string associated with M.
21 Keys entries?

22 A. I did. I went onto the CMS, and I looked for everything
23 relating to M. Keys from June to July.

24 MR. SILVER: Next slide, please.

25 Q. Was there any relationship between the user agent string

1 for the M. Keys entries and, on the other hand, the 91.172
2 entries?

3 A. Correct. So with regard to M. Keys, the username that
4 Matthew Keys used when he was employed at Fox 40, I did a
5 search for everything. And actually I found roughly 194
6 entries or log-ins related to M. Keys over that time frame, and
7 I found that almost all of them came from that IP address
8 75.11. I think out of 194 times he logged in, 184 times was
9 from 75.11.

10 And when I looked at those, they all had the same user
11 agent string showing that he had logged in using an Apple
12 computer with a Firefox browser. That was the user agent
13 string used by M. Keys, Matthew Keys.

14 And when I went to the user agent logs or the CMS logs for
15 that IP address 91.172, which had logged into Fox Mulder, I
16 found that same user agent string for that computer, Apple with
17 Firefox.

18 MR. SILVER: Next slide, please.

19 Q. This slide has -- this is yellow and orange, Agent Cauthen?

20 A. Yes.

21 Q. This is Yahoo and Overplay?

22 A. Yes, it is.

23 Q. And what's being laid out here, Agent Cauthen?

24 A. So what I did here is I compared the Yahoo logs for the
25 person logging into Fox Mulder going to Overplay to see if

1 Overplay had any information about that 91.172 IP, and sure
2 enough they do. In fact, in some instances they overlap
3 perfectly. But based on my investigation, I believe the clocks
4 on the computers overseas in Overplay were off by about 15
5 minutes. So if I adjusted the 15-minute differential on some
6 of these calls, it was a perfect match.

7 In the first two, I didn't need to make an adjustment
8 because the session that he was logged on at Overplay
9 overlapped, so that it didn't matter if there was a 15-minute
10 error. But in some cases, they did.

11 And what you find, specifically looking back on December
12 6th, is that Keys JOM from IP 75.53.168.11 is logged in on
13 Overplay to the IP address 91.172, which was being used to
14 access the Fox Mulder e-mail account at Yahoo.

15 Q. Again, just to try to boil this down, these are repeated
16 cases where the Keys JOM account is getting that 91.172 IP and
17 then connecting to the Fox Mulder account?

18 A. Every single one of the Yahoo log-ins on Fox Mulder tracks
19 back to Matthew Keys according to Overplay.

20 Q. Who is Fox Mulder?

21 A. A TV character on a TV show called X Files.

22 Q. Who was controlling the Fox Mulder e-mail account?

23 A. Matthew Keys.

24 Q. What about Cancer Man, Agent Cauthen? Next slide, please.

25 This is Exhibit 104, is that right, which is redacted?

1 104, I think page 3 of that?

2 A. Yeah, this came from Exhibit -- one of the exhibits, I
3 forgot the number. It's a Cancer Man e-mail. It's dated
4 December 2nd. It's a Yahoo e-mail.

5 MR. SILVER: If we could skip forward to the slide that
6 starts with who was Cancer Man, please.

7 Q. Agent Cauthen, does this slide, again, compare Yahoo and
8 Overplay records?

9 A. Correct. I did the same thing that I did before with the
10 Cancer Man e-mail. I went to Overplay. I went to Yahoo.
11 Which IP logged into the Cancer Man e-mail account? They gave
12 me the IP 91.172. I looked at the Overplay records, and it
13 comes back to Matthew Keys.

14 Q. Who was using the Cancer Man 4099 e-mail account?

15 A. Matthew Keys.

16 And of particular note in this IP right here. It's
17 changed. There's a new one. It's 75 and ends in dot 204. So
18 what that says is Matthew Keys on this date is logged into
19 Cancer Man Yahoo from this IP, 75.204, to the Overplay VPN.

20 Q. Did you investigate the 75.204 IP address?

21 A. I did. That was an IP assigned to AT&T, so we sent the
22 subpoena to AT&T. Sorry.

23 Q. That's okay. My bad.

24 You said you sent a subpoena to AT&T?

25 A. Yes.

1 Q. And is that what you got back in part?

2 A. In part, yes.

3 Q. Can you explain what all these numbers and letters on here
4 are referring to?

5 A. Well, not all of them, but in part I can.

6 In short, that's the start date down there when this IP was
7 assigned. That's the termination date when it stopped. And
8 this is information relating to the user. And there is some
9 other computer data here about ISPs, how Internet service
10 providers keep track of their customers.

11 Q. And the record continues on the next page?

12 A. Yes.

13 And specifically they identify the customer and the service
14 where this IP was assigned to, and it's here in Sacramento at
15 3381 Shadow Tree Drive. And it's assigned to Matthew Keys.

16 Q. And this IP address was in the Overplay records as Keys JOM
17 and connecting to Cancer Man?

18 A. That's correct.

19 Q. Did you look at CMS entries --

20 MR. SILVER: Your Honor, we're beginning a new section,
21 and I notice the hour. I don't know if the Court would want me
22 to --

23 THE COURT: We can take our break for the day and the
24 weekend at this point.

25 So as we break, given the length of the break -- we'll

1 start up again on Monday morning at 8:30. I'll give you a more
2 clear schedule at that point in time after I confer with
3 counsel. But I understand that we'll likely finish with the
4 agent on Monday, perhaps hear from a few more witnesses, and
5 I'll have a better sense by Monday morning of the schedule for
6 closing argument and instructing you.

7 So as we leave, particularly given that we're getting
8 closer to the end, please keep in mind all of the admonitions
9 I've been giving you at every stage. Don't discuss the case
10 with anyone, including fellow jurors, family members, friends,
11 anyone you might see this weekend. Don't allow anyone to talk
12 about the case with you. If you hear or see anything that you
13 believe is a news report related to this case, please disregard
14 it immediately. If anyone does approach you at any point and
15 tries to talk to you about the case, please let me know. Don't
16 do any research of any kind, electronic or otherwise.

17 Have a very good weekend. We'll see you Monday
18 morning. Thank you.

19 (Jury not present.)

20 THE COURT: You may step down. Please be back in your
21 seat at 8:30.

22 So how much longer do you believe you have on direct?

23 MR. SILVER: An hour and a half, outside limit, I would
24 say.

25 THE COURT: All right. And then at this point,

1 Mr. Leiderman, you'll be doing the cross. If you had to
2 estimate, do you know -- I realize you have a lot to hear yet.

3 MR. LEIDERMAN: I don't even know what to do with all
4 of this, with all of this material. I couldn't give the
5 Court --

6 THE COURT: All right. That's --

7 MR. LEIDERMAN: -- an estimation.

8 THE COURT: I won't pin you down, then.

9 So who -- the government may call two more people? Who
10 would those people be, if you do call them?

11 MR. SEGAL: We might call Jerry Del Core. We might
12 call Soto -- probably not. I think it will -- if we call -- we
13 might call Jerry Del Core for about half an hour and Davis and
14 Soto maybe for 10 minutes each, but I don't think we need them.

15 THE COURT: All right.

16 MR. SEGAL: I want to wrap this up.

17 THE COURT: All right. Well, depending on cross, I
18 think evidence will be done Monday.

19 How much time do you anticipate for closing? Or are
20 you requesting for closing, I should say.

21 MR. HEMESATH: We spoke about this briefly, Your Honor,
22 and I'll have Mr. Leiderman speak with me on that subject.

23 He has an estimate for his --

24 MR. LEIDERMAN: I think we were estimating two hours
25 each side based upon our discussions.

1 THE COURT: All right. You agree with that,
2 Mr. Hemesath?

3 MR. HEMESATH: Yes, Your Honor. And is my
4 understanding correct that whatever is not used may be used for
5 rebuttal?

6 THE COURT: If you reserve time, yes.

7 MR. HEMESATH: And when would we reserve time?

8 THE COURT: Well, you would tell me at the beginning if
9 you want me to give you a warning sign when you're coming up on
10 a point. Say if you want to reserve 20 minutes, I'd give you a
11 notice when you have 20 minutes left out of two hours.

12 MR. HEMESATH: I see.

13 THE COURT: Then you'll have -- I run the clock, and so
14 I give you equal time.

15 MR. HEMESATH: Okay. We'll let you know at that time.

16 THE COURT: All right.

17 MR. SEGAL: If we get equal time, then we have to --
18 okay.

19 MR. HEMESATH: If I end at the -- if I request 30
20 minutes out of that for reservation for rebuttal, and I end
21 early --

22 THE COURT: You get two hours total --

23 MR. SEGAL: Okay.

24 THE COURT: -- regardless of when you end in your
25 opening before rebuttal, your first part of closing.

1 All right. Two hours is a long time, but if you say
2 that's what you need. Think about that this weekend, and we'll
3 check in on that on Monday morning.

4 Ms. Schultz has a working set of instructions she'll
5 e-mail you and a verdict form. When you look at the
6 instructions, at this point I've been generally over-inclusive.
7 So there are certain areas where I have questions myself, but
8 we'll review those -- I think at this point we'll review them
9 initially -- I think we can do this right at the end of day on
10 Monday.

11 So we'll have a working session on jury instructions.
12 I'll get you a revised version of instructions probably later
13 in the day. We'll have another working session -- we might
14 start a little later on Tuesday morning so as to finalize the
15 jury instructions so they will be in final form before you give
16 your closing.

17 So it sounds to me as if it will go to the jury by the
18 end of the day Tuesday. On Monday, I'm going to ask them to
19 think about whether or not they want to deliberate later on
20 Tuesday; that is, past 1:30. And I'm assuming if they want to
21 deliberate until 4:30 or 5:00, that you can be available.

22 And then on Wednesday the same, let us know if they
23 want to start deliberating in the morning even though I'll have
24 criminal calendar that morning.

25 MR. HEMESATH: A clarification, Your Honor.

1 THE COURT: Uh-huh.

2 MR. HEMESATH: Am I understanding that no matter what
3 happens with the length of witnesses on Monday, that we're
4 planning on closing on Tuesday?

5 THE COURT: Unless you wrap up much more quickly.

6 MR. SEGAL: We have to have the charge conference on --
7 there's no way the charge conference happens before Monday
8 afternoon, so I don't see how we could close by --

9 THE COURT: I mean, if you came in Monday morning and
10 say, oh, I only have five more minutes with Agent Cauthen, and
11 you decided your cross is very truncated, then we would give
12 the jury a long break, and we would do what we could --

13 MR. SEGAL: Okay.

14 THE COURT: -- to get the jury instructions done.

15 MR. SEGAL: Right.

16 THE COURT: So -- but I do think it's likely your
17 closings will start first thing Tuesday, whenever we start with
18 the jury on Tuesday.

19 MR. SEGAL: Have a nice weekend, Your Honor.

20 THE COURT: Did you have questions over here?

21 MR. JAFFE: No, I think it's -- I think we understand
22 that.

23 MR. LEIDERMAN: Yes. Have a nice weekend, Your Honor,
24 and everyone else.

25 THE COURT: All right. We'll see everybody on Monday

1 morning at 8:30.

2 THE CLERK: Court is in recess.

3 (Proceedings were adjourned at 1:34 p.m.)

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I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

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