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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 548 (JMF)

5 JOSHUA ADAM SCHULTE,

6 Defendant.

Trial

7 -----x

New York, N.Y.
June 30, 2022
9:00 a.m.

10 Before:

11 HON. JESSE M. FURMAN,

12 District Judge
13 -and a Jury-

14 APPEARANCES

15 DAMIAN WILLIAMS
United States Attorney for the
16 Southern District of New York
BY: DAVID W. DENTON JR.
17 MICHAEL D. LOCKARD
Assistant United States Attorneys
18

19 JOSHUA A. SCHULTE, Defendant *Pro Se*

20 SABRINA P. SHROFF
21 DEBORAH A. COLSON
Standby Attorneys for Defendant
22

Also Present: Charlotte Cooper, Paralegal Specialist
23 Elizabeth Caruso
24 Vivian Goa
Interpreters (Spanish)
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1 (Trial resumed; jury not present)

2 THE COURT: You may be seated.

3 All right. I'm told the witness is not yet in the
4 courthouse, which is unfortunate. I'll try and get a sense of
5 his timing while we talk, but in the meantime, let's take care
6 of whatever business we have.

7 First, Mr. Schulte, any objections to 1703-1 and
8 1704-1, the proposed summary charts?

9 MR. SCHULTE: Yes. I think there's still an
10 objection. They took, like, 60, 70 percent of the slides, not
11 really any mechanism for how they chose random slides. And
12 it's just not proper evidence, what they selected.

13 THE COURT: Can you be a little more specific than
14 that? The sheer number is not a ground for objection. The
15 question is whether the selections they made are consistent
16 with Rule 1006, which is to say that they summarize or display
17 the contents of voluminous writings, recordings, or photographs
18 that cannot be conveniently examined in court, as opposed to
19 being something that is just a demonstrative aid to the
20 witness's testimony. So certainly portions of these are
21 clearly proper under 1006. I think the burden is on you to
22 identify if you think that something isn't and/or if it is
23 otherwise inadmissible or misleading.

24 MR. SCHULTE: Would the Court want me to submit
25 something for each of the ones I object to, or -- I mean I

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1 think a lot of it is still just demonstrative. Obviously, some
2 of it is admissible under that rule, but I think still that the
3 government didn't really pare down a lot of the demonstrative
4 exhibits, and especially when it didn't really pertain to
5 voluminous records, some of the slides.

6 THE COURT: OK. I'd say the only issue is that the
7 government, sounds like, may rest as soon as today, and I think
8 in fairness, I'd wanted this resolved before that. On the
9 other hand, assuming the government has no objection, I suppose
10 I can always tell the jury that we're sorting out what portions
11 of 1703 and 1704 can be admitted into evidence. I think I told
12 them that for the moment they're just demonstratives, and then
13 we can always, I think, just admit them after the fact if
14 there's no objection from anybody.

15 MR. LOCKARD: I think they may need -- I take the
16 Court's point. The point is that they are not in but they are
17 accepted as demonstratives and can be converted to substantive
18 evidence; I'm not sure we can do that after the government
19 rests.

20 THE COURT: Why not, if Mr. Schulte has no objection?

21 MR. LOCKARD: I think we're concerned about the effect
22 on things like Rule 29 motions and other things that are tied
23 to the close of the government's case in chief. That's the
24 concern. I think we're less concerned about what goes into the
25 jury room. I think that's an easy question. I think we're

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1 more concerned about motions tied to --

2 THE COURT: Is there anything in here that is not part
3 of the record in some other form, either by testimony of the
4 witness or the actual underlying evidence? Most of it
5 references evidence that is in the record, government exhibits,
6 and the like. To the extent that it is in the record, I think
7 it is complete and there would be no Rule 29 issues.

8 MR. LOCKARD: That's a fair point, your Honor. I
9 think especially the witness testimony certainly covers the
10 slides in the deck.

11 THE COURT: All right.

12 Mr. Schulte, assuming that you have no objection to
13 proceeding in that way, given that it would be to accommodate
14 your desire to go through this more carefully and submit
15 something in writing, I'm happy to give you that opportunity
16 and have you file something by Tuesday, identifying with
17 specificity, any portions of this that you think are not proper
18 under Rule 1006. Does that work?

19 MR. SCHULTE: I very much appreciate that. Thank you.

20 THE COURT: All right. And just to be crystal clear,
21 I take it you have no objection to whatever portions are
22 admissible being admitted after the government rests its case.
23 So resting conditioned on that?

24 MR. SCHULTE: That's correct.

25 THE COURT: OK. Great.

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1 Second, the IRC chat issue, situation. Has that been
2 resolved?

3 MR. LOCKARD: We think so. We've reworked the
4 exhibits, as discussed yesterday afternoon, and included the
5 file titles from which those chats were derived, which contains
6 the year of each of the chats, and we've provided those to
7 Mr. Schulte so that he can review them when he has an
8 opportunity.

9 THE COURT: OK.

10 Mr. Schulte, have you had an opportunity? It doesn't
11 sound like there would be much to review.

12 MR. SCHULTE: I mean, from my understanding, it's the
13 same.

14 (Defendant conferred with standby counsel)

15 MR. SCHULTE: I just received them, so I haven't had a
16 chance to go through them. So just having an opportunity to do
17 that, and I think they're -- yeah.

18 (Defendant conferred with standby counsel)

19 THE COURT: OK. Well, given the delay in the
20 witness's arrival, it may be that you'll have a chance to do
21 that in a moment.

22 Anything else that you guys need to discuss?

23 MR. LOCKARD: Not to discuss, your Honor, but I think
24 just in the vein of ensuring that the record on the admitted
25 evidence is clear, you know we've been providing the parties

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1 and the Court with the government's list of admitted exhibits.
2 I think there is one more set of exhibits that will be admitted
3 through Agent Schlessinger's testimony, and then after that we
4 hope to have an opportunity to see if Mr. Schulte objects to or
5 disagrees with our list of what's in evidence.

6 THE COURT: All right. I've been getting a running
7 list, although now that I look, I don't think I have today's --
8 oh, I think I do. I very much appreciate the government
9 keeping track.

10 MR. LOCKARD: And we flagged in connection, I think,
11 you know, there are times when the record will reflect that a
12 disk containing exhibits has been received in evidence and then
13 the government's list also contains an individualized list of
14 what's included on those disks, which is not necessarily
15 reflected in the transcript but we think doesn't affect their
16 status as received evidence.

17 THE COURT: Sorry. Can you say that again?

18 MR. LOCKARD: Sure. The identification of particular
19 documents on a disk has been a little bit inconsistent in the
20 transcript. So there are times where the transcript will
21 reflect that a disk has been received in evidence as well as
22 identifying the exhibits that are contained on that disk.
23 Other times, the disk itself is indicated as received but not
24 the underlying or the contained exhibits. We don't think that
25 affects the fact that those contained exhibits were received as

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1 part of the disk. We just wanted to flag that so that
2 everybody's aware of it and on the same page.

3 THE COURT: OK.

4 Mr. Schulte, I would ask that you take the weekend to
5 go through that list and see if you have any disagreement with
6 anything that the government believes is in evidence and be
7 prepared to raise that, I guess, when we resume next week.
8 It's not critical just yet, but certainly when it comes time to
9 submitting the case to the jury, I want to make sure we're all
10 on the same page and have the exhibits that have been admitted
11 collected so that they can be submitted to the jury. That will
12 be in electronic format, so if the government wants to begin
13 consolidating them -- well, I'll talk to Ms. Smallman about
14 whether it's easier to have you give us a new set so that we
15 don't have to collate or go through the ones that we have or
16 just select from what we already have. In any case, it's
17 certainly important that everybody's on the same page about
18 what is in evidence.

19 So Mr. Schulte, if you can review the government's
20 lists over the weekend and be prepared to raise anything that
21 you think is inaccurate when we resume next week, that would be
22 great. OK?

23 MR. SCHULTE: Yes. Will do.

24 THE COURT: All right. I think I may have said that
25 was the last item on my agenda list, but I have one other,

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1 which is the proposed redactions to the transcript from -- I
2 think if I have it right, we're now talking Tuesday. I have
3 received those and I'm OK with the redactions -- well, here's
4 what I would propose. I have no problem approving the limited
5 proposed redactions with respect to the transcript to be
6 released publicly. I think that they're narrowly tailored to
7 what would be justifiably redacted. To the extent that the
8 redactions are to questions that I sustained an objection,
9 there's also no issue with redacting it in the event that the
10 jury requests this portion of the transcript.

11 I do have some concerns, however. There are a couple
12 questions where there was no objection, one question that I
13 posed, that is redacted. I apologize for that. And those I
14 have a little bit of concern redacting from the jury in the
15 event that the jury requests this portion. Obviously they may
16 not request this portion, and then it would be a moot point.
17 But what I would propose is if the jury does request this
18 portion, that we give them a version that only redacts -- any
19 transcript that we give to the jury should redact anything that
20 I've sustained. So that's a nonissue. But with respect to
21 something where there was no objection or I overruled the
22 objection, I think we should give a copy to the jury without
23 the redaction, and then we would collect those after the fact
24 so that there's no danger of them being released. But since
25 what's done is done. It was said in open court. It was

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1 public, or public to the extent that I previously approved at
2 the time. I have no trouble redacting it from the public
3 version, but I think if the jury requests it, we shouldn't
4 redact something that's technically in evidence.

5 Any objection to proceeding in that manner?

6 MR. LOCKARD: No, your Honor.

7 THE COURT: Mr. Schulte.

8 MR. SCHULTE: No.

9 THE COURT: I think that's it on my agenda.

10 Anything else from any of you?

11 MR. DENTON: Not urgent, your Honor, but just since we
12 have a moment, with respect to the defense witnesses for next
13 week, first of all, let me say again we apologize, but to the
14 extent that our misestimation of how things were going to go
15 this week results in our not having a defense witness available
16 today, we apologize for that.

17 Mr. Schulte provided us last night with a trimmed-down
18 list of nine current or former CIA employees or contractors
19 that he intends to call. One of those, the last name on the
20 list is the individual whom we've discussed previously that we
21 were not -- or I should say the CIA was not able to contact,
22 and his contact information was provided to standby counsel.
23 So we are not making arrangements for him. I will note,
24 however, based on his status at the time that he retired, he
25 would fall into one of the categories for protected witnesses.

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1 So if defense counsel is able to arrange and secure his
2 appearance, we'll just have to coordinate on that.

3 For the other eight witnesses, we will have all of
4 them here and ready to go on Wednesday morning and kind of have
5 them available in, you know, as the defendant requests them.
6 We'll try and manage the logistics of getting people up here as
7 efficiently as possible -- up here meaning within the
8 courthouse and just having people kind of ready to go so that
9 there isn't long delay between witnesses. But based on the
10 defendant's representation of only expecting a two- to
11 three-day case, our plan is just to have everybody available
12 and so we'll be able to move efficiently.

13 THE COURT: OK. I think that makes the most sense.

14 For my planning purposes, of the nine, how many fall
15 into the most highly protected category; that is to say, for
16 whom the partial courtroom closure would be implemented?

17 MR. DENTON: If I could just have a second, your
18 Honor.

19 So, your Honor, I think of the nine, I believe eight
20 of them would fall into different degrees of closure. One of
21 them would not. One of them would be able to testify in his
22 full name in open court, like Mr. Roche did. I think, if I'm
23 remembering correctly, that there are three of those who would
24 be testifying under pseudonyms, and then the other five would
25 be testifying in their true first name only.

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1 THE COURT: And all eight would be subject to the
2 partial closure of the courtroom, though, or just the three
3 with pseudonyms?

4 MR. DENTON: Yes, all eight would be.

5 THE COURT: All right.

6 Mr. Schulte, any disagreement about that?

7 MR. SCHULTE: I mean --

8 (Defendant conferred with standby counsel)

9 MR. SCHULTE: Yeah, the status, obviously whatever the
10 status the government says.

11 I wanted to note also that there's at least one other
12 witness, Hannah Slotnick, who is not a CIA witness, who we've
13 subpoenaed.

14 (Defendant conferred with standby counsel)

15 MR. SCHULTE: And for whom we have no 3500. I just
16 want to make sure the government is aware of that and the
17 Court's aware of that on the record.

18 And then I'd just ask for a couple seconds to review
19 something with standby counsel about a stipulation with the
20 government.

21 THE COURT: OK.

22 MR. SCHULTE: All right. I think that's cleared up.

23 THE COURT: OK. Anything else from your end,
24 Mr. Schulte? Otherwise --

25 MR. SCHULTE: No, nothing.

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1 THE COURT: Great. So if you can review the IRC chat
2 exhibits while we're awaiting either Mr. Betances or word about
3 him, that would be great. I'll stay on the bench in the hopes
4 that that's just a few minutes.

5 MR. DENTON: Your Honor, with respect to the witness
6 issue, I think at the end of the day today, we can provide the
7 Court with a list of the defense witnesses or at least the
8 defense CIA witnesses and who falls into which category and
9 just itemize it that way in a classified submission.

10 THE COURT: All right. I think that would be very
11 helpful so that we can plan accordingly, but I assume that
12 you'll also coordinate with the CISO team and the marshals, as
13 needed.

14 MR. DENTON: Of course.

15 THE COURT: All right. Anything else that we need to
16 discuss while we wait?

17 Is the government still expecting to rest today?

18 MR. LOCKARD: That's our expectation/hope.

19 THE COURT: OK.

20 Mr. Schulte, anything else, other than reviewing the
21 IRC chats?

22 MR. SCHULTE: No, nothing else.

23 THE COURT: Great. Why don't you review that, and
24 I'll let you know when I have word about the witness or the
25 witness will appear.

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1 All right. I gather the witness is here and is on his
2 way up. We'll start to round the jury up as well.

3 Mr. Schulte, any chance to review the IRC chat
4 situation?

5 MR. SCHULTE: Yes, I have.

6 THE COURT: Any objection to what the government is
7 proposing?

8 MR. SCHULTE: No.

9 THE COURT: All right. Then I don't need to take
10 anything up.

11 Do we know where Ms. Shroff and Ms. Colson are? Some.

12 MR. SCHULTE: I think they had to use the restroom
13 real quick.

14 THE COURT: All right. Let's get the witness on the
15 stand. When they're back, we'll get the jury in and get
16 started.

17 (Continued on next page)

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1 (Jury present)

2 THE COURT: You may be seated.

3 Good morning, ladies and gentlemen. Welcome back.

4 Thank you for being here on time, and my sincere apologies for
5 the fact that we're getting started a few minutes late. I had
6 Ms. Smallman come down to give you a heads-up that we'd be a
7 little delayed. We were having some technical difficulties up
8 here, but we have sorted them out, so we can resume.

9 I should have a better sense of where we are by the
10 end of today, so before I excuse you for this very long
11 weekend, I'll give update you an update on where things are,
12 but the good news is that after talking to the parties, I think
13 we're actually in better shape and on better pace than I had
14 expected. So that's good news, but I'll give you more concrete
15 information on that front before you leave for the weekend, and
16 obviously, of course, that is, knock on wood, subject to all
17 the various things that could possibly go wrong. But we'll
18 keep our fingers crossed. But I'm glad to see everyone's here
19 today.

20 We will pick up where we left off yesterday, with the
21 direct testimony of Mr. Betances.

22 CARLOS MANUEL BETANCES LUNA MERA, resumed.

23 THE COURT: Mr. Betances, you remain under oath.

24 THE WITNESS: OK.

25 THE COURT: Mr. Lockard, you may proceed.

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1 DIRECT EXAMINATION CONTINUED

2 M6uWsch1 Betances - Direct

3 BY MR. LOCKARD:

4 Q. Good morning, sir.

5 A. Good morning.

6 Q. Mr. Betances, yesterday you testified about certain things
7 that you heard the defendant say while the two of you were at
8 the Metropolitan Correctional Center together. Do you recall
9 that?

10 A. Yes.

11 Q. Mr. Betances, are you able to speak and understand English?

12 A. A little bit, yes.

13 Q. What's your first language?

14 A. Spanish.

15 Q. And are you more comfortable today testifying here in court
16 with a Spanish interpreter?

17 A. Yes.

18 MR. LOCKARD: Ms. Cooper, could we please pull up
19 Government Exhibit 408. I'm sorry. 820-408.

20 Q. Mr. Betances, yesterday you testified about certain phones
21 that you charged in your cell. Do you remember that?

22 A. Yes.

23 Q. Is this one of those phones?

24 A. Yes.

25 Q. And which phone is this?

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1 A. This one is -- hold on. I can't really make it out too
2 well.

3 Yes, it's the Samsung. It's the Samsung.

4 Q. And can you remind us who used the Samsung cell phone?

5 A. Josh used it at the beginning. We were using it also, but
6 after he changed the password, I wasn't able to use it.

7 Q. Mr. Betances, did you write what's written here?

8 A. No.

9 Q. So just directing your attention to the sentence that says,
10 "My case involved WikiLeaks and the Vault 7/8 release," did the
11 defendant mention WikiLeaks to you?

12 A. I heard him talking about it with him once.

13 Q. And did you hear the defendant mention Vault 7?

14 A. Yes. I also heard him talk about that once, but when I
15 heard him talking, he just, all of a sudden, stopped talking.

16 MR. LOCKARD: Thank you, Ms. Cooper.

17 Q. Mr. Betances, did you hear the defendant mention
18 information war?

19 A. I also heard him mention that once -- that, too, once.

20 Q. Did you understand what he was talking about?

21 A. Well, the meaning, I guess it means some sort of a war with
22 respect to information, something like that.

23 MR. SCHULTE: Objection.

24 THE COURT: Overruled.

25 BY MR. LOCKARD:

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1 Q. But other than that, did you understand what he was
2 referring to?

3 A. Yes.

4 Q. Did he say anything else about the information war?

5 A. No.

6 MR. LOCKARD: Ms. Cooper, could we please play the
7 video that's in evidence as Government Exhibit 820-420.

8 THE COURT: Counsel, do you mean 420 or 402?

9 MR. LOCKARD: Thank you, your Honor. 402.

10 (Video played)

11 BY MR. LOCKARD:

12 Q. Mr. Betances, did you take that video?

13 A. Yes.

14 Q. Who is shown in that video?

15 A. Josh.

16 Q. And where were the two of you when you took that video?

17 A. In Chino's cell.

18 Q. And what was Mr. Schulte holding at that time?

19 A. The Samsung telephone.

20 MR. LOCKARD: Ms. Cooper, could we please see
21 Government Exhibit 820-430.

22 Q. Mr. Betances, what phone is shown here?

23 A. It's the Samsung.

24 Q. And did you write what's written here?

25 A. No.

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1 Q. Is this the same phone that Mr. Schulte was holding in the
2 video we just watched?

3 A. Yes.

4 MR. LOCKARD: Ms. Cooper, if we could please also see
5 Government Exhibit 820-431.

6 Q. And again, Mr. Betances, which phone are we seeing here?

7 A. The Samsung. That's it.

8 Q. And again, did you write what's written on this screen?

9 A. No.

10 MR. LOCKARD: Can we please turn to Government Exhibit
11 820-436.

12 Q. Mr. Betances, again, is this the Samsung?

13 A. Yes.

14 Q. The same phone that Mr. Schulte was holding in that video?

15 A. Yes.

16 Q. Do you see the email address annon1204@protonmail.com?

17 A. Yes.

18 Q. Whose email address was that?

19 A. Josh's.

20 Q. Did the defendant say anything to you about ProtonMail?

21 A. Yes.

22 Q. And what did he tell you about ProtonMail?

23 A. That it was more efficient; that it was safer to use that
24 email address because it was encrypted; it was better than
25 Gmail.

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1 MR. LOCKARD: Could we turn to Government Exhibit
2 820-434.

3 Q. Mr. Betances, which phone is shown here?

4 A. Samsung.

5 Q. And do you see the icon for ProtonMail in the second row of
6 icons?

7 A. Yes.

8 Q. I'd like to draw your attention to the icon on the far
9 right in the top row, Orbot. Did the defendant say anything to
10 you about Orbot?

11 A. Yes, that it was an application that could change the IP
12 address location when the phones were used.

13 Q. And did the defendant say anything to you about why that
14 was important?

15 A. Well, that we had to have it on every time we had the phone
16 powered on.

17 Q. Mr. Betances, I'd like to draw your attention to the icon
18 for Signal on the bottom left. Or middle left, rather. I'm
19 sorry. Did the defendant say anything to you about Signal?

20 A. Yes.

21 Q. And what did he tell you about Signal?

22 A. That, also that it was safer for text messages, video
23 calls; it was safer than all the other ones.

24 Q. And Mr. Betances, if I could draw your attention to the
25 icon in the middle right called Turbo VPN. Did the defendant

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1 say anything to you about Turbo VPN?

2 A. Yes.

3 Q. And what did the defendant tell you about that?

4 A. That we also had to have it on when the phone was powered
5 on because it would change the location of where we were using
6 the telephone.

7 Q. Mr. Betances, did there come a time when you learned of an
8 effort to take the Samsung somewhere else in the jail?

9 A. Yes.

10 Q. And what did you learn about that?

11 A. That they were going to pay this friend of mine, Flaco, 200
12 bucks to take it down to the library that day.

13 Q. And who wanted to pay to bring the phone to the library?

14 MR. SCHULTE: Objection. Hearsay.

15 THE COURT: How did you learn about that information?

16 THE WITNESS: Because Flaco told me.

17 THE COURT: All right. Objection sustained.

18 BY MR. LOCKARD:

19 Q. Mr. Betances, did you observe anything about Mr. Schulte's
20 or Omar's behavior around that time?

21 A. Yes. They were very wary. They wanted to go down to the
22 library then, and -- so once I realized that they wanted to go
23 down there, I threw this little piece of paper at the guard who
24 was right there, and letting him know that something was going
25 to happen in the library, that he could -- he should --

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1 THE INTERPRETER: Interpreter correction.

2 A. -- that he should conduct a search or everybody should go
3 down and figure out what was about to happen.

4 So that is what happened. When Josh and Omar came up, they
5 said something had happened, that there was a search, there had
6 been a search in the library, but they never found out that I
7 was the one who had prevented that from happening.

8 Q. And did you hear Mr. Schulte or Omar discuss why they
9 wanted the phone in the library?

10 MR. SCHULTE: Objection.

11 THE COURT: Overruled.

12 A. They wanted to send something very important. I don't know
13 what it was, but it was important. They had spent a week, a
14 long time with the phones. They would give me the phone back
15 very late at night with a very low charge.

16 THE COURT: And did one of them say something to that
17 effect? And if so, who, and what did they say?

18 THE WITNESS: None of them said anything. I just
19 found out about it because Flaco had told me about it before,
20 and they had spent a lot of time, and they were very concerned
21 about going down to the library.

22 MR. SCHULTE: Move to strike. All of that was
23 hearsay.

24 THE COURT: Overruled.

25 BY MR. LOCKARD:

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1 Q. Mr. Betances, did there come a time when you heard about
2 efforts to bring a USB drive?

3 A. Yes.

4 Q. And who did you hear that from?

5 A. Omar and Josh. They were trying to bring them in, but that
6 was before going down to the library.

7 Q. And what did you hear about the USB drive?

8 A. They needed it urgently. They needed it inside the jail.

9 Q. And did you hear from Mr. Schulte and Omar whether they
10 were able to bring it in?

11 A. No, because I was the one who would communicate with the
12 person upstairs how and when they could bring them in, and I
13 stopped that also.

14 MR. LOCKARD: Thank you, Ms. Cooper. I think we can
15 take this down.

16 Q. Mr. Betances, we've seen some photographs and a video that
17 you took while you were in the MCC.

18 THE INTERPRETER: MCC or MDC? Excuse me.

19 MR. LOCKARD: While you were in the MCC.

20 A. Yes.

21 Q. What did you do with those videos and pictures after you
22 took them?

23 A. I put them in an email. And I created a personal account
24 that neither Josh nor Omar knew I had.

25 Q. And did there come a time when you shared those pictures

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1 and videos with the government?

2 A. Yeah. After what had happened with the library and the
3 USB, I called my lawyer and I told him what was happening. And
4 after that I met with the government.

5 (Continued on next page)

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1 BY MR. LOCKARD:

2 Q. And when you met with the government, were you given any
3 instructions about the cell phones?

4 INTERPRETER: I'm sorry. I didn't hear your question.
5 Would you repeat, please?

6 Q. When you met with the government, were you given any
7 instructions about the cell phones?

8 A. They told me not to do anything, that I should leave
9 everything the way it was, and that I shouldn't do anything for
10 them.

11 Q. After that meeting, did there come a time when your cell
12 was searched?

13 A. Yes. They found a phone in my cell.

14 Q. And what happened after the phone was found in your cell?

15 A. They took me to the SHU.

16 Q. And can you explain what is the SHU?

17 A. It's a cell where you can't have communications with
18 anybody, you are locked up.

19 Q. And for how long were you there?

20 A. Approximately seven to eight days.

21 Q. So, Mr. Betances, you said the SHU is a cell where you
22 can't have any communication with the other inmates?

23 A. I cannot -- I can't communicate with my family but I could
24 communicate with the people inside the SHU.

25 Q. Did you receive any messages while you were in the SHU?

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Betances - Direct

1 A. Yes.

2 Q. How were inmates able to pass messages in the SHU at the
3 MCC?

4 MR. SCHULTE: Objection.

5 THE COURT: Overruled.

6 A. Through the air conditioning.

7 THE COURT: Can you explain that?

8 THE WITNESS: They talk through the air conditioning
9 ducts and we hear downstairs or I can hear what they are
10 saying.

11 BY MR. LOCKARD:

12 Q. And from whom did you receive the message that you got in
13 the SHU?

14 A. Chino.

15 Q. And who spoke to you directly about Chino's message?

16 A. A person who was in the cell next to mine.

17 Q. And why was that person in the cell next to yours?

18 MR. SCHULTE: Objection.

19 THE COURT: Sustained.

20 Q. What had that person done to be in the SHU?

21 MR. SCHULTE: Objection.

22 THE COURT: Overruled.

23 A. He had also been caught with a phone.

24 Q. Had he been caught with one of the phones that you held and
25 charged?

M6U5sch2

Betances - Cross

1 MR. SCHULTE: Objection.

2 THE COURT: Overruled.

3 A. Yes.

4 Q. And what was the message from Chino?

5 MR. SCHULTE: Objection.

6 THE COURT: I would like to hear the answer and then I
7 will rule on the objection.

8 INTERPRETER: I'm sorry, your Honor. Did you say he
9 could go ahead?

10 THE COURT: He may answer, yes.

11 INTERPRETER: Could you please repeat the question?

12 Q. What was the message you received from Chino?

13 A. That I shouldn't talk, I should stay silent, and they were
14 going to send me \$5,000 to stay silent.

15 THE COURT: Objection is overruled.

16 BY MR. LOCKARD:

17 Q. And who is the "they"?

18 A. Omar and Josh.

19 MR. LOCKARD: May I have just one moment, your Honor?

20 THE COURT: Yes.

21 MR. LOCKARD: No further questions.

22 THE COURT: Cross-examination.

23 You may proceed.

24 CROSS EXAMINATION

25 BY MR. SCHULTE:

M6U5sch2

Betances - Cross

- 1 Q. Good morning.
- 2 A. Good morning.
- 3 Q. You were born in the Dominican Republic, correct?
- 4 A. Yes.
- 5 Q. You first came to the United States in the 1990s, right?
- 6 A. That's right.
- 7 Q. And you entered the United States illegally, right?
- 8 A. Yes.
- 9 Q. Your grandmother paid for you to come here, right?
- 10 A. Yes.
- 11 Q. And it was her hope that you would get a job here, right?
- 12 A. Yes.
- 13 Q. And you did that after you arrived, right?
- 14 A. Yes.
- 15 Q. You worked in a restaurant, correct?
- 16 A. Yes.
- 17 Q. The restaurant paid you, correct?
- 18 A. Yes.
- 19 Q. They paid you the same wages as other people who worked
- 20 there, right?
- 21 A. Yes.
- 22 Q. And that money wasn't enough for you, correct?
- 23 A. Yes.
- 24 Q. You wanted to make more money, correct?
- 25 A. Yes.

M6U5sch2

Betances - Cross

1 Q. And you made a decision to sell drugs so that you could
2 make more money, correct?

3 A. Yes.

4 Q. You sold drugs in New York, correct?

5 A. Yes.

6 Q. In the Bronx?

7 A. Yes.

8 Q. And your first job in selling drugs was with your
9 brother-in-law, right?

10 A. Yes.

11 Q. You were a lookout for him, correct?

12 A. Yes.

13 Q. You would let him know when the police were coming, right?

14 A. Yes.

15 Q. You would stay outside of the building from where he was
16 selling drugs, right?

17 A. Yes.

18 Q. And he was selling drugs from inside the building, right?

19 A. Yes.

20 Q. And your job was to monitor and notify him by radio when
21 the police were coming, right?

22 A. Yes.

23 Q. And this was so he wouldn't get arrested, right?

24 A. Yes.

25 Q. And this was all the way back in 1996 or 1997, right?

1 A. Yes.

2 Q. You continued selling drugs after that, right?

3 A. Yes.

4 Q. You sold drugs in 1999, right?

5 A. Yes.

6 Q. In fact, you pled guilty to selling drugs from December
7 1999, right?

8 A. Yes.

9 Q. You pled guilty to selling cocaine, correct?

10 A. Yes.

11 Q. And you faced a mandatory minimum sentence of 10 years for
12 that case, correct?

13 A. Yes.

14 Q. And by a mandatory minimum, that means without your
15 cooperation, even the Judge cannot give you less than 10 years,
16 right?

17 A. Correct.

18 Q. And the only way the Judge can give you less is if this
19 prosecutor write a letter to the Judge, correct?

20 A. Yes, but --

21 Q. It is just yes or no.

22 A. -- to tell the whole truth.

23 INTERPRETER: Your Honor, may I continue?

24 THE COURT: Finish the witness' answer, please.

25 A. Yes, if I tell the whole truth. If I don't -- yes, if I

1 don't, they'll take away the agreement.

2 THE COURT: The question was that the only way you can
3 get a lower sentence is if the prosecutor writes a letter to
4 the Judge. Yes or no?

5 A. Yes.

6 Q. And it is the prosecutor that decides what is true, not the
7 Judge; right?

8 A. Yes.

9 Q. And the maximum sentence you face is life in prison,
10 correct?

11 A. Yes.

12 Q. And you sold drugs in 2000, right?

13 A. Yes.

14 Q. In August 2000 you sold more than five kilos of cocaine,
15 correct?

16 A. Yes.

17 Q. And in October of 2000 you sold another 500 grams of
18 cocaine, correct?

19 A. Yes.

20 Q. Let's talk about the August 2000 case, OK? You pled guilty
21 to that offense, correct?

22 A. Yes.

23 Q. In fact, you pled guilty to nine charges, correct?

24 A. Yes.

25 Q. You had a private lawyer assisting you, right?

M6U5sch2

Betances - Cross

1 A. Yes.

2 Q. And when you pled guilty to that offense in August 2000,
3 you faced a maximum sentence of life, correct?

4 A. Yes.

5 Q. And the mandatory minimum sentence of 10 years, correct?

6 A. Yes.

7 Q. You were deported for selling drugs, correct?

8 A. Yes.

9 Q. And this was for your drug conviction in 2000, correct?

10 A. Yes.

11 Q. Now, around 2001 you were deported from the United States,
12 right?

13 A. Yes.

14 Q. And you were deported back to the Dominican Republic,
15 right?

16 A. Yes.

17 Q. And you were deported because you had violated the laws of
18 the United States by selling drugs in the U.S., right?

19 A. Yes.

20 Q. You were convicted of a felony, correct?

21 A. Yes.

22 Q. And that felony conviction was for selling drugs, right?

23 A. Yes.

24 Q. As a result of your deportation you were prohibited from
25 returning to the United States, correct?

1 A. Yes.

2 Q. You were told that you could not return unless you got
3 specific permission from the Attorney General, correct?

4 A. Yes.

5 Q. And you never got that permission from the Attorney
6 General, correct?

7 A. No.

8 Q. You decided to break the law again, correct?

9 A. What are you referring to with violating the law?

10 INTERPRETER: Your Honor, that might be my
11 translation. I could use a different word.

12 THE COURT: Well, with that understanding,
13 Mr. Schulte, why don't you ask the question again.

14 Q. You decided to illegally enter the United States again,
15 correct?

16 A. Yes.

17 Q. And less than a year from when you were deported, correct?

18 A. Yes.

19 Q. You paid someone to illegally enter into the United States,
20 right?

21 A. Yes.

22 Q. And you pled guilty to illegal re-entry, correct?

23 A. Yes.

24 Q. You illegally re-entered through Texas, correct?

25 A. Yes.

M6U5sch2

Betances - Cross

1 Q. Now let's talk about how you did that. You used another
2 person's name to get travel documents, right?

3 A. Yes.

4 Q. And that is because you could not enter the U.S. in your
5 own name, right?

6 A. Yes. Correct.

7 Q. What name did you use?

8 A. Several names. Arturo Vazquez was the first one as I
9 remember, yes.

10 Q. The other person didn't know you used their name, right?

11 A. No.

12 Q. They didn't give you permission to use their name, right?

13 A. No.

14 Q. You used the name without permission to apply for travel
15 documents, correct?

16 A. Yes.

17 Q. You filled out forms pretending to be somebody else, right?

18 A. Yes.

19 Q. And then you signed those forms, right?

20 A. Yes.

21 Q. So you lied on those forms, correct?

22 A. Yes.

23 Q. You pretended to be somebody you were not, correct?

24 A. Yes.

25 Q. You used those travel documents to return to the United

- 1 States, correct?
- 2 A. Yes.
- 3 Q. So the government required you to take responsibility for
4 lying on those travel documents, correct?
- 5 A. I don't understand your question. What do you mean when
6 you say the government?
- 7 Q. The government as in the United States government, the
8 prosecutors.
- 9 A. Yes, OK, but could you repeat the question? I didn't
10 understand it when you asked me it.
- 11 Q. You didn't just confess to being here illegally, correct?
- 12 A. Yes.
- 13 Q. As part of your cooperation agreement you pled guilty to
14 aggravated identity theft, correct?
- 15 A. Yes.
- 16 Q. And that has a mandatory minimum sentence for two years,
17 right?
- 18 A. Yes.
- 19 Q. Then after you returned to this country illegally you
20 worked in construction for a period, right?
- 21 A. Yes.
- 22 Q. You earned an honest wage for a short time, correct?
- 23 A. Yes.
- 24 Q. But then you began selling drugs again, correct?
- 25 A. Yes.

M6U5sch2

Betances - Cross

- 1 Q. You pled guilty to selling drugs in 2015, correct?
- 2 A. From 2015 to 2018, yes.
- 3 Q. And you were arrested in March of 2018, correct?
- 4 A. Yes.
- 5 Q. In front of a building with a friend, correct?
- 6 A. Yes.
- 7 Q. And charged with conspiracy and drug possession, correct?
- 8 A. Yes.
- 9 Q. You didn't just sell drugs but you also committed mail
10 fraud, correct?
- 11 A. Yes.
- 12 Q. You stole someone else's mail, right?
- 13 A. Yes.
- 14 Q. Checks would arrive in the mail and you were paid to pick
15 up the checks, right?
- 16 A. Yes.
- 17 Q. You were stealing people's checks, right?
- 18 A. Yes.
- 19 Q. And you don't know who those checks belonged to, correct?
- 20 A. No.
- 21 Q. You don't know if it was someone's disability payment,
22 correct?
- 23 A. No.
- 24 Q. Or someone's tax refund, correct?
- 25 A. No.

1 Q. Or someone's paycheck, correct?

2 A. No.

3 Q. People earned money honestly and you stole from them,
4 correct?

5 A. Yes.

6 Q. In fact, you were paid to steal from them, correct?

7 A. Yes.

8 Q. Now let me show you what has been marked as Defendant's
9 Exhibit 814, just to the parties and the witness.

10 Do you recognize this document?

11 A. Yes.

12 Q. It is a document you signed, right?

13 A. Yes.

14 MR. SCHULTE: I move to introduce Defendant's Exhibit
15 814.

16 MR. LOCKARD: No objection.

17 THE COURT: Admitted.

18 (Defendant's Exhibit 814 received in evidence)

19 BY MR. SCHULTE:

20 Q. This is your cooperation agreement, correct?

21 A. Yes.

22 Q. And that's just between you and the government and not the
23 Judge, correct?

24 A. Yes.

25 Q. And as part of the agreement you promised to tell the

- 1 truth, correct?
- 2 A. Yes. That is my duty.
- 3 Q. In fact, you are under oath here today, right?
- 4 A. Yes.
- 5 Q. And you also agreed to meet with the prosecutors whenever
- 6 they asked you to meet with them, right?
- 7 A. Yes.
- 8 Q. You also agreed to let them postpone your sentencing date,
- 9 correct?
- 10 A. Could you repeat that? I didn't really understand you. I
- 11 don't think I was involved in that.
- 12 Q. OK. I withdraw the question.
- 13 A. OK.
- 14 Q. On page 5 of 8 of the document it says that the prosecutors
- 15 will forward your cooperation to the attention of Immigration
- 16 and Customs Enforcement, correct?
- 17 A. Yes.
- 18 Q. And your hope is that these prosecutors will help you get
- 19 an S-visa so you can stay in the United States, correct?
- 20 A. They haven't promised me anything.
- 21 Q. But that's your hope, correct?
- 22 A. Of course.
- 23 Q. As part of your cooperation agreement you are obligated to
- 24 meet with the prosecutors, correct?
- 25 A. Yes. And you have asked me that question twice. I

1 answered yes the first time.

2 Q. OK. About how many times have you met with the
3 prosecutors?

4 A. I didn't keep a record of that.

5 Q. You also pled guilty to having phones in the MCC, correct?

6 A. Yes.

7 Q. The MCC is the jail where you and I met, correct?

8 A. Yes.

9 Q. And we met around 2018, correct?

10 A. Yes.

11 Q. And pleading guilty to having an illegal cell phone was
12 part of your cooperation agreement, correct?

13 A. Yes.

14 Q. Let's start with the first phone you smuggled into the MCC.
15 What kind of phone was it?

16 A. iPhone.

17 Q. That first phone was given to your wife, correct?

18 A. Yes; outside of the MCC.

19 Q. And she brought it into the MCC during visiting hours,
20 correct?

21 A. Yes, because the person who was supposed to pick it up
22 outside wasn't there.

23 Q. And bringing the phone into the MCC is illegal, correct?

24 A. Well, yes; to the visiting floor where we were, yes.

25 Q. So you had your wife take the risk of bringing the phone

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Betances - Cross

- 1 into the MCC, correct?
- 2 A. No, it wasn't a risk for her because up in the visiting
3 area in the locker area where she changed, it wasn't a risk.
- 4 Q. You had your wife do something illegal, correct?
- 5 A. Yes.
- 6 Q. She could have been arrested, correct?
- 7 A. Yes.
- 8 Q. And sent to prison, right?
- 9 A. Yes.
- 10 Q. And you were paid \$500 for that phone, correct?
- 11 A. Yes.
- 12 Q. I think you testified Chino deposited \$500 into your
13 commissary account, correct?
- 14 A. No, he didn't deposit \$500, he only deposited \$100 because
15 he shared it.
- 16 Q. OK. The commissary account allows you to buy things,
17 correct?
- 18 A. Yes.
- 19 Q. Like food, right?
- 20 A. Correct.
- 21 Q. And clothes?
- 22 A. Yes.
- 23 Q. And batteries?
- 24 A. Yes.
- 25 Q. Now let's talk about the phones you used at the MCC.

- 1 A. That we used.
- 2 Q. It was an iPhone, right?
- 3 A. Yes.
- 4 Q. You testified that you stored cell phones in your cell,
5 correct?
- 6 A. Yes.
- 7 Q. You testified that you stored phones for Omar because he
8 let you use them, correct?
- 9 A. Yes.
- 10 Q. And you testified that you stored multiple phones for Omar,
11 correct?
- 12 A. Yes.
- 13 Q. Now, did Omar pay you to store the phones?
- 14 A. He never paid me. He promised he was going to pay me but
15 he never ever paid me.
- 16 Q. So why did you do it?
- 17 A. So I could use them, make calls on them, and make video
18 calls on them.
- 19 Q. So you stored the phones so that you could use them,
20 correct?
- 21 A. Yes.
- 22 Q. Your testimony is that you put yourself at risk by agreeing
23 to store Omar's phones, right?
- 24 A. And also the one that you, Josh, used.
- 25 Q. Now you testified several times about getting paid money in

1 your commissary account, right?

2 A. Yes. I answered that question for you. I was sent \$100
3 one time.

4 Q. So the only time that you were ever paid to do anything
5 with the phones, smuggling or anything, was just one time?

6 A. Yes.

7 Q. So your testimony today is different from your testimony
8 from a prior proceeding, correct?

9 A. It might seem different but it's not, it's the same.

10 Q. You testified at a previous proceeding in this case in
11 February 2020, correct?

12 A. Could you please repeat that question?

13 Q. Yes.

14 You previously testified at a prior proceeding in this
15 case in February 2020, correct?

16 A. Yes. Correct.

17 Q. And you were under oath when you testified at that
18 proceeding, correct?

19 A. That's right. Yes.

20 Q. Just like you are under oath here today, right?

21 A. Yes.

22 Q. At that time, on page 2435, lines 12 and 13, you were asked
23 how much did your wife get to bring the phone into the MCC and
24 you answered \$500.

25 INTERPRETER: Excuse me. I need to find it in the --

1 where would that be? Pages 2435. Can somebody tell me where
2 that would be in this binder? There is a lot of different
3 things in here.

4 THE COURT: I'm not sure the binder is necessary.

5 INTERPRETER: No, I need to read what he said.

6 THE COURT: I think you can just translate the
7 question.

8 INTERPRETER: Can you please repeat the question, let
9 me repeat that, and repeat the answer. Thank you.

10 Q. Your wife was paid \$500 for bringing the phone in, correct?

11 A. It was sent to Chino and Chino is the one who distributed
12 the money.

13 Q. OK, but it was \$500; right?

14 A. Yes.

15 Q. And I never paid you anything, correct?

16 A. No.

17 Q. In fact, you knew during this time that I did not have any
18 money, correct?

19 A. There was no way of me knowing. I knew you but I didn't
20 know if you had it or not.

21 Q. Well, you know that I never paid for any cell phones,
22 correct?

23 A. I repeat the same question to you. How would I know, if it
24 was you and Omar who were doing the transactions?

25 Q. OK, so on that point you testified on direct multiple times

1 about me and Omar, correct?

2 A. Yes.

3 Q. So how do you know or how do you link me and Omar?

4 A. Because when he came to the unit initially, he started to
5 ask for Omar when he arrived. When Josh went to the unit he
6 started asking about Omar -- or for Omar.

7 Q. But Omar and I are not the same person, correct?

8 A. Of course not.

9 Q. So when Omar makes a request or tells you something, that
10 does not mean it is coming from me; correct?

11 A. Right.

12 Q. You knew during this time that I had a public lawyer,
13 correct?

14 MR. LOCKARD: Objection.

15 THE COURT: Sustained.

16 Q. I never sent you or your wife money in any form, correct?

17 A. No.

18 Q. Sir, isn't it true that you smuggled cell phones into the
19 MCC and leased them out to people?

20 A. No.

21 Q. Isn't it true that your neighbors, you would lease them
22 cell phones to use and they would pay you, right?

23 A. No.

24 Q. So your testimony is you never lent someone else the phone
25 for them to borrow it in exchange for money?

1 A. No.

2 Q. So all the phones you kept, you kept all those for
3 Mr. Almanat? Is that your testimony?

4 INTERPRETER: For Mr. Who?

5 Q. For Omar.

6 A. And also for you.

7 Q. OK. So did I -- is it your testimony that I brought you a
8 cell phone to store for me?

9 A. Yes. I stored the Samsung that you used.

10 Q. OK. So your testimony was that there used to be an iPhone,
11 correct?

12 A. Yes, but he had already exchanged it for a Samsung when he
13 had it. He also used an iPhone. Josh used an iPhone, too.

14 Q. OK, so when it was an iPhone, your testimony is that I gave
15 you the iPhone to hold for me?

16 A. He gave it to me in my hands.

17 Q. So during this time you were already holding phones for
18 Omar, correct?

19 A. And for him too.

20 Q. But the phones you were holding for Omar, your agreement
21 with Omar was that you could use the phone, right?

22 A. Yes.

23 Q. So why would you agree to hold a cell phone for me then?

24 A. Because you were with Omar so I had to hold both of them
25 for that reason.

1 Q. So your agreement with Omar was to hold all the phones and
2 you attributed -- let me just rephrase.

3 So your agreement with Omar was to hold all the
4 phones, correct?

5 A. Yes, including the one that he used.

6 Q. So your testimony is that Omar gave you the phones and I
7 used one of those phones; is that right?

8 A. That's right.

9 Q. So Omar would then provide those phones for others,
10 correct?

11 A. I can't answer that he used it. Chino used it, Josh used
12 it, and I used it.

13 Q. So just in total, how many phones did you store?

14 A. Four at that time.

15 Q. So when Omar would go to retrieve a phone -- let me
16 rephrase that.

17 So Omar would come to you to retrieve a phone,
18 correct?

19 A. When it was not charged, yeah, just battery was gone.

20 Q. So Omar would give you the phone when it was dead to charge
21 it, right?

22 A. Yes.

23 Q. So when it was charged then he would take it from you,
24 right?

25 A. Yes.

1 Q. But you don't know what Omar did with the phone after he
2 took it from you, right?

3 A. No.

4 Q. And during this time you knew that I was doing work for
5 Omar, correct?

6 A. No.

7 Q. Your testimony is that I wasn't working on anything for
8 Omar?

9 A. Yes, because he never mentioned it to me.

10 Q. OK, but on the phones you saw a technical report from me,
11 correct?

12 A. Yes.

13 Q. I am going to show the witness and the parties what's in
14 evidence as -- or it is marked Exhibit 1303-39 on page 8.

15 THE COURT: Is this a defendant's exhibit with that
16 number or government exhibit?

17 MR. SCHULTE: This is a government exhibit.

18 MR. LOCKARD: This is not in evidence.

19 THE COURT: I understand. Just what it is marked as
20 for the moment.

21 BY MR. SCHULTE:

22 Q. Do you recognize this?

23 A. I just recognize the address and that your last name is on
24 there.

25 Q. But you took screenshots and videos of this with your cell

M6U5sch2

Betances - Cross

1 phone, right?

2 A. That's right. Yes.

3 MR. SCHULTE: I move to introduce 1303-39, Government
4 Exhibit.

5 MR. LOCKARD: We object.

6 THE COURT: So, first of all, what I have is 1303-39
7 is different or has other -- first of all, is it the entire
8 document that you are offering, Mr. Schulte? All 70 pages?

9 MR. SCHULTE: I believe the government is going to
10 introduce it on the next witness.

11 THE COURT: That's not the question.

12 MR. SCHULTE: Yes, all of it.

13 THE COURT: Grounds, Mr. Lockard?

14 MR. LOCKARD: Hearsay.

15 MR. SCHULTE: It is not offered for the truth of the
16 matter.

17 THE COURT: And the purpose for which it is offered,
18 Mr. Schulte?

19 MR. SCHULTE: It is just offered for, to establish
20 that I did work for Omar and he knows about it from his
21 pictures that he took.

22 THE COURT: Could you just show the witness the first
23 page of the document, please, and ask if he recognizes that?

24 MR. SCHULTE: Sure.

25 BY MR. SCHULTE:

1 Q. Do you recognize this?

2 A. The first page, yes, but not this one.

3 THE COURT: The first page meaning the first page that
4 you were shown?

5 THE WITNESS: Exactly, the first one that I was shown.

6 THE COURT: Mr. Schulte, I am inclined to admit just
7 that one page which I think is page 8 of this document. That's
8 my ruling. So I will admit, over the government's objection,
9 page 8 of the document which, just for tracking and convenience
10 purposes. Why don't we mark that as a new Exhibit 1303-39A.

11 Is that OK with everyone?

12 MR. LOCKARD: Yes, your Honor.

13 THE COURT: So that one-page document marked 1303-39A,
14 is admitted.

15 (Government's Exhibit 1303-39A received in evidence)

16 MR. SCHULTE: May I publish it to the jury?

17 THE COURT: If it is only that one page, yes.

18 BY MR. SCHULTE:

19 Q. Do you recognize the address that's listed there?

20 A. Yes. It's the address for the MCC, for the jail.

21 Q. And do you see the suite number in that address?

22 A. Yes.

23 Q. And that's the number for the cell that's in MCC, right?

24 A. Yes; one of the cells, yes.

25 Q. And do you see the date on the document?

M6U5sch2

Betances - Cross

1 A. Yes.

2 Q. What is the date?

3 A. January 29th, 2018.

4 Q. And the case there that's listed there, you recognize that
5 as Omar's criminal case, correct?

6 A. I have no way of knowing because -- well, yeah, it says
7 Omar's name but I never knew about his case.

8 Q. You knew that Omar was convicted though, right?

9 A. Yes. He was waiting to be sentenced.

10 Q. And during the time that we were at MCC you knew that I was
11 reviewing the information from his case, correct?

12 MR. LOCKARD: Objection.

13 THE COURT: Overruled.

14 A. No.

15 Q. OK.

16 I think you testified about a video on direct;
17 820-402, right?

18 A. Yes.

19 Q. OK.

20 And in this video you are facing towards me, correct?

21 A. Yes.

22 Q. And the door is behind you, right?

23 A. Yes.

24 Q. And you are using another cell phone to record me, correct?

25 A. Yes.

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Betances - Cross

1 Q. So you were not watching as a lookout because you are
2 facing the wrong way, right?

3 A. Yes, but there was somebody else who was a lookout.

4 Q. Right, but you were -- you were there to guard the phone I
5 was using, right?

6 A. Not specifically. It was so I would prevent any officer
7 from coming in, from taking your phone, from the phone that
8 Omar was using. That's what it was about.

9 Q. OK, but you were facing away from the door so you would not
10 know if someone was coming in, right?

11 A. Yes, but that was because I told one of the guys outside --
12 his name was Pedro, he was my cell mate, we lived together -- I
13 told him to stay outside and keep his eye open.

14 INTERPRETER: Interpreter correction: I told him to
15 keep his eyes open.

16 Q. So your testimony is -- let me rephrase that.

17 Isn't it true that you were there protecting the phone
18 to make sure that I did not steal it, right?

19 A. Negative. You couldn't have stolen your own phone.

20 Q. OK.

21 So just to be clear, there was someone else watching
22 outside the cell and you were inside the cell facing me, right?

23 A. Exactly. Correct.

24 Q. The prosecutor showed you a lot of screenshots that you
25 took on the phone, right?

1 A. Yes.

2 Q. Screenshots you took of content from those cell phones,
3 right?

4 A. Yes.

5 Q. You took the screenshots without permission, right?

6 A. Yes.

7 Q. And then you gathered information about inmates to testify
8 against them, right?

9 A. When you talk about other inmates, which ones are you
10 referring to? You are not including yourself.

11 Q. Other inmates in general.

12 A. No. Only yours.

13 Q. OK, but you testified that at least Omar and Chino were
14 using the cell phones too, right?

15 A. Yes.

16 Q. I'm going to show, just to the witness and the parties,
17 what is marked as Government Exhibit 820-143. It is in
18 evidence so I will show it to the jury.

19 So this is one of the screenshots that you took,
20 right?

21 A. Yes.

22 Q. This is a picture of Omar and his family, correct?

23 A. Yes.

24 Q. So you were gathering information about multiple inmates,
25 correct?

1 A. I took photographs of all of the phones that were being
2 used.

3 Q. And you took them so you could testify against those
4 people, right?

5 A. May I remind you that all I wanted to testify about was
6 what I heard and the conversations?

7 THE COURT: I think the question is did you take these
8 photos because you also intended to or wanted to testify
9 against Omar and the other people.

10 THE WITNESS: So the question really is, when I took
11 those photographs it was for me to gather evidence from all of
12 the phones but in the end, when I gave all of that evidence to
13 the government, so that I was called in to be involved, to
14 check all of those things that I had taken -- images that I had
15 taken. So when I was called in I was asked to verify the
16 information that had to do with Josh because it was important,
17 which is why they found the information that was there, because
18 I had an idea that that was very valuable.

19 BY MR. SCHULTE:

20 Q. Well, you hoped to cooperate against anyone that you could,
21 right?

22 A. At the time, yes.

23 Q. So you told your lawyer to give your images to the
24 prosecutor, right?

25 A. No. They called me in and they asked me for the code, the

1 password, so they could see them.

2 Q. OK, but you gave that information to your lawyer first;
3 right?

4 A. Yes, but I never gave my lawyer the code or the password.

5 Q. Yes, but then you gave it to the prosecutor; right?

6 A. Yes, when we were all in the meeting together there.

7 Q. And then the prosecutors picked out the images or videos
8 and asked you about the ones they picked out, right?

9 A. No, not right then. They didn't ask me to do anything.
10 They just told me not to do anything -- they didn't ask me
11 anything -- and just to sit tight.

12 Q. But you also read through everything so that you could come
13 up with a good story to tell the FBI about other inmates,
14 right?

15 A. No.

16 Q. You testified on direct that I was very scared because the
17 FBI had gone to my cousin's house, right?

18 A. Yes. You know that yourself because you were really
19 scared.

20 Q. But, of course, you read that the FBI had gone to my
21 cousin's house through one of your pictures, right?

22 A. Negative.

23 Q. I will show Government Exhibit 820-94. That's in evidence.

24 This is one of the screenshots that you took, right?

25 A. Yes.

1 Q. And this is -- and this e-mail discusses that the FBI
2 raided or confiscated my cousin's laptop, right?

3 A. Yes. That's what it says there.

4 Q. But I never told you anything about that, right?

5 A. We did. We were all meeting together; you, me, Chino,
6 Omar, we were talking about that, and you said that your lawyer
7 told you to stop meeting with Omar because it could get you
8 into trouble.

9 (Continued on next page)

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M6uWsch3

Betances - Cross

1 BY MR. SCHULTE:

2 Q. OK. But that has nothing to do with the FBI or my cousin,
3 right?

4 A. It does have something to do, because we had that
5 conversation, and you were there.

6 Q. OK. So when you described me as very scared, what is that
7 based on?

8 A. Because you said we had to change the phones, we had to
9 change everything. You were freaking out. You were freaked
10 out, in panic mode.

11 Q. OK. So your description's not based on the demeanor but
12 based on what you say are requested actions from me, right?

13 A. I didn't understand your question. Could you repeat it?

14 Q. Yes. It wasn't my outward appearance but what we were
15 discussing that led you to believe I was very scared, right?

16 MR. LOCKARD: Objection. Form.

17 THE INTERPRETER: I'm sorry, sir. Did you say
18 something? The interpreter just wants -- did you say something
19 at the very end?

20 MR. SCHULTE: I think there was an objection.

21 THE COURT: The objection's overruled.

22 A. It's not that you made me believe. It's the way that you
23 were acting, your outward appearance. You were freaking out.

24 Q. OK. And what was I scared of?

25 A. The fact that we had to change our phones, you were pacing

M6uWsch3

Betances - Cross

1 back and forth, because the FBI might be listening in on the
2 calls; they might do something. And then, so I asked you why.
3 You know, did you talk to somebody on the phones that we were
4 all using? And that's when you didn't answer me. You didn't
5 say yes or no.

6 Q. OK. But your testimony is that I only used the Samsung
7 phone, right?

8 A. Yes, but remember one thing. When you started using the
9 Samsung, you changed the password, so I couldn't get into it.
10 And that was end of September, middle of September, sometime
11 around then. I no longer had access to that phone because you
12 were using the other phones, but you were using mostly the
13 Samsung.

14 And may I also remind you that you were also worried
15 because the charger, there was something wrong with it. It
16 wasn't working. So you weren't able to use the phone for two
17 or three days' time. And you fixed it yourself. You used an
18 iPhone charger to make it into a Samsung charger.

19 Q. OK. So why did all of the phones need to be changed?

20 A. Well, that's a question I should ask you. Why?

21 Q. Nobody -- nobody asked why during this alleged meeting?

22 A. I did. I asked you, but you didn't answer me.

23 Q. OK. So then your testimony is because I was very scared,
24 then we -- we got rid of all the phones and SIM cards and
25 bought new ones?

M6uWsch3

Betances - Cross

1 A. We didn't get rid of the phones, just the SIM cards.

2 Q. OK. But during this meeting, there was no -- no one else
3 asked why and there was no explanation given?

4 A. No.

5 Q. All right. OK. So you testified on direct also that I
6 told you I could open the doors of the MCC with a small
7 computer, right?

8 A. Yes.

9 Q. OK. And the doors of the MCC cells, they required keys,
10 right?

11 A. Correct.

12 Q. OK. MCC officers unlocked your cell with a key, right?

13 A. Yes, correct.

14 Q. And locked you in with a key, right?

15 A. Yes, correct.

16 Q. OK. So how does a small computer unlock a door that
17 requires a key?

18 MR. LOCKARD: Objection.

19 THE COURT: Sustained.

20 BY MR. SCHULTE:

21 Q. And in fact, I did have a computer at MCC, right?

22 A. It's my understanding you used to go outside with it,
23 because you told me that yourself. Well, I don't know what you
24 were doing with it, if you were doing something with it. That
25 you never told me.

M6uWsch3

Betances - Cross

1 Q. OK. But many inmates at MCC had laptops that they used,
2 right?

3 A. No.

4 Q. OK. But there were computers in the unit, right?

5 A. Yes.

6 Q. Right outside your cell, right?

7 A. Well, yes, they were upstairs on the second floor.

8 Q. But that's all within the same unit, right?

9 A. Yes.

10 Q. OK. Next, you testified on direct that I told you the
11 Russians would have to help me for the work I was doing, right?

12 A. Yes, correct.

13 Q. OK. So the Russians were going to send paratroopers into
14 New York and break me out of MCC?

15 MR. LOCKARD: Objection.

16 THE COURT: Sustained.

17 BY MR. SCHULTE:

18 Q. What is your understanding of how the Russians were going
19 to help?

20 A. No, I don't know how they were going to help you. You were
21 the one who knew that.

22 Q. What work was I doing for Russia?

23 A. I don't know what kind of work you were doing for Russia,
24 but I know you were spending long periods of time in your cell
25 with the phones.

1 Q. OK.

2 A. With a sheet covering you.

3 Q. OK. But only Omar ever spoke about Russia, correct?

4 A. No. You spoke about Russia.

5 Q. Your testimony is you never learned anything about Omar and
6 Russian oligarchs?

7 A. No.

8 MR. SCHULTE: OK. I'm going to show just to the
9 witness and the parties what's marked still as Government
10 Exhibit 1303-39, page 41.

11 Q. So you took pictures of this from your cell phone too,
12 right?

13 A. No, I don't think so. Not this one.

14 Q. You don't remember taking pictures of this one?

15 A. No.

16 Q. OK. What about -- I'm going to show page 55. What about
17 this one; do you recognize this one?

18 A. No.

19 Q. OK. Next, you testified that I said information war,
20 correct?

21 A. Yes, correct.

22 Q. And I said that, according to you, the same time I said
23 something about WikiLeaks, is that right?

24 A. No. Separate times.

25 Q. OK. And the time when you heard information war, what --

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Betances - Cross

1 where were you?

2 A. In my, in my -- in the tier of my unit.

3 Q. OK. And you were sitting at a table, right?

4 A. You were sitting at the table with Chino.

5 Q. OK. And you were -- you were standing?

6 A. I was walking by.

7 Q. OK. So your testimony is you were just walking by and you
8 overheard information war?

9 A. Yes. I was passing by. I almost -- I had almost gone up
10 to you, and then you stopped talking.

11 Q. OK. So the only thing that you heard was information war,
12 and then everyone stopped talking?

13 A. Not everybody. Just you stopped talking.

14 Q. So you don't know what -- you don't know what was said
15 about information war, right?

16 A. No. My understanding, that it's a war as to information;
17 that's what it means.

18 Q. OK. And that was the only time you heard anything about
19 information war, is that right?

20 A. Correct.

21 Q. OK. So you testified in a prior proceeding in this case,
22 correct?

23 THE COURT: I think we've established that,

24 Mr. Schulte.

25 Next question.

1 BY MR. SCHULTE:

2 Q. At that proceeding, you testified under oath that you heard
3 information war on two occasions, right?

4 A. One occasion.

5 (Defendant conferred with standby counsel).

6 MR. SCHULTE: I'm going to show just the witness and
7 the parties a transcript, page 2576, on lines 23 through 25.

8 Q. And you were asked: "Have you ever heard the defendant use
9 the phrase 'information war?'"

10 And you responded: "Yes, on two occasions."

11 A. Where does it say that here?

12 Yes, I already see it.

13 THE COURT: And did you testify to that effect in the
14 prior proceeding?

15 THE WITNESS: Yes. That's what I testified. It might
16 be that I didn't remember. It's been over two years, yeah.

17 THE COURT: For the record, I think that's page 2407.

18 MR. SCHULTE: OK.

19 THE COURT: Mr. Schulte, just for planning purposes,
20 how much longer do you expect on cross?

21 MR. SCHULTE: I have five pages of questions here.
22 I'm hoping to go quickly after --

23 THE COURT: Keep going. Next question.

24 MR. SCHULTE: OK.

25 Q. So your memory isn't perfect after two years, correct?

M6uWsch3

Betances - Cross

1 A. Not like that. Not like the way you're describing it. I
2 don't remember some things, but I do remember a lot of things.

3 Q. OK. But during your first testimony, your description of
4 where you heard this information is completely different,
5 correct?

6 A. What do you mean it was different?

7 THE COURT: Can you just specify which information
8 you're referring to, please.

9 MR. SCHULTE: All right. On transcript page 2508 to
10 2409.

11 THE COURT: Mr. Schulte, if you can just ask the
12 question again but specify the information.

13 MR. SCHULTE: OK.

14 Q. You testified that you heard, you overheard information war
15 when you were going into Chino's cell to warn people using a
16 cell phone, correct?

17 A. Yes, that was one of the times. Yes.

18 Q. All right. And that time you said as soon as you opened
19 the door, you just happen to hear information war and then
20 everyone stops talking, right?

21 A. Not everybody. You stopped talking. What are you
22 referring to when you say everybody?

23 Q. Well, were other people talking?

24 A. You were the one that was talking. The moment that I went
25 in, you were talking with Omar.

M6uWsch3

Betances - Cross

1 Q. So I'm confused now. Now your testimony is that you heard
2 information war on two occasions?

3 A. Yes, just the way you showed it to me. I heard it on two
4 occasions. You refreshed my memory now when you showed it to
5 me.

6 Q. OK. So the truth is you get some things wrong after two
7 years, right?

8 MR. LOCKARD: Objection.

9 THE COURT: Sustained.

10 BY MR. SCHULTE:

11 Q. OK. But the second instance you just testified about is
12 very similar to the -- your previous testimony today, right?

13 A. I don't understand the question. Can you please repeat it?

14 Q. Yes.

15 So every time you hear information war, you happen to walk
16 into a situation and only hear that word and nothing else,
17 right?

18 A. Yeah. I don't -- I don't know what information war you're
19 talking about. I don't even know the meaning of it. I don't
20 know what you were talking about.

21 Q. OK. But the point is each time you don't hear any other
22 context; all you happen to hear is information war, right?

23 A. That I can remember, yes, because you would stop talking.

24 Q. OK. And so now the occasion where you heard WikiLeaks,
25 what was that occasion?

M6uWsch3

Betances - Cross

1 A. If I remember correctly, it was on the side of your tier.
2 I don't remember, but I think it was on the tier. I don't
3 remember very well on which side.

4 Q. OK. So what were you doing during this time?

5 A. I was -- I would always go and check to see if the cell
6 phones were dead or if you were needing anything or if the
7 guard was passing by, that type of thing.

8 Q. OK. So what was I doing during this time?

9 A. Mostly during the day, you were using the phones. You were
10 sitting at the table talking, things to that effect.

11 Q. All right. I'm talking about the specific occasion when
12 you hear the word "WikiLeaks." What was I doing?

13 A. You were talking. You were chatting.

14 Q. Was I talking to you?

15 A. No.

16 Q. OK. So what did you hear?

17 A. I've answered the question three times already. WikiLeaks.
18 I heard that conversation.

19 Q. OK. What else was said in the conversation?

20 A. You stopped talking. You didn't talk any further.

21 Q. OK. So your testimony is you walked by, and you just
22 happened to hear the word WikiLeaks and nothing else, is that
23 right?

24 A. Yeah. I heard it. I just heard WikiLeaks. At that time I
25 didn't even know what it was. There was a page that was called

M6uWsch3

Betances - Cross

1 like that too.

2 THE INTERPRETER: I'm sorry. Excuse me. Correction.

3 A. There was a website that had that name.

4 Q. OK. So just to clarify, every time you heard the word
5 "WikiLeaks" or "information war," you just happened to walk by
6 and you heard that and nothing more. That's your testimony,
7 right?

8 A. It's the fourth time you asked me the question. I said
9 yes.

10 Q. All right. I want to talk to you about the Samsung phone
11 now. OK?

12 A. OK.

13 Q. You said I used this phone, correct?

14 A. Yes, right.

15 Q. I exchanged an iPhone with another inmate named Jimmy?

16 A. Yes.

17 Q. Is this a common occurrence, that people are just swapping
18 phones in MCC?

19 A. No.

20 Q. OK. But there are a lot of phones at MCC, right?

21 A. The ones that we had, I knew we had them. If other people
22 had them, I didn't know about it.

23 Q. OK. You testified that you were concerned that me and Omar
24 were planning to do something big, right?

25 A. Yes.

M6uWsch3

Betances - Cross

1 Q. That we -- you testified that we were going to do something
2 really big and needed to go to the law library, right?

3 A. You were paying \$200 to my friend named Flaco to go to the
4 library, yes.

5 Q. I paid someone money?

6 A. No. They were paying. And Flaco refused to take it
7 downstairs. And the only option left was that they had to go
8 down and take it themselves.

9 Q. OK. So Omar offered to pay money for Flaco to take some
10 phone down, right?

11 A. That's not how Flaco told me. That's not the way Flaco
12 described it. He said that both of them were offering him
13 money.

14 Q. All right. But there were cameras in the law library,
15 correct?

16 THE INTERPRETER: I'm sorry. Can you repeat the
17 question?

18 Q. There were cameras in the law library, correct?

19 A. I don't know.

20 Q. OK. But your testimony on direct was that me and Omar
21 needed to send some information from the phone, right?

22 A. Let me explain it to you again. Not information. It's
23 that you had to do something in the, in the library. That's
24 what I testified about.

25 Q. OK. What did I have to do in the law library, according to

1 you?

2 A. Well, you're very smart. You must know the question.

3 There was something down there that you wanted to use that you
4 couldn't use upstairs.

5 Q. OK. You also testified something about a USB drive, right?

6 A. Yes.

7 Q. You testified, I believe, that me and Omar wanted a USB
8 device, right?

9 A. Yeah. You asked me all the time when the drive was going
10 to arrive. When was it coming? When was it coming?

11 Q. OK. But there were already USB hard drives given to
12 prisoners in the prison, right?

13 A. Not to my understanding.

14 Q. You don't -- you never received or saw anyone using a USB
15 drive with their discovery on it?

16 A. No, because I -- no, I hardly ever went down to the law
17 library.

18 Q. All right. And then you said, you testified that you
19 slipped a note under the guard's door?

20 A. Yes.

21 Q. And that was about, you said something was going to happen
22 in the law library, right?

23 THE INTERPRETER: Could you repeat the question,
24 please?

25 MR. SCHULTE: Yes.

M6uWsch3

Betances - Cross

1 Q. You said that the note said something was going to happen
2 in the law library, right?

3 A. Yes.

4 Q. All right. I'll move on.

5 You testified on direct about certain accounts, right?

6 A. What are you referring to when you say certain accounts?

7 Q. Accounts you took pictures of on the cell phones. Right?

8 A. Yes, that's right.

9 Q. OK. And you claimed that certain accounts belonged to me,
10 right?

11 A. Yeah, because one time I also saw that you had them written
12 down in a notebook. I think so.

13 Q. OK. So I had -- your testimony is I had a list of accounts
14 written down in a notebook, right?

15 A. No. I saw that. I saw that account also on a paper
16 somewhere. I don't know where. When you would give me the
17 phones, you left the emails open and I would look at them. And
18 they were yours, because you were the one that was using the
19 phone in the moment.

20 Q. OK. But you don't actually know if, whether these accounts
21 are shared amongst others, right?

22 A. No.

23 Q. OK. And you never actually witnessed anyone send an email
24 from one of these accounts, right?

25 A. No.

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1 Q. OK. At some point you testified that you told the
2 prosecutors where the phone was located in your cell, right?

3 A. Yeah, but to clarify, you already had the Samsung when they
4 went looking for it.

5 Q. OK. But after you told them where it was, the MCC guards
6 came and took the phone, right?

7 A. No. They came the following day.

8 Q. OK. Well, they took the phone and sent you to the SHU,
9 right?

10 A. That's right.

11 Q. OK. And your testimony today is that Omar and I sent you a
12 message while you were in the SHU, right?

13 A. Yes. It was through Chino. Chino's the one who told me
14 not to talk, that they were going to pay me \$5,000.

15 Q. OK. And did Chino tell you that Omar was going to pay you
16 or that I was going to pay you?

17 A. He said those guys are going to pay you.

18 THE COURT: All right. And we're going to stop there
19 for our break.

20 Ladies and gentlemen, you know the drill. Don't
21 discuss the case. Don't do any research about the case.
22 Continue to keep an open mind. Please be ready to go at 12:15
23 so we can start promptly at 12:20. Enjoy your break.

24 Thank you.

25 (Continued on next page)

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1 (Jury not present)

2 THE COURT: You may be seated.

3 Mr. Betances --

4 Can I get the interpreters to help?

5 THE INTERPRETER: I'm sorry, your Honor. I didn't
6 hear you.

7 THE COURT: Can you help me interpret something?

8 THE INTERPRETER: Yes, of course.

9 THE COURT: Mr. Betances, you're on cross-examination.
10 So during the break assuming that you even see anyone from the
11 government, you may not speak to them about the substance of
12 your testimony.

13 THE WITNESS: OK.

14 THE COURT: All right. The marshals will bring you
15 back in about 35 minutes, and we'll see you then.

16 Enjoy your break.

17 THE WITNESS: Thank you.

18 (Witness not present)

19 THE COURT: All right. Mr. Schulte, there's a saying
20 with respect to cross that sometimes less is more. I think
21 this cross is a good example of why that's a good expression.
22 It's not clear to me what -- first of all, the cross is about
23 twice the length of the direct at this point.

24 Second, I'm not sure that there's any particular
25 question that you've asked that's relevant. It's not clear to

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1 me what you're accomplishing. Indeed, I think to some extent
2 you're causing yourself more harm than good with some of this
3 cross. But be that as it may, I assume that you'll have a few
4 minutes left. Is that correct?

5 (Defendant conferred with standby counsel)

6 MR. SCHULTE: I think it should be less than 15. I'm
7 already on the last page or so.

8 THE COURT: All right. I'm assuming from your
9 estimate yesterday, Mr. Lockard, that the government may not
10 get to the conclusion of its case today. Is that a fair
11 assumption?

12 MR. LOCKARD: It's going to depend a little bit on
13 what happens after Agent Schlessinger's direct is concluded.

14 THE COURT: All right. I'll keep my fingers crossed,
15 but in either case, we'll be prepared.

16 Anything we need to discuss before I give you your
17 breaks?

18 MR. LOCKARD: Not from us.

19 THE COURT: Mr. Schulte.

20 MR. SCHULTE: No.

21 THE COURT: All right. Please be in your seats at
22 12:15. We'll get the witness on the stand and hopefully get
23 the jury up at 12:20.

24 Thank you.

25 (Luncheon recess)

1 A F T E R N O O N S E S S I O N

2 12:15 p.m.

3 THE COURT: Mr. Lockard, do you have something?

4 MR. LOCKARD: I just have one very quick thing.

5 There is just a minor issue raised by the interpreters
6 which is I think during Mr. Betances' testimony he will
7 occasionally address the interpreter as though the interpreter
8 is the questioner instead of addressing Mr. Schulte. And so,
9 we thought it might be appropriate for the Court to remind
10 Mr. Betances to address Mr. Schulte directly for clarity of the
11 record.

12 THE COURT: All right.

13 THE WITNESS: So I was also going to ask that same
14 question. I was confused, too, but I never had the opportunity
15 to have him ask me questions.

16 THE COURT: You should just answer to him, ignore the
17 fact that the interpreters are here and they will just
18 translate what you say to him. OK?

19 THE WITNESS: OK. Perfect.

20 INTERPRETER: Thank you.

21 THE COURT: I don't think that the record needs to be
22 cleared particularly because he has occasionally referred to
23 the defendant in the third person but I don't think there is
24 any confusion who he is referring to.

25 MR. LOCKARD: We agree. We just thought it would be a

1 helpful tweak.

2 THE COURT: All right.

3 THE DEPUTY CLERK: Jury entering.

4 (Continued on next page)

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1 (Jury present)

2 THE COURT: You may be seated. Welcome back, ladies
3 and gentlemen. I hope you enjoyed your break. We will
4 continue with the cross-examination of Mr. Betances.

5 Mr. Betances, you remain under oath.

6 THE WITNESS: OK.

7 THE COURT: Mr. Schulte, you may proceed.

8 Let me just say, Mr. Betances, I said this to you
9 earlier but just to remind you, you can speak directly to the
10 person asking you the question and ignore that there is an
11 interpreter here. So in that regard, if you want to refer to
12 Mr. Schulte as "you" rather than by his name, that's fine.

13 THE WITNESS: OK.

14 THE COURT: You may proceed, Mr. Schulte.

15 BY MR. SCHULTE:

16 Q. Before we broke for lunch we were talking about this \$5,000
17 bribe, right?

18 A. Correct.

19 Q. And it is your testimony today that me and Omar offered to
20 pay you \$5,000 to keep quiet and not say anything about the
21 phone, right?

22 A. That was the message you guys sent me, yes.

23 Q. But that's not what you testified to before, correct?

24 A. I didn't mention that that time, no.

25 Q. So as part of your cooperation to testify in that

1 proceeding in 2020 you did not mention that, right?

2 A. No, I didn't mention it. No.

3 Q. And you were under oath during that time, right?

4 A. Correct.

5 Q. And you met with the prosecutors to prepare for your
6 testimony in that proceeding, right?

7 A. Yes, correct.

8 Q. And you met with them multiple times, right?

9 A. Yes, correct.

10 Q. And you never once mentioned anything about this supposed
11 bribe, right?

12 A. No, but I remembered it right when they were asking me
13 questions.

14 Q. OK. In fact, the first time you ever told the prosecutors
15 about this supposed bribe was June 2022, right?

16 A. If you are asking me to remember the date I really don't
17 remember it too well.

18 Q. OK, but you remember the year, right?

19 A. Correct.

20 Q. And that would be 2022, right?

21 A. You are confusing me with your question because we are in
22 2022 now.

23 Q. Right. The very first time that you told prosecutors about
24 this supposed bribe was in 2022, right?

25 A. Yes, correct.

M6U5sch4

Betances - Cross

1 Q. And do you remember that that happened this month in June,
2 right?

3 A. Well, look. I mean, if I didn't remember it that time I
4 did remember it this time. We talk about so many things, I
5 have to tell the truth, and I just talked about all of these
6 things.

7 Q. So literally years after you began cooperating, correct?

8 A. Correct.

9 Q. Years after you promised to tell the truth, correct?

10 A. Yes, correct.

11 Q. And yet you want this jury to believe that this happened?

12 A. Well, they don't have to believe me, they have to believe
13 what I am telling them, because just because I said didn't it
14 say it then but I'm saying that it doesn't mean that they
15 shouldn't believe me now.

16 Q. OK. Final line of questioning for you, sir.

17 You testified that cell phones were illegal at the
18 MCC, correct?

19 A. You asked me that question again four times and I answered
20 yes.

21 Q. OK, but people had them anyway, right?

22 A. Whoever could have it.

23 Q. And drugs were also illegal, correct?

24 A. Correct.

25 Q. But people had drugs, too, right?

1 A. According to your understanding, yes, they did have it.
2 Not according to my understanding.

3 Q. According to your understanding you never saw any drugs at
4 MCC?

5 A. Usually, no, I never saw them.

6 Q. Did you witness Chino take drugs?

7 A. No.

8 Q. You witnessed me take drugs, correct?

9 A. No.

10 Q. And you never -- your testimony is you never smuggled in
11 any drugs into the MCC?

12 A. Of course not.

13 I don't know where you are trying to go with this one.
14 You know I didn't.

15 MR. SCHULTE: No further questions.

16 THE COURT: Redirect?

17 MR. LOCKARD: No redirect, your Honor.

18 THE COURT: Mr. Betances, you may step down. You are
19 excused. Please put your mask on before you step down and have
20 a good afternoon.

21 (witness excused)

22 THE COURT: Government, please call your next witness.

23 MR. DENTON: The government calls Special Agent Evan
24 Schlessinger, your Honor.

25 THE COURT: All right. You.

M6U5sch4

Schlessinger - Direct

1 THE DEPUTY CLERK: Stand up and take your mask off.
2 Please raise your right hand.

3 EVAN SCHLESSINGER,

4 called as a witness by the Government,

5 having been duly sworn, testified as follows:

6 THE DEPUTY CLERK: Please have a seat. Can you please
7 state and spell your first name for the record?

8 THE WITNESS: Evan Schlessinger. E-V-A-N
9 S-C-H-L-E-S-S-I-N-G-E-R.

10 THE COURT: You may proceed.

11 MR. DENTON: Thank you, your Honor.

12 DIRECT EXAMINATION

13 BY MR. DENTON:

14 Q. Good afternoon, sir.

15 A. Good afternoon.

16 Q. Where do you work?

17 A. The FBI.

18 Q. What is your position with the FBI?

19 A. I am a special agent.

20 Q. Are you assigned to a particular FBI field office?

21 A. Yes, I am.

22 Q. Which field office is that?

23 A. The Washington, D.C. field office.

24 Q. How long have you been assigned there?

25 A. About a year and a half.

M6U5sch4

Schlessinger - Direct

- 1 Q. Where were you assigned before that?
- 2 A. The New York field office.
- 3 Q. If I can ask you to slide a little bit closer to the mic?
- 4 A. The New York field office.
- 5 Q. Were you assigned to a particular squad with the FBI in the
- 6 New York field office?
- 7 A. Yes.
- 8 Q. Which squad was that?
- 9 A. The counter-espionage squad.
- 10 Q. For how long were you assigned to the counter-espionage
- 11 squad?
- 12 A. For approximately four years.
- 13 Q. What kind of crimes did the counter-espionage squad
- 14 investigate during the time that you were a part of it?
- 15 A. Generally they investigated crimes dealing with
- 16 unauthorized disclosures of sensitive or classified
- 17 information.
- 18 Q. As part of your work on that squad, did you participate in
- 19 the investigation of Joshua Schulte?
- 20 A. Yes, I did.
- 21 Q. What was your role in that investigation?
- 22 A. I became a case agent approximately November or December of
- 23 2017.
- 24 Q. As part of your participation in that investigation, did
- 25 you work on the execution of a search warrant at the

M6U5sch4

Schlessinger - Direct

1 Metropolitan Correctional Center?

2 A. Yes.

3 Q. Is that also sometimes referred to as the MCC?

4 A. Yes.

5 Q. Approximately when did that search occur?

6 A. October 3rd, 2018.

7 Q. Was the defendant in custody at the MCC at that time?

8 A. Yes.

9 Q. Were other agents involved in that search along with you?

10 A. Yes.

11 Q. Roughly how many?

12 A. About 50.

13 Q. Why were that many agents involved in the search?

14 A. There was a lot of urgency to find a contraband cell phone
15 that the defendant had at the MCC. Also, given the relatively
16 large area that was to be searched, which included the entire
17 7 South tier and the MCC library, we needed as many agents as
18 we could gather to assist.

19 Q. Generally, what led you to believe that the defendant was
20 using a contraband cell phone?

21 A. We received information from an MCC detainee by the name of
22 Carlos Betances.

23 Q. In addition to receiving information from Mr. Betances, did
24 he provide you with materials?

25 A. Yes, he did.

M6U5sch4

Schlessinger - Direct

1 Q. What kind of materials?

2 A. Photographs and videos of the defendant using the phone, as
3 well as some of the activity that was occurring on the phone.

4 MR. DENTON: Ms. Cooper, could we put up what is in
5 evidence as Government Exhibit 820-433, please? I'm sorry;
6 433.

7 Q. Special Agent Schlessinger, do you recognize this photo?

8 A. Yes, I do.

9 Q. How did you get this photo?

10 A. From Carlos Betances.

11 Q. What does it depict?

12 A. It is a picture of the back side of a cell phone.

13 Q. And do you see the number there next to the letters IMEI?

14 A. Yes.

15 Q. Can you just read those numbers for us?

16 A. 357073084445432.

17 MR. DENTON: Ms. Cooper, could we put up also what is
18 in evidence as Government Exhibit 3003 and turn to page 3?

19 Q. I'm not going to ask you to read the entire thing Special
20 Agent Schlessinger, but can I ask you to look at paragraph 4,
21 here? And do you see an IMEI number listed in that paragraph?

22 A. Yes.

23 Q. Is that the same as the IMEI number that was displayed in
24 Government Exhibit 820-433?

25 A. Yes.

M6U5sch4

Schlessinger - Direct

1 MR. DENTON: Thank you, Ms. Cooper. Could we publish
2 what is in evidence -- and if we can do both at the same time
3 that would be terrific -- Government's Exhibits 820-419 and
4 420?

5 Q. Special Agent Schlessinger, have you seen these photographs
6 before?

7 A. Yes, I have.

8 Q. And in what context did you first see them?

9 A. They were provided to us by Carlos Betances.

10 Q. Can I ask you to read the first sentence of the writing on
11 Government Exhibit 820-419?

12 A. Presumption of Innocence Origins.

13 Q. And the first sentence of text below that, please?

14 A. My case involved WikiLeaks and the Vault 7/8 release.

15 Q. And do you see about 10 lines up from the top a sentence
16 that starts: My fellow developers?

17 A. Yes.

18 Q. Can you read that, please?

19 A. My fellow developers and operators were generally
20 successful, despite management's best efforts to derail and
21 disrupt our work with meaningless process, nonsensical
22 directives, a lack of leadership, and incoherent babble and
23 buzz words that only confirmed our suspicions that management
24 literally --

25 Q. And is Government Exhibit 820-420 a continuation of that

M6U5sch4

Schlessinger - Direct

1 text?

2 A. Yes.

3 Q. So can you please continue reading through the end of that
4 sentence?

5 A. -- had no idea or understanding of what we did and,
6 therefore, could not possible lead us.

7 MR. DENTON: Ms. Cooper, if we could then put up
8 Government Exhibit 820-423 and 820-424, please?

9 Q. Special Agent Schlessinger, again, have you seen these
10 before?

11 A. Yes, I have.

12 Q. Are they a continuation of that same text that you have
13 been reading?

14 A. Yes.

15 Q. I'm going to ask you to focus, in particular, on Government
16 Exhibit 820-424. Can you read what is written in Government
17 Exhibit 820-424?

18 A. Unfortunately, my life was totally destroyed by government
19 incompetence and malfeasance. On March 7th, 2017, WikiLeaks
20 unveiled Vault 7 which were classified documents from my old
21 group's internal development network. I was the only one to
22 have recently departed this group on poor terms while
23 disclosing vulnerabilities in the system, all the while
24 planning to visit Cancun with my brother during spring break in
25 the following week. Due to these unfortunate coincidences, the

M6U5sch4

Schlessinger - Direct

1 FBI ultimately made the snap judgment that I was guilty of the
2 leaks and targeted me. The FBI illegally, with malicious
3 intent and blatant disregard for the truth, filed a probable
4 cause affidavit and obtained a search warrant for my New York
5 City apartment.

6 Q. Let me stop you there, Special Agent. Do you see the part
7 that you read that referred to the FBI made a snap judgment?

8 A. Yes.

9 Q. How long after the Vault 7 disclosure was the defendant
10 first approached by the FBI?

11 A. About a week after.

12 Q. Was he arrested at that time?

13 A. No.

14 Q. Approximately how long was it after the leaks before the
15 defendant was charged in this case?

16 A. About a year and several months afterwards.

17 Q. And were you a case agent involved in the investigation
18 during that time?

19 A. At the time he was charged, yes.

20 Q. What type of tasks were you performing during those
21 intervening months?

22 A. Collecting evidence, interviewing witnesses, serving legal
23 process. Things like that.

24 MR. DENTON: Ms. Cooper, could we take these down and
25 then go to Government Exhibit 820-428?

1 Q. Special Agent Schlessinger, can I ask you to read the
2 paragraph from below the paragraph break that starts: This was
3 their mistake?

4 A. This was their mistake. They did not truly know their
5 enemy. If the FBI had actually reviewed my security file at
6 the CIA, not only would they find successful background
7 investigations and polygraphs, but also my psychological
8 evaluation which consists of the following vices: Arrogance
9 and extreme self-confidence, unrelenting determination, and
10 righteous indignation. Should I be wronged, I will fight with
11 every ounce of strength that I can muster. I will see this
12 through to the very end and fight until the day a jury of my
13 peers finds me guilty and sentences me.

14 MR. DENTON: We can take that down, Ms. Cooper,
15 please.

16 Q. Special Agent Schlessinger, during your search of the MCC
17 did you recover any materials that the defendant had written?

18 A. Yes, we did.

19 Q. What kinds of materials?

20 A. We recovered notebooks and articles that the defendant had
21 written.

22 Q. During the course of your participation in this
23 investigation, have you had occasion to observe the defendant's
24 handwriting?

25 A. Yes.

M6U5sch4

Schlessinger - Direct

1 Q. Have you become familiar with his handwriting?

2 A. Yes.

3 Q. Did you obtain additional search warrants to review the
4 content of the materials that you seized on that day?

5 A. Yes, we did.

6 MR. DENTON: Ms. Cooper, can we put up what is in
7 evidence, subject to connection, as Government Exhibit 806?

8 Q. Sir, do you recognize this?

9 A. Yes, I do.

10 Q. What is it?

11 A. This is a notebook that was recovered at the MCC.

12 Q. And where did you first see it?

13 A. At the MCC.

14 Q. Do you recognize the handwriting on the cover?

15 A. Yes, I do.

16 Q. Whose handwriting is that?

17 A. Mr. Schulte's.

18 MR. DENTON: Ms. Cooper, if we could go to the next
19 page of this exhibit?

20 Q. Special Agent, can I ask you to read the paragraph in the
21 middle that starts: If you need help?

22 A. If you need help, ask WikiLeaks for my code. I developed
23 software to parse MSFT, NTFS, and EXT 3 partitions so that I --
24 for a operation.

25 Q. Do you recognize that handwriting?

1 A. Yes, I do.

2 Q. Whose is it?

3 A. Mr. Schulte's.

4 THE COURT: Mr. Denton, do you want to offer this in
5 full at this time?

6 MR. DENTON: I am happy to, your Honor.

7 THE COURT: OK.

8 Any objection? Mr. Schulte?

9 MR. SCHULTE: Same objection as before. I think there
10 is a couple pages that aren't included that I would want to
11 include.

12 THE COURT: The objection is overruled.

13 Ladies and gentlemen, earlier you may recall that I
14 admitted this subject to connection. That's just done where,
15 essentially, there is another piece of foundation that needs to
16 be laid and that happens at a different time through a
17 different witness. So I find that the foundation now has been
18 laid so this is in evidence, in full.

19 (Government's Exhibit 806 received in evidence)

20 THE COURT: Mr. Denton, you may proceed.

21 MR. DENTON: Thank you, your Honor.

22 Ms. Cooper, if we could go to page 3 of Government
23 Exhibit 806, and if we could blow up the paragraph at the top
24 of that page, please? Yes. Sorry.

25 Q. Can you read what is written here, Special Agent

1 Schlessinger?

2 A. Ugh. Talked to my parents today and found out that my
3 fucking articles that have up -- that were uploaded to FB, a
4 fucking docx fucking format were the wrong fucking articles.
5 They put articles 1 through 7 and only the old ones. I said I
6 was disappointed and my mom got all upset like she does and I
7 spent the entire phone call trying to apologize.

8 MR. DENTON: Ms. Cooper, can we go to the next page of
9 Government Exhibit 806, please? Is it possible to blow up the
10 writing to make that a little larger on both pages?

11 Q. Special Agent Schlessinger, on the left-hand side here do
12 you see a date?

13 A. Yes, I do.

14 Q. What is that date?

15 A. July 14, 2018.

16 Q. And can you read the text that is written on the right-hand
17 page?

18 A. New article plan: 1. FBI not the only agency against
19 Trump, CIA too.

20 (a) leak documents to make trump look bad.

21 (b) sell documents to make \$\$\$.

22 2. Political relevant -- I'm not sure what the second
23 word is, there.

24 3. Incompetence within CIA, government agencies.

25 4. If I were Russia I would:

1 (a) attack judiciary.

2 (b) U.S. destroy itself.

3 MR. DENTON: We can take that down, Ms. Cooper, and if
4 we could show Special Agent Schlessinger the first page of
5 Government Exhibit 809?

6 Q. Special Agent Schlessinger, do you recognize this?

7 A. Yes, I do.

8 Q. Where did you first see this?

9 A. At the MCC.

10 Q. And what is it?

11 A. It is another one of the notebooks that we recovered there.

12 Q. And do you recognize the handwriting that's on the cover
13 here?

14 A. Yes.

15 Q. Whose handwriting is it?

16 A. Mr. Schulte's.

17 MR. DENTON: Your Honor, the government offers
18 Government Exhibit 809, in full.

19 THE COURT: Any objection?

20 MR. SCHULTE: Same objection.

21 THE COURT: Same ruling. Overruled, and admitted in
22 full.

23 MR. DENTON: Thank you, your Honor.

24 (Government's Exhibit 809 received in evidence)

25 BY MR. DENTON:

M6U5sch4

Schlessinger - Direct

1 Q. Special Agent Schlessinger, do you see something that looks
2 like a date written on this cover?

3 A. Yes.

4 Q. What does that say?

5 A. 7/25 to 9.

6 Q. If we can go to the second page of Government Exhibit 809?
7 Is there a date written on this page, Special Agent
8 Schlessinger?

9 A. Yes.

10 Q. What's that date?

11 A. 8/8/2018.

12 Q. And can I ask you to read the text in the portion that kind
13 of curls around the date there?

14 A. If government doesn't pay me \$50 billion in restitution and
15 prosecute the criminals who lied to the judge and presented
16 this BS case, then I will visit every country in the world and
17 bear witness to the treachery that is the USG. I will look to
18 break up diplomatic relationships, close embassies, end U.S.
19 occupation across the world, and finally reverse U.S. jingoism.
20 If this is the way the U.S. government treats one of their own,
21 how do you think they treat allies?

22 MR. DENTON: Ms. Cooper, can we go to page 3 of
23 Government Exhibit 809?

24 Q. Do you see a date on this page, Special Agent?

25 A. Yes.

M6U5sch4

Schlessinger - Direct

1 Q. And what's that date?

2 A. 8/14.

3 Q. Do you see the text there that says: Got to use last
4 night?

5 A. Yes.

6 MR. DENTON: Ms. Cooper, can we pull up what is in
7 evidence as Government Exhibit 821?

8 Q. Special Agent, do you recognize what that is?

9 A. Yes, I do.

10 Q. What is it?

11 A. This is a report from the Samsung cell phone that was
12 recovered at the MCC.

13 Q. How do you recognize it is a report from the Samsung cell
14 phone?

15 A. The IMEIs match and I have seen it before.

16 Q. When was the Samsung phone activated?

17 A. August 13th, 2018.

18 Q. And how do you know that?

19 A. The phone activation time entry, it says August 14th but
20 that's in UTC time, and if you convert that to Eastern Standard
21 Time it would be August 13th.

22 Q. What time of day on August 13th?

23 A. In the evening.

24 MR. DENTON: You can take down 821, Ms. Cooper,
25 please.

M6U5sch4

Schlessinger - Direct

1 Q. Can I ask you to keep reading the text that is written on
2 page 3 of Government Exhibit 809?

3 A. Got to use last night. The way is clear. I will set up a
4 Wordpress of joshschulte.wordpress.com and
5 presumptionofinnocence.wordpress.com. From here I will stage
6 my information war.

7 Facebook I will rename simply Who is John Galt? or who
8 is Joshua Schulte? From Facebook -- from FB I will post links
9 to the articles and logs as I write them.

10 The Presumption of Innocence blog will only contain my
11 10 articles 1 through 10 ending on the presumption of
12 innocence. I will post each of them on the FB and delete the
13 previous articles.

14 Q. Special Agent, just to go back up to the top, can I ask you
15 to read the text that is written in the margins next to the
16 first paragraph?

17 A. Give me a phone and a blog and I will change the world.

18 Q. Now, Special Agent, as part of your participation in this
19 investigation, did you also obtain records from electronic
20 service providers pertaining to certain accounts?

21 A. Yes, we did.

22 MR. DENTON: Ms. Cooper, could we publish what is in
23 evidence as Government Exhibit 1301-1, please?

24 Q. Special Agent, do you recognize this?

25 A. Yes, I do.

M6U5sch4

Schlessinger - Direct

1 Q. What is it?

2 A. This is a search warrant return from one of the providers.

3 Q. And what's the date and time of the first entry at the top
4 there?

5 A. August 14, 2018; 4:40.

6 Q. And who is the user?

7 A. JoshSchultel.

8 Q. And then do you see an entry for August 14th at 7:36 p.m.?

9 A. Yes, I do.

10 Q. What is the event that's listed there?

11 A. Set user role.

12 Q. What role is that?

13 A. The administrator role.

14 MR. DENTON: If we could go back to Government Exhibit
15 809, Ms. Cooper?

16 Q. Special Agent Schlessinger, do you see the language that
17 reads from FB I will post links to the articles and blogs?

18 A. Yes.

19 Q. Did you investigate Facebook accounts created by the
20 defendant?

21 A. Yes, we did.

22 MR. DENTON: Ms. Cooper, can we show just Special
23 Agent Schlessinger and the parties Government Exhibit 823?

24 Q. Special Agent, do you recognize this?

25 A. Yes.

1 Q. What is it?

2 A. This is a Facebook page.

3 Q. And did you take this image?

4 A. Yes, I did.

5 Q. How did you take it?

6 A. I took a screenshot of it.

7 MR. DENTON: Your Honor, the government offers
8 Government Exhibit 823.

9 MR. SCHULTE: No objection.

10 THE COURT: Admitted.

11 (Government's Exhibit 823 received in evidence)

12 MR. DENTON: If we could publish that, please,
13 Ms. Cooper?

14 Q. Is this one of the Facebook pages that was listed in
15 Government Exhibit 809 that we were just talking about?

16 A. I believe it was, yes.

17 MR. DENTON: Can we blow up the "About" section,
18 Ms. Cooper, over on the right side? Thank you.

19 Q. What is the link that is listed there?

20 A. Presumptionofinnocence.net.

21 Q. Do you know what is at that link?

22 A. Yes.

23 Q. What is it?

24 A. That's the Wordpress site that was referenced earlier.

25 MR. DENTON: Thank you, Ms. Cooper, we can take that

1 down. And if we can go back to Government Exhibit 809 and turn
2 to page 4?

3 Q. Can you read the first sentence here, Special Agent?

4 A. I texted my dad from WhatsApp and Signal recently and
5 finally got a response at 1 percent battery.

6 Q. What are WhatsApp and Signal?

7 A. They're commercial messaging applications.

8 MR. DENTON: Ms. Cooper, could we pull up what is in
9 evidence as Government Exhibit 820-434?

10 Q. Special Agent, do you see an application for WhatsApp on
11 this phone?

12 A. Yes.

13 Q. What about Signal; is that there as well?

14 A. Yes.

15 MR. DENTON: We can take that down and go back to page
16 4 of Government Exhibit 809.

17 Q. Can you keep reading that top paragraph, please?

18 A. I said please put articles on drafts in gmail. Response:
19 My lawyer advised me not to. Fucking incredible. Fucking
20 incredible. My own father, who fucked me into \$150,000 of
21 credit card debt, won't help me. Why the fuck is everyone such
22 a God damn pussy? Everyone is so fucking pussy. Grow a pair
23 and stand up to these assholes.

24 Q. Please continue with the next paragraph.

25 A. I'm not sure what the first word is there -- finally able

M6U5sch4

Schlessinger - Direct

1 to call and talk to him and I felt so fucking bad. The man
2 sounded terrified at the government and said they're watching
3 my e-mail, they're listening and watching everything. But he
4 also said Josh Dratel was coming to see me Thursday or Friday.
5 I thought I convinced him to set up a Proton e-mail account for
6 me to upload the articles.

7 THE COURT: Ladies and gentlemen, just a reminder that
8 these are in evidence and it is up to you, number one, what
9 weight, if any, to give them; and number two, if your reading
10 of them differs from how any witness reads them, you should
11 rely on your own interpretation of reading them.

12 Mr. Denton?

13 MR. DENTON: Thank you, your Honor.

14 BY MR. DENTON:

15 Q. Special Agent Schlessinger, are you familiar with
16 ProtonMail?

17 A. Yes.

18 Q. What is ProtonMail?

19 A. It is a secure e-mail service based in Switzerland.

20 MR. DENTON: Ms. Cooper, can we go to next page of
21 Government Exhibit 809, please?

22 Q. Is there a date listed on this page?

23 A. Yes.

24 Q. What is it?

25 A. Tuesday the 21st.

1 Q. Can you start, sir, by reading the text that's kind of in
2 the top right corner near the margin?

3 A. They got IMEI of my phone via subpoena of phone number.

4 Q. Can you read the numbers 1 through 5 on the numbered list
5 here?

6 A. 1. Delete all Google docs from JohnSmith.

7 2. Delete all e-mails from John Smith.

8 3. Delete suspicious e-mails from my gmail.

9 (a) new logins from phones.

10 (b) Paypal.

11 (c) Wordpress.

12 (d) PW changes.

13 4. Create new ProtonMail,
14 presumedguilty@ProtonMail.com.

15 5. Migrate Wordpress to ProtonMail.

16 Q. Then if we can zoom back out and look at the portion with
17 the header research? Can you read that?

18 A. Research. 1. Gmail keep deleted e-mails?

19 2. Changing Samsung IMEI

20 (a) without rooting.

21 (b) generate new IMEI. Subpoena for IMEI question
22 mark? Worst case, all three have compromised IMEIs.

23 Q. Special Agent, are you familiar with what routing is?

24 A. Yes, generally.

25 Q. Generally speaking, what is it?

M6U5sch4

Schlessinger - Direct

1 A. It is to obtain root-level access of a system which would
2 allow you to do whatever you would like on the system.

3 MR. DENTON: Ms. Cooper, can we put up what is in
4 evidence as Government Exhibit 820-435?

5 Q. Special Agent, do you see an application there labeled
6 Kingo Root?

7 A. Yes.

8 Q. Do you know what that is?

9 A. I believe it is an app that allows you to obtain root-level
10 access.

11 MR. DENTON: Ms. Cooper, I'm sorry. If we can go back
12 to page 5 of Government Exhibit 809 and if we can go on to the
13 bottom part of the page below that line?

14 Q. Can you read what is written here, please?

15 A. 6. Clean off apps.

16 7. Reset factory phone.

17 Set up WhatsApp, Signal --

18 MR. SCHULTE: Objection. Speaks for itself.

19 THE COURT: I will allow the witness to read it, but
20 subject to the instructions I gave you earlier.

21 Go ahead.

22 A. Set up WhatsApp, Signal, Telegram, all with different
23 numbers. New phone use old phone's WhatsApp. Need to set up
24 WhatsApp with non-call number.

25 MR. DENTON: You can zoom out there.

M6U5sch4

Schlessinger - Direct

1 Q. Special Agent Schlessinger, do you remember reading up
2 above there item 3(d) PW changes?

3 A. Yes.

4 Q. What's the date on this page?

5 A. Tuesday, the 21st.

6 MR. DENTON: Ms. Cooper can we put up what is in
7 evidence as Government Exhibit 822-2?

8 Q. Sir, do you recognize this document?

9 A. Yes, I do.

10 Q. What is it?

11 A. This is a list of Internet searches that were conducted
12 from the Samsung cell phone.

13 Q. And how do you recognize it?

14 A. This was a report I ran from the forensic review software
15 that we use.

16 MR. DENTON: Ms. Cooper, can we go to page 2 of this
17 and blow up lines 39 to 42?

18 Q. Special Agent, what is the search that is reflected in line
19 39?

20 A. Generate random password.

21 Q. And what's the date of that search?

22 A. August 22nd, 2018.

23 MR. DENTON: Ms. Cooper, can we go back to page 5 of
24 Government Exhibit 809? I'm sorry, page 6.

25 Q. Special Agent, do you see a list of letters and numbers

M6U5sch4

Schlessinger - Direct

1 next to an e-mail address at the top there?

2 A. Yes.

3 Q. What e-mail address is that?

4 A. Presumedguilty@ProtonMail.

5 Q. What happens if you try to log into that ProtonMail account
6 with the letters and numbers to the left of it?

7 A. You will successfully log on to that account.

8 Q. How do you know that?

9 A. I was present when that occurred.

10 Q. Looking down, do you see the phrase annon1204?

11 A. Yes.

12 Q. And the letters and numbers that are to the right of that?

13 A. Yes.

14 MR. DENTON: Ms. Cooper, can we publish Government
15 Exhibit 820-436?

16 Q. Do you see a ProtonMail account with that user name?

17 A. Yes.

18 Q. What happens if you try to log into that ProtonMail account
19 with the numbers and letters on page 6 of Government Exhibit
20 809?

21 A. You will successfully log onto that account.

22 Q. How do you know that?

23 A. I was present when that occurred.

24 MR. DENTON: Then if we could go back to Government
25 Exhibit 809, page 6, Ms. Cooper?

M6U5sch4

Schlessinger - Direct

1 Q. Finally, below that do you see "Free Jason Bourne"?

2 A. Yes.

3 Q. Have you seen a ProtonMail account with that user name?

4 A. Yes.

5 Q. Do you see that string of letters and numbers there?

6 A. Yes.

7 Q. What happens if you try to log into that account with those
8 letters and numbers?

9 A. You will successfully log into that account.

10 Q. And again, how do you know that?

11 A. I was present when that occurred.

12 Q. Special Agent, you should have, on the podium there, a
13 binder that's marked for identification as Government Exhibit
14 1303.

15 A. Yes.

16 Q. And just for the record, that contains Government's
17 Exhibits 1303-6 -44, -47,-48, -49, -50, and Exhibit 812?

18 A. Yes.

19 Q. Do you recognize what those are?

20 A. Yes, I do.

21 Q. What are they?

22 A. These are e-mails from the accounts we just discussed.

23 Q. How do you recognize them?

24 A. I was there when they were accessed. I have reviewed them.

25 MR. DENTON: Your Honor, the government offers

1 Government Exhibit 812, Government Exhibit 1303-6, -44, and -47
2 through -50.

3 THE COURT: Any objection?

4 MR. SCHULTE: I guess we don't see them.

5 THE COURT: I think they're in the binder but you
6 should have received copies previously. Do you want to look at
7 the binder?

8 Do we have a copy of the binder for Mr. Schulte?

9 MR. DENTON: We don't have a copy of the binder but
10 since Special Agent Schlessinger has had a chance to review it,
11 I am happy to get it and show it to them.

12 THE COURT: OK. Why don't you put your mask on,
13 Mr. Denton, and retrieve it and then we can proceed.

14 MR. SCHULTE: No objection.

15 THE COURT: Those exhibits are admitted.

16 (Government's Exhibits 812, 1303-6, 1303-44, and
17 1303-47 through 1303-50 received in evidence)

18 MR. DENTON: Thank you, your Honor.

19 Ms. Cooper, can we pull up along side this page
20 Government Exhibit 820-434?

21 Q. Special Agent, do you see the sort of text below the
22 password to the presumedguilty@ProtonMail account that is
23 written in Government Exhibit 809?

24 A. Yes, I do.

25 Q. How does that text correspond to what we are looking at in

1 Government Exhibit 820-434?

2 A. It references apps that are also on that phone.

3 Q. And just to take a couple ones in particular, do you see
4 the reference in both exhibits to Orbot?

5 A. Yes.

6 Q. Do you know what that is?

7 A. Yes. Orbot is an app. It is used in conjunction with
8 Orfox. It provides access to the TOR service which allows you
9 to browse the Internet anonymously.

10 MR. DENTON: Ms. Cooper, can we switch to Government
11 Exhibit 822-2 and go to page 2? Can we blow up line 51 down
12 there?

13 Q. What is reflected in line 51?

14 A. A search for: Can't log in to ProtonMail through TOR.

15 Q. On what date?

16 A. August 22, 2018.

17 MR. DENTON: If we can take all of that down and go to
18 page 7 of Government Exhibit 809, Ms. Cooper?

19 Q. Is there a date listed on this page?

20 A. Yes.

21 Q. What is it?

22 A. August 23rd.

23 Q. Could you read the first two sentences of the text up here
24 at the top?

25 A. Well, a lot has happened lately. Yesterday I started

1 cleansing the phone and in the process set up a new ProtonMail
2 which I transferred the Wordpress to.

3 Q. Down at the bottom do you see a sentence kind of by itself?
4 Could you read that, please?

5 A. Yesterday I started e-mailing Shane from the Washington
6 Post.

7 Q. During the course of your investigation, have you reviewed
8 press reporting about this case?

9 A. Yes.

10 Q. And did that include reporting in the Washington Post?

11 A. Yes.

12 Q. Who was the author of that reporting?

13 A. Shane Harris.

14 MR. DENTON: Ms. Cooper, can we go to page 3 of
15 Government Exhibit 822-2? Can we look at lines 83 and 84 down
16 at the bottom there?

17 Q. What is reflected there?

18 A. A search for: Sean Washington Post.

19 Q. And what date and time?

20 A. August 22nd, 2018; 8:45 p.m.

21 MR. DENTON: Ms. Cooper, can we take that down and put
22 up what is now in evidence as Government Exhibit 1303-6?

23 Q. Starting with the bottom e-mail in this chain, what's the
24 date and time of the e-mail?

25 A. August 22nd, 2018; 8:58 p.m.

M6U5sch4

Schlessinger - Direct

1 Q. And who sent it?

2 A. The annon1204 account.

3 Q. Who was it sent to?

4 A. Shane Harris.

5 Q. Can you read the top paragraph in that e-mail?

6 A. Shane, sorry to bother you with this request, but if you
7 could please forward the nine articles that Shane Presnall sent
8 you on behalf of Josh Schulte we would greatly appreciate it.
9 Shane Presnall is under subpoena as they wrongly claim he
10 assisted Josh in violation of a protective order, so we don't
11 want to go to him for this request.

12 Q. I'm sorry. Can you also just read the next paragraph?

13 MR. SCHULTE: Objection. It speaks for itself.

14 THE COURT: Overruled.

15 A. We are family and friends of Josh and are looking to
16 further post these articles and new ones that he has written...
17 The current ones on Facebook are old rough drafts but we have
18 lost the newest versions that we believe were forwarded to you.
19 Thanks.

20 Q. Do you see a reference there to an individual named Shane
21 Presnall?

22 A. Yes.

23 Q. Do you know who that is?

24 A. Yes.

25 Q. Who is he?

1 A. He is Mr. Schulte's cousin.

2 MR. DENTON: Now, Ms. Cooper, can we pull up, if we
3 can at the same time, Government's Exhibits 820-412 and -413?

4 Q. Special agent, are these the same e-mails that we were just
5 looking at in Government Exhibit 1303-6?

6 A. Yes.

7 MR. DENTON: We can take those down, Ms. Cooper,
8 please, and go back to Government Exhibit 809 and turn to page
9 8?

10 Q. Special Agent, do you see some phone numbers at the top of
11 this page?

12 A. Yes, I do.

13 Q. Starting with the one that starts with 940, do you
14 recognize that?

15 A. Yes, I do.

16 Q. Whose phone number is that?

17 A. Shane Presnall's.

18 Q. And the number starting with 202, do you recognize that
19 phone number?

20 A. Yes.

21 Q. Whose phone number is that?

22 A. Shane Harris.

23 Q. How do you know that?

24 A. That phone number is publicly available -- or was. I
25 believe it was on Shane Harris' Twitter bio.

1 Q. Can you read the text that is written there in between
2 those phone numbers?

3 A. Shane Harris or spoof e-mail: Shane.Presnall@gmail.com.

4 Q. Please keep going.

5 A. I am hoping to write/edit my nine articles. I don't know
6 how I can get them -- oh, I may text Shane Harris from Shane
7 Presnall' number. Omar claims that some service exists to do
8 this. I'm dubious. Although, I feel this may not work either.
9 IDK. Basically on hold for my publication.

10 Secondly, I want to rewrite article no. 10, Malware of
11 the Mind.

12 MR. DENTON: Ms. Cooper, can we pull up Government
13 Exhibit 1301-4?

14 Q. Special Agent, do you recognize this?

15 A. Yes, I do.

16 Q. And what is it?

17 A. This is a legal return from Wordpress.

18 Q. Generally, what is Wordpress?

19 A. It's a blogging service.

20 Q. And I apologize, this is a little difficult to read, but do
21 you see in the bottom two paragraphs the URL right before the
22 paragraph break?

23 A. Yes, I do.

24 Q. What URL is that?

25 A. Presumptionofinnocence.net.

1 MR. DENTON: Can we go to the next page, Ms. Cooper?

2 Q. About a third of the way down this page do you see a title?

3 A. Yes, I do.

4 Q. What title is there?

5 A. 10. Malware of the Mind.

6 Q. Is there a publication date that's listed just below that?

7 A. Yes.

8 THE COURT: I'm going to ask you, Agent, why the
9 document appears with all the sort of coding in it. Is that
10 just how it came from Wordpress?

11 THE WITNESS: Yes, your Honor.

12 THE COURT: Do you know when it was produced what the
13 request was for? Why it was produced in that form?

14 THE WITNESS: As I recall, this is just how they
15 provided the legal search warrant return.

16 MR. DENTON: I apologize it is not a little bit
17 prettier.

18 BY MR. DENTON:

19 Q. Now, if we can zoom back out?

20 Special Agent, can you read the text that is listed
21 there next to "Content Encoded"?

22 A. Today we are facing a stealth constitutional crisis. A
23 malware of the mind has entered and corrupted the justice
24 system. Technology has advanced so rapidly that the law and
25 law enforcement are decades behind and are unable to catch up.

1 Into this chasm defendant, defense attorneys, judges, and
2 juries are increasingly blindsided by the evolution of
3 innovative prosecutorial techniques based on faux forensics,
4 manipulation, and intentional misrepresentation which are, in
5 turn, nothing more than long shot theories and, in some cases,
6 blatant fabrications analogous to accusations of witch craft
7 and wizardry.

8 This final article is incomplete as it was written by
9 Mr. Schulte entirely from prison and he is unable to get it
10 out.

11 (Continued on next page)

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1 MR. DENTON: Ms. Cooper, can we take that down and put
2 up what has been marked as Government Exhibit 801.

3 Q. Special Agent, do you recognize Government Exhibit 801?

4 A. Yes, I do.

5 Q. What is it?

6 A. This is an article that was recovered from the MCC.

7 Q. And whose handwriting do you see here?

8 A. The defendant's.

9 MR. DENTON: Your Honor, the government would offer
10 Government Exhibit 801 now in full.

11 THE COURT: Subject to prior rulings, any objection?

12 MR. SCHULTE: Same objection as before.

13 THE COURT: All right. Admitted.

14 (Government Exhibit 801 received in evidence)

15 BY MR. DENTON:

16 Q. Special Agent, what's the title of this document?

17 A. Malware of the Mind.

18 Q. Is that the same as the title of the post in Government
19 Exhibit 1301-4?

20 A. Yes.

21 MR. DENTON: Ms. Cooper, could we turn to page 3 of
22 Government Exhibit 801. If we could blow up the bottom
23 paragraph and I guess if we could grab the last couple
24 sentences of the paragraph above too, please.

25 Q. Special Agent, can you read, starting from the end of this,

1 the top paragraph, "I can guarantee"?

2 A. "I can guarantee you that there are multiple encrypted
3 volumes on my server that the FBI never decrypted or even
4 found, which brings me to my next point. Do you know what my
5 specialty was at the CIA? Do you know what I did for fun?
6 Data hiding and crypto. I designed and wrote software to
7 conceal data in a custom-designed file system contained within
8 the drive's slack space or hidden partitions. I disguised
9 data. I split across files and file systems to conceal the
10 crypto. Analysis tools would never detect random or
11 pseudorandom data indicative of potential crypto. I designed
12 and wrote my own crypto. How better to fool buffoons like
13 forensic examiners and the FBI than to have custom software
14 that doesn't fit into their two-week class where they become
15 forensic experts. Make no mistake. I am an expert in data
16 hiding and cryptography, with thousands of hours of experience
17 and among the top specialists in the world -- or was."

18 Q. Special Agent, without going back to the prior exhibit,
19 does any of this text appear in the content listed in
20 Government Exhibit 1301-4 that we were just looking at from
21 WordPress?

22 A. No.

23 MR. DENTON: Thank you, Ms. Cooper. If we could go
24 back to Government Exhibit 809 and go back to page 8. And if
25 we could look at what's below in the second half, the bottom

1 half of the page, below the line. That's perfect.

2 Q. Can you read the text that's below the line?

3 A. "Anonymous. Attila, Turkey. USG acknowledges coup
4 attempt. Classified information. Reality winner. Tool from
5 vendor report. Bartender for" redacted "vendor" redacted
6 "China and Russia openly attacking U.S., looking to undermine
7 world reserve currency."

8 Q. Special Agent, if I could ask you, with Ms. Cooper's help,
9 could we jump to page 14 of this exhibit, is there a date on
10 this page?

11 A. Yes.

12 MR. DENTON: If we could blow up the date in the top
13 paragraph.

14 Q. What's the date here?

15 A. September 2, 2018.

16 MR. DENTON: I'm sorry, Ms. Cooper. Can we blow up
17 the paragraph of text there.

18 Q. Can you read that, please?

19 A. "Well, it's September now. Locked in all day. Hopefully
20 tonight I can set up Signal from my cell and message Harris to
21 confirm Annon's permission and get my fucking articles. I also
22 need to confirm my Twitter."

23 MR. DENTON: Ms. Cooper, could we put up what's in
24 evidence as Government Exhibit 822-1.

25 Q. Special Agent, do you recognize what this exhibit is?

M6uWsch5

Schlessinger - Direct

1 A. Yes.

2 Q. What is it?

3 A. These are the Signal messages that were extracted from the
4 Samsung phone.

5 Q. And just looking at the first entry here, what does that
6 say?

7 A. "Hi. I got your number from Shane P. I'm messaging from
8 Josh's phone. I'm hoping to validate Anonymous's legitimacy,
9 helping our family and authorize release of Josh's articles to
10 them when you get the chance. The group is apparently some
11 computer group Josh was a part of before they have agreed to
12 switch from NYT to talk to you instead to help us. They claim
13 to have NYT some info on Russia and oligarchs already but will
14 give you more info. So far they have been trustworthy and
15 helpful for us. We have never met any of them, though."

16 MR. DENTON: If we could scroll over to column W,
17 Ms. Cooper.

18 Q. When was that message sent?

19 A. September 2, 2018.

20 Q. And just looking at column Q, do you recognize that phone
21 number under recipient?

22 A. Yes.

23 Q. Whose phone number is that?

24 A. Shane Harris.

25 MR. DENTON: We can take that down, please,

M6uWsch5

Schlessinger - Direct

1 Ms. Cooper, and if we could put up in what's in evidence as
2 Government Exhibit 812.

3 Q. Do you recognize this?

4 A. Yes.

5 Q. What is it?

6 A. These are emails from the Annon1204 ProtonMail account.

7 MR. DENTON: And if we could blow up the bottom email
8 in this chain.

9 Q. Do you see this email here?

10 A. Yes.

11 Q. Can you read the first paragraph?

12 A. "Dear Shane. Sorry for the delay, the FBI raided Josh's
13 parents' house last week and forcibly made them delete his
14 articles. I'm attaching the search warrants in Josh Schulte's
15 case along with his notes. We intend to send you other
16 documents in the coming days."

17 Q. Now, Special Agent, you said earlier that you were one of
18 the case agents in this investigation, is that right?

19 A. Yes.

20 Q. And does that entail being involved in supervising the
21 investigation?

22 A. Yes.

23 Q. To your knowledge, did the FBI ever raid Mr. Schulte's
24 parents' house?

25 A. No.

M6uWsch5

Schlessinger - Direct

1 Q. If you could read the next paragraph, please.

2 A. "We have decided to share with you an initial exposé
3 (depending on how the first one goes with you we will share up
4 to nine more) involving Russian oligarchs, business ties and
5 wire transfers involving hundreds of millions of dollars to
6 Donald Trump's closest advisers and law firms, including
7 Giuliani and Mark Kasowitz firms. Trump's self-reported best
8 friend plays a starting role."

9 MR. DENTON: If we could zoom out and just blow up the
10 next two emails on the top half of the page, Ms. Cooper.

11 Q. Now, Special Agent, do you see a listing here for
12 attachments?

13 A. Yes.

14 Q. Have you reviewed those attachments?

15 A. Yes.

16 MR. DENTON: Could we go to page 14 of this exhibit,
17 Ms. Cooper.

18 Q. Special Agent, do you recognize this?

19 A. Yes, I do.

20 Q. What is it?

21 A. This was a search warrant application, an affidavit in this
22 case.

23 Q. Do you see at the bottom where it says USG-confidential?

24 A. Yes.

25 Q. Are you familiar with a classification marking for a

M6uWsch5

Schlessinger - Direct

1 classification level of confidential?

2 A. Yes.

3 Q. Does this refer to that classification level or to
4 something else?

5 A. It refers to something else.

6 Q. What does this marking refer to?

7 A. It refers to the fact that the document is under a
8 protective order.

9 MR. DENTON: Now, if we could go up to page 2 of this
10 exhibit.

11 THE COURT: What's your understanding of a protective
12 order?

13 THE WITNESS: It's, in this instance, at least, to
14 prevent it from being shared with unauthorized parties.

15 THE COURT: All right.

16 Ladies and gentlemen, let me just instruct you that a
17 protective order, at least in some contexts, is an order that
18 is issued by a judge in a case that basically restricts the
19 sharing of certain documents relating to the case. So it
20 limits the distribution of documents to those who are
21 authorized under the protective order to receive them and bars
22 anyone who receives them pursuant to the protective order from
23 sharing them with anyone outside of the protective order.

24 MR. DENTON: Thank you, your Honor.

25 Ms. Cooper, could we go up to page 2 -- I'm sorry. It

M6uWsch5

Schlessinger - Direct

1 must be the next page. I'm sorry. It must be page 3.

2 There we go. Thank you.

3 Q. Do you see a reference at the top there to probable cause?

4 A. Yes.

5 Q. Did the search warrant that we were just looking at have a
6 section describing probable cause?

7 A. Yes.

8 MR. DENTON: Could we blow up paragraph 8(b),
9 Ms. Cooper. I'm sorry. 8(b). Thank you.

10 Q. Special Agent, can you read that?

11 A. "3 of 200 people in one CIA group had access to classified
12 info. In reality, two groups -- EDG and COG -- and at least
13 400 people had access. They don't include COG, who was
14 connected to our DevLAN through Hickok, an intermediary network
15 that connected both COG and EDG. Reckless disregard for the
16 truth. There is absolutely no reason they shouldn't have known
17 this connection exists. Step one in narrowing down the
18 possible suspects and to completely disregard an entire group
19 and half the suspects is reckless. All they needed to do was
20 talk to one person on infrastructure branch or through any
21 technical description/diagram of the network."

22 MR. DENTON: If we could zoom out there.

23 Q. Special Agent, who was this attachment sent to?

24 A. Shane Harris.

25 Q. Does Shane Harris work for the CIA?

M6uWsch5

Schlessinger - Direct

1 A. No.

2 Q. Does he work for the U.S. government?

3 A. No.

4 MR. DENTON: If we could then go to the bottom of page
5 9 of this exhibit, Ms. Cooper. If we can blow up that bottom
6 paragraph.

7 Q. Can you read that, please?

8 A. "CI had to be stolen between 3/7 and 3/8 because later data
9 is from 3/8. Truth: 3/7 and 3/8 establish only the lower
10 bound from the first possible date the data could have been
11 stolen. Since data existed from 3/7 and 3/8, it could not be
12 that the data was stolen before this date, although it is
13 within reason that data was continuously stolen, in which case
14 this date would be the last date the data was stolen. However,
15 since the backups are stored from the time of the backup
16 indefinitely, any date after 3/7 and 3/8 is a reasonable date
17 that the data could have been stolen up until the WikiLeaks
18 release. As an easy counterexample, on 7/9, someone could have
19 copied the 3/7 backup and give it to --"

20 MR. DENTON: Could we go to the next page, Ms. Cooper.

21 Q. And just finish that.

22 A. "-- WikiLeaks. In fact, in all actuality, the date of the
23 backup is almost certainly not the date the data was stolen as
24 any intelligent person would try to obfuscate the day the data
25 was stolen."

M6uWsch5

Schlessinger - Direct

1 MR. DENTON: Ms. Cooper, could we pull up what's in
2 evidence as Government Exhibit 1207-30 and blow up the top
3 three or four lines there.

4 Q. Special Agent, do you see a file there that was created on
5 March 3, 2016?

6 A. Yes.

7 Q. Was it accessed the same day that it was created?

8 A. No.

9 MR. DENTON: Ms. Cooper, if we could go back to
10 Government Exhibit 809 and go to page 9.

11 Q. Special Agent, can you read the email address that's listed
12 in this page here?

13 A. Freejasonbourne@protonmail.com.

14 Q. Is that one of the ProtonMail accounts that you were able
15 to access?

16 A. Yes.

17 Q. And below that there is a reference to Twitter. Do you see
18 that?

19 A. Yes.

20 Q. What account is referenced there?

21 A. Free Jason Bourne.

22 Q. Do you know who Jason Bourne is?

23 A. Yes.

24 Q. Who is that?

25 A. He is a fictional CIA operative in the Jason Bourne movies.

M6uWsch5

Schlessinger - Direct

1 MR. DENTON: Ms. Cooper, could we pull up what's in
2 evidence as Government Exhibit 1304-1.

3 Q. Do you recognize this, sir?

4 A. Yes.

5 Q. What is it?

6 A. This is a return from Free Jason Bourne.

7 Q. And what's the date created for this account?

8 A. September 1, 2018.

9 Q. Is there an email associated with it?

10 A. Yes.

11 THE COURT: And by return, do you mean a search
12 warrant return, what was produced in response to a search
13 warrant?

14 THE WITNESS: Yes, your Honor.

15 THE COURT: OK.

16 MR. DENTON: Now, Ms. Cooper, could we then pull up
17 Government Exhibit 1303-44.

18 Q. Do you recognize this?

19 A. Yes, I do.

20 Q. What is it?

21 A. This is an email from the Free Jason Bourne ProtonMail
22 account.

23 Q. And who is this an email from?

24 A. Twitter.

25 Q. Do you see a location listed there?

M6uWsch5

Schlessinger - Direct

1 A. Yes.

2 Q. What location is that?

3 A. Moldova.

4 Q. On September 1, 2018, where was the defendant being housed?

5 A. At the MCC.

6 Q. Is that in Moldova?

7 A. No.

8 THE COURT: Mr. Denton, I apologize. We're having
9 just a technology issue. Can we take a 30-second break and
10 maybe everybody can stretch while I'm just dealing with
11 something. You're welcome to stand and stretch where you are
12 if you'd like.

13 All right. I've succeeded in fixing my problem. I
14 apologize to everybody, but hopefully you enjoyed your stretch
15 nonetheless.

16 Mr. Denton, you can carry on.

17 MR. DENTON: Thank you, your Honor.

18 Ms. Cooper, could we then pull up Government Exhibits
19 1303-48 and 1303-49. If we can do them side by side, that
20 would be great.

21 Q. Special Agent, who sent the email that's on the left here
22 in 1303-48?

23 A. Twitter.

24 Q. Who is it sent to?

25 A. Free Jason Bourne.

M6uWsch5

Schlessinger - Direct

1 Q. What's the location that's listed there?

2 A. Toulouse, France.

3 Q. What's the location that's listed in 1303-49?

4 A. Bucharest, Romania.

5 Q. What is the difference in time between these two emails?

6 A. About 15 minutes.

7 Q. Are you aware of any way to travel between Bucharest and
8 Toulouse in 15 minutes?

9 A. No, I'm not.

10 MR. DENTON: Ms. Cooper, could we pull up Government
11 Exhibit 820-434.

12 Q. Special Agent, do you see an icon there labeled Turbo VPN?

13 A. Yes.

14 Q. Do you know what that is?

15 A. Yes.

16 Q. And what does it do?

17 A. Well, VPN stands for virtual private network. It describes
18 a general networking concept. It has a variety of uses. One
19 use is to disguise your location.

20 MR. DENTON: If we can take that down and go to
21 Government Exhibit 1303-47.

22 THE COURT: Can you just elaborate? Does that mean
23 that -- by disguise your location meaning that it makes it seem
24 as if the device is somewhere else, not where it actually is?

25 THE WITNESS: Yes, that's my understanding, your

1 Honor.

2 BY MR. DENTON:

3 Q. Now, Special Agent, what's the date of this email?

4 A. September 1, 2018.

5 Q. And what's the subject of it?

6 A. Confirm your Twitter account, Free Jason Bourne.

7 MR. DENTON: Ms. Cooper, can we go back to Government
8 Exhibit 809 and go to page 14.

9 Q. What's the date that's listed here, sir?

10 A. September 2, 2018.

11 Q. Can you read the last sentence of the top paragraph?

12 A. "I'm also need to confirm my Twitter."

13 THE COURT: Whoever's device that was, please shut it
14 off.

15 MR. DENTON: Now, if we could go to the next page,
16 please, Ms. Cooper.

17 Q. What's the date that's listed here?

18 A. September 12.

19 MR. DENTON: If we could blow up the text that's below
20 the redactions, Ms. Cooper.

21 Q. Can you read the first three lines, Special Agent?

22 A. "Finalize copy by Friday. Edit during weekend, Saturday,
23 sun. Finalize. Monday 17th to Tuesday 18th, DL disc UL WL."

24 MR. DENTON: Ms. Cooper, could we pull up Government
25 Exhibit 822-2 and go to page 7.

M6uWsch5

Schlessinger - Direct

1 If we could blow up lines 179 and '80.

2 Q. What are those searches for, Special Agent?

3 A. WikiLeaks and send WikiLeaks message.

4 MR. DENTON: If we could go back to page 15 of
5 Government Exhibit 809, Ms. Cooper.

6 Q. And Special Agent, if I could ask you to read the other
7 three lines of the text below the redaction?

8 A. "19, 20, 21: Schedule tweets, 27th, send tech reports MCC
9 letter. Russia piece. Rest 22-25."

10 MR. DENTON: Ms. Cooper, could we put up what's in
11 evidence as Government Exhibit 1303-50.

12 Q. Special Agent, do you know what Buffer is?

13 A. Yes, generally.

14 Q. What is Buffer?

15 A. It's an app that you can use to help manage your social
16 media accounts.

17 Q. What are some of the things that you can do with Buffer?

18 A. You can schedule tweets for Twitter or posts on Facebook in
19 advance.

20 Q. Which email address registered this Buffer account?

21 A. Freejasonbourne@protonmail.com.

22 MR. DENTON: Ms. Cooper, if we could then go back to
23 page 9 of Government Exhibit 809.

24 Q. Special Agent, do you see below where it says Free Jason
25 Bourne, there's a bracketed reference to the @Dept. of Justice?

M6uWsch5

Schlessinger - Direct

1 A. Yes.

2 Q. Are you familiar with that formulation's usage in
3 connection with Twitter postings?

4 A. Yes, I am.

5 Q. What is it?

6 A. It's used to identify a specific Twitter user.

7 MR. DENTON: Ms. Cooper, if we could blow up that
8 text.

9 Q. Special Agent, can you read this for us, please?

10 A. "The @Dept. of Justice arrested the wrong man for Vault 7.
11 I personally know exactly what happened, as do many others.
12 Why are they covering it up? Meet the CIA's" struck "X:
13 Jeremy Weber and Karen at the CIA set up Josh Schulte -- Joshua
14 Schulte. Jeremy Weber hacked Atlassian's Crowd, and when
15 Schulte, the admin, found out, Karen issued him a memo/letter
16 of warning for self-granting admin privileges. The system
17 administrator self-granting admin privileges. Hmmm. Right
18 over the FBI's head too. Or was it? Schulte is the scapegoat
19 because he routinely reported security issues at the CIA,
20 including infrastructure branch's abysmal management."

21 MR. DENTON: Thank you.

22 Ms. Cooper, could we go to the next page, please, and
23 continue.

24 Q. Can you read the text that's in the box at the top left?

25 A. "Just to authenticate me first. The @CIA was involved in"

1 redacted. "The code for the initially planned cyber operation
2 is in Vault 7. Additionally, tool described in vendor report
3 is in fact Bartender, a CIA tool set for operators to configure
4 for" redacted "deployment."

5 MR. DENTON: If we could zoom out, Ms. Cooper.

6 Q. Now, just below that, Special Agent, do you see where it
7 says, "I'm a former co-worker of @JoshuaSchulte, just below the
8 section you were just reading?"

9 A. Yes, I do.

10 Q. Do you recognize the handwriting there?

11 A. Yes.

12 Q. Whose handwriting is that?

13 A. Mr. Schulte's.

14 MR. DENTON: If we could go to the next page,
15 Ms. Cooper, and if we could blow up the top of this page.

16 Q. Do you see some text that follows hashtag symbols in the
17 top right there?

18 A. Yes, I do.

19 Q. Are you familiar with what that formulation indicates in
20 connection with Twitter postings?

21 A. Yes, I am.

22 Q. What does it indicate?

23 A. It's a way to index a particular topic or categorize a
24 tweet.

25 Q. What are the hashtags that are listed here?

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Schlessinger - Direct

1 A. #top secret. #fuck your top secret. Or dump the secrets
2 here.

3 Q. Can you read what's, the portion of the page that's blown
4 up here?

5 A. "Let me first authenticate," struck through "established
6 credibility myself. The USG was involved in the" redacted.
7 "Source code for the planned" redacted "cyber espionage
8 component is in the Vault 7 release."

9 Q. If you could continue, please.

10 A. "The @CIA conducted numerous operations against" redacted
11 "and" redacted. "Source code is available in the Vault 7
12 release."

13 THE COURT: Ladies and gentlemen, I'm sure I don't
14 need to give you this reminder, but just a reminder that, No.
15 1, you shouldn't speculate as to what is behind the redactions
16 or why things have been redacted. I've approved the
17 redactions. And where there are substitutions, I've also
18 approved those substitutions so you may consider what has been
19 substituted for what is behind the substitution.

20 You may proceed.

21 MR. DENTON: Thank you, your Honor.

22 Ms. Cooper, if we could zoom out and blow up the rest
23 of this page.

24 Q. Can you read that portion of the page, Special Agent?

25 A. "@vendor discovered tool in 2016, which is really the CIA's

1 Bartender tool suite. Bartender was written to deploy against
2 various targets. The source code is available in the Vault 7
3 release."

4 Q. And the next paragraph, please.

5 A. "Vault 7 contains numerous zero days and malware that could
6 easily be deployed," struck through "repurposed and released
7 onto the world in a devastating fashion that would make
8 NotPetya look like child's play."

9 Q. Sir, do you know what NotPetya is?

10 A. Yes, generally.

11 Q. Generally, what is a reference to?

12 A. Russian malware.

13 MR. DENTON: If we could zoom out and just look at the
14 whole page for a second, Ms. Cooper.

15 Thank you.

16 Q. Special Agent, is the text on this page similar to the text
17 that you were reading on the previous page of this exhibit?

18 A. Yes.

19 Q. Is it identical?

20 A. I don't believe so.

21 MR. DENTON: If we could go to the next page, page 12,
22 Ms. Cooper, and just blow up the text here.

23 Q. Can you read the text that's in the top margin here?

24 A. "To the United States intelligence community. Why would
25 you keep America's secrets when your own country prosecutes

M6uWsch5

Schlessinger - Direct

1 your own?"

2 Q. And are some parts of that struck through?

3 A. Yes.

4 Q. What do they say there?

5 THE COURT: Sorry. Does it say, with the strike
6 through, "when the government wrongly prosecutes your own"? Is
7 that what it says.

8 THE WITNESS: I'm sorry. I don't --

9 THE COURT: In other words, there's language crossed
10 out, and I think it says, "the government wrongly prosecutes
11 your own." Is that correct?

12 THE WITNESS: Yes, I see that now. I'm sorry.

13 THE COURT: All right.

14 Again, ladies and gentlemen, your own interpretation
15 of the exhibits is what governs.

16 MR. DENTON: If we could go to the next page,
17 Ms. Cooper, and blow up the top paragraph there.

18 Q. Can you read that for us, Special Agent?

19 A. "Your service, intense security investigations, and
20 pristine criminal history can't even get you bail. As Josh
21 Schulte has said, you are denied a presumption of innocence.
22 Ironic. You do your country's dirty work, but when your
23 country accuses you of a crime, you are arrested and presumed
24 guilty. Until your country," struck through "government
25 protects you and honors your service, send all your government

1 secrets here: WikiLeaks."

2 Q. Special Agent, who wrote that?

3 A. Mr. Schulte.

4 MR. DENTON: No further questions.

5 THE COURT: Cross-examination.

6 I realize you just had a stretch break, but if you
7 want to stretch while Mr. Schulte is setting up, you're welcome
8 to do that.

9 CROSS-EXAMINATION

10 BY MR. SCHULTE:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. You testified about Twitter, correct?

14 A. Yes.

15 Q. And there's all this stuff about Jason Bourne, right?

16 A. Yes.

17 Q. You testified about Toulouse and Moldova and all those
18 different places, right?

19 A. Yes.

20 Q. You looked at the handle for Twitter, correct?

21 A. Yes.

22 Q. @freejasonbourne, correct?

23 A. Yes.

24 Q. And was there anything posted under that handle?

25 A. Other than the picture, there was nothing.

M6uWsch5

Schlessinger - Cross

1 Q. You mean the photo of Matt Damon?

2 A. Yes.

3 Q. OK. But there were no tweets on there, right?

4 A. No.

5 Q. And you talked about this Buffer account, right?

6 A. Yes.

7 Q. And there was no use of that account either, right?

8 A. I don't recall.

9 Q. You don't recall if there were tweets planned to be sent?

10 A. I don't, no.

11 Q. Well, you testified that there's no tweets on Jason Bourne
12 account, right?

13 A. Yes.

14 Q. OK. So there were -- there can't be any tweets planned if
15 nothing was tweeted, right?

16 MR. DENTON: Objection.

17 THE COURT: Sustained.

18 BY MR. SCHULTE:

19 Q. OK. Through your investigation, did you seize the Buffer
20 account?

21 A. No, we didn't seize it. We served a search warrant on it,
22 I believe.

23 Q. OK. Through your search warrant, it didn't return any use
24 of that account, right?

25 A. I don't recall what was in the search warrant return

1 exactly.

2 Q. OK. Well, if something was there, you would have talked
3 about it here, right?

4 MR. DENTON: Objection.

5 THE COURT: Sustained.

6 BY MR. SCHULTE:

7 Q. You would have wanted to know if there were planned tweets
8 in the Buffer account, right?

9 A. Yes.

10 Q. OK. And none of the -- there were absolutely nothing,
11 nothing at all posted on the Twitter account, either messages,
12 private messages, or tweets, right?

13 THE COURT: Asked and answered.

14 BY MR. SCHULTE:

15 Q. In fact, none of the, those notebook entries that you were
16 going through, none of that is posted on -- is posted anywhere,
17 right?

18 A. I don't know if -- what exactly is posted or isn't posted
19 from all of the notebooks.

20 Q. As the FBI agent, you don't know what from the notebooks
21 was posted?

22 A. Well, there were aspects of the journal entries that may
23 have been incorporated in other articles that you wrote, and
24 whether those were posted on the WordPress site, I just
25 couldn't say.

1 Q. OK. But you seized everything from the WordPress site too,
2 right?

3 A. Yes.

4 Q. We saw lots of references to that, the articles, right?

5 A. Yes.

6 Q. And those articles were all about the criminal justice
7 system, right?

8 A. I don't know if they were all about the criminal justice
9 system. It was certainly a major theme among those articles,
10 yes.

11 Q. OK. But you seized and read through all those articles,
12 correct?

13 A. Yes.

14 MR. SCHULTE: OK. I'm going to show the witness and
15 the parties what's noted as defense exhibit 410.

16 Q. Do you recognize this?

17 A. Appears to be from the WordPress return.

18 Q. Similar to what you testified before on direct about
19 returns from WordPress, right?

20 A. Yes, it looks similar.

21 Q. OK. And I think you testified earlier that the
22 WordPress -- that the FBI received search results from its
23 search warrant from WordPress, right?

24 A. Yes.

25 Q. And that would be all of the posted documents in WordPress,

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Schlessinger - Cross

1 right?

2 A. Yes.

3 MR. SCHULTE: Move to introduce defense exhibit 410.

4 MR. DENTON: Object to the content being introduced,
5 your Honor. The metadata is fine.

6 THE COURT: OK. Well, can I reserve on that and we
7 can discuss later what that means and what my ruling is; is
8 that OK, Mr. Schulte?

9 MR. SCHULTE: Yes.

10 THE COURT: OK.

11 Ladies and gentlemen, I'll circle back to you on this
12 one. I just need to look at it and talk to the parties about
13 what precisely that means.

14 Can I just, Agent, confirm, is this file the content
15 that was returned in connection with the search warrant served
16 on WordPress?

17 THE WITNESS: It's being presented a little bit
18 differently than what I'm used to seeing, but it appears to be
19 very similar, so it looks to be the same to me.

20 THE COURT: All right.

21 Again, I'll circle back to you on it.

22 Go ahead, Mr. Schulte.

23 BY MR. SCHULTE:

24 Q. You testified about the prison notebooks that were
25 recovered, correct?

1 A. Yes.

2 Q. OK. And when all of these writings -- when these notebooks
3 were being written, do you know how long I had already been in
4 prison?

5 MR. DENTON: Objection.

6 THE COURT: Sustained.

7 Ladies and gentlemen, just a reminder. I told you, I
8 think, very early in the case I would give you instructions,
9 and I will, at the close of the case about what uses, if any,
10 you can -- what you may consider the fact that Mr. Schulte was
11 in custody for. As I remind you, he is presumed innocent of
12 the charges. The burden remains on the government at all
13 times, and I will tell you now that you certainly can't
14 conclude from evidence that he was in jail that he has a bad
15 character or a criminal propensity. But again, I'll give you
16 further instructions on that at the conclusion of the case.

17 BY MR. SCHULTE:

18 Q. Well, you were the case agent on the case, right?

19 A. I was one of them, yes.

20 Q. OK. And you're testifying on behalf of the United States,
21 right?

22 A. Yes.

23 Q. You wanted to have a timeline prepared, correct?

24 A. Yes, there was a timeline element to it. Yes.

25 Q. So based upon your investigation, do you know how long I

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Schlessinger - Cross

1 would have been sitting in jail when the accounts were created?

2 MR. DENTON: Objection.

3 THE COURT: Upon reflection, I'll allow it. So
4 overruled.

5 You can answer.

6 A. Approximately eight or nine months.

7 Q. OK. Let's talk about Shane Harris. OK?

8 A. OK.

9 Q. You testified that Mr. Shane Harris is the reporter for the
10 Washington Post, is that correct?

11 A. Yes.

12 Q. In light of your investigation, of all the articles that
13 Mr. Harris received, did you review all of them?

14 A. I don't know if I've reviewed all of them. I've reviewed
15 the article that was published in May of 2018.

16 Q. Article that was published in May of 2018?

17 A. Yes.

18 Q. OK. But they were titled the Presumption of Innocence,
19 correct?

20 A. Oh, I'm sorry. I thought you were referring to
21 Mr. Harris's articles in the Washington Post.

22 Q. I'm sorry. No. I'm talking about the articles Mr. Harris
23 received. Did you review all of those?

24 A. Yes.

25 Q. OK. And they were titled the Presumption of Innocence,

1 correct?

2 A. Yes, I remember that title.

3 Q. It was a redress of grievances, right?

4 A. Yes.

5 Q. And that specific redress of grievances titled Presumption
6 of Innocence was about the criminal justice system, right?

7 MR. DENTON: Objection.

8 THE COURT: Sustained.

9 BY MR. SCHULTE:

10 Q. There was nothing about Russia in those articles, right?

11 A. I don't recall anything about Russia in those articles.

12 Q. Sitting here, do you remember today how many articles were
13 contained in the presumption of innocence?

14 A. I think it was about ten.

15 Q. And those were the ones that were published on WordPress,
16 correct?

17 A. Yes.

18 Q. And do you remember how long each of them was?

19 A. I don't recall exactly, no.

20 Q. OK. I'm going to show, this was -- you testified about
21 this on direct, 820, Government Exhibit 820-408, right? And do
22 you remember all these screenshots that Mr. Betances took?

23 A. Yes.

24 Q. Where it says "article 8 subtitled Origins," do you
25 remember that?

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Schlessinger - Cross

- 1 A. Yes.
- 2 Q. Nothing to do with Russia, right?
- 3 A. I don't recall it having anything to do with Russia, no.
- 4 Q. That had only to do with my case, right?
- 5 A. I don't recall everything that was discussed in the
- 6 article. I remember it was -- some of the articles were very
- 7 long, and given that I reviewed some of them many years ago, I
- 8 don't remember every topic that was discussed in each article.
- 9 Q. Well, at the time they were obtained by the FBI, you read
- 10 each one, right?
- 11 A. Yes.
- 12 Q. The CIA reviewed each one, right?
- 13 A. I don't know.
- 14 Q. You don't know if the CIA conducted a classification
- 15 review?
- 16 A. I believe they did, yes.
- 17 Q. OK. And the CIA's determination for the redress of
- 18 grievances was that it was unclassified, right?
- 19 A. I think that's right, yes.
- 20 Q. OK. By the way, do you know if Mr. Harris received all
- 21 those?
- 22 A. I believe he received some of them. I don't know if he
- 23 received all of them.
- 24 Q. Do you know if the Washington Post published all of those?
- 25 A. I don't remember.

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Schlessinger - Cross

1 Q. They didn't publish any of them, right?

2 A. I don't know.

3 Q. OK. You didn't follow up as the case agent or one of the
4 co-case agents to see if the Washington Post published
5 anything?

6 A. We did at the time. I just don't remember if the articles
7 were featured or referenced in those news articles.

8 Q. Well, you remember the ProtonMail email that referenced
9 Marc Kasowitz, right?

10 A. Yes.

11 Q. OK. And there's no relation between me and Marc Kasowitz,
12 right?

13 A. No. You're -- not that I'm aware of.

14 Q. OK. Let's talk about the cell search at the MCC.

15 Now, in the cell search at the MCC, did you know what cell
16 I was in?

17 A. Yes.

18 Q. And just real quick, you did know that there was a
19 relationship between Mr. Amanat and Marc Kasowitz, right?

20 A. I know it was a -- it's connected to Mr. Amanat. I don't
21 know exactly how.

22 Q. OK.

23 A. Or how it relates to Mr. Amanat.

24 Q. So that could be -- MCC search, you coordinated with MCC,
25 right?

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Schlessinger - Cross

1 A. Yes.

2 Q. MCC told you which cell I was in, correct?

3 A. Yes.

4 Q. They told you my bunkmate, right?

5 A. Yes.

6 Q. Mr. Omar Amanat, right?

7 A. Yes.

8 Q. And the further you went along, you researched Omar Amanat,
9 the criminal detainee, correct?

10 A. Did I research Mr. Amanat?

11 Q. That's right. Yes.

12 A. I wouldn't say I researched him. I -- we were sort of
13 aware generally of what he was in prison for.

14 Q. OK. You tried to figure out what Mr. Amanat had been
15 charged with, right?

16 A. I was aware of it generally, yes.

17 Q. OK. And you understand him to have money, correct?

18 A. That was my understanding, yes.

19 Q. He had several retained lawyers, right?

20 MR. DENTON: Objection.

21 THE COURT: Sustained.

22 BY MR. SCHULTE:

23 Q. And then you went and searched the cell, right?

24 A. Yes.

25 Q. And it's one cell, correct?

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Schlessinger - Cross

1 A. Yes.

2 Q. OK. And were you able to distinguish between Mr. Amanat's
3 stuff and my stuff?

4 A. In most instances, yes.

5 Q. OK. In most instances -- so you found stuff in there that
6 you believed was definitively mine, correct?

7 A. Yes.

8 Q. And you thought there was stuff there that was definitively
9 Mr. Amanat's, correct?

10 A. Yes.

11 Q. OK. And did you find anything from me to anyone in Russia?

12 A. No.

13 Q. OK. Did you find anything at all that I sent to anyone in
14 Russia?

15 A. No.

16 Q. OK. And when you searched the cells, you didn't find any
17 cell phones, correct?

18 A. That's correct. When we searched, we didn't find any cell
19 phones.

20 Q. In fact, the first day you searched MCC you didn't find any
21 cell phones, correct?

22 A. That's correct.

23 Q. OK. So 50 Federal Bureau of Investigations agents went in
24 and didn't find it themselves, right?

25 A. Correct.

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Schlessinger - Cross

1 Q. OK. But then the Bureau of Prisons eventually found the
2 cell phone, right?

3 A. Yes.

4 Q. It was a Samsung with the IMEI that you identified,
5 correct?

6 A. Yes.

7 Q. And they gave it to you, right?

8 A. Yes.

9 Q. And where did they find it?

10 A. 7 south.

11 Q. Do you know if it was found in someone's cell or where it
12 was found specifically?

13 A. I don't think they told me any more specifically than that.

14 Q. OK. Didn't you want to know specifically where it was
15 found?

16 A. No. I mean it was the phone that we were looking for.
17 That was the primary concern.

18 Q. So it wasn't a concern about who might have access or who
19 might be using it?

20 A. Well, we were primarily interested in your activity on the
21 phone.

22 Q. But it would be important to identify how many people would
23 have had access to the phone, right?

24 A. Yes, potentially.

25 Q. Right. How long was it before the second cell phone was

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Schlessinger - Cross

1 found?

2 A. Well, the -- so, actually, there was a phone that was
3 discovered before the Samsung phone. Then we received word
4 that BOP had discovered two cell phones. I took custody of
5 both those cell phones at the same time.

6 Q. And one of those was the Samsung, is that right?

7 A. Yes.

8 Q. And you learned that I was moved into administrative
9 segregation before the search, right?

10 A. No. I learned that during the search.

11 Q. You learned that while you were conducting the search at
12 MCC, that I'd been moved?

13 A. Yes.

14 Q. OK. Isn't it fair to say that during your investigation,
15 you learned that Mr. Amanat was still in general population?
16 Correct?

17 A. Yes.

18 Q. And between the time the first -- between the time of the
19 first day that you go into the MCC and the time you get the
20 phones, the phone is still in use, right?

21 A. I think so, yes.

22 Q. There's a couple of days when the Samsung phone is in the
23 MCC and you just can't find it, right?

24 A. Yes.

25 Q. Did you check, as part of your investigation here, to see

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Schlessinger - Cross

1 if during the time that I moved out of that cell but Amanat is
2 still in general population, whether the Samsung phone was in
3 use?

4 A. Yes.

5 Q. And what did you find?

6 A. The phone may have been in use during that time, but none
7 of the accounts that we discussed earlier were active around --
8 during that time.

9 Q. None of the accounts were active during that time?

10 A. Yes. For example, the Annon1204 ProtonMail account had no
11 activity in that period.

12 Q. OK. What about -- what about the, I think, the chat
13 messages from Signal that you discovered?

14 A. I don't recall.

15 Q. OK. This is in evidence as Government Exhibit 822-1. Do
16 you see the messages here at the end?

17 A. Yes.

18 (Continued on next page)

19

20

21

22

23

24

25

1 BY MR. SCHULTE:

2 Q. Those are outgoing messages, right?

3 A. Yes.

4 Q. And they are being sent on October 2nd, 2018; correct?

5 A. Yes.

6 Q. And at this point these messages are being sent I'm in
7 administrative segregation, correct?

8 A. I don't know when you were put into administrative
9 segregation.

10 MR. SCHULTE: OK. I move to introduce the
11 stipulation, Government Exhibit 3011.

12 MR. DENTON: No objection.

13 THE COURT: Admitted.

14 (Government's Exhibit 3011 received in evidence)

15 MR. SCHULTE: If called as a witness, a representative
16 of the United States Bureau of Prisons, with knowledge of the
17 matter, would testify that Defendant's Exhibit 802 is a true
18 and correct copy of records from the BOP which were made at or
19 near the time by, or from information transmitted by, person
20 with knowledge of the matter set forth in the records that were
21 kept in the course of a regularly conducted business activity,
22 and it was the regular practice of that business activity to
23 mean the records.

24 If called as a witness, a representative of BOP with
25 knowledge of the matter would testify that AD in EX --

1 Defendant's Exhibit it should say there -- 802 means
2 Administrative Detention which is an administrative status
3 which removes an inmate from the general population when
4 necessary to ensure the safety, security, and orderly operation
5 of correctional facilities or protect the public.
6 Administrative detention status is non-punitive and can occur
7 for a variety of reasons.

8 I move to introduce Defendant's Exhibit 802.

9 MR. DENTON: No objection.

10 THE COURT: Admitted.

11 (Defendant's Exhibit 802 received in evidence)

12 BY MR. SCHULTE:

13 Q. So based on the "AD" there I was moved to administrative
14 detention on October 1, 2018 at 2:35; correct?

15 A. Yes. If that's what that means. I have never seen this
16 before.

17 Q. Yes. I mean, I can go back to the stipulation. The
18 government stipulated that "AD" means administrative detention.

19 THE COURT: Next question.

20 Q. Let me just go back. So back to the question on October
21 2nd, 2018, this message is being sent by someone other than me,
22 correct?

23 A. Yes. Most likely.

24 Q. Well, you found the cell phone on 7 South you said,
25 correct?

M6U5sch6

Schlessinger - Cross

1 A. Yes. Well, I didn't find it but BOP found it.

2 Q. And on October 2nd I'm not on 7 South, right?

3 A. Correct.

4 Q. And I just want to show the fields here. This is the
5 sender phone number, correct?

6 A. Yes.

7 Q. This field?

8 And you would see that this is being sent from my
9 phone number, correct?

10 A. Yes.

11 Q. And what about the Samsung phone in general? Is it being
12 used during this time?

13 A. It appears to be, yes.

14 Q. I am going to show Government Exhibit 822-2. This was the
15 forensic report that you testified earlier was from the Samsung
16 phone, correct?

17 A. Yes.

18 Q. There is activity on October 3rd from the browser there,
19 correct?

20 A. Yes.

21 Q. Going back to 822-1; these messages are being sent to Shane
22 Harris, right?

23 A. Which messages are you referring to?

24 Q. The messages from my phone number in Government Exhibit
25 822-1.

1 A. The last one is, yes.

2 Q. Oh, the last one is? OK.

3 THE COURT: That's line 561, for the record.

4 MR. SCHULTE: Thanks.

5 Q. And when you checked the Proton e-mails, did you notice
6 that more than one person was in fact using the ProtonMail
7 account?

8 A. Yes.

9 Q. You did not think more than one person was accessing the
10 account?

11 A. No.

12 Q. OK. And what's that based on?

13 A. Well, the password for the account was found in your
14 notebook. It seemed to pertain mainly to your case. It seemed
15 to involve or at least refer to members of your family. For
16 those reasons I didn't think anyone else was using the Annon
17 ProtonMail account.

18 Q. So you don't know if the password was shared with someone,
19 correct?

20 A. No, I don't.

21 Q. So you're speculating based on what you see as the content
22 of the account; is that right?

23 MR. DENTON: Objection.

24 THE COURT: Sustained.

25 Q. I'm going to show just the witness and the parties what's

1 marked as Government Exhibit 1303-39 and this is the first page
2 of that.

3 Do you recognize this e-mail? This document?

4 A. Yes.

5 Q. And where did it come from?

6 A. The annon1204 ProtonMail account.

7 Q. When is this sent?

8 A. September 26, 2018.

9 Q. Who is it sent to?

10 A. Shane Harris.

11 Q. And there is multiple exhibits in this, correct?

12 A. Yes.

13 MR. SCHULTE: I move to introduce this into evidence.

14 MR. DENTON: Objection. Hearsay.

15 MR. SCHULTE: It is not for the truth, just access of
16 the account.

17 THE COURT: If not for the truth, Mr. Denton. Any
18 objection?

19 MR. DENTON: I think the not for the truth proposition
20 depends on the truth of the statements asserted in it.

21 THE COURT: I will allow it but, ladies and gentlemen,
22 I will admit it not for the truth, that is to say you can't
23 rely on any statements in this document for their truth, just
24 for the fact that they were said, or more to the point, found
25 on the Proton e-mail account. With that understanding, it is

1 admitted.

2 (Government's Exhibit 1303-89 received in evidence)

3 BY MR. SCHULTE:

4 Q. So you testified before that the content of the ProtonMail
5 account did not pertain to anything except me, correct?

6 A. No, that's not what I said. I said it mainly dealt with
7 your case.

8 Q. But if there is e-mails being sent about someone else and
9 other people's case, that would change your determination if
10 anyone else also had access to that account?

11 A. No.

12 Q. It wouldn't change your assessment?

13 A. No, it would not.

14 Q. So if an e-mail is sent from an account and the e-mail
15 pertains to a completely different individual, you still
16 believe that that person wouldn't have access to it?

17 MR. DENTON: Objection.

18 THE COURT: Sustained.

19 Q. You testified earlier about -- OK, just these two, can you
20 read those two paragraphs, starting with: The oligarch hired?

21 A. The oligarch hired two of Trump's primary law firms, the
22 Kasowitz firm and Giuliani's firm, and sent hundreds of
23 millions of dollars to them. We have the evidence in the form
24 of wire transfers. The Yahoo hacks in 2014 by the Russian
25 government, the largest breach in history, were started as a

1 result of this business dispute.

2 Q. And then just the last one?

3 A. Hacks of this person's e-mails account by a Moscow based IP
4 resulted in a false arrest and an American Khodorovsky banished
5 to Siberia and sent to an American gulag.

6 Q. Are you familiar with the attachments in this e-mail?

7 A. Yes. Generally, I have looked at them.

8 Q. Showing page 41 of the document, you recognize this as
9 something that was written by Mr. Amanat?

10 MR. DENTON: Objection.

11 THE COURT: Sustained.

12 You may not rely on any of this for its truth, just
13 for the fact it was found on the Proton e-mail.

14 With that, Mr. Schulte, move on, please.

15 Q. I will just move to page 55. Did you investigate -- did
16 you conduct an investigation into this e-mail?

17 A. I'm not sure what you mean by conduct an investigation into
18 the e-mail. We reviewed and collected those e-mails and
19 reviewed them.

20 Q. Was this important in your investigation to identify where
21 these documents would come from?

22 A. We weren't particularly interested in these documents
23 because it didn't seem to pertain to your case.

24 Q. Did you try and find out who wrote them?

25 A. No.

1 Q. So your focus in reviewing all of the discovery identified
2 from MCC was specific to a relation to me; is that true?

3 A. Yes.

4 Q. And you are -- let me rephrase.

5 I am not a part of Omar Amanat's criminal case,
6 correct?

7 A. No, but you did write a forensic report as part of his case
8 that I'm aware of.

9 Q. OK, but I wasn't a co-defendant on his case, correct?

10 A. Correct.

11 Q. Let's start, move on to Government Exhibit 809.

12 THE COURT: Mr. Schulte, any estimate of how much more
13 you have left?

14 MR. SCHULTE: I think it will go through until the
15 end.

16 Q. You testified about this page, correct?

17 A. Yes.

18 Q. This is page 2 in Government Exhibit 809 and the very top
19 part was what you read on direct, correct?

20 A. Yes.

21 Q. But this part, this top part was written after the middle
22 section, correct?

23 MR. DENTON: Objection.

24 THE COURT: Sustained.

25 Q. Well, identifying the bottleneck in the middle section

1 there would indicate that you can't write that section without
2 the middle part first, right?

3 MR. DENTON: Objection.

4 THE COURT: Sustained.

5 Q. Let's review that section. I say how I'm called down at
6 6:00 a.m. to 2:00 p.m., something or other, right?

7 A. Yes.

8 Q. And I say I took my last piece, right?

9 A. Yes.

10 Q. And I'm feeling great, right?

11 A. Yes.

12 Q. I envision my appointment as a cardinal and becoming a
13 young pope as I unify Christianity and the church, right?

14 A. Yes.

15 Q. Through your investigation you learn that drugs are
16 smuggled into the MCC, correct?

17 MR. DENTON: Objection.

18 THE COURT: Sustained.

19 Q. And the bottom line, it says: Took too much and feel sick.
20 Right?

21 A. Yes.

22 Q. And through your investigation and search of MCC, you
23 learned that I used drugs while I was incarcerated, correct?

24 MR. DENTON: Objection.

25 THE COURT: Sustained.

1 Q. You are an FBI investigator, right?

2 A. Yes.

3 Q. You wanted to make sense of this page, correct?

4 A. Yes.

5 Q. So through your experience and your investigation, what did
6 you determine from that?

7 MR. DENTON: Objection.

8 THE COURT: Sustained.

9 Let's move on, please.

10 Q. The statement that you testified about on direct, it is
11 saying that the criminals who lie to the Judge should be
12 prosecuted, right?

13 A. Yes.

14 Q. And if they are not, then I will visit every country in the
15 world, right?

16 A. Yes.

17 Q. And to bear witness; which means to give testimony, right?

18 MR. DENTON: Objection.

19 THE COURT: Sustained.

20 Q. As a private citizen you are free to travel to the United
21 Kingdom, right?

22 A. Yes.

23 Q. And you can demand an audience with Parliament over there,
24 right?

25 A. I wasn't aware of that.

1 Q. It won't be granted but you can make the demand, right?

2 MR. DENTON: Objection.

3 THE COURT: Sustained.

4 Whoever has a device that just dinged, please --
5 please -- shut it off. If it goes again I will have my deputy
6 find it and take it.

7 Q. And \$50 billion restitution would put you in the top 10
8 wealthiest people in the world, right?

9 A. I suspect so. I don't know for sure.

10 Q. That's a very high restitution valuation, correct?

11 A. Yes.

12 Q. In any case, there is zero likelihood I'm going to leave
13 the MCC to go visit any of those countries on the dates I am
14 writing it, right?

15 A. That's right.

16 Q. That's 8/8/2018, right?

17 A. Yes.

18 Q. And I have no foreign job openings that I have been hired
19 for, correct?

20 MR. DENTON: Objection.

21 THE COURT: Sustained.

22 Q. Do you find out, by the way, if I do anything to end U.S.
23 occupation around the world?

24 MR. DENTON: Objection.

25 THE COURT: Sustained.

1 Q. So on Government Exhibit 806, you testified about this on
2 direct, correct?

3 A. Yes.

4 Q. If you need help, ask WikiLeaks for my code; right?

5 A. That's what it says.

6 Q. And how long has the WikiLeaks leak been up by the time
7 that this is written?

8 A. About a year and a half or so.

9 Q. And my code is up on WikiLeaks, correct?

10 A. That's what it says.

11 Q. No, I'm asking you if that's true.

12 A. I believe parts of it is, yes.

13 Q. And this could be read seriously, correct?

14 A. Yes.

15 Q. It could be read as a flippant statement too, right? If
16 you need help, ask WikiLeaks for my code; right?

17 MR. DENTON: Objection.

18 THE COURT: Sustained.

19 Q. Through your examination of my notebooks you note sarcasm
20 in there, right?

21 MR. DENTON: Objection.

22 THE COURT: Sustained.

23 Mr. Schulte, you will have an opportunity to make
24 arguments to the jury about what inferences they should draw
25 from the notebooks, but since this witness has no firsthand

1 knowledge as to what your intentions were, just simply what
2 words appear on the page, please don't ask him questions along
3 those lines.

4 MR. SCHULTE: All right.

5 BY MR. SCHULTE:

6 Q. If we could take a look at Government Exhibit 801? You
7 testified a little bit about this on direct, right?

8 A. Yes.

9 Q. And it is titled Malware of the Mind, correct?

10 A. Yes.

11 Q. There is an introduction, right?

12 A. Yes.

13 Q. Transcripts, right?

14 A. Yes.

15 Q. When you read the section about transcripts it is about
16 court transcripts, correct?

17 A. I believe so.

18 Q. And search warrants, right?

19 A. Yes.

20 THE COURT: Mr. Schulte, just to save us time, I'm
21 going to ask you not to just use this witness to go through an
22 exhibit that's in evidence. You will have an opportunity to
23 make those arguments to the jury.

24 Q. OK. I just wanted to highlight the introduction that I
25 think you have already seen that was -- it was on one of the

1 Wordpress in a government exhibit, right?

2 A. A version of it, yes.

3 Q. I will take that down.

4 I think that's Government Exhibit -- one second -- no,
5 it's not. OK, we are going to come back to that but in this
6 document there was nothing about Russia, right? Malware of the
7 Mind?

8 A. I don't think so, no.

9 Q. That document, too, was about the criminal justice system,
10 right?

11 A. There are portions of it that are about the criminal
12 justice system. I don't know if the whole thing is about it.

13 Q. But you know from -- let me display it again -- from the
14 table of contents that it is at least 133 pages, right?

15 A. Yes.

16 Q. And this document was never transmitted, correct?

17 A. I don't think so, no.

18 Q. In fact, there are multiple pages in the notebooks that
19 outline a plan to rewrite this Malware of the Mind, correct?

20 A. Yes. That's right.

21 Q. Government Exhibit 809 on page 8, this says: Secondly, I
22 want to rewrite article no. 10, Malware of the Mind, correct?

23 A. Yes.

24 Q. I'm going to show, just to the witness and the parties,
25 what is noted as Defendant's Exhibit 809-2. Do you recognize

1 this?

2 A. Yes.

3 Q. And this is the same document that we were looking at
4 before, right?

5 A. I believe so.

6 MR. SCHULTE: I move to introduce this page that
7 wasn't included in the other document.

8 MR. DENTON: Objection. Hearsay.

9 THE COURT: Sustained.

10 Q. I offer it for completeness and not for the truth?

11 THE COURT: We are almost at the end of the day, we
12 will discuss that after the jury leaves, but for now the
13 objection is sustained.

14 Q. I would like to show Government Exhibit 812. This was an
15 e-mail you testified to on direct, right?

16 A. Yes.

17 Q. I think you testified about this section starting with
18 probable cause, right?

19 A. Yes.

20 Q. And you went through a couple of lines of questions, right?

21 A. Yes.

22 Q. OK. I will take that down.

23 I'm going to show the parties and the witness what is
24 marked as Defendant's Exhibit 812. Do you recognize this?

25 A. No. I haven't seen this e-mail before.

1 Q. You haven't seen the e-mail before, right?

2 A. That's right.

3 Q. But do you recognize what this is?

4 A. Yes. That looks to be from the same as the previous
5 document.

6 MR. SCHULTE: I move to introduce this Defendant's
7 Exhibit 812 into evidence.

8 MR. DENTON: Objection.

9 THE COURT: Sustained.

10 This is where we will end for the day, ladies and
11 gentlemen. All right, so as you know, we are not going to be
12 sitting tomorrow or, for that matter on Tuesday just given some
13 pre-existing commitments, so we will break for a very long
14 weekend, longer than I would like but such is life, and it is a
15 holiday after all. So we will pick up on Wednesday at the same
16 time.

17 A few things. First of all, I told you I would give
18 you a better sense of where things are. The good news is I
19 think we are very close to the end of the government's case,
20 which is a pretty significant moment in the case and, as I have
21 told you repeatedly, the government bears the burden at all
22 times so there is no obligation on a criminal defendant in our
23 system of criminal justice to present any evidence
24 whatsoever -- I will give Mr. Schulte a moment to get back to
25 the table.

1 So just a reminder, again, the burden is, at all
2 times, on the government. A criminal defendant in our system
3 has absolutely no burden whatsoever. He doesn't need to call a
4 single witness, put in a single exhibit, testify -- anything.
5 At the same time, he has the right to do all of those things if
6 he wishes to do so. So after the government rests and -- and I
7 expect that will probably happen on Wednesday morning -- we
8 will proceed, or I will find out if Mr. Schulte plans to
9 present a defense case, and if he does, then we will proceed
10 directly into the defense case. In either event, I do expect
11 that we will probably conclude with the evidentiary portion of
12 the case either sometime next week or perhaps early the week
13 after. At that point we would proceed to the next phase which
14 is the summations and then my instructions and, after that,
15 your deliberations.

16 So that's where things stand so I hope that's welcome
17 news in the sense that we are certainly within the time frame
18 that I predicted, even with some of the delays that we have
19 had.

20 I do want to remind you -- I said this to you a while
21 back so you may not remember -- I said that when we get to
22 summations, instructions, and deliberations, that I would
23 likely ask you to sit for the full day, until 5:00 p.m. because
24 it becomes harder to manage the schedule given the length of
25 the summations, given the length of the instructions, and once

1 you begin your deliberations it is important to make as much
2 progress as you can each day. So I am just giving you the
3 heads up about that. Certainly next Wednesday I will be in a
4 better position to tell you when we are likely to get there,
5 but just want to give you a heads up about that and remind you
6 since you may need to adjust things accordingly. Again, we
7 will have more information next Wednesday but the good news is
8 that we are making pretty good progress and all things
9 considered barring again -- knock on wood -- anything
10 unexpected, that that should be roughly where we are next week.

11 It is going to be a long break. I hope that you guys
12 have barbecues and other fun things planned for the coming
13 weekend and that you will be with family and friends to
14 celebrate the holiday. I just want to remind you again, it is
15 very, very, very important that you adhere to my instructions
16 and you don't discuss anything about the case. You are welcome
17 to say that you are sitting as a juror in a criminal case but
18 don't say anything about it or about any of us, anyone involved
19 in the case. Just leave it at that. Don't talk about it at
20 all. If you happen to be in the presence of anyone who is
21 talking about this case -- not that I expect that will
22 happen -- it is your obligation to immediately withdraw and
23 remove yourself and avoid any information or news about it.
24 And I remind you that if you are exposed to anything, you
25 should bring that promptly to the attention of my staff or

1 Ms. Smallman next week.

2 Additionally, don't do any research about the case,
3 don't communicate about the case in any way, shape, or form.
4 And, continue to keep an open mind. You haven't yet heard all
5 of the government's case and if the defendant has a case you
6 haven't yet heard that. And, nor have you heard the other
7 things that I mentioned that are coming down the pike so it is
8 still very important that you keep an open mind.

9 With that, I wish you all a very, very wonderful,
10 pleasant holiday.

11 Juror no. 13 has a question.

12 JUROR: Yes. Are we still sitting until 4:00 on
13 Wednesday and Thursday?

14 THE COURT: Good question. The answer is yes. Thank
15 you for reminding me. I meant to say that but yes is the
16 answer.

17 So with that, I wish you a wonderful holiday. Stay
18 safe. Stay healthy. Enjoy your friends and family, whatever
19 plans you have. We will see you next Wednesday. Please be in
20 the jury room by 8:45 ready to go and we will proceed at that
21 time.

22 Thank you very much. You are excused.

23 THE DEPUTY CLERK: All rise.

24 (Continued on next page)

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1 (Jury not present)

2 THE COURT: You may be seated.

3 Agent, I very much hoped to be done with your
4 testimony today but we didn't quite get there so you either get
5 a weekend in New York or a trip back to New York. But, in any
6 case, you need to be here next Wednesday before we start. I do
7 want to caution or remind you that since you are on
8 cross-examination you shouldn't discuss, with anyone from the
9 prosecution team, anything relating to the substance of your
10 testimony. Logistics, that sort of thing is fine, but don't
11 discuss the substance of your testimony.

12 Understood?

13 THE WITNESS: Understood, your Honor.

14 THE COURT: With that, you are excused. Have a
15 wonderful holiday yourself and see you next Wednesday.

16 THE WITNESS: Thank you, your Honor.

17 (witness steps down)

18 THE COURT: I have a couple exhibits we need to
19 discuss, the first is Defendant's Exhibit 410. There is one
20 potential issue with it which is it makes reference to the
21 child porn charges and, at a minimum, I would think that that
22 portion would need to be redacted. But, Mr. Denton, I don't
23 know precisely what you mean when you say no objection to the
24 metadata but objection to the content.

25 MR. DENTON: So, your Honor, because of the way the

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1 exhibit is there is kind of two components to it, there is the
2 portions that I was intending to describe as metadata that sort
3 of identifies posts, links, whether they were made, things like
4 that. There is also reams of the defendant's own statements
5 which are obviously hearsay and inadmissible and I think that
6 we can solve the child pornography problem by either excising
7 or redacting the content and if he wants to offer the sort of
8 record that shows that posts were made and when, that's fine,
9 but his own statements are hearsay and inadmissible.

10 THE COURT: Mr. Schulte?

11 MR. SCHULTE: The exhibit was not introduced for the
12 truth but the government spent substantial time of their direct
13 on the articles, page after page after page was talking about
14 the articles and what was released, what information was
15 published, what information was disseminated from the MCC. So
16 I think it -- and the government has basically highlighted or
17 took a couple portions of several of the articles that they
18 wanted to show and have been read to the jury. But I think, as
19 far as the government's case goes with information war and
20 attempts to disseminate classified information, I think the
21 point is to show that information was disseminated from MCC and
22 that this is part of the -- these are the only documents that
23 were released, there was no Twitter, there are no Tweets, and
24 the articles are continually referenced in the government's
25 direct.

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1 THE COURT: I understand all of that but how does that
2 make this admissible? In other words, I don't expect the
3 government will get up and say that you tweeted anything or the
4 like. I think their theory on those fronts is that it was an
5 attempt.

6 MR. SCHULTE: Yes. So I think the point is that
7 that's exactly -- the government is going to be on and on -- is
8 going to be going on and on about, during summation about
9 information war and this -- and an attempt to release
10 classified information from prison but the CIA's review
11 determined that no information from the electronic accounts
12 contained any classified information with the exception to the
13 Hickok e-mail which is the dispute of whether or not that
14 information already released as public. So as far as the
15 Hickok charge goes --

16 THE COURT: Mr. Schulte, just try to focus on this
17 exhibit. What about this exhibit is relevant or admissible and
18 for a non-hearsay purpose?

19 MR. SCHULTE: Introducing it to show what Wordpress
20 received.

21 THE COURT: Why is that relevant? In other words, the
22 government has introduced one thing that Wordpress received.
23 Obviously they're not going to argue that about anything else
24 that Wordpress received because it is not in evidence. What
25 reason are you offering it into evidence?

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1 I need a purpose here, not just a truism about what
2 this exhibit is.

3 (Defendant and standby counsel conferring)

4 MR. SCHULTE: The purpose is to show that what was
5 sent to Wordpress was just about the criminal justice system
6 and it was not an intent to engage in an information war or an
7 attempt to disclose NDI or an attempt to disclose classified
8 information.

9 THE COURT: OK.

10 MR. SCHULTE: I think it goes to the willfully -- part
11 of it goes to the willfully element and -- I mean, essentially
12 if the electronic accounts show what was actually sent and
13 there was no classified information and something was sent, I
14 think that is what makes it relevant and admissible.

15 THE COURT: So is it for the fact that it was sent to
16 Wordpress, not the truth of any matters asserted in it? Is
17 that what you are trying to say?

18 MR. SCHULTE: Yes.

19 THE COURT: Mr. Denton, why would it not be with that
20 limitation?

21 MR. DENTON: Your Honor, I think it is black letter
22 law that evidence of the absence of criminal activity is not
23 admissible as evidence pertaining to the defendant's intent on
24 another occasion.

25 THE COURT: Let me stop you. Agreed. So stipulated.

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1 I think the argument here, if I understand it
2 correctly, would be, in essence, to show that the entirety of
3 what was sent to Wordpress in an effort to put in context what
4 the government introduced into evidence to demonstrate that the
5 point wasn't to engage in an information war or to reveal
6 anything of a sensitive nature, but rather that it was part of
7 his agitation about his criminal case and how he has been
8 treated and so forth.

9 MR. DENTON: Your Honor, I think they are obviously
10 separable. As the Court already noted, we are not going to
11 argue that the Wordpress articles were a component of the NDI
12 that was released or that is alleged to have attempted to have
13 been released. Part of the reason why we went through some of
14 the Wordpress stuff is to verify the use of the phone, to show
15 the corroboration between statements in the defendant's
16 notebooks and in subsequent actions. So the fact that he said
17 he would take certain actions with respect to the Wordpress,
18 and did, is evidence that the notebooks reflected a plan. We
19 are not going to argue that the Wordpress articles were NDI or
20 constituted some part of the NDI. And so I think they fall
21 into that SCARPA category of actions on separate occasions that
22 are not necessarily informative of one another.

23 THE COURT: Mr. Schulte, anything else you want to say
24 on this?

25 MR. SCHULTE: Yes.

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1 I think it is important to the defense case especially
2 because of the attempted transmission charge and the
3 substantial step allegations that the government is going to
4 argue significantly that because this stuff was written down in
5 a notebook that this constituted a substantial step or that
6 there was some plan to release this information. So the fact
7 that the only -- so putting the government's case into context
8 and showing that that's not the case and that we didn't --
9 there was no following of any plan that the government is
10 alleging is critical to the defense.

11 THE COURT: I'm going to reserve judgment. I will
12 give you a ruling, if not over the weekend, then at the
13 beginning of trial. Why don't you prepare three versions of
14 the exhibit; one, which is -- well, two versions, one which
15 redacts all of the content and just has the metadata; the other
16 of which just redacts the child pornography references but that
17 otherwise leaves the contents as is and I will circle back to
18 it.

19 The other exhibit that I said we would discuss is
20 809-2 which is another portion of the notebooks and I think
21 references Malware of the Mind -- or rewriting Malware of the
22 Mind. Mr. Schulte offered it for completeness. Do you want to
23 elaborate on that? It seems to me an entirely separate entry
24 in what is essentially a diary. How is that necessary to
25 understand the separate entry? It seems like a separate

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1 writing.

2 (Defendant and standby counsel conferring)

3 BY MR. SCHULTE:

4 Q. I think there is two issues. I think there is completeness
5 based on some of the documents from the same day that are bled
6 over but I need to double-check and check that. I think the
7 second point is to show -- is to refute the government's claim
8 of an attempted transmission just because a document is
9 written. There is no -- the government's substantial step is
10 going to say well, he wrote this document, therefore that's a
11 substantial step. So I think it is very critical to show
12 that --

13 THE COURT: So first of all --

14 MR. SCHULTE: -- it goes to show state of mind as
15 well. And the fact that documents can be rewritten and just
16 because it is in one state on one day it doesn't mean that's
17 the final version or that's some version that is intended to be
18 released.

19 THE COURT: First of all, I think drafting a document
20 is a substantial step. Second of all, the fact that you
21 intended to rewrite it doesn't change that. Third of all,
22 there is evidence in the record already that you intended to
23 rewrite it and this is just cumulative of that evidence.
24 Fourth of all, its relevance for state of mind turns on it
25 being true and you can't offer your own statement because it's

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1 hearsay.

2 So, for all of those reasons, it is inadmissible
3 unless there is a rule of completeness issue. But, since it is
4 a different date entry, unless you can point me to something
5 that is necessary to consider in conjunction with in fairness,
6 it is not coming in. So, I think that resolves that.

7 I will say, seeing Agent Schlessinger's testimony and
8 putting together all of the relevant pieces, just an editorial
9 note that I think that my conclusion about the Malware of the
10 Mind document not being privileged, I feel even more sure that
11 that was the correct decision. It seems to me, putting
12 together all the evidence that intentioned that Mr. Schulte
13 could not carry his burden of showing that that was intended to
14 be shared only with counsel and on a confidential basis it
15 seems quite clear that, putting all of the evidence together,
16 that it was intended for dissemination and for that reason it
17 obviously wasn't a confidential or privileged document.

18 Anything else that we need to discuss? Otherwise, I
19 have a couple matters on after this that I am already running
20 late for.

21 Mr. Denton?

22 MR. DENTON: Your Honor, on Exhibit 410 we recognize
23 the Court has reserved judgment on that. I want to put sort of
24 a fourth version in the hopper. At least in the version we are
25 looking at, it is a 94-page 35000-word document. To the extent

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1 that the only thing the Court deems admissible is sort of the
2 fact that there were postings that did not contain NDI, we
3 would think it might be more appropriate to stipulate to that
4 fact rather than put, essentially, a giant manifesto in
5 evidence not for the truth.

6 So I want to put that option out there given the scope
7 of the document.

8 THE COURT: I don't think that that's appropriate and
9 I think you are misunderstanding the import of it.

10 I don't think it is SCARPA. The fact that there is no
11 NDI in here is what Mr. Schulte can use it for. I agree with
12 you on that. What I am thinking about is whether he can put it
13 in just to show that it is, in essence, the entire purpose of
14 the Wordpress document was, you know, to issue a manifesto to
15 the world about his unfair treatment and it was not part of an
16 information war with any intention of releasing anything
17 classified or sensitive or anything of that sort. That's why I
18 think -- and if done for that, it would not be for the truth.
19 In other words, it doesn't matter whether he is being
20 mistreated by the FBI or not. That's not the issue in this
21 trial and the jury will be instructed that they should not rely
22 on it for its truth but it will be for, essentially, what the
23 entirety of it is, the fact that he wrote it, not for the truth
24 and content of it, per se.

25 MR. DENTON: Understood, your Honor. I think at that

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1 point, even if we get past the hearsay and the not for the
2 truth problems, then there is a sort of looming 403 problem in
3 the sense that it is a massive document that is essentially an
4 manifesto offered for a comparatively small point. I think at
5 that point it is risk of confusing the jury and potentially
6 inflaming them if people decide to sit down and to read his
7 entire screed, it significantly outweighs the fairly limited
8 value it serves. But, we recognize the Court has reserved on
9 this so I don't need to belabor the point now.

10 THE COURT: Unless I am looking at something
11 different, what I opened as Defendant's Exhibit 410 -- it
12 opened for me in Internet Explorer, for some reason and I
13 didn't even think Internet Explorer existed anymore -- and it
14 does not appear to be 84 pages. So, I don't even know if I am
15 looking at what is being offered or not. But, let me add
16 another option, which is if the government identifies any
17 particular content in here that it thinks should be excluded
18 under 403, then you are certainly welcome to make that proposal
19 as well in the event that I do decide that it should come in in
20 more or less its entirety with the child porn redacted. And if
21 you think that there is something else that should be redacted
22 pursuant to 403, I will consider that. All right?

23 MR. DENTON: We will make sure we are looking at the
24 same thing and take a look at it over the weekend, your Honor.

25 THE COURT: Perhaps one or both sides can submit to my

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1 chambers what we are talking about to make sure that we are all
2 on the same page and looking at the same thing.

3 MR. SCHULTE: I just wanted to note, I think the
4 output -- you were asking the witness earlier, the output that
5 they provide is not very good so I don't know what the
6 government wants to do. There could be other sources or other
7 ways to display the data or some way -- whatever. I mean, we
8 can work out with the government how to change it so it is
9 displayed better or whatever.

10 THE COURT: Well, that's a separate issue. You are
11 certainly welcome to discuss it with one another and if there
12 is a better way to present it to the jury and everybody is in
13 agreement, I would certainly be open to that.

14 Mr. Denton?

15 MR. DENTON: The only other issue we wanted to raise
16 was we wanted to flag a concern about the last exhibit that the
17 defendant attempted to offer, Defendant's Exhibit 812. The
18 Court sustained the objection to it but there is sort of a
19 looming issue there that we wanted to note. That's an e-mail
20 between the defendant and a member of his defense team at
21 Federal Defenders. We received it as a marked exhibit, no
22 issue there, but I'm not entirely sure that the defendant has
23 contemplated the privilege waiver that it entails or that might
24 be involved if he goes further down this road. So we wanted to
25 alert him and the Court to the fact that if there are attempts

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1 to introduce this e-mail or other communications with the
2 Federal Defenders, I think we are going to need to seek a
3 ruling and potentially take additional investigative steps
4 based on the waiver of privilege.

5 THE COURT: Number one, I sustained the objection.
6 Number two, I would think that if it is a waiver, it has
7 already been waived because he disclosed it to you and to me.
8 So you can decide what, if anything, to do with that. If it
9 doesn't go any further maybe we will just leave it there, but.

10 MR. DENTON: I think our hope is to leave it there and
11 so we are just flagging that if it recurs then we are not going
12 to leave it there.

13 THE COURT: Mr. Schulte?

14 MR. SCHULTE: Yes. I mean, this was an exhibit that I
15 wanted to bring to the Court's attention as well. I think the
16 government introduced an exhibit that has a scanned copy of
17 this information so this information is already -- the
18 government already has it and they provided it in their own
19 exhibit that has this exact same document -- information in
20 there.

21 The point is I think it is important to show that this
22 document was written and sent to my defense team and so that
23 really goes against the government's argument that this was
24 somehow written with the intent to willfully disclose
25 classified information. So that's why I think it is relevant

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1 and admissible, because it shows when and to whom the document
2 is written to. And the purpose, obviously, is not to disclose
3 classified information but to help with the defense. The fact
4 that later on it is disclosed publicly obviously waives the
5 privilege but it doesn't change the initial intent of the
6 document.

7 THE COURT: Why is the initial intent relevant? The
8 fact that you later shared it with a Washington Post reporter
9 is what the government is relying on. The fact that you
10 earlier wrote it for your lawyer doesn't seem to be relevant to
11 that.

12 MR. SCHULTE: Well, I think it is relevant because it
13 shows that when writing this document there is no intent to
14 willfully disclose classified information because this is a
15 privileged document, this is to -- with respect to the defense.
16 The fact that --

17 THE COURT: But you sent it to a reporter.

18 MR. SCHULTE: Right, but the first e-mail, when it was
19 initially sent it wasn't sent to a reporter, right? It was
20 sent to a reporter after the fact.

21 THE COURT: But it doesn't matter what your intent was
22 when you first drafted it, it is the fact that you sent it to
23 the reporter. Now whether it has anything classified or NDI in
24 it is a separate question but I don't think there is any
25 relevance to the fact that in the first instance at some date

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1 prior to when you decided to send this to a Washington Post
2 reporter that you happened to draft it for your defense team.

3 What am I missing here?

4 MR. SCHULTE: Because the state of mind when it is
5 being written is what is the important part because this is
6 written with the state of mind to help the defense. And if it
7 is shared later on with someone else, you can't change what the
8 state of mind or what the intent of the document was. This was
9 initially supposed to be for your defense and that's what you
10 are thinking when you are writing it. I think that's what's
11 relevant. Even if you share it with other people, you are not
12 thinking -- does that make sense or that doesn't make sense?

13 THE COURT: I don't think it makes sense.

14 Mr. Denton?

15 MR. DENTON: The willful element of 793(e) modifies
16 the transmission of the information and not the drafting of the
17 document so I think it is not relevant to that at all.

18 THE COURT: Well, I will ponder it and -- I will
19 ponder it but I also do think that if you go down this path
20 further, Mr. Schulte, you are certainly at significant risk of
21 waiving privilege and opening up to examination and discovery
22 what communications you had with your counsel since it may be
23 necessary to understand in context. So be forewarned and, in
24 any event, I have sustained the objection for the moment.

25 Anything else that we need to discuss?

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1 MR. DENTON: Not from the government, your Honor.

2 THE COURT: Mr. Schulte? Mr. Schulte?

3 MR. SCHULTE: No.

4 THE COURT: So I am expecting a classified submission
5 from the government with a list of witnesses and what
6 categories they fall into and so forth. If there is any
7 material developments with respect to the scope or extent of
8 the defense case over the weekend, I would appreciate a heads
9 up just so I can plan accordingly, but certainly on Wednesday
10 morning I expect a pretty reality-based estimate of how long
11 the defense case would be which probably includes the question
12 of whether you are likely to testify, Mr. Schulte, recognizing
13 that you may not make the ultimate decision on that score until
14 you have had other witnesses testify. But I just want to have
15 an understanding of the schedule and how next week is likely to
16 go.

17 With that, I will stay on the bench because I have
18 another matter that I need to get to right away so I would ask
19 you guys to clear out as quickly as you can. I wish you all a
20 very pleasant holiday and weekend and will see you next
21 Wednesday morning.

22 Thank you.

23 MR. DENTON: Thank you, your Honor.

24 (Adjourned to July 6, 2022 at 9:00 a.m.)

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GOVERNMENT EXHIBITS

Exhibit No.	Received
1303-39A1782
8061821
8091823
8231828
812, 1303-6, 1303-44, and 1303-471836
through 1303-50	
8011844
30111879
1303-891884

DEFENDANT EXHIBITS

Exhibit No.	Received
8141770
8021880