

No. 19-50231

**In the United States Court of Appeals
for the Ninth Circuit**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

NIKISHNA POLEQUAPTEWA,
Defendant-Appellant.

On Appeal from the United States District Court
for the Central District of California
The Honorable Cormac J. Carney, Presiding
No. CR-16-00036-CJC

Appellant's Excerpts of Record
[Volume 4 of 6]

CUAUHTEMOC ORTEGA
Interim Federal Public Defender
JAMES H. LOCKLIN
Deputy Federal Public Defender
321 East 2nd Street
Los Angeles, California 90012
213-894-2929

Counsel for Defendant-Appellant

Table of Contents

Volume 1

Order Denying Motion to Suppress Evidence	1
[Filed May 4, 2018; Docket No. 39]	
Transcript – Retrial – Day 5 – A.M. (Jury Instructions Only)	9
[Dated November 13, 2018; Filed January 25, 2019; Docket Nos. 144, 159]	

Volume 2

Indictment	27
[Filed March 24, 2016; Docket No. 1]	
Defendant’s Motion to Suppress Evidence.....	30
[Filed February 2, 2018; Docket No. 33]	
Government’s Opposition to Motion to Suppress Evidence*	109
[Filed April 16, 2018; Docket No. 36]	
Defendant’s Reply re Motion to Suppress Evidence	191
[Filed April 23, 2018; Docket No. 37]	
Government’s Application re Evidentiary Hearing	197
[Filed April 27, 2018; Docket No. 38]	
Transcript – First Trial – Day 5 (Excerpt)	203
[Dated June 26, 2018; Filed August 29, 2018; Docket Nos. 82, 104]	
First Superseding Indictment	235
[Filed August 29, 2018; Docket No. 106]	
Joint Proposed Jury Instructions (Excerpt)	240
[Filed October 10, 2018; Docket No. 116]	

* Documents marked with an asterisk have been redacted pursuant to Fed. R. App. P. 25(a)(5) and Fed. R. Crim. P. 49.1(a).

Transcript – Retrial – Day 1 - P.M. (Excerpt)	244
[Dated November 6, 2018; Filed January 31, 2020; Docket Nos. 139, 202]	

Volume 3

Transcript – Retrial – Day 2 – A.M.	292
[Dated November 7, 2018; Filed January 31, 2020; Docket Nos. 140, 209]	

Transcript – Retrial – Day 2 – P.M.	414
[Dated November 7, 2018; Filed January 31, 2020; Docket Nos. 140, 203]	

Volume 4

Transcript – Retrial – Day 3 – A.M.	580
[Dated November 8, 2018; Filed June 30, 2019; Docket Nos. 141, 186]	

Transcript – Retrial – Day 3 – P.M.	716
[Dated November 8, 2018; Filed June 30, 2019; Docket Nos. 141, 184]	

Volume 5

Transcript – Retrial – Day 4 – A.M.	855
[Dated November 9, 2018; Filed January 31, 2020; Docket Nos. 142, 204]	

Transcript – Retrial – Day 4 – P.M.	1002
[Dated November 9, 2018; Filed January 31, 2020; Docket Nos. 142, 210]	

Volume 6

Transcript – Retrial – Day 5 – A.M.*	1047
[Dated November 13, 2018; Filed January 25, 2019; Docket Nos. 144, 159]	

Transcript – Retrial – Day 5 – P.M.	1178
[Dated November 13, 2018; Filed February 7, 2020; Docket Nos. 144, 214]	

Jury Instructions.....	1209
[Filed November 13, 2018; Docket No. 143]	
Selected Trial Exhibits (Nos. 66A, 84, and 98).....	1237
Jury Note 1	1252
[Filed November 13, 2018; Docket No. 147 (Redacted Version)]	
Response to Jury Note 1	1253
[Filed November 13, 2018; Docket No. 148]	
Jury Note 2	1254
[Filed November 13, 2018; Docket No. 149 (Redacted Version)]	
Verdict.....	1255
[Filed November 13, 2018; Docket No. 151 (Redacted Version)]	
List of Exhibits and Witnesses.....	1258
[Filed November 13, 2018; Docket No. 153]	
Judgment	1288
[Filed July 9, 2019; Docket No. 190]	
Notice of Appeal	1291
[Filed July 12, 2019; Docket No. 192]	
Docket	1298

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

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION
HONORABLE CORMAC J. CARNEY, U.S. DISTRICT JUDGE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	<u>CERTIFIED TRANSCRIPT</u>
)	
vs.)	Case No.
)	8:16-cr-00036-CJC-1
NIKISHNA POLEQUAPTEWA,)	
)	DAY 3, VOLUME I
Defendant.)	
)	

REPORTER'S TRANSCRIPT OF
JURY TRIAL
THURSDAY, NOVEMBER 8, 2018
8:11 A.M.
LOS ANGELES, CALIFORNIA

DEBBIE HINO-SPAAN, CSR 7953, CRR
FEDERAL OFFICIAL COURT REPORTER
350 WEST FIRST STREET, SUITE 4311
LOS ANGELES, CALIFORNIA 90012
dhinospaan@yahoo.com

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF:

NICOLA T. HANNA
United States Attorney
BY: VIBHAV MITTAL
BRADLEY EDWARD MARRETT
Assistant United States Attorneys
United States Courthouse
411 West Fourth Street
Suite 8000
Santa Ana, California 92701
(714) 338-3708

FOR THE DEFENDANT:

KHOURI LAW FIRM
BY: MICHAEL JOHN KHOURI, ESQ.
24012 Calle de la Plata
Suite 210
Laguna Hills, California 92653
(949) 336-2433

ALSO PRESENT:

Todd Munoz, FBI Special Agent

I N D E X**WITNESSES****PAGE****JOHN MOOERS, CALLED BY THE GOVERNMENT**

Direct Examination by Mr. Mittal	6
	99
Cross-Examination by Mr. Khouri	102

EXHIBITS

EXHIBIT		IN EVIDENCE	WITHDRAWN OR REJECTED
3	Defendant's Redacted Resume	9	
30	Mac Pro Receipts from Blue Stone	30	
101-105	E-mails	12	
117	June 26, 2014, E-mail Re: IT Meeting Today	15	
109	Chart Summarizing Defendant's Projects	20	
13	Defendant's August 20, 2014, Self-Appraisal Form	22	
129	November 15, 2014 e-mail from Defendant to Mark Palmer and John Mooers re: Password Breach	30	
36	E-mail from Yacobi to Defendant Re: E-mail login questions	32	

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

I N D E X
(Continued:)

EXHIBITS

EXHIBIT		IN EVIDENCE	WITHDRAWN OR REJECTED
50	November 18, 2014, E-mail from Defendant to Amy Watson and John Mooers Re: Google Apps Admin	34	
118	November 19, 2014 E-mail Re: Defendant's Resignation	41	
86	Revenue breakdown by year	45	
84	Personnel Expenses	48	
85	E-blasts	100	

1 **SANTA ANA, CALIFORNIA; THURSDAY, NOVEMBER 8, 2018**

2 **8:11 A.M.**

3 - - -

4 **(In the presence of the jury.)**

08:11AM 5 THE COURT: Mr. Mittal, looks like you're ready to
6 call the next witness, sir.

7 MR. MITTAL: Yes, Your Honor. The government calls
8 John Mooers.

9 THE COURT: Very well.

08:11AM 10 Good morning, Mr. Mooers. If you'd be kind enough
11 to stand by our court reporter for a moment. We'll administer
12 an oath to you, sir, and have you take the witness stand.

13 THE WITNESS: Thank you, Your Honor.

14 **JOHN MOOERS, GOVERNMENT WITNESS, WAS SWORN**

15 THE COURTROOM DEPUTY: Do you solemnly swear that
16 the testimony you should give now in the cause before this
17 Court shall be the truth, the whole truth, and nothing but the
18 truth, so help you God?

19 THE WITNESS: I do.

08:11AM 20 THE COURTROOM DEPUTY: Please state your full name
21 and spell your last name for the record.

22 THE WITNESS: John Mooers. Last name is
23 M-o-o-e-r-s.

24 ///
08:12AM 25 ///
26 ///
27 ///
28 ///
29 ///
30 ///
31 ///
32 ///
33 ///
34 ///
35 ///
36 ///
37 ///
38 ///
39 ///
40 ///
41 ///
42 ///
43 ///
44 ///
45 ///
46 ///
47 ///
48 ///
49 ///
50 ///
51 ///
52 ///
53 ///
54 ///
55 ///
56 ///
57 ///
58 ///
59 ///
60 ///
61 ///
62 ///
63 ///
64 ///
65 ///
66 ///
67 ///
68 ///
69 ///
70 ///
71 ///
72 ///
73 ///
74 ///
75 ///
76 ///
77 ///
78 ///
79 ///
80 ///
81 ///
82 ///
83 ///
84 ///
85 ///
86 ///
87 ///
88 ///
89 ///
90 ///
91 ///
92 ///
93 ///
94 ///
95 ///
96 ///
97 ///
98 ///
99 ///
100 ///
101 ///
102 ///
103 ///
104 ///
105 ///
106 ///
107 ///
108 ///
109 ///
110 ///
111 ///
112 ///
113 ///
114 ///
115 ///
116 ///
117 ///
118 ///
119 ///
120 ///
121 ///
122 ///
123 ///
124 ///
125 ///
126 ///
127 ///
128 ///
129 ///
130 ///
131 ///
132 ///
133 ///
134 ///
135 ///
136 ///
137 ///
138 ///
139 ///
140 ///
141 ///
142 ///
143 ///
144 ///
145 ///
146 ///
147 ///
148 ///
149 ///
150 ///
151 ///
152 ///
153 ///
154 ///
155 ///
156 ///
157 ///
158 ///
159 ///
160 ///
161 ///
162 ///
163 ///
164 ///
165 ///
166 ///
167 ///
168 ///
169 ///
170 ///
171 ///
172 ///
173 ///
174 ///
175 ///
176 ///
177 ///
178 ///
179 ///
180 ///
181 ///
182 ///
183 ///
184 ///
185 ///
186 ///
187 ///
188 ///
189 ///
190 ///
191 ///
192 ///
193 ///
194 ///
195 ///
196 ///
197 ///
198 ///
199 ///
200 ///
201 ///
202 ///
203 ///
204 ///
205 ///
206 ///
207 ///
208 ///
209 ///
210 ///
211 ///
212 ///
213 ///
214 ///
215 ///
216 ///
217 ///
218 ///
219 ///
220 ///
221 ///
222 ///
223 ///
224 ///
225 ///
226 ///
227 ///
228 ///
229 ///
230 ///
231 ///
232 ///
233 ///
234 ///
235 ///
236 ///
237 ///
238 ///
239 ///
240 ///
241 ///
242 ///
243 ///
244 ///
245 ///
246 ///
247 ///
248 ///
249 ///
250 ///
251 ///
252 ///
253 ///
254 ///
255 ///
256 ///
257 ///
258 ///
259 ///
260 ///
261 ///
262 ///
263 ///
264 ///
265 ///
266 ///
267 ///
268 ///
269 ///
270 ///
271 ///
272 ///
273 ///
274 ///
275 ///
276 ///
277 ///
278 ///
279 ///
280 ///
281 ///
282 ///
283 ///
284 ///
285 ///
286 ///
287 ///
288 ///
289 ///
290 ///
291 ///
292 ///
293 ///
294 ///
295 ///
296 ///
297 ///
298 ///
299 ///
300 ///
301 ///
302 ///
303 ///
304 ///
305 ///
306 ///
307 ///
308 ///
309 ///
310 ///
311 ///
312 ///
313 ///
314 ///
315 ///
316 ///
317 ///
318 ///
319 ///
320 ///
321 ///
322 ///
323 ///
324 ///
325 ///
326 ///
327 ///
328 ///
329 ///
330 ///
331 ///
332 ///
333 ///
334 ///
335 ///
336 ///
337 ///
338 ///
339 ///
340 ///
341 ///
342 ///
343 ///
344 ///
345 ///
346 ///
347 ///
348 ///
349 ///
350 ///
351 ///
352 ///
353 ///
354 ///
355 ///
356 ///
357 ///
358 ///
359 ///
360 ///
361 ///
362 ///
363 ///
364 ///
365 ///
366 ///
367 ///
368 ///
369 ///
370 ///
371 ///
372 ///
373 ///
374 ///
375 ///
376 ///
377 ///
378 ///
379 ///
380 ///
381 ///
382 ///
383 ///
384 ///
385 ///
386 ///
387 ///
388 ///
389 ///
390 ///
391 ///
392 ///
393 ///
394 ///
395 ///
396 ///
397 ///
398 ///
399 ///
400 ///
401 ///
402 ///
403 ///
404 ///
405 ///
406 ///
407 ///
408 ///
409 ///
410 ///
411 ///
412 ///
413 ///
414 ///
415 ///
416 ///
417 ///
418 ///
419 ///
420 ///
421 ///
422 ///
423 ///
424 ///
425 ///
426 ///
427 ///
428 ///
429 ///
430 ///
431 ///
432 ///
433 ///
434 ///
435 ///
436 ///
437 ///
438 ///
439 ///
440 ///
441 ///
442 ///
443 ///
444 ///
445 ///
446 ///
447 ///
448 ///
449 ///
450 ///
451 ///
452 ///
453 ///
454 ///
455 ///
456 ///
457 ///
458 ///
459 ///
460 ///
461 ///
462 ///
463 ///
464 ///
465 ///
466 ///
467 ///
468 ///
469 ///
470 ///
471 ///
472 ///
473 ///
474 ///
475 ///
476 ///
477 ///
478 ///
479 ///
480 ///
481 ///
482 ///
483 ///
484 ///
485 ///
486 ///
487 ///
488 ///
489 ///
490 ///
491 ///
492 ///
493 ///
494 ///
495 ///
496 ///
497 ///
498 ///
499 ///
500 ///
501 ///
502 ///
503 ///
504 ///
505 ///
506 ///
507 ///
508 ///
509 ///
510 ///
511 ///
512 ///
513 ///
514 ///
515 ///
516 ///
517 ///
518 ///
519 ///
520 ///
521 ///
522 ///
523 ///
524 ///
525 ///
526 ///
527 ///
528 ///
529 ///
530 ///
531 ///
532 ///
533 ///
534 ///
535 ///
536 ///
537 ///
538 ///
539 ///
540 ///
541 ///
542 ///
543 ///
544 ///
545 ///
546 ///
547 ///
548 ///
549 ///
550 ///
551 ///
552 ///
553 ///
554 ///
555 ///
556 ///
557 ///
558 ///
559 ///
560 ///
561 ///
562 ///
563 ///
564 ///
565 ///
566 ///
567 ///
568 ///
569 ///
570 ///
571 ///
572 ///
573 ///
574 ///
575 ///
576 ///
577 ///
578 ///
579 ///
580 ///
581 ///
582 ///
583 ///
584 ///
585 ///
586 ///
587 ///
588 ///
589 ///
590 ///
591 ///
592 ///
593 ///
594 ///
595 ///
596 ///
597 ///
598 ///
599 ///
600 ///
601 ///
602 ///
603 ///
604 ///
605 ///
606 ///
607 ///
608 ///
609 ///
610 ///
611 ///
612 ///
613 ///
614 ///
615 ///
616 ///
617 ///
618 ///
619 ///
620 ///
621 ///
622 ///
623 ///
624 ///
625 ///
626 ///
627 ///
628 ///
629 ///
630 ///
631 ///
632 ///
633 ///
634 ///
635 ///
636 ///
637 ///
638 ///
639 ///
640 ///
641 ///
642 ///
643 ///
644 ///
645 ///
646 ///
647 ///
648 ///
649 ///
650 ///
651 ///
652 ///
653 ///
654 ///
655 ///
656 ///
657 ///
658 ///
659 ///
660 ///
661 ///
662 ///
663 ///
664 ///
665 ///
666 ///
667 ///
668 ///
669 ///
670 ///
671 ///
672 ///
673 ///
674 ///
675 ///
676 ///
677 ///
678 ///
679 ///
680 ///
681 ///
682 ///
683 ///
684 ///
685 ///
686 ///
687 ///
688 ///
689 ///
690 ///
691 ///
692 ///
693 ///
694 ///
695 ///
696 ///
697 ///
698 ///
699 ///
700 ///
701 ///
702 ///
703 ///
704 ///
705 ///
706 ///
707 ///
708 ///
709 ///
710 ///
711 ///
712 ///
713 ///
714 ///
715 ///
716 ///
717 ///
718 ///
719 ///
720 ///
721 ///
722 ///
723 ///
724 ///
725 ///
726 ///
727 ///
728 ///
729 ///
730 ///
731 ///
732 ///
733 ///
734 ///
735 ///
736 ///
737 ///
738 ///
739 ///
740 ///
741 ///
742 ///
743 ///
744 ///
745 ///
746 ///
747 ///
748 ///
749 ///
750 ///
751 ///
752 ///
753 ///
754 ///
755 ///
756 ///
757 ///
758 ///
759 ///
760 ///
761 ///
762 ///
763 ///
764 ///
765 ///
766 ///
767 ///
768 ///
769 ///
770 ///
771 ///
772 ///
773 ///
774 ///
775 ///
776 ///
777 ///
778 ///
779 ///
780 ///
781 ///
782 ///
783 ///
784 ///
785 ///
786 ///
787 ///
788 ///
789 ///
790 ///
791 ///
792 ///
793 ///
794 ///
795 ///
796 ///
797 ///
798 ///
799 ///
800 ///
801 ///
802 ///
803 ///
804 ///
805 ///
806 ///
807 ///
808 ///
809 ///
810 ///
811 ///
812 ///
813 ///
814 ///
815 ///
816 ///
817 ///
818 ///
819 ///
820 ///
821 ///
822 ///
823 ///
824 ///
825 ///
826 ///
827 ///
828 ///
829 ///
830 ///
831 ///
832 ///
833 ///
834 ///
835 ///
836 ///
837 ///
838 ///
839 ///
840 ///
841 ///
842 ///
843 ///
844 ///
845 ///
846 ///
847 ///
848 ///
849 ///
850 ///
851 ///
852 ///
853 ///
854 ///
855 ///
856 ///
857 ///
858 ///
859 ///
860 ///
861 ///
862 ///
863 ///
864 ///
865 ///
866 ///
867 ///
868 ///
869 ///
870 ///
871 ///
872 ///
873 ///
874 ///
875 ///
876 ///
877 ///
878 ///
879 ///
880 ///
881 ///
882 ///
883 ///
884 ///
885 ///
886 ///
887 ///
888 ///
889 ///
890 ///
891 ///
892 ///
893 ///
894 ///
895 ///
896 ///
897 ///
898 ///
899 ///
900 ///
901 ///
902 ///
903 ///
904 ///
905 ///
906 ///
907 ///
908 ///
909 ///
910 ///
911 ///
912 ///
913 ///
914 ///
915 ///
916 ///
917 ///
918 ///
919 ///
920 ///
921 ///
922 ///
923 ///
924 ///
925 ///
926 ///
927 ///
928 ///
929 ///
930 ///
931 ///
932 ///
933 ///
934 ///
935 ///
936 ///
937 ///
938 ///
939 ///
940 ///
941 ///
942 ///
943 ///
944 ///
945 ///
946 ///
947 ///
948 ///
949 ///
950 ///
951 ///
952 ///
953 ///
954 ///
955 ///
956 ///
957 ///
958 ///
959 ///
960 ///
961 ///
962 ///
963 ///
964 ///
965 ///
966 ///
967 ///
968 ///
969 ///
970 ///
971 ///
972 ///
973 ///
974 ///
975 ///
976 ///
977 ///
978 ///
979 ///
980 ///
981 ///
982 ///
983 ///
984 ///
985 ///
986 ///
987 ///
988 ///
989 ///
990 ///
991 ///
992 ///
993 ///
994 ///
995 ///
996 ///
997 ///
998 ///
999 ///
1000 ///
1001 ///
1002 ///
1003 ///
1004 ///
1005 ///
1006 ///
1007 ///
1008 ///
1009 ///
1010 ///
1011 ///
1012 ///
1013 ///
1014 ///
1015 ///
1016 ///
1017 ///
1018 ///
1019 ///
1020 ///
1021 ///
1022 ///
1023 ///
1024 ///
1025 ///
1026 ///
1027 ///
1028 ///
1029 ///
1030 ///
1031 ///
1032 ///
1033 ///
1034 ///
1035 ///
1036 ///
1037 ///
1038 ///
1039 ///
1040 ///
1041 ///
1042 ///
1043 ///
1044 ///
1045 ///
1046 ///
1047 ///
1048 ///
1049 ///
1050 ///
1051 ///
1052 ///
1053 ///
1054 ///
1055 ///
1056 ///
1057 ///
1058 ///
1059

DIRECT EXAMINATION

1 BY MR. MITTAL:

2 Q Good morning, Mr. Mooers.

3 A Good morning, sir.

08:12AM 4 Q Where do you work?

5 A Blue Stone Strategy Group.

6 Q How long have you worked with Blue Stone?

7 A Since its inception. A little over 11 years ago.

8 Q And before you were with Blue Stone, where did you work?

08:12AM 9 A I worked for 360 Advisors.

10 Q What did you do at 360 Advisors?

11 A I developed strategic plans for corporations in the U.S.

12 Q How long, roughly, had you been in strategy consulting?

13 A My entire career. I'm 59 years old, so a little over
08:12AM 14 30-some years now.

15 Q When did you first start consulting for Native American
16 tribes?

17 A In 12-and-a-half -- almost 13 years ago.

18 Q So before you were with Blue Stone?

08:13AM 19 A Yes.

20 Q What tribes did you work with before you worked with Blue
21 Stone?

22 A The San Manuel indian tribe located in Riverside,
23 California.

08:13AM 24 Q Briefly what kind of project was that?

1 A The San Manuel tribe was looking at making an investment
2 into a bottled water company at the time and a technology
3 company as well, and they asked me to come in and evaluate if
4 that business opportunity was worthwhile and if the facts that
08:13AM 5 they were being presented by the potential partners were valid
6 and valuable to them. So I did the due diligence.

7 Q Did you work with any other Native American tribes before
8 founding Blue Stone?

9 A There was one additional project for the Morongo tribe,
08:13AM 10 which is located just as you move into Palm Desert off the
11 10 Freeway.

12 Q What kind of project was that?

13 A They own 3500 acres on the other side of the 10 Freeway
14 there, and they were looking at developing that. And they had
08:14AM 15 several developers that came to them and asked them for -- to
16 partner with them to build residential and industrial
17 complexes. And they had several offers and they wanted me to
18 specifically look at them and say what made sense and what
19 didn't. So again, due diligence services.

08:14AM 20 Q So the projects that you did with the San Manuel and
21 Morongo tribes, how were those referred to? Was there a
22 referral? How did you come in contact with those two tribes?

23 A Yes, they were referred by Merrill Lynch financial
24 services company that both did banking there. And they had
08:14AM 25 approached their Merrill Lynch representatives to have

1 assistance in looking at these opportunities. And Merrill
2 Lynch recommended our firm and me specifically.

3 Q And did you ultimately meet an individual by the name of
4 Jamie Fullmer?

08:15AM 5 A Yes. I was referred to Jamie Fullmer about 12-and-a-half
6 years ago.

7 Q Was that from Merrill Lynch as well?

8 A Yes. Jamie, at the time, was the chairman of the Yavapai
9 Apache Nation located about 90 miles north of Phoenix. He was
08:15AM 10 coming out of his term. And he also had a relationship with
11 Merrill Lynch because they were the banking entity for his
12 tribe, and they had recommended that we be introduced to one
13 another.

14 Q And you've been working with Blue Stone since you and
08:15AM 15 Mr. Fullmer founded it?

16 A That is correct, sir.

17 Q Were you involved with the hiring --

18 Your Honor, before I get there, I'll note for the
19 record that there's a stipulation as to the identification of
08:15AM 20 the defendant.

21 THE COURT: The record will reflect the
22 identification.

23 Q BY MR. MITTAL: Were you involved in the hiring of the
24 defendant as a senior strategist in April of 2014?

08:15AM 25 A Yes, I was one of the ones involved.

1 Q And was travel something that was discussed during the
2 defendant's hiring?

3 A Absolutely.

08:16AM 4 Q During that interview, did the defendant provide you a
5 resumé?

6 A Yes, he did.

7 Q And did that resumé provide a cell phone number?

8 A Yes, it did.

9 Q Do you know his cell phone number as you sit here today?

08:16AM 10 A Not by heart.

11 Q Would referring to his resumé refresh your recollection
12 as to his cell phone number?

13 A It would.

14 Q There should be a binder, if you look at Exhibit 4 --
08:16AM 15 sorry -- Exhibit 3.

16 A Yes, it is confirmed.

17 Q And is Exhibit 3 a redacted copy of the resumé that the
18 defendant had provided when he was hired?

19 A Yes. I believe so.

08:17AM 20 MR. MITTAL: Your Honor, I move to admit Exhibit 3.

21 THE COURT: Any objection?

22 MR. KHOURI: None, Your Honor.

23 THE COURT: Exhibit 3 will be received into
24 evidence.

08:17AM 25 **(Exhibit No. 3 received.)**

1 Q BY MR. MITTAL: Can you take a look at Exhibit 83.

2 A Yes, sir.

3 Q Do you recognize Exhibit 83?

4 A Yes. It's a W-2 statement.

08:17AM 5 Q Was this the W-2 for the defendant?

6 A Yes, sir.

7 Q And would this have covered all of the work or
8 compensation that you received for the roughly seven months
9 that he worked for Blue Stone?

08:18AM 10 A Yes, sir.

11 Q Including compensation related to his work in IT and
12 marketing as well as consulting?

13 A Yes, sir, this is total compensation.

14 MR. MITTAL: Your Honor, I move to admit Exhibit 83.

08:18AM 15 THE COURT: Any objection?

16 MR. KHOURI: No, Your Honor.

17 THE COURT: Exhibit 83 will be received into
18 evidence.

19 MR. MITTAL: Can we publish Exhibit 83.

08:18AM 20 Q I assume you're generally familiar with W-2s that are
21 provided to an employee?

22 A Yes, sir.

23 Q Can you highlight the first box on the right where it
24 says, "1. Wages, tips and other compensation."

08:18AM 25 A Yes, \$48,854.11.

1 Q We can take that down.

2 When the defendant joined Blue Stone, did he make
3 changes to Blue Stone's IT infrastructure?

4 A Yes, sir.

08:18AM 5 Q Did he become the most -- in your opinion, the most
6 knowledgeable person about Blue Stone's IT infrastructure?

7 A Yes, sir, absolutely.

8 Q And before the defendant joined, were you using the
9 Google application for e-mail and file sharing as a company?

08:19AM 10 A I believe we were, yes.

11 Q Did he introduce the use of an e-mail through Google?

12 A Yes, that was one of the applications that I know he
13 recommended.

14 Q Did the defendant also purchase Apple computers?

08:19AM 15 A Yes, sir.

16 Q Can you take a look at Exhibit 30.

17 A Yes, sir.

18 Q And you met with the government in preparation for your
19 testimony and, also, the FBI during the investigation in this
08:19AM 20 matter?

21 A Yes, sir.

22 Q So you have reviewed -- have reviewed some of these
23 exhibits before today?

24 A Yes, sir.

08:20AM 25 Q Is Exhibit 30 a copy of the receipt for the Mac Pro

1 desktop that the defendant used while working for Blue Stone?

2 A Yes, sir, it is.

3 MR. MITTAL: Your Honor, I move to admit Exhibit 30.

4 THE COURT: Any objection?

08:20AM 5 MR. KHOURI: None, Your Honor.

6 THE COURT: Exhibit 30 will be received into
7 evidence.

8 **(Exhibit No. 30 received.)**

9 MR. MITTAL: Can I have a moment, Your Honor?

08:20AM 10 THE COURT: You may.

11 **(Counsel conferred off the record.)**

12 Q BY MR. MITTAL: Could you take a look at Exhibits 101 to
13 105. Do you recognize Exhibit 101 to 105?

14 A Yes, sir.

08:21AM 15 Q Are 101 to 105 e-mails the defendant sent while he was
16 working for Blue Stone?

17 A Yes, sir.

18 MR. MITTAL: Your Honor, I move to admit 101 to 105.

19 THE COURT: Any objection?

08:21AM 20 MR. KHOURI: None, Your Honor.

21 THE COURT: Exhibits 101 through 105 will be
22 received into evidence.

23 **(Exhibit No. 101 through 105 received.)**

24 MR. MITTAL: Can we publish 101, Page 1, for now.

08:22AM 25 Q Is this an e-mail that the defendant sent to you and

1 Mrs. Watson?

2 A Yes, sir.

3 Q And the subject is "Updated IT priority plan"?

4 A Yes, sir.

08:22AM 5 Q Can we go to Page 3 of 101. Are Pages 3 and 4, are these
6 an attachment to that e-mail?

7 A Yes, sir.

8 Q And in here there's a -- what's titled a "Four-Week IT
9 Implementation Plan Update"?

08:22AM 10 A Yes, sir.

11 MR. MITTAL: Can we go down to Week 2 where it says
12 "CRM."

13 Q Are you familiar with the CRM project that the defendant
14 worked on internally while he was at Blue Stone?

08:23AM 15 A Yes. The customer relationship management program that
16 was proprietary to Blue Stone, yes, I do.

17 Q What's your understanding of what the defendant worked on
18 related to the CRM system?

19 A He actually, one, came up with the concept of storing all
08:23AM 20 our information about all the tribes that we have worked with,
21 all the contacts that we've developed over -- in this case we
22 had seven years built up of information about tribes that we
23 had derived from working with tribes, that we had derived from
24 attending conferences, et cetera.

08:23AM 25 And so his concept that was presented to us was he

1 was going to take all that information and put it into one
2 system. That system, as he explained it, was going to be built
3 basically from scratch. He was going to use some existing
4 application framework, but he was actually going to build the
08:24AM 5 application out to make it more robust. So you could search
6 information, so you could identify certain information within
7 this quote database. But he was basically taking all the seven
8 years of data that we had developed proprietary to Blue Stone
9 in many cases and going to put it in one location.

08:24AM 10 Q And roughly what percentage of defendant's time while he
11 was working with Blue Stone was he working on this system?

12 A Well, originally it was set out to be one of many
13 projects, as you can see. But the CRM, customer relationship
14 proprietary application that he was working on seemed to
08:24AM 15 control a lot of his time. He seemed to be very focused on
16 that to try to get that completed. And so I would estimate
17 approximately 50 percent of his time was around building out
18 this application.

19 Q After the defendant resigned on November 18, 2014, were
08:25AM 20 you able to ever access the CRM system that he was developing?

21 A It was completely destroyed. All the information was
22 lost. And all the work that was done to build it was lost
23 along with it.

24 Q Can you take a look at Exhibit 117.

08:25AM 25 A Yes, sir.

1 Q Do you recognize Exhibit 117?

2 A Yes.

3 Q What is 117?

4 A It's an e-mail from Nikishna to myself and copying Amy
08:25AM 5 Watson.

6 MR. MITTAL: Your Honor, I move to admit 117.

7 MR. KHOURI: No objection, Your Honor.

8 THE COURT: Exhibit 117 will be received into
9 evidence.

08:25AM 10 **(Exhibit No. 117 received.)**

11 MR. MITTAL: Can we publish Exhibit 117.

12 Q This was sent on June 26th, 2014; correct?

13 A Yes, sir.

14 Q Roughly about two months after the defendant had joined
08:26AM 15 Blue Stone?

16 A That's correct.

17 Q And the subject there, you see, is "RE IT meeting today"?

18 A Yes, sir.

19 Q And can we scroll to the first full paragraph there. And
08:26AM 20 the second sentence says, "I wanted to take a moment to recap
21 the IT meeting today and express some concerns." Do you see
22 that?

23 A Yes, sir.

24 Q Had you set up a meeting in roughly late June of 2014
08:26AM 25 between Eldad Yacobi and the defendant?

1 A Yes, I did.

2 Q What was the purpose of that meeting?

3 A We had never had any IT issues in the first seven-plus
4 years in the firm. And as we moved forth with this new IT
08:27AM 5 infrastructure plan that Nikishna had come up with, we realized
6 that, one, he needed to have responsibility, and we entrusted
7 him with that responsibility to build this plan out. And we
8 gave him all the tools and authority to do so. We also wanted
9 to make sure that there was additional backup if anything was
08:27AM 10 to ever happen.

11 And so I had asked Eldad to stay in touch with --
12 Eldad is our IT -- Eldad Yacobi to stay in touch with Nikishna,
13 be a resources needed. But also, if something were ever to
14 happen, if Nikishna was hit by a bus or couldn't come to work,
08:27AM 15 where would we stand? So to have a backup of somebody -- at
16 least understand the system. Because at that time, only
17 Nikishna understood what was he building. And we tried to give
18 him the tools to do that. But one was to provide resources
19 from Eldad, if necessary.

08:28AM 20 MR. MITTAL: And can we go to the second full
21 paragraph. Can we go to the third line there.

22 Q There was also some conversations about regular meetings.
23 Generally is this the e-mail that the defendant described what
24 happened in his view of the meeting and his concerns?

08:28AM 25 A Yes.

1 Q And in that sentence it says there was also some
2 conversation about regular meetings as well as the potential
3 for Eldad to provide technical support moving forward.

4 A Yes, sir.

08:28AM 5 Q And was that something you had instructed Mr. Yacobi to
6 do?

7 A Yes, I did.

8 MR. MITTAL: Can we highlight where it says, "This
9 is of great concern," all the way through the end of that
08:29AM 10 paragraph.

11 Q Do you see what the defendant wrote:

12 "This is a great concern for me because
13 of the -- a great deal of time was required to
14 repair the patchwork of 'fixes' that Eldad
08:29AM 15 administered over the years"?

16 A Yes, sir.

17 Q And then the next sentence is:

18 "The e-mail migration has not been as smooth
19 as it should have been due to computer settings not
08:29AM 20 being properly configured."

21 Do you see that?

22 A Yes, sir.

23 Q Were you unsatisfied at all with Mr. Yacobi's work prior
24 to the defendant joining?

08:29AM 25 A Absolutely not. We didn't have a plan to build --

1 MR. KHOURI: Objection. Nonresponsive after
2 "absolutely not."

3 THE COURT: Overruled.

4 You can continue, sir.

08:29AM 5 THE WITNESS: Thank you, Your Honor.

6 Q BY MR. MITTAL: It says "The e-mail migration has not
7 been as smooth as it should have been."

8 Were you aware of any issues with the e-mail
9 migration that was caused by Mr. Yacobi?

08:30AM 10 A No.

11 Q And then the next sentence there is:

12 "The building IT manager kicked us off of the
13 Internet because Eldad illegally connected Blue
14 Stone onto the Crestline Funding system with the
08:30AM 15 wrong settings, which created a security breach for
16 them."

17 Do you see that?

18 A Yes, I see that.

19 Q Are you aware of any such action taken by Crestline
08:30AM 20 Funding?

21 A Absolutely not. I actually -- when I received this
22 e-mail --

23 MR. KHOURI: Objection. Nonresponsive after
24 "absolutely not."

08:30AM 25 THE COURT: Why don't you follow up with a question

1 so he can give his answer, to explain.

2 Q BY MR. MITTAL: The -- what is Crestline Funding?

3 A Crestline Funding actually owns and operates the building
4 that we reside in.

08:30AM 5 Q That's the building in Irvine?

6 A Yes, sir.

7 Q And have you reviewed this e-mail and tried to confirm
8 whether there was any such claim or any issue with the
9 Internet?

08:31AM 10 A Yes, I did. I directly went down to the general manager
11 of Crestline Funding as well as to their IT to understand what
12 they were speaking of, and they said there was no --

13 MR. KHOURI: Objection. Move to strike. Hearsay.

14 THE COURT: Overruled.

08:31AM 15 I assume not for the truth.

16 MR. MITTAL: Correct, Your Honor.

17 THE WITNESS: There was no wrongdoing --

18 MR. KHOURI: Irrelevant.

19 THE COURT: Overruled.

08:31AM 20 THE WITNESS: There was no wrongdoing of any kind on
21 behalf of our staff or Eldad in this case. And they did not
22 kick us off their system. And I took this information as just
23 Nikishna did not want to have anybody touching his
24 infrastructure, and he wanted to make all the decisions by
08:31AM 25 himself.

1 Q BY MR. MITTAL: If any of these allegations that are
2 contained in this e-mail were true, would you have continued to
3 work with Mr. Yacobi's company?

4 A No, sir.

08:31AM 5 Q Was there -- strike that.

6 Can you take a look at Exhibit 109.

7 A Yes, sir.

8 Q Do you recognize 109?

9 A Yes, sir.

08:32AM 10 Q What is 109?

11 A It's a list of the projects that Nikishna actually was
12 assigned to work on while he was at Blue Stone.

13 MR. MITTAL: Your Honor, I move to admit 109.

14 THE COURT: Any objection?

08:32AM 15 MR. KHOURI: No, Your Honor.

16 THE COURT: Exhibit 109 will be received into
17 evidence.

18 **(Exhibit No. 109 received.)**

19 Q BY MR. MITTAL: Are you familiar with these projects?

08:32AM 20 A Yes, I am.

21 Q Can you just very briefly describe what the nature of
22 these projects were.

23 A Lummi Nation is located in the state of Washington and it
24 was a workforce development initiative in which we had other
08:33AM 25 team members beside Nikishna. I believe there was three team

1 members.

2 Seminole Tribe of Florida is located in the state of
3 Florida, and it's a government assessment project. So they
4 have 77 different departments and they were -- asked us to come
08:33AM 5 in and evaluate those departments for operational efficiency,
6 how could they work closely together, how the government could
7 be more efficient. And we had a number of our team members
8 assigned to that project.

9 And then the Squaxin Island Tribe is located in the
08:33AM 10 southern part of Washington, and it was an economic development
11 project that we were working on to help build their tribal
12 economy and create jobs for their people.

13 Q And was defendant's role for these projects strategy work
14 generally?

08:33AM 15 A Primarily, yes.

16 Q So none of the projects that the defendant would have had
17 were based in Irvine?

18 A No, sir. There are no federally recognized tribes in
19 Orange County or in Irvine.

08:34AM 20 Q Can you take a look at Exhibit 13.

21 A 13?

22 Q Yes. Should be in the first binder.

23 A Yes, sir.

24 Q Do you recognize Exhibit 13?

08:34AM 25 A Yes, sir.

1 Q What is Exhibit 13?

2 A It's his annual performance review, dated August 7.

3 Q And when you say "his" --

4 A Nikishna.

08:34AM 5 Q This is an e-mail of the defendant along with the
6 attachment?

7 A That is correct.

8 MR. MITTAL: Your Honor, I move to admit Exhibit 13.

9 THE COURT: Any objection?

08:35AM 10 MR. KHOURI: May I have a moment, Your Honor?

11 THE COURT: You may.

12 MR. KHOURI: No objection.

13 THE COURT: Exhibit 13 will be received into
14 evidence.

08:35AM 15 **(Exhibit No. 13 received.)**

16 MR. MITTAL: Can we publish Page 1 of 13.

17 Q So this e-mail was sent from the defendant to you and
18 Mrs. Watson on August 20th, 2014?

19 A Yes, sir.

08:35AM 20 MR. MITTAL: Can we go to Page 2, Exhibit 13. Can
21 we just zoom in on that first paragraph.

22 Q Do you see where the defendant wrote "Attached is a copy
23 of my completed performance appraisal form"?

24 A Yes, sir.

08:36AM 25 Q Can you explain what a performance appraisal form is as

1 Blue Stone uses them?

2 A We have a process in the company that it's a two-phase
3 process. So on a regular scheduled basis, the employee is
4 given this appraisal form to fill out so they can self-evaluate
08:36AM 5 their own performance based on their job description and their
6 set of duties. So they are required to fill that out and give
7 their own impression of their -- how they're doing in each of
8 the categories. Then from there it goes to the supervisor and
9 they evaluate based on the same list of criteria. And then
08:36AM 10 afterwards they come together and discuss it.

11 Q Is it kind of a start of a dialogue between the employee
12 and his management?

13 A That is correct.

14 Q And it's -- you see the next sentence:

08:37AM 15 "I would have had it earlier in the week.
16 Monday was taken up with the personal
17 self-evaluation project. And all of Tuesday was
18 spent with Bill Moon on-boarding."

19 A Yes, sir.

08:37AM 20 Q What is your understanding of what he meant when he said,
21 "Bill Moon on-boarding"?

22 A Any new team member that comes into the firm has to go
23 through an on-boarding process that's not only documents,
24 employment documents that need to be signed and executed.
08:37AM 25 There needs to be an office that's set up. There's e-mail

1 that's set up. There's access to the Google drive. There's
2 normal on-boarding processes that we go through. And in this
3 case, Nikishna was working with Bill primarily on the IT
4 on-boarding processes.

08:37AM 5 Q So at this time frame, roughly August of 2014, the
6 defendant was responsible for getting everyone on to the IT
7 systems including computers and whatnot?

8 A That is correct. Helping set up passwords, et cetera.

9 MR. MITTAL: Can we go to Page 7 of Exhibit 13.

08:38AM 10 Q I'm not going to go through all of the form, but all of
11 the information that was attached would have been provided by
12 the defendant?

13 A Yes, sir.

14 Q Can we publish that paragraph there. Do you see the
08:38AM 15 first sentence there, "Although my salary was matched in
16 transitioning over to Blue Stone, my benefits package was not."

17 A Yes, sir.

18 Q What was your understanding of what the defendant meant
19 there?

08:38AM 20 A I believe his previous employer, which was a government
21 organization, had probably a more robust package than our
22 privately small company offered.

23 Q So it was his way of requesting additional benefits?

24 A Yes.

08:39AM 25 Q And then it states:

1 "Additionally, I've taken on a more robust
2 role in the firm and also managing the overall IT
3 infrastructure remotely supporting and centralizing
4 services for employees across the country;
08:39AM 5 therefore, I'm requesting a \$5,000 compensation
6 increase to my annual salary."

7 Do you see that?

8 A Yes, I do.

9 Q And what was your understanding of what the defendant
08:39AM 10 meant there?

11 A He wanted more money.

12 Q And then the next sentence is:

13 "Lastly, I'm requesting an external title of
14 chief technology officer for the firm so that I can
08:39AM 15 continue to negotiate lower prices on equipment and
16 technology services."

17 Do you see that?

18 A Yes.

19 Q Was he ever given the CTO title?

08:39AM 20 A No, sir.

21 Q During the seven months that he worked there, was he also
22 a senior strategist?

23 A Yes, sir, he was.

24 MR. MITTAL: We can take this down.

08:40AM 25 Q Were you initially the defendant's supervisor?

1 A Initially I was, yes.

2 Q And did Bill Moon become the defendant's direct
3 supervisor when he joined in August of '14?

4 A Yes, he did.

08:40AM 5 Q At some point did you and Mr. Fullmer decide to move the
6 defendant away from IT and marketing?

7 A Yes, we did.

8 Q And why did you move him away from IT and marketing?

9 A Originally, as you stated, he was hired as a senior
08:40AM 10 strategist. And the IT is something he approached us with as
11 an additional opportunity to grow the firm and using his skill
12 set and knowledge. And so we entrusted him with that and gave
13 him, again, all the tools to do a job. But his core
14 responsibility still had to be towards working with clients and
08:40AM 15 creating revenue and delivering on projects that are for our
16 travel clients.

17 And unfortunately, there was a major drop-off in his
18 performance regarding, in fact, many of these areas. He came
19 in as an ambitious young man, wanting to help in many ways, and
08:41AM 20 we allowed him to do that and empowered him as a young Native
21 American man to grow. Unfortunately, very quickly over a
22 period of a couple months --

23 MR. KHOURI: Your Honor, the witness is engaging in
24 a narrative now.

08:41AM 25 THE COURT: Overruled.

1 THE WITNESS: -- over a couple of months projects
2 started to miss deadlines. And clients were not seeing the
3 deliverables that we were engaged to provide. Missing
4 deadlines is something that is, as you know, is very difficult.
08:41AM 5 So we also saw the quality of this work as a strategist
6 diminish considerably.

7 And we also saw that he was becoming more of a silo,
8 not working in a good team environment with our other team
9 members, which is critical for our other projects. And then on
08:42AM 10 top of that, the IT projects were not being completed on a
11 timely manner as well. So we felt it was in his best interest
12 for a career move is to take back the IT responsibilities and
13 really have him focus and grow in the areas to be a strong
14 senior strategist. And at that point, that's why that decision
08:42AM 15 was made.

16 Q Was the decision to reassign his IT and marketing
17 responsibilities done in any way to retaliate against the
18 defendant for submitting internal whistleblower complaints?

19 A Absolutely not. I'm not aware of any whistleblower
08:42AM 20 comments while he was an employer there of any sort. And there
21 was no retaliation of any sort. If anything, it was to help
22 him grow in his career within Blue Stone. And we had all the
23 support around our team to allow that to happen. And
24 unfortunately, that trust was broken.

08:42AM 25 Q Was the first time that you learned of those allegations

1 in a countersuit that the defendant filed?

2 A Several months later, yes, sir.

3 Q I want to go back to November 2014. Did you contact

4 Mr. Yacobi to see if he could take on doing the IT support for

08:43AM 5 Blue Stone full time?

6 A Yes, I did.

7 Q And did you make the request to Mr. Yacobi?

8 A I did.

9 Q Was Mr. Yacobi calling you to get your business back?

08:43AM 10 A Absolutely not. He was there as a resource to Nikishna,
11 but he wasn't utilized much. So he wasn't trying to pursue our
12 business in any way.

13 Q It was your and Mr. Fullmer's decision to pursue

14 Mr. Yacobi?

08:43AM 15 A (No audible response.)

16 Q Was it you and Mr. Fullmer who decided to reach out to
17 Yacobi?

18 A Yes, sir, it was.

19 Q And were you present at a meeting on Friday, November 14,
08:43AM 20 2014, at 12:00 p.m., where the reassignment of defendant's IT
21 and marketing responsibilities were discussed?

22 A I was. I called the meeting.

23 Q In addition to the defendant, were Mr. Robert Mooers and
24 Mr. Yacobi also present?

08:44AM 25 A They were.

1 Q Was there discussion about who was going to handle the IT
2 and marketing going forward?

3 A Yes.

08:44AM 4 Q Who was discussed in that meeting was going to handle the
5 marketing?

6 A So marketing was going to be turned over to Robert Mooers
7 and -- which he had been actively involved with Nikishna on
8 many of the projects anyway. So that was a easy, smooth
9 transition. And Mr. Yacobi was assigned to take over all the
08:44AM 10 IT responsibilities as of that Friday.

11 Q Both of those changes were communicated to the defendant
12 during that meeting?

13 A Clearly.

14 Q Do you recall, if anything, the defendant's reaction to
08:44AM 15 the reassignment?

16 A I didn't see any emotional response. Again, the whole
17 rational of doing this was to allow Nikishna to grow in his
18 career path at Blue Stone working with tribes as a strategist.
19 And we had a very large project, a Seminole Tribe which is a
08:45AM 20 great opportunity for him to grow. So assigning him to that
21 project team is an honor. And that was our whole intention.
22 So I didn't see any negative reaction of any kind at the
23 meeting itself.

24 Q Can you flip to Exhibit 129.

08:45AM 25 A 129. Yes, sir.

1 Q And can you go to Page 2. Is this an e-mail that you
2 were copied on from the defendant?

3 A Yes, sir.

4 MR. MITTAL: Can -- I move to admit Exhibit 129.

08:46AM 5 THE COURT: Any objection?

6 MR. KHOURI: May I have a moment, Your Honor?

7 THE COURT: You may.

8 MR. KHOURI: Thank you. No objection, Your Honor.

9 THE COURT: Exhibit 129 will be received into
08:46AM 10 evidence.

11 **(Exhibit No. 129 received.)**

12 MR. MITTAL: Can we publish Page 2 of 129.

13 Q This is an e-mail that's --

14 We can scroll the first five lines there.

08:46AM 15 So this is the e-mail from the defendant to Mark
16 Palmer, yourself, and Bill Moon?

17 A Yes, sir.

18 Q And it's dated November 15, 2014?

19 A Yes, sir.

08:47AM 20 Q So this would have been the day after the meeting where
21 the defendant was reassigned -- the defendant's IT marketing
22 responsibilities were reassigned?

23 A That's correct.

24 Q Who's Mark Palmer?

08:47AM 25 A Mark Palmer is a subject matter expert that was assigned

1 to the Seminole Tribe of Florida project. So he's one of the
2 team members.

3 MR. MITTAL: Can we go down to the bottom first
4 message, forwarded message.

08:47AM 5 Q Do you see that what appears to be an e-mail from a phone
6 number to a Gmail account as well as a Safford.co account?

7 A Yes.

8 Q Are you familiar with the phone number 714-299-5400?

9 A That's Amy Watson. She's the office manager at Blue
08:48AM 10 Stone.

11 Q This is that -- this is the evening after the meeting to
12 reassign the IT marketing responsibilities?

13 A That's correct.

14 MR. MITTAL: Can we go down to the paragraph on the
08:48AM 15 bottom.

16 Q See where it says:

17 "We are updating our Blue Stone e-mail
18 passwords this evening. After 8:00 p.m. PST, your
19 password will be MPalmer2214. Should you have any
08:48AM 20 questions over the weekend, please contact Eldad at
21 949-355-1000"?

22 A That's correct.

23 Q And had you and Mr. Yacobi and Ms. Watson decided to
24 reset everyone's Google e-mail password except for the
08:48AM 25 defendant after that meeting?

1 A Yes, to give a fresh start to all of our IT passwords at
2 that time.

3 Q Can we go up to the middle there, the next e-mail. This
4 appears to be an e-mail between Mr. Palmer and the defendant?

08:49AM 5 A Yes, sir.

6 Q And then the defendant forwards this all on to you and
7 Mr. Moon?

8 A Yes.

9 MR. MITTAL: We can take this down.

08:49AM 10 Q Go to Page -- Exhibit 36.

11 A Yes, sir.

12 Q Can we go to Page 2. Is this an e-mail from Mr. Yacobi
13 to you with a copy and then Mrs. Watson as well?

14 A Yes, sir.

08:50AM 15 MR. MITTAL: Your Honor, I move to admit Exhibit 36.

16 THE COURT: Any objection?

17 MR. KHOURI: I need a moment again, Your Honor. I
18 apologize.

19 **(Pause in proceedings.)**

08:50AM 20 MR. KHOURI: No objection, Your Honor.

21 THE COURT: 36 will be received into evidence.

22 **(Exhibit No. 36 received.)**

23 MR. MITTAL: Can we publish Page 2, Exhibit 36.

24 Q This e-mail is sent on November 17, 2014, that following
08:51AM 25 Monday early in the morning?

1 A Yes, sir.

2 Q And it's from Mr. Yacobi, again, to the defendant,
3 Mrs. Watson and yourself?

4 A Yes, sir.

08:51AM 5 Q And then it looks like it was sent around 6:30 in the
6 morning?

7 A Yes.

8 MR. MITTAL: Can we go down to the first two
9 sentences there. Can we actually get the next sentence as
08:51AM 10 well.

11 Q Do you see there Mr. Yacobi wrote:

12 "I'm following up with you on our
13 conversation earlier today. You've told me some
14 users can't log in onto their e-mails, but you did
08:51AM 15 not recall their names. I would appreciate it if
16 you can find out who were those people and e-mail
17 me ASAP their names so we can take care of them at
18 the earliest convenience."

19 Do you see that?

08:52AM 20 A Yes.

21 Q Was it odd to you that the defendant was still fielding
22 IT-related questions after your November 14, 2014 meeting?

23 A Yes.

24 Q Should those questions have been directed to Mr. Yacobi
08:52AM 25 at that point?

1 A That is correct.

2 Q Can you take a look at Exhibit 50. Go to Page 2.

3 Do you recognize this e-mail?

4 A Yes, I to.

08:52AM 5 Q Is this an e-mail from the defendant to Mrs. Watson and
6 yourself?

7 A That is correct.

8 MR. MITTAL: Your Honor, I move to admit 50.

9 THE COURT: Any objection?

08:53AM 10 MR. KHOURI: None.

11 THE COURT: Exhibit 50 will be received into
12 evidence.

13 **(Exhibit No. 50 received.)**

14 MR. MITTAL: Can we publish that Page 2 of 50. Can
08:53AM 15 we highlight the purple field there.

16 Q So their e-mail was sent in the morning of November 18,
17 2014?

18 A Yes, sir.

19 MR. MITTAL: And can we go down to the body of the
08:53AM 20 e-mail, just highlight that paragraph.

21 Q In the middle there it says:

22 "There are glitches that continue to arise
23 that I could -- can easily fix, but I have no
24 ability to do so since I have been removed as an
08:53AM 25 admin from Google apps; therefore, I am requesting

1 to be restored as a Google apps admin at least
2 until we get back to CA so we that we can keep
3 things moving over here."

4 A Yes, sir.

08:54AM 5 Q So at this point, the defendant was no longer the admin
6 for the Google -- Blue Stone Google account; correct?

7 A That is correct.

8 Q And he didn't copy Mr. Yacobi on this e-mail; correct?

9 A That is correct.

08:54AM 10 Q And the defendant was to be in Florida on the Seminole
11 Tribe project on November 17 and 18 of 2014?

12 A That is correct, he was.

13 Q On those two days was he ever authorized to delete Blue
14 Stone's website files?

08:54AM 15 A Absolutely not.

16 Q On November 17th and 18th of 2014, was he ever authorized
17 to delete files on the Apple Mac Pro computer that he used in
18 Irvine, which we saw the receipt of earlier this morning?

19 A Absolutely not.

08:54AM 20 Q On those two days was he authorized to send, erase, or
21 wipe command to that Apple Mac Pro computer that he used in
22 Irvine?

23 A Absolutely not.

24 Q On those two days was he authorized to delete
08:55AM 25 Blue Stone's files on its MailChimp account?

1 A Absolutely not.

2 Q Was he authorized to delete Blue Stone's files that
3 Blue Stone maintained with Google?

4 A Absolutely not.

08:55AM 5 Q On those days was he authorized to delete Blue Stone's
6 files that Blue Stone held on Cox's only backup service?

7 A No, sir.

8 Q On those two days was he authorized to delete the Vtiger
9 system that he had been developing for your CRM?

08:55AM 10 A For our customer relationship management proprietary
11 software, yes, he was not authorized to delete any of that
12 information.

13 Q Were you present when the defendant resigned on
14 November 18, 2014?

08:55AM 15 A No, I was not.

16 Q Where were you?

17 A I was in the Irvine office.

18 Q How did you learn about -- did you ever learn that the
19 defendant was deleting Blue Stone files?

08:56AM 20 MR. KHOURI: I'm sorry, I understand -- didn't
21 understand the question.

22 THE COURT: Do you understand the question, sir?

23 THE WITNESS: Could you repeat that.

24 MR. KHOURI: I didn't hear it.

08:56AM 25 Q BY MR. MITTAL: Did you ever learn that the defendant was

1 deleting Blue Stone files?

2 A Yes.

3 Q How did you learn that?

4 A I was in the Irvine office and I received a call from my
08:56AM 5 office from Janeen Gordon. And she notified me that we have a
6 major problem. She's on her Google drive and she noticed that
7 Nikishna's logged in to her Google drive and the files are
8 being deleted in front of her. Client files, project files are
9 being deleted right in front of her. I then immediately went
08:56AM 10 from my office to her office and visually saw the same thing,
11 files being deleted. That's how I was notified.

12 Q Did you speak to Bill Moon and Mr. Yacobi that evening as
13 well?

14 A I immediately picked up the phone and called Bill Moon on
08:57AM 15 his cell phone in Florida. And I said, "Where is Nikishna?"

16 He said, "He resigned."

17 And I asked him, "Where is he right now? Because
18 he's deleting our client files."

19 Q Did you ask Mr. Moon to do anything?

08:57AM 20 A I asked him if he could please locate Nikishna and ask him
21 to stop this. I did.

22 Q Did you ask him to retrieve a laptop that the defendant
23 had with him?

24 A I asked him first to please find out where he's at. He
08:57AM 25 believed he was at the hotel room. I said, "Please confirm

1 that if he's back at the hotel."

2 And then he hung up and he called me back and he
3 says, "I believe he's in his hotel room."

4 And I said, "Call the police."

08:57AM 5 Q And did you believe the laptop the defendant used, a
6 MacBook Pro in Florida, was a Blue Stone asset?

7 A Yes.

8 Q Did you later learn that it was not?

9 A That is correct.

08:57AM 10 Q Did Mr. Yacobi assist Blue Stone on the evening of
11 November 18, 2014?

12 A I immediately called Eldad, Mr. Yacobi, afterwards, after
13 I heard from Bill Moon and told him what was going on and
14 alerted him to the situation, yes.

08:58AM 15 Q And did you ask Mr. Yacobi to assist in determining what
16 was going on and prevent any damage to your systems?

17 A I did.

18 Q Did Mr. Moon retrieve the defendant's laptop, to your
19 understanding, in Florida on November 18, 2014?

08:58AM 20 A I believe the Florida police department retrieved it.

21 Q Did they provide it to Mr. Moon?

22 A Yes, they did.

23 Q And did it ultimately arrive in Blue Stone's offices?

24 A In a sealed package, FedEx, yes.

08:58AM 25 Q And did you turn that over to your attorney?

1 A In a sealed package without opening it to our attorney,
2 yes.

3 Q And as far as you know, has anyone ever used that laptop
4 after it was returned from Florida?

08:59AM 5 A No.

6 Q Did you also learn that the Mac Pro desktop that we saw
7 earlier was erased on November 19, 2014?

8 A I later learned that, yes.

9 Q Was that also turned over to your attorney?

08:59AM 10 A That is correct.

11 Q Did you -- ultimately did you consent to turning over
12 that desktop to law enforcement?

13 A I surely did.

14 Q Specifically, it was turned over to the FBI?

08:59AM 15 A That is correct.

16 Q To your knowledge, was either the desktop or the laptop
17 that came from Florida ever used after -- strike that.

18 Was the Mac Pro desktop ever used after you learned
19 it was erased, to your knowledge?

08:59AM 20 A No, sir.

21 Q Were you present on November 19, 2014, when the defendant
22 returned to Blue Stone's offices?

23 A I was.

24 Q Was he expected to return that day?

09:00AM 25 A No, sir.

1 Q Did you believe he was still in Florida?

2 A Yes, I did.

3 Q And in preparation for your testimony today, did you
4 review a copy of the video that Mr. Yacobi took that day?

09:00AM 5 A I did.

6 Q Can you take a look at Exhibit 66.

7 A I'm sorry?

8 Q In the binder, Exhibit 66.

9 A 66, I'm sorry. Yes, sir.

09:00AM 10 Q And did you review that in preparation and initial it as
11 well?

12 A Yes, I did.

13 Q And the start of that recording, is that complete to the
14 extent when you compared it to the version that you've seen
09:01AM 15 during -- closer to the time of the events?

16 A Yes, sir, it is.

17 Q When the defendant returned on November 19, 2014, did he
18 ever give any explanation or justification for the deletions
19 you believe he did?

09:01AM 20 A No justifications. No explanations, other than stated
21 that he deleted them.

22 Q Did you twist the defendant's arm that day?

23 A Absolutely not.

24 Q Did Blue Stone return the defendant's personal items
09:01AM 25 later on?

1 A The personal items that were not held by the FBI were all
2 returned to Nikishna.

3 Q Can we go to Exhibit 118.

4 A Yes, sir.

09:02AM 5 Q Is this an e-mail that you sent to Mr. Fullmer, another
6 Blue Stone employee?

7 A That is correct.

8 MR. MITTAL: Your Honor, I move to admit 118.

9 THE COURT: Any objection?

09:02AM 10 MR. KHOURI: No, Your Honor.

11 THE COURT: Exhibit 118 will be received into
12 evidence.

13 **(Exhibit No. 118 received.)**

14 MR. MITTAL: Can we publish 118.

09:02AM 15 Q This is dated November 19, 2014 at 2:10 p.m.?

16 A Yes.

17 Q So this is the day after the defendant's resignation?

18 A That is correct.

19 Q This would have been the same day that you returned to
09:03AM 20 the Blue Stone office in Irvine?

21 A That is correct.

22 Q Can we go down to the paragraph, first full paragraph.
23 And here, were you informing the other employees that the
24 defendant had resigned the day before at 7:25 p.m.?

09:03AM 25 A Yes, sir.

1 Q And the time here would have been the Eastern Standard
2 Time?

3 A That is correct.

4 Q In the middle there you say:

09:03AM 5 "Please don't discuss any Blue Stone internal
6 or external information with Nikishna, and please
7 do not provide any authorization or information
8 regarding your Blue Stone account and data. Amy
9 Watson will discuss any necessary e-mail password
09:03AM 10 changes."

11 Do you see that?

12 A Yes, sir.

13 MR. MITTAL: And can we go down to the next
14 paragraph.

09:04AM 15 Q You wrote:

16 "Should you have any IT or marketing
17 needs/questions, please refer to the below
18 individuals."

19 You can take this down. Can we put up 118.

09:04AM 20 Q And you also provided the contact information for
21 Mr. Yacobi and Mr. Mooers for IT and marketing-related
22 questions?

23 A Yes, sir.

24 Q Why did you send this e-mail?

09:04AM 25 A I wanted to notify that one of our team members was no

1 longer on the team. And one thing about working at Blue Stone
2 is you have access to highly confidential data. And the
3 actions that I was a witness to the evening before led me to be
4 concerned on several levels. One is that he could attempt
09:04AM 5 and --

6 MR. KHOURI: Your Honor, the witness is engaging in
7 a narrative.

8 THE COURT: Overruled.

9 You can continue, sir.

09:05AM 10 THE WITNESS: Thank you.

11 One, because if he had the ability to go back into
12 anybody's system, like he did the evening before and take down
13 more data, delete more data, that was very concerning to me
14 obviously. The actions that had taken place the night before
09:05AM 15 of having the police involved and -- was very concerning to me.
16 And that led me to be concerned about the safety of our other
17 team members to be irrational behavior that was taking place.
18 And for those two reasons, felt it was important to notify them
19 immediately, not to engage. And if you had any questions or
09:05AM 20 needs for your projects, you know, please let us know by the
21 following contacts.

22 MR. MITTAL: Can we take this down.

23 Q On November 20th, 2014, did you contact the FBI about the
24 deletions?

09:05AM 25 A I did, yes.

1 Q And why did you contact the FBI?

2 A I was instructed to do so by the Irvine Police Department,
3 which I notified that Tuesday morning first thing. I was at
4 the Irvine Police Department and they informed me that this is
09:06AM 5 a serious crimes being committed here and they're over state
6 boundaries. And since it's over state lines, it would be out
7 of their jurisdiction and I would need to be referred to the
8 FBI in which they immediately referred me to Mr. Todd Munoz.

9 Q And did you work with the FBI during their investigation
09:06AM 10 and in preparation for today?

11 A Absolutely.

12 Q About a week later on November 26, 2014, did Blue Stone
13 file a civil lawsuit against the defendant?

14 A We were instructed to do so, yes.

09:06AM 15 Q And is that civil case as well as counterclaims that were
16 filed by the defendant still pending?

17 A That is correct.

18 Q Following November 2014, did Blue Stone's revenue change?

19 A We had a significant drop in revenue and loss of contracts
09:07AM 20 at Blue Stone since the incident. Almost put us out of
21 business.

22 Q Can you take a look at Exhibit 86. Do you recognize
23 Exhibit 86?

24 A Yes, I do.

09:07AM 25 Q What is Exhibit 86?

1 A This is our financial picture of the company. It's a
2 small company. It's our amount of billings that we have billed
3 tribal clients on an annual basis, 2012 through 2017. The
4 accrual base is the monies that were actually billed when we
09:08AM 5 completed a project. The cash base is the monies that were
6 actually received or paid during that same period.

7 MR. MITTAL: Your Honor, I move to admit Exhibit 86.

8 THE COURT: Any objection?

9 MR. KHOURI: No, Your Honor.

09:08AM 10 THE COURT: Exhibit 86 will be received into
11 evidence.

12 **(Exhibit No. 86 received.)**

13 MR. MITTAL: Can we publish 86.

14 Q Would it be fair to say between 2012 and 2013, Blue Stone
09:08AM 15 was roughly a \$2 million business?

16 A Yes, slightly higher, 2.192 to be exact. Yes.

17 Q And then in '15, can you describe what happened with the
18 revenue?

19 A We had an immediate loss of contracts and it was -- almost
09:09AM 20 100 percent of that was due to Nikishna posting classified
21 information that he had taken from the firm on the Internet and
22 social media. That classified information was information that
23 we received from the tribes to do their projects about
24 businesses that they owned, about the performance of those
09:09AM 25 businesses, about our recommendations on some of those

1 businesses. So he took the information from the firm,
2 confidential on tribes.

3 And because we have nondisclosure agreements that we
4 are to hold that information within the firm and not share it
09:09AM 5 with anybody. Due to Nikishna's actions, those nondisclosure
6 agreements were broken and we lost the business with the tribes
7 because they couldn't trust us.

8 MR. KHOURI: Your Honor, move to strike. This is
9 not a breach of contract case.

09:09AM 10 THE COURT: Overruled.

11 Q BY MR. MITTAL: And what you're talking about, that's
12 your belief and understanding of what happened with the
13 revenue; correct?

14 A Absolutely.

09:10AM 15 Q Did the defendant make public statements about Blue Stone
16 also?

17 A Very derogatory statements about whistleblowing that were
18 completely untrue that brought forth months after he left the
19 company, allegations of wrongdoing, which were all completely
09:10AM 20 false as the FBI has fully investigated all of those. And he
21 made comments --

22 MR. KHOURI: Your Honor, objection. Lack of
23 foundation.

24 THE COURT: Overruled. You can cross-examine on it
09:10AM 25 and you have a continuing objection.

1 MR. KHOURI: Thank you, Your Honor.

2 THE WITNESS: He made derogatory comments about our
3 team members, our tribal advisers and the tribes, in fact, that
4 we worked with.

09:10AM 5 Q BY MR. MITTAL: And following the events of the evening
6 of November 18, 2014, did Blue Stone try to determine what
7 happened to its IT systems?

8 A Yes.

9 Q And did you and others learn that data had been deleted
09:11AM 10 from various accounts of Blue Stone on November 17 and 18 of
11 2014?

12 A Yes. And after as well.

13 Q And did those include the website files, the Vtiger
14 system, files on the Apple Mac Pro computer that we've been
09:11AM 15 talking about, as well as accounts with Google, MailChimp and
16 Cox online backup service?

17 A That is correct.

18 Q Did you and other Blue Stone employees spend time
19 responding to those deletions?

09:11AM 20 A Yes. It was of the highest priority to find out what had
21 transpired and what damage had been done.

22 Q And did that time include conducting a damage assessment
23 in attempting to restore your files and systems to their
24 condition before the deletions?

09:12AM 25 A That is correct.

1 Q Can you take a look at Exhibit 84.

2 A Yes.

3 Q Did you review and prepare Exhibit 84 to calculate how
4 much Blue Stone had spent on responding to these deletions
09:12AM 5 including conducting the damage assessment and attempting to
6 restore file systems to their state before the deletions?

7 A Yes, sir.

8 Q Is Exhibit 84 limited to losses for Blue Stone within one
9 year of November 18, 2014?

09:12AM 10 A That is correct.

11 MR. MITTAL: Your Honor, I move to admit Exhibit 84.

12 THE COURT: Any objection?

13 MR. KHOURI: No, Your Honor.

14 THE COURT: Exhibit 84 will be received into
09:13AM 15 evidence.

16 **(Exhibit No. 84 received.)**

17 Q BY MR. MITTAL: So Exhibit 84, is that based on Blue
18 Stone's records as well as your knowledge about how much time
19 people spent following the events of November 18, 2014?

09:13AM 20 A That is correct.

21 Q And would it be fair to say if the employees that are
22 listed here were not working on responding to these deletions,
23 they would have been doing work that would lead to generating
24 business?

09:13AM 25 A That is correct.

1 Q All the employees on the left side of this exhibit
2 starting with Jamie Fullmer, were those payroll employees as
3 opposed to independent contractors?

4 A That is correct.

09:13AM 5 Q And does the second column there outline some of the
6 tasks that they performed related to responding to the
7 deletions of Blue Stone data?

8 A That is correct.

9 Q Does the third column list the number of hours spent in
09:14AM 10 the year that followed?

11 A Yes.

12 Q And can you explain briefly the next four columns there
13 starting with "Hourly Rate" through "Total."

14 A So the hourly rate is actually the rate that they were
09:14AM 15 paid. So you take off their biweekly paycheck. And whatever
16 that exact amount was to the cost of the firm is how it's
17 calculated here. There's no markup or profit or any additional
18 charges. It's only the exact money that they were paid per
19 hour.

09:14AM 20 Q And then the 20 percent overhead, what does that mean?

21 A That represents the taxes. You have to provide, in some
22 cases, matching taxes to the employee and then the health
23 benefits cost for that period of time for those -- for that
24 number of hours.

09:14AM 25 Q Can you explain what some of these tasks are. So looking

1 at Mr. Fullmer, it says "project management." What does that
2 mean?

3 A So there was so much destruction here. You've listed
4 the -- all the files and the various applications that were
09:15AM 5 deleted or removed or dismantled in some cases. So we divided
6 and conquered. And so we each kind of set teams up on how
7 we're going to address our website, for instance, how that's
8 going to be managed to get the work done, who's going to do it,
9 who's going to oversee it, what kind of resources are needed.

09:15AM 10 So each of these tasks, whether it's how to deal
11 with data recovery, how to recreate the website, how to find
12 out if the we could get some of our information back on our
13 customer relationship system, those were all parts of this.
14 And we defined responsibilities and divided it up to try to get
09:15AM 15 the work done as quickly as we could.

16 Q One of the other tasks listed there is website creation
17 and website recreation support. What does that mean?

18 A So our website was completely demolished. Nikishna took
19 it down and not only removed it but dismantled it section by
09:16AM 20 section with great intent. So in this particular case, we had
21 to rebuild the website section by section and -- to hope to get
22 back in business so we can generate opportunities through our
23 website. And it's used as a knowledge source, so we needed to
24 get back in business. So that was part of that effort.

09:16AM 25 Q So, for example, it's listed you as website creation. I

1 assume you weren't doing the nitty-gritty of coding?

2 A No, sir.

3 Q What was your role in website recreation?

4 A Looking at the content. There's a lot of content on our
09:16AM 5 website. And so everything from our list of services to our
6 referrals and testimonial section to about the firm section,
7 about our staff section, all those sections of the website were
8 destroyed. And so making sure all that content was relevant
9 and refreshed and accurate.

09:17AM 10 Q And then the CRM system investigation, what does that
11 mean?

12 A As I've mentioned earlier, this customer relationship
13 management proprietary system that was built specifically for
14 Blue Stone was completely demolished. So we were in hopes of
09:17AM 15 getting some of the information back. It was seven years of
16 data that had been populated in that database that would --
17 resided there. And trying to get access to that and working
18 with Vtiger, trying to understand is there a possibility to
19 recreate that, and there wasn't. So, unfortunately, all that
09:17AM 20 was lost. So we had to basically start from the beginning
21 again.

22 Q There's a field that says "Document Recreation." What
23 does that mean?

24 A We have documents that are posted on our website. You
09:17AM 25 could go in and download a PDF on a particular service and get

1 it printed out so you can use it as a handout to share with
2 tribal leaders and tribal council. Those are all lost. So
3 they had to be recreated from the beginning.

4 Q Under Mrs. Watson and Mrs. Gordon, then Ms. Goodman,
09:18AM 5 "data loss/recovery attempts," what does that mean?

6 A Exactly the same. It's understanding can it be recovered.
7 So looking at what we had on file, any old data that we could
8 collect and possibly piece it back together, trying to work
9 with MailChimp to see if there's access that we could get to
09:18AM 10 some of the older files that we could recreate. It was just --
11 it was a survival mode of how we could rebuild the
12 infrastructure of our company in the shortest amount of time.

13 Q And all the employees that are listed here -- you can
14 look at both pages if you need to -- do they all still work at
09:18AM 15 Blue Stone?

16 A Unfortunately not. Financial demise of the company
17 directly contributed to loss of jobs, loss of careers. We had
18 to let go some longtime employees, which is the heartbreaking
19 part because of this damage in the attack against our company.
09:19AM 20 And so we were unable to keep the full staff.

21 Q During the investigation, did you provide the government
22 a different estimate initially of the loss?

23 A I did.

24 Q Did you revise it after reviewing the loss definition
09:19AM 25 that applies to this case?

1 A That is correct.

2 MR. MITTAL: Can we go to Page 2.

3 Take it down. Can you take this down.

4 Can you publish --

09:19AM 5 MR. KHOURI: Your Honor, can I approach, please?

6 THE COURT: This is probably a good time for our
7 morning break. Why don't we take a break.

8 **(Out of the presence of the jury.)**

9 THE COURT: Mr. Khouri?

09:20AM 10 MR. KHOURI: Your Honor, I didn't personally see
11 this. I was looking at Page 2 of whatever exhibit we were on,
12 84. But I'm informed that when counsel asked the agent to
13 bring up Page 2 of 84 that went up, that what went up on the
14 screen here at defense counsel table, and presumably the
09:21AM 15 screens of the jury they were looking at, was the UCI dismissal
16 letter.

17 I have the letter somewhere here, but it's my
18 recollection that it talked about those sexual misconduct
19 allegations and the theft of the computer. And for the record,
09:21AM 20 before I forget, because this is what I'm told by the lawyers
21 that speak at conferences, that I should be moving for
22 mistrial, and I do.

23 But I think we need to ask the jurors whether they
24 saw that letter and whether they read anything about it. And I
09:22AM 25 don't know how many seconds it was up, but I'm presuming

1 between the time that the agent put it up and counsel asked him
2 to please take it down, we're probably taking about five
3 seconds.

4 THE COURT: I'm not sure it was five seconds. I
09:22AM 5 didn't even -- I saw a "Notice of Dismissal" or something, but
6 that -- why don't you put it up.

7 MR. MITTAL: Yes, sir. It's Exhibit 1.
8 Can I respond?

9 THE COURT: Let me at least see it.
09:22AM 10 I just was able to see the Notice of Dismissal and
11 UC personnel, and then you've told him take it down.

12 MR. KHOURI: If --

13 THE COURT: Let me read it first, please, sir.
14 Did you want to say something else, Mr. Khouri,
09:23AM 15 before Mr. Mittal responds?

16 MR. KHOURI: Yes, Your Honor. If the Court saw it,
17 my client saw it -- I did not -- it's probable that the jurors
18 saw it. And I believe it could have an effect on the jury and
19 we should find out if they saw it and ask them each
09:24AM 20 individually if they saw it, if they read any part of it.

21 The term "sexual harassment" is on Page -- somewhere
22 there on Page 1 in the final paragraph. Says "Notice of
23 Dismissal." It has the "University of California, Irvine" at
24 the top -- I got a lot of those rejection letters when I was
09:24AM 25 graduating from high school -- but anyway, they see it, and

1 they see "Notice of Dismissal." And they say -- they have to
2 wonder about it. I'm not making any allegation that the FBI
3 agent did this intentionally. I'm assume it was a mistake,
4 but --

09:24AM 5 THE COURT: I get it. I get it.

6 MR. KHOURI: All right. Thank you.

7 THE COURT: I have to deal with this as it is. It
8 does have very serious allegations, and it is prejudicial. I
9 don't know whether they -- I didn't see those aspects of it.

09:25AM 10 All I saw was notice of dismissal. But I didn't see the
11 "sexual harassment" in the second paragraph and "sexual
12 harassment" in the end.

13 I do want to hear from you, Mr. Mittal, but I'm
14 inclined that I will have to, at the least, individually poll
09:25AM 15 each juror to see if they saw this and what they saw.

16 MR. MITTAL: I understand, Your Honor.

17 Just for the record, I note -- my memory is that it
18 was up for maybe a second or two. Because once I saw it, I
19 said, "Take it down." And the view that -- we all know what
09:25AM 20 this is because we've been here. I don't know if the lay jury
21 would even understand what this is without really spending some
22 time. I think it took me a while to see.

23 THE COURT: You know I can't --

24 MR. MITTAL: I know. I'm just making a record,
09:26AM 25 Your Honor.

1 THE COURT: No, I want you to speak for the record.
2 But when I individually poll them, I cannot start asking them
3 what they thought of it. All I have to ask is -- and what I
4 should ask -- is did they see it and what did they see. But I
09:26AM 5 can't comment or question them about what kind of impact it
6 had. It is -- it's very prejudicial.

7 I'm just frustrated. Why is this document even on
8 the system? I have no doubt that this was not intentional, but
9 I don't understand why you would have this document on the
09:26AM 10 system to allow this type of mistake.

11 MR. MITTAL: Your Honor, it's --

12 THE COURT: This was never going to come in.

13 MR. MITTAL: This was to impeach the defendant if he
14 testified and denied being terminated, because that was
09:26AM 15 allowed, to cross him on his termination.

16 THE COURT: But I thought this was an issue of the
17 first trial where I said we're not going to get into this
18 sexual harassment.

19 MR. MITTAL: Your Honor, but the second page goes
09:27AM 20 into the return of the laptop, and that is admissible to
21 impeach him on it. So this was to refresh his memory if he
22 denied he was terminated and he had to return the laptop that
23 was stolen. I understand the concern.

24 THE COURT: I mean, it's a lesson. I had a big
09:27AM 25 trial -- I don't understand the government's organization of

1 documents and exhibits. You've got to keep this crap separate
2 from the stuff that's coming in, because mistakes like this
3 happen when you commingle it. You've got to keep it separate.

4 MR. MITTAL: I understand, Your Honor.

09:27AM 5 THE COURT: It's not going to behoove us to dwell on
6 this. I do think I have to take each individual juror. And
7 what I'm proposing is to ask, "Okay, unfortunately, there was
8 an exhibit that came to the screen that is not relevant to this
9 case, and I need to understand if you saw the exhibit, and what
09:28AM 10 did you see," and that's it. And if -- I think we got a
11 problem if anybody says they saw it and they saw "sexual
12 harassment." If it's just the "Notice of Dismissal," I'm not
13 sure whether it be grounds for a mistrial. But if you have
14 "sexual harassment" in there, I think you got a problem.

09:28AM 15 MR. MITTAL: Just procedurally, was the Court going
16 to bring everyone in, and then if they say "yes," have them
17 stay individually to do it? I just don't want to taint
18 potentially more jurors.

19 THE COURT: Obviously, that's why I said I'm going
09:29AM 20 to individually poll them. We'll bring them in one at a time
21 and have to ask them.

22 MR. KHOURI: I take no pleasure criticizing the
23 government, especially the individuals that are here, but we've
24 seen lots of redaction and --

09:29AM 25 THE REPORTER: I'm sorry. Counsel, can you speak

1 into the mic.

2 MR. KHOURI: Oh, I'm sorry.

3 We've seen lots of redactions and e-mails and the
4 documents that were presented into evidence, and we took great
09:29AM 5 pains to look at all this. I really have no objection to any
6 of the exhibits. Why the paragraphs about sexual harassment
7 were not redacted in compliance with the Court's prior order,
8 that really should have been done. And, again, I take no
9 pleasure in this --

09:30AM 10 THE COURT: Well, I just think, Mr. Khouri, we're
11 going to probably have a time and place to discuss that if one
12 or more of the jurors saw this. But at this point, I think we
13 really need to bring in each juror one at a time and ask them
14 these questions.

09:30AM 15 MR. KHOURI: Thank you.

16 MR. MITTAL: Your Honor, we're not there yet. But
17 one thing I was going to -- we do have two alternates if we get
18 there. We can address that, but --

19 THE COURT: Right. Let's take it one step at a
09:31AM 20 time.

21 Give me one moment. I'll give you the specific
22 questions that I'm going to pose.

23 **(Pause in proceedings.)**

24 THE COURT: All right. What was the document,
09:34AM 25 Mr. Mittal, that you had asked to publish on the screen?

1 MR. MITTAL: We initially had Exhibit 84, Page 1 up,
2 and I was moving to Page 2.

3 THE COURT: And you asked to put up Page 2.

4 MR. MITTAL: Yeah.

09:34AM 5 THE COURT: And that's when it came up. Page 2 of
6 Exhibit 84?

7 MR. MITTAL: Yes, Your Honor.

8 THE COURT: I'll ask each individual juror:

9 "Prior to the break, Mr. Mittal asked that
09:36AM 10 Agent Munoz to publish Page 2 of Exhibit 84. An
11 irrelevant document, not Page 2 of Exhibit 84, was
12 inadvertently published on the screen, and
13 Mr. Mittal then immediately directed Agent Munoz to
14 take it down. I need to know if you saw the
09:36AM 15 document, and if so, what you saw."

16 So the first question, "Did you see the document?"
17 If they say "Yes," I'll say, "What did you see?"

18 MR. MITTAL: That's fine.

19 MR. KHOURI: My only concern is that they know what
09:37AM 20 Exhibit 84 is. In other words, I don't think they're going to
21 know which is which.

22 MR. MITTAL: We can publish 84, Page 1, just to
23 recreate the process.

24 THE COURT: I think your point's well taken, so we
09:37AM 25 can do -- I can say 84 is the summary chart, which we could

1 just keep on the screen. Would you rather that, or me just say
2 84 was the summary chart of the task?

3 MR. KHOURI: I think the latter is the best. But I
4 also think we should say right before we broke that the -- he
09:37AM 5 asked for Page 2 and another document came up. And maybe we
6 should even say it had "University of California" on top of it.

7 MR. MITTAL: I would object to that. We don't know
8 if --

9 THE COURT: Yeah, I don't want to suggest anything.
09:38AM 10 I don't want to suggest anything about that document to the
11 jury. And even just saying "UCI," especially given the "Notice
12 of Dismissal" in the title, I prefer to stay away from it.

13 MR. KHOURI: I agree, Your Honor.

14 THE COURT: That's the prejudicial document. But --
09:38AM 15 so I'll say, "Immediately prior to the break, Mr. Mittal asked
16 Agent Munoz to publish Page 2 of 84."

17 Do you want to have just 84 on the screen?

18 MR. KHOURI: Sure. I think that would be helpful.

19 THE COURT: All right.

09:38AM 20 MR. MITTAL: For the record, if Your Honor wants to
21 say, "Exhibit 84, Page 1, which is shown or published on the
22 screen," so it's clear that. Because I assume they'll recall
23 that exhibit.

24 THE COURT: Right.

09:38AM 25 MR. KHOURI: For the purposes of this hearing, could

1 I move government's Exhibit No. 1 into evidence and ask that it
2 be sealed for our record?

3 THE COURT: Yes, you may.

4 So we're going to call each juror, all 14 of them,
09:39AM 5 one at a time, and then I'll ask these questions. So could you
6 put Exhibit 84, first page of it, Agent.

7 Melissa, the less said, the better. It's just
8 the -- an issue has come up and the judge needs to ask each of
9 you a few questions. So I'm going to be taking you up one at a
09:39AM 10 time. And we'll start with Ms. Rowe. We'll go from -- we'll
11 first do the first 12 and then the alternates.

12 THE COURTROOM DEPUTY: Do you want me to tell them
13 not to say anything to each other?

14 THE COURT: I'll do that.

09:45AM 15 **(Recess from 9:40 a.m. to 9:46 a.m.)**

16 THE COURT: Counsel, I don't know if it was clear.
17 Please don't take offense, either side, but I want to do all
18 the questioning. Don't say anything.

19 **(Juror No. 1 entered the courtroom.)**

09:46AM 20 THE COURT: Good morning, Ms. Rowe. Why don't you
21 be comfortable, ma'am. Sit in the seat.

22 Ms. Rowe, an issue came up that I need to talk to
23 you about. And I'll be also talking with each juror about it.
24 And please, whatever we discuss, do not discuss with any of the
09:46AM 25 other jurors. I have to ask each of you some questions

1 individually. And I don't want anything that we say to in any
2 way influence what they would say. It's really important.

3 Okay. Prior to our break, Mr. Mittal was asking
4 that Agent Munoz publish Page 2 of Exhibit 84. On the screen
09:46AM 5 there is Exhibit 84. Unfortunately, an irrelevant document,
6 not Page 2 of Exhibit 84, was inadvertently published on the
7 screen. And then Mr. Mittal immediately directed the agent to
8 take it down. And I need to know if you saw the document, and
9 if so, what you saw.

09:47AM 10 So my first question for you: Did you see this
11 document that was flashed on the screen?

12 THE JUROR: I saw it, but I couldn't tell what it
13 said.

14 THE COURT: So you didn't see any of the information
09:47AM 15 on the document?

16 THE JUROR: No. No.

17 THE COURT: That's what I needed to know. And
18 again, please do not discuss what we discussed with any of the
19 fellow jurors.

09:47AM 20 **(Ms. Rowe left the courtroom, and**
21 **Mr. Aguilera entered the courtroom.)**

22 THE COURT: Okay. We have Mr. Aguilera?

23 THE COURTROOM DEPUTY: Yes.

24 THE COURT: Hello, Mr. Aguilera. Would you please
09:48AM 25 take your seat there, sir. I need to ask you a few questions

1 about an issue that came up immediately prior to the break.

2 THE JUROR: Sure.

3 THE COURT: I just want to reiterate anything that
4 we discuss, I don't want you to say anything to the other
09:49AM 5 jurors. I need to ask each juror questions about this issue,
6 and I don't want anybody being influenced by it. Okay?

7 THE JUROR: Understood.

8 THE COURT: So, like, immediately prior to our
9 break, Mr. Mittal had asked Agent Munoz to publish Page 2 of
09:49AM 10 Exhibit 84. If you look at your screen, that's Exhibit 84.
11 And then Mr. Mittal said, "Let's turn to Page 2."
12 Unfortunately, Page 2 was not published. And inadvertently
13 what was published was another document that's irrelevant to
14 this case. And I need to know -- well, before that, as soon as
09:50AM 15 Mr. Mittal realized that this irrelevant document was
16 published, he immediately directed the agent to take it down.
17 And I need to know if you saw that document, and if so, what
18 did you see.

19 THE JUROR: Yeah, I saw the document. The text was
09:50AM 20 too small to read, but it saw it pop up.

21 THE COURT: Okay. So you did see a document and you
22 were trying to read it, but you didn't see any of its contents.

23 THE JUROR: I saw the document pop up. I didn't
24 read any of the text.

09:50AM 25 THE COURT: Did you see any word on it?

1 THE JUROR: I just knew there were words, but I
2 couldn't make up any of the words.

3 THE COURT: Okay. That's what I need to know, sir.
4 If you could go back to the jury room. And please don't say
09:50AM 5 anything to anybody. All right? Thank you.

6 **(Mr. Aguilera left the courtroom and**
7 **Ms. Lee entered the courtroom.)**

8 Hello, Ms. Lee. How are you, ma'am?

9 THE JUROR: Good.

09:51AM 10 THE COURT: I need to ask you a few questions about
11 an issue that came up immediately prior to our break. And I
12 want to say at the outset, whatever we discuss, we need to keep
13 to ourselves. Do not discuss this with any of the other
14 jurors. Okay?

09:52AM 15 THE JUROR: Yes.

16 THE COURT: Immediately prior to the break,
17 Mr. Mittal had asked the agent to publish Page 2 of Exhibit 84.
18 Exhibit 84 should be on the screen there before you.

19 THE JUROR: Yes.

09:52AM 20 THE COURT: Unfortunately, Page 2 of Exhibit 84 was
21 not published and an irrelevant document having nothing to do
22 with this case was put on the screen. When Mr. Mittal realized
23 that that document was on the screen, he immediately directed
24 the agent to take it down. But I need to know if you saw that
09:52AM 25 document, and if so, what did you see from it.

1 THE JUROR: I only saw the top portion. I had not
2 seen anything below.

3 THE COURT: Okay. And what did you see in the top
4 portion?

09:53AM 5 THE JUROR: I couldn't read anything, but just saw
6 the centered wording and that was it, and it was taken off the
7 screen.

8 THE COURT: You couldn't see any of the wording?

9 THE JUROR: No.

09:53AM 10 THE COURT: Okay. That's what I needed to know.
11 Please don't say anything to the other jurors about this.

12 THE JUROR: Yes.

13 THE COURT: Okay. Thank you.

14 Mr. Tran, I believe, next.

09:53AM 15 **(Mr. Lee left the courtroom, and**
16 **Mr. Tran entered the courtroom.)**

17 THE COURT: Hello, Mr. Tran. Could you take a seat
18 there, sir.

19 THE JUROR: Yes, sir.

09:54AM 20 THE COURT: Immediately prior to the break, an issue
21 came up that I need to ask you a few questions about.

22 THE JUROR: Yes, sir.

23 THE COURT: But I want to reiterate that whatever we
24 discuss, we need to keep to ourselves. Do not discuss this
09:54AM 25 with any of the other jurors. Okay?

1 THE JUROR: Yes, sir.

2 THE COURT: Immediately prior to our break,

3 Mr. Mittal had asked the agent to publish Page 2 of Exhibit 84.

4 On your screen is the first page of Exhibit 84. And then,

09:55AM 5 unfortunately, Page 2 of Exhibit 84 did not come on the screen

6 and another document that's irrelevant to this case, had

7 nothing to do with this case, was put on the screen. When

8 Mr. Mittal realized that, he immediately told the agent to take

9 it down. What I need to know is, did you see that irrelevant

09:55AM 10 document? And if so, what did you see?

11 So my first question for you is, did you see the

12 irrelevant document that was put on the screen?

13 THE JUROR: Yes.

14 THE COURT: What did you see, sir?

09:55AM 15 THE JUROR: I see the payrolls document, a lot of
16 people around here. And I saw the hour and payment something.

17 THE COURT: Yeah, that was -- that was Exhibit 84.

18 THE JUROR: Yes.

19 THE COURT: But then Mr. Mittal, the record will

09:56AM 20 show, said, "Okay, Agent, put Page 2 of this exhibit." And

21 inadvertently, Page 2 was not put on the screen, and another

22 document that's irrelevant to this case was put on the screen.

23 Did you see that document?

24 THE JUROR: No.

09:56AM 25 THE COURT: So then you didn't -- if you didn't see

1 the document, then you wouldn't have known what were the
2 contents of it; correct?

3 THE JUROR: Yeah. Yeah.

4 THE COURT: All right. Okay. Now, I'm going to ask
09:56AM 5 you to go back to the jury room, but please don't discuss this
6 with any of the other jurors, all right, sir?

7 THE JUROR: Thank you.

8 THE COURT: All right. Thank you.

9 **(Mr. Tran left the courtroom.)**

09:57AM 10 THE COURT: The next juror should be Ms. Ibanez
11 Calderon. I thought during jury selection she said it was
12 Ms. Ibanez. I'll just, out of an abundance of caution, say
13 "Ibanez Calderon."

14 **(Ms. Ibanez Calderon entered the courtroom.)**

09:58AM 15 THE COURT: Hello, Ms. Ibanez Calderon. Can you
16 take a seat there. I need to ask you a question. Before we
17 have our discussion, I just want to reiterate to you that
18 whatever we discuss, I do not want you to discuss with the
19 other jurors. It's just we need to keep it between us. All
09:58AM 20 right?

21 THE JUROR: Understood.

22 THE COURT: Prior to the break, Mr. Mittal was
23 talking about Exhibit 84, which is that document that you see
24 on the screen. And then he directed the agent to put Page 2 of
09:58AM 25 that document up. Unfortunately, Page 2 did not come up and an

1 irrelevant document having nothing to do with this case came on
2 the screen. When Mr. Mittal realized that that irrelevant
3 document came up, he directed the agent to take it down. I
4 need to know if you saw that document, and if so, what did you
09:59AM 5 see.

6 Did you see that document?

7 THE JUROR: I saw the seal.

8 THE COURT: You saw the seal. Did you see what kind
9 of seal it was?

09:59AM 10 THE JUROR: No.

11 THE COURT: All right. Is there anything that you
12 saw?

13 THE JUROR: No.

14 THE COURT: All right. Again, would you please not
09:59AM 15 discuss this with any of the other jurors. Thank you.

16 **(Ms. Ibanez Calderon left the courtroom,**
17 **and Ms. Rangel entered the courtroom.)**

18 THE COURT: Hello, Ms. Rangel. Could you take a
19 seat there for us, ma'am. I need to discuss an issue that came
10:01AM 20 up immediately prior to our break. Whatever we discuss, I need
21 you to keep to yourself and not discuss it with any of the
22 other jurors. All right, ma'am?

23 THE JUROR: Okay. Yes.

24 THE COURT: Immediately prior to the break,
10:01AM 25 Mr. Mittal had directed the agent to put on the screen Page 2

1 of Exhibit 84. What you see there is the first page of
2 Exhibit 84. Unfortunately, the second page of Exhibit 84 was
3 not published, and inadvertently, an irrelevant document having
4 nothing to do with this case was put on the screen. When
10:01AM 5 Mr. Mittal realized that that wasn't Page 2 of Exhibit 84, he
6 immediately directed the agent to take it down. What I need to
7 know is if you saw that irrelevant document, and if so, what
8 did you see.

9 THE JUROR: I saw it being irrelevant.

10:02AM 10 THE COURT: Did you see -- so you saw some document
11 that was put on the screen?

12 THE JUROR: Perhaps this one?

13 THE COURT: No. This is what you see there is the
14 first page of Exhibit 84.

10:02AM 15 THE JUROR: Okay.

16 THE COURT: Okay. And then Mr. Mittal says, "Okay,
17 I now would like to show Page 2 of this exhibit." And Page 2
18 was not put up, it was another document that had nothing to do
19 with this case. And then Mr. Mittal realized that's not Page 2
10:02AM 20 of this Exhibit 84. And he said, "Agent, take it down." And
21 then we broke, because we realized that there was an irrelevant
22 document that was put on the screen. And I need to know if any
23 of the jurors -- and I'm going by -- asking each of you
24 individually so no one's influenced by anybody else's answers,
10:03AM 25 did you see that irrelevant document that was put on the

1 screen?

2 THE JUROR: No.

3 THE COURT: You didn't?

4 THE JUROR: No.

10:03AM 5 THE COURT: That's what I need to know. So if you
6 didn't see the document, then you have no idea what its
7 contents were.

8 THE JUROR: Right.

9 THE COURT: All right. Thank you. Please don't
10:03AM 10 discuss this with any of the other jurors, all right, ma'am?

11 THE JUROR: Okay. Thank you.

12 THE COURT: Thank you.

13 **(Ms. Rangel left the courtroom.)**

14 THE COURT: We're going to go to Juror No. 7,
10:03AM 15 Mr. De La Rosa.

16 **(Mr. De La Rosa entered the courtroom.)**

17 THE COURT: Hello, sir.

18 THE JUROR: Hello.

19 THE COURT: Could you please take a seat there.

10:04AM 20 THE JUROR: Yes.

21 THE COURT: Mr. De La Rosa, I have to ask you a few
22 questions about an issue that came up right prior to the break.
23 Whatever we discuss, I need you to keep to yourself. Please do
24 not discuss with any of the other jurors, all right, sir?

10:05AM 25 THE JUROR: Okay.

1 THE COURT: Immediately prior to the break, we were
2 focusing on Exhibit 84, which should be on your screen there.
3 And Mr. Mittal asked the agent to publish Page 2 of this
4 exhibit. Unfortunately, Page 2 of Exhibit 84 was not put on
10:05AM 5 the screen. Another document was put on that had nothing to do
6 with this case.

7 Mr. Mittal, realizing that that was not Page 2 of
8 Exhibit 84, told the agent take it off the screen. I need to
9 know if you saw that document, and if so, what did you see.

10:05AM 10 Did you see the document?

11 THE JUROR: Yes.

12 THE COURT: And what did you see, sir?

13 THE JUROR: I saw "Notice of Dismissal."

14 THE COURT: Notice of Dismissal. Did you see
10:05AM 15 anything else?

16 THE JUROR: I didn't have the time to read it. I
17 just saw the heading. I stopped reading after that because I
18 figured either we're going to continue talking about it or take
19 it down.

10:06AM 20 THE COURT: Okay. So all you saw was "Notice of
21 Dismissal" and nothing else; correct?

22 THE JUROR: Correct.

23 THE COURT: And you haven't discussed this with any
24 of your other jurors; correct?

10:06AM 25 THE JUROR: Correct.

1 THE COURT: All right. Now, please don't say
2 anything to any other jurors about this, all right, sir?

3 THE JUROR: Okay.

4 THE COURT: Thank you.

10:06AM 5 **(Mr. De La Rosa left the courtroom.)**

6 THE COURT: Should be Mr. Dominguez next.

7 **(Mr. Dominguez entered the courtroom.)**

8 THE COURT: Hello, Mr. Dominguez.

9 THE JUROR: Hi.

10:07AM 10 THE COURT: Sir, could you take that seat right
11 there. I need to ask you a few questions about an issue that
12 came up right before our break. Whatever we discuss, you need
13 to keep to yourself and not discuss with any of the other
14 jurors, all right, sir?

10:08AM 15 THE JUROR: Understood.

16 THE COURT: Prior to our break, Mr. Mittal was
17 focusing on Page 1 of Exhibit 84. That is the document you
18 should see on the screen before you. And then he asked the
19 agent to turn to Page 2 of this exhibit, sir. Unfortunately,
10:08AM 20 Page 2 was not put up, and a document that's irrelevant to this
21 case was put up there in its place. When Mr. Mittal saw that,
22 he told the agent to take it down.

23 I need to know if you saw the document that was
24 inadvertently put on the screen, and if so, what you saw.

10:09AM 25 THE JUROR: I have bad eyesight. I did not see

1 anything. I mean, it was a blur to me.

2 THE COURT: Okay. That's what I need to know. So,
3 obviously, if you didn't see the document, then you have no
4 idea what its contents were.

10:09AM 5 THE JUROR: None whatsoever.

6 THE COURT: All right. And again, this document was
7 irrelevant to this case. And I need to make sure that you
8 don't say anything to any of the other jurors, all right, sir?

9 THE JUROR: Yeah.

10:09AM 10 THE COURT: Thank you.

11 THE JUROR: Sure.

12 **(Mr. Dominguez left the courtroom,**
13 **and Ms. Joaquin entered the courtroom.)**

14 THE COURT: Hello, Ms. Joaquin. Ma'am, there's an
10:10AM 15 issue that came up that I need to ask you a few questions
16 about.

17 THE JUROR: Okay.

18 THE COURT: Whatever we discuss, I need you to keep
19 to yourself and not discuss with the other jurors, all right,
10:10AM 20 ma'am?

21 THE JUROR: Yes, sir.

22 THE COURT: Immediately prior to our break,
23 Mr. Mittal was talking about and asking questions about
24 Exhibit 84, and what was on the screen was Page 1 of
10:11AM 25 Exhibit 84. Then he asked the agent to put on the screen

1 Page 2 of this exhibit. Unfortunately, Page 2 was not put on
2 the screen and a document that's irrelevant to this case was
3 put on the screen in its place. When Mr. Mittal realized this
4 mistake, he told the agent to take that irrelevant document
10:11AM 5 down.

6 I need to know if you saw that document that was
7 inadvertently put on the screen, and if so, what did you see?

8 THE JUROR: I was aware of the situation, but I did
9 not -- I saw the document, but I could not make any -- anything
10:11AM 10 out of the document. I just saw basically a template of a
11 document, but no words or any -- anything on the document.

12 THE COURT: That's what I needed to know.

13 THE JUROR: Yes.

14 THE COURT: And if you could please, again, keep
10:12AM 15 this to yourself. Do not discuss this with any of the other
16 jurors, all right?

17 THE JUROR: Yes, sir.

18 THE COURT: Thank you.

19 **(Ms. Joaquin left the courtroom.)**

10:12AM 20 THE COURT: Should be Mr. Mozaffari now.

21 **(Mr. Mozaffari entered the courtroom.)**

22 THE COURT: Hello, Mr. Mozaffari. Sir, could you
23 take a seat there.

24 There's an issue that came up prior to our break
10:13AM 25 that I need to discuss with you. And whatever we discuss, I

1 need you to keep to yourself and not discuss with the other
2 jurors, all right, sir?

3 THE JUROR: Sure.

4 THE COURT: Immediately prior to the break,
10:13AM 5 Mr. Mittal was asking questions about Exhibit 84. The first
6 page of Exhibit 84 is on the screen there, sir.

7 THE JUROR: Yes.

8 THE COURT: He then asked the agent to publish and
9 put on the screen Page 2 of Exhibit 84. Unfortunately, Page 2
10:13AM 10 was not put on the screen and an irrelevant document was put on
11 the screen. When Mr. Mittal saw this irrelevant document on
12 the screen, he immediately told the agent "Take it down."

13 I need to know if you saw that document, and if so,
14 what did you see?

10:14AM 15 THE JUROR: No, I didn't see it. I see [sic] what
16 happened, but I didn't see the document.

17 THE COURT: Okay. So you don't have any idea what
18 its contents were?

19 THE JUROR: No. No.

10:14AM 20 THE COURT: Would you please go back to the jury
21 room. And please do not discuss what we discussed with any of
22 the other fellow jurors.

23 THE JUROR: Sure.

24 THE COURT: Thank you, sir.

10:14AM 25 **(Mr. Mozaffari left the courtroom.)**

1 THE COURT: Is it Verdin-Flores, is that how you
2 pronounce the next juror's name? "Verdin"?

3 MR. MITTAL: I believe so, Your Honor. That's how I
4 pronounced it.

10:15AM 5 **(Mr. Verdin-Flores entered the courtroom.)**

6 THE COURT: Hello, Mr. Verdin-Flores, sir.

7 THE JUROR: Hello.

8 THE COURT: Could I have you take that seat right
9 there. I need to discuss an issue with you. Whatever we
10:15AM 10 discuss, I need you to keep to yourself. Please do not discuss
11 this with any of the other jurors. Okay, sir?

12 THE JUROR: Okay. Yes.

13 THE COURT: Immediately prior to the break,
14 Mr. Mittal was asking questions and focusing on Exhibit 84,
10:16AM 15 specifically Page 1 of 84. That is the document that's on the
16 screen there, sir. He then asked the agent to put Page 2 of
17 this document on the screen. And unfortunately, there was
18 another document that was put on the screen; it was not Page 2
19 of Exhibit 84.

10:16AM 20 When Mr. Mittal realized that that document that's
21 irrelevant was put on the screen, he immediately told the agent
22 "Take it down." I need to know if you saw that document, and
23 if so, what you saw.

24 THE JUROR: I did see that document, but I -- it
10:16AM 25 was -- I didn't get a chance to look at it very well.

1 THE COURT: Its contents, did you see any word that
2 you could recognize?

3 THE JUROR: No. No.

4 THE COURT: No. It was just print?

10:17AM 5 THE JUROR: Right. Yes, I didn't see anything that,
6 you know, that I could make out, you know, words. Just print.

7 THE COURT: Okay. That's what I need to know.
8 Please do not discuss this matter with any of your fellow
9 jurors. All right?

10:17AM 10 THE JUROR: Okay.

11 THE COURT: Thank you.

12 **(Mr. Verdin-Flores left the courtroom,**
13 **and Ms. Martin entered the courtroom.)**

14 THE JUROR: Hello.

10:18AM 15 THE COURT: Could you take a seat there, ma'am. I
16 need to discuss an issue with you that came up prior to our
17 break.

18 THE JUROR: Okay.

19 THE COURT: At the outset, I want to say whatever we
10:18AM 20 discuss, please keep to yourself. Do not discuss it with any
21 of the other jurors, all right, ma'am?

22 THE JUROR: Okay.

23 THE COURT: Immediately prior to the break,
24 Mr. Mittal was asking questions about Exhibit 84, which is on
10:19AM 25 the screen there --

1 THE JUROR: Uh-huh.

2 THE COURT: -- particularly Page 1 of Exhibit 84.

3 He then asked the agent to put Page 2 of that

4 exhibit on the screen. And unfortunately, Page 2 was not put

10:19AM 5 on the screen, another document that's irrelevant to this case

6 was put on the screen. When Mr. Mittal realized the mistake,

7 he told the agent "Take it down."

8 THE JUROR: Okay.

9 THE COURT: I need to know if you saw the document.

10:19AM 10 And if so, did you see any of its contents?

11 THE JUROR: I really only remember if it did happen,

12 it happened so fast. I wasn't paying attention.

13 THE COURT: So you didn't see anything in that

14 document?

10:19AM 15 THE JUROR: No.

16 THE COURT: That's what I needed to know,

17 Ms. Martin. Thank you for your time. If you could go back to

18 the jury room. Please do not discuss this with any of the

19 other jurors.

10:20AM 20 THE JUROR: Okay. Thank you.

21 THE COURT: Thank you.

22 **(Ms. Martin left the courtroom and**

23 **Ms. De La Rosa entered the courtroom.)**

24 THE COURT: I think we'll have Ms. De La Rosa.

10:21AM 25 Hello, Ms. De La Rosa. Ma'am, would you take a seat

1 there. Great.

2 There's an issue that came up that I need to discuss
3 with you.

4 THE JUROR: Yes.

10:21AM 5 THE COURT: Whatever we discuss, I need you to keep
6 to yourself and not discuss with any of the other jurors, all
7 right, ma'am?

8 THE JUROR: Yes.

9 THE COURT: Immediately prior to the break,
10:21AM 10 Mr. Mittal was asking questions about Exhibit 84 that should be
11 on the screen there in front of you. And he was focusing on
12 the first page of Exhibit 84. Then he asked the agent to put
13 on the screen Page 2 of this exhibit. And unfortunately,
14 Page 2 did not come on the screen, another document did that
10:21AM 15 has nothing to do with this case. It's not relevant. When
16 Mr. Mittal realized that it was the wrong document, he told the
17 agent "Take it down."

18 I need to know if you saw that document, and if so,
19 what did you see? Did you see the document?

10:22AM 20 THE JUROR: I saw a flash of it. Because I was
21 looking at the screen, because this was being projected. I can
22 remember seeing Nikishna's name. And then I think it had
23 something to do with him, the unemployment. I didn't see -- I
24 didn't read the document, but --

10:22AM 25 THE COURT: Okay.

1 THE JUROR: -- I saw a flash.

2 THE COURT: I want to take our time. I'm sorry if
3 this seems like a test, but it's really important that I have a
4 very good understanding of exactly what you saw.

10:22AM 5 So you saw a document, and you saw
6 Mr. Polequaptewa's name. Did you see anything else?

7 THE JUROR: I think the word "resignation." So
8 probably had to do with resignation and that's all I remember.

9 THE COURT: That's all you remember?

10:23AM 10 THE JUROR: Uh-huh.

11 THE COURT: Have you discussed this document and
12 what you saw with any of your other jurors?

13 THE JUROR: No.

14 THE COURT: All right. Again, please keep this to
10:23AM 15 yourself and don't discuss it with anybody. All right?

16 THE JUROR: Okay.

17 THE COURT: Thank you.

18 **(Ms. De La Rosa left the courtroom, and**
19 **Mr. Cohen entered the courtroom.)**

10:24AM 20 THE COURT: Hello, Mr. Cohen.

21 THE JUROR: Hello.

22 THE COURT: Sir, would you take a seat there.

23 There's an issue that came up; I need to ask you a few
24 questions about it. Whatever we discuss, sir, would you please
10:24AM 25 keep to yourself and not discuss it with anyone?

1 THE JUROR: Yes.

2 THE COURT: Okay. Prior to our break, Mr. Mittal
3 was asking questions and focusing on Exhibit 84, which is on
4 the screen before you. He then asked the agent to put on the
10:25AM 5 screen Page 2 of that exhibit. And unfortunately,
6 inadvertently, another document was put on the screen, not
7 Page 2 of Exhibit 84, and that document is irrelevant, has
8 nothing to do with this case. And when Mr. Mittal realized the
9 mistake that was made, he told the agent "Take it down," and
10:25AM 10 the document was taken down. But I need to know if you saw
11 that document, and if so, what did you see?

12 THE JUROR: I saw the document but did not see the
13 content. It was not legible.

14 THE COURT: You could not see any of the words?

10:25AM 15 THE JUROR: Correct.

16 THE COURT: That's what I need to know. Would you
17 please go back to the jury room, and please do not discuss this
18 with any of the jurors, all right, sir?

19 THE JUROR: Okay.

10:25AM 20 THE COURT: Thank you.

21 **(Mr. Cohen left the courtroom.)**

22 THE COURT: I think as a result of my inquiry of
23 each juror, there were only two jurors that saw the document
24 and saw some contents. My recollection is Ms. De La Rosa saw a
10:26AM 25 "Notice of Dismissal" only. She didn't see anything else. And

1 then Mr. De La Rosa saw the defendant's name -- excuse me --
2 Ms. De La Rosa saw the defendant's name and she thought she saw
3 the word "resignation" as well. All the other jurors that I
4 polled didn't see the document or any of its contents. So with
10:26AM 5 that, what is the parties' request? Probably should start with
6 the defense first. Mr. Khouri.

7 MR. KHOURI: Thank you, Your Honor. I think at the
8 very least, Mr. De La Rosa and -- well, the two that read
9 something on the document at the very least should be dismissed
10:27AM 10 because they saw a document that the Court has excluded from
11 the evidence excepting very limited circumstances. They
12 obviously -- it's going to be obvious to all the jurors that
13 saw the document, it was -- that it's a government exhibit and
14 it's something that is incriminating as to the defendant.

10:28AM 15 So if these two jurors actually saw information on
16 the document, I don't see how it cannot affect them
17 especially -- and I know I asked for this procedure, so I'm not
18 trying to have my cake and eat it too. But the fact of the
19 matter is once we go through this procedure, everybody knows
10:28AM 20 that a document has been shown by the government. It's got to
21 be incriminating of the defendant or the government wouldn't
22 have it in their exhibit book. And they're being told not to
23 talk to one another about it.

24 So I think it's especially apparent with respect to
10:28AM 25 the two jurors who saw the content, and I think it actually --

1 all the other jurors -- I think the Court should grant a
2 mistrial because all the other jurors, with the exception of
3 two or three, saw the document proffered by the government and
4 have been told not to talk to one another about it. I just
10:29AM 5 can't see how that isn't going to affect their judgment of the
6 facts of the case because they're all going to be wondering
7 what was in the document. What was it in the document that is
8 bad about the defendant?

9 It was brought up by the FBI agent, and it was in
10:29AM 10 the government's exhibit book. I don't think there's one
11 exculpatory exhibit that the government has admitted so far or
12 they wouldn't be admitting them.

13 THE COURT: All right. I understand your argument.
14 Mr. Mittal?

10:29AM 15 MR. MITTAL: Your Honor, just to clarify for the
16 record, I think the genders may have gotten confused.

17 THE COURT: Mr. De La Rosa was the one who saw
18 "Notice of Dismissal" only, and Ms. De La Rosa saw the
19 defendant's name and the word "resignation." That's my notes,
10:30AM 20 and that's my recollection.

21 MR. MITTAL: And that's what I have, Your Honor,
22 too.

23 I guess addressing the mistrial issue first, I think
24 the counts were very consistent, and I don't think we're
10:30AM 25 anywhere near that point for a mistrial.

1 In terms of what to do with the jurors that saw some
2 content, and those are Mr. and Mrs. De La Rosa -- obviously no
3 relation -- I think they should remain on, and we can see how
4 things progress. I don't really have any concern with
10:30AM 5 Mrs. De La Rosa because her interpretation was -- she thought
6 it was something that related to his resignation, like a
7 resignation letter or something. Her response didn't indicate
8 any prejudice.

9 For Mr. De La Rosa, he saw a "Notice of Dismissal."
10:31AM 10 I think that was the biggest thing in block letters on the
11 document. Particularly, if the defendant testifies, I think
12 any prejudice from seeing that becomes moot because his
13 termination is going to be in front of the jury. There will be
14 an admission to the termination. If he does not testify, that
10:31AM 15 may change whether he should remain. But I think we can
16 address that when we get there.

17 THE COURT: I agree with some of what you said, and
18 I disagree with -- or I have concerns with it. And you can
19 maybe talk me out of it.

10:31AM 20 I am going to deny the motion for a mistrial. I
21 don't believe there has been any actual prejudice -- legal
22 prejudice to Mr. Polequaptewa. I don't think Mr. De La Rosa
23 has been tainted, but out of an abundance of caution, I'm
24 thinking of replacing him with Ms. De La Rosa. I think if you
10:32AM 25 listen to all the testimony, it's clear that Mr. Polequaptewa

1 resigned. And there's been no mention about UCI. She --
2 Ms. De La Rosa doesn't have anything to connect it to UCI. And
3 resignation is -- sounds to me it's going to be a more
4 favorable characterization than termination. So I just don't
10:32AM 5 see any prejudice at all with her.

6 But a Notice of Dismissal, I don't know what that
7 means, and I can't inquire. I think it would be inappropriate
8 to ask Mr. De La Rosa, "Well, what do you think 'Notice of
9 Dismissal' means?" And given this -- this is a serious case,
10:33AM 10 serious charges, out of an abundance of caution, I'm inclined
11 to replace him. It's unfortunate, but I think we should do
12 that out of an abundance of caution.

13 MR. MITTAL: Your Honor, the only thought I had is
14 what I mentioned, if the defendant testifies, it's going to be
10:33AM 15 in front of them, that he received a Notice of Dismissal and
16 was terminated. So any prejudice from seeing those three
17 words, I think, would be moot. If he doesn't testify and it
18 doesn't come in, I think I would agree with Your Honor that we
19 should replace him.

10:33AM 20 THE COURT: Yeah, but, in other words, you cannot --
21 I think there would be more prejudice if I then recused him or
22 dismissed him at that time; whereas, right now I've
23 individually polled each juror, and I've asked them if they've
24 seen this document. And what I'm going to give an instruction
10:34AM 25 to the jury is -- or what I'm proposing is something to the

1 effect that "I've asked you individually about a document that
2 was inadvertently put on the screen. That document is
3 irrelevant to this case. It has no bearing on it. I've
4 excused one of your jurors, because unfortunately, he saw the
10:34AM 5 document. I'm instructing you not to discuss this document or
6 consider it during your deliberations." Something to that
7 effect.

8 It just seems to me if I deal with it now given
9 we've taken 40 minutes or more to deal with this, it's better
10:35AM 10 we can move on. If a couple days from now, tomorrow, or next
11 week I then all of a sudden say, "Okay, I'm going to dismiss
12 Mr. De La Rosa," I think that's prejudicial.

13 MR. MITTAL: Your Honor, I'll defer to the Court. I
14 don't have a strong opinion. But I think the taint is
10:35AM 15 lessened, then, because at that point the jury is not going to
16 understand why he was let go. It could be, you know, we're
17 coming back Tuesday and he doesn't testify and we're closing
18 and, you know, it's a scheduling issue. We can sanitize it.
19 Whereas, right now, obviously, everyone knows he's being
10:35AM 20 dismissed because of this document.

21 THE COURT: I mean, it is what it is. You -- people
22 have a lot of common sense. And they know that this is an
23 important issue. Again, I don't think it's prejudicial because
24 they didn't see anything. This happens all -- I don't want to
10:36AM 25 say this issue happens all the time, but the jurors constantly

1 in trials are hearing in questions or documents either side is
2 trying to get in, and I say it's not coming in. And we have
3 instructions where I strike things from the record and you have
4 to disregard it.

10:36AM 5 And if you tell the jury, "You need to disregard it.
6 It's irrelevant," I think the law supports my view is that
7 they'll do the responsible thing. And every person I polled, I
8 thought they acted with integrity. I'm not suggesting either
9 side is saying they didn't, but -- honest and forthright -- and
10:36AM 10 if I tell them this document has nothing to do with this case
11 and it's irrelevant, they're going to accept that.

12 MR. MITTAL: I understand, Your Honor.

13 And just for the record, I just want to note our lit
14 support is removing that exhibit from the laptop. We're
10:37AM 15 learning this hard way but, obviously, it's an error on our
16 part. So we'll have this removed.

17 THE COURT: At some point I think we need to talk
18 about this because now this is the second time something like
19 this has come up, and I just don't understand. I really -- I
10:37AM 20 don't want to say it's laziness, but it's intellectual laziness
21 is that I don't think there was a hope that that document was
22 ever going to come in.

23 But giving the government all the benefit of the
24 doubt that maybe if something happens at trial, some form of it
10:37AM 25 could come in, I still don't know why you would keep that

1 document with all the other documents. That document talks
2 about sexual harassment. It talks about minors. And it talks
3 about being fired from a university, which is not a trivial
4 thing.

10:38AM 5 And my knowledge of universities, it has to be
6 pretty darn serious to be fired. And that's incredibly
7 prejudicial, you know. And I know everybody at the table well
8 enough, this was not intentional. But you just got to keep
9 that stuff separate because this happens.

10:38AM 10 Now, this is the second time that this has happened
11 to me within a year. In the other case, not to bore you with,
12 the government, they thought they were going to be able to get
13 in a very serious gang case, prior felony convictions including
14 rape, RICO -- assault, RICO conspiracy with the Bloods. And
10:39AM 15 then you had all these convictions. There must have been 14 or
16 18 of them, including, like I said, rape, sexual assault. And
17 I'm at a loss to understand -- and the chances that any of
18 these defendants were going to testify with their criminal
19 history was nil. It was not like this case.

10:39AM 20 So again, I'm not really understanding and I'm quite
21 frustrated with the government's trial preparation. You're
22 obviously being trained that you can keep these documents
23 together. And I realize the efficiency and the scale, but it's
24 just so darn dangerous.

10:39AM 25 And you see in this case, you have a document where

1 the university has fired him for sexual misconduct with a
2 minor. I mean, in this circuit if they had saw that, and I
3 said we're going to go, it would have been immediately
4 reversed. And, in my opinion, being a judge for 16 or 17 years
10:40AM 5 and sitting by designation on the Ninth Circuit, they would
6 have reversed me in a nanosecond. And all this time and effort
7 over this inadvertent mistake. You just got to be very, very
8 careful.

9 And I don't know why the training is -- you can do
10:40AM 10 it this way. Because it's clearly -- now I've seen this is the
11 pattern and practice of the United States Attorney's Office
12 that someone's telling you you can commingle impeachment
13 exhibits, even explosive impeachment exhibits, with the other
14 exhibits that everyone knows is going to come in. And you just
10:41AM 15 can't do that. You got to keep them separate.

16 MR. MITTAL: I understand, Your Honor. And I'm
17 aware of the frustration that's caused the Court in the prior
18 proceeding. I do plan to report this to our office. And my
19 practice is not --going to be to not do this again.

10:41AM 20 THE COURT: Okay. Enough said.

21 Let me just give you the exact wording of the
22 instruction I want to give to the jurors.

23 And then, Mr. Khouri, you can make your record. And
24 I take no offense. I know you disagree with me.

10:41AM 25 **(Pause in proceedings.)**

1 THE COURT: All right. My proposed instruction is:

2 "I have discussed with each of you a document
3 that was inadvertently put on the screen. This
4 document was irrelevant to this case.

10:46AM 5 Mr. De La Rosa, unfortunately, saw the document and
6 its contents, so I have excused him from service --
7 from further service on this case. I am
8 instructing you not to discuss or consider this
9 matter, the document or Mr. De La Rosa's excusal
10:46AM 10 during your deliberations. It is not evidence that
11 you can consider."

12 You want me to read it again?

13 MR. KHOURI: No, Your Honor.

14 THE COURT: Okay. Any objections?

10:47AM 15 MR. KHOURI: Yes, Your Honor.

16 THE COURT: To its wording or just the issue of
17 denial of the mistrial or not excusing the other person? Or
18 you don't even want me to say anything?

19 MR. KHOURI: As to form and content and wording, I
10:47AM 20 think it's a good instruction; however, we object because we
21 believe a mistrial should be granted.

22 I appreciate the Court's time and effort in thinking
23 about this. I think that if we dismiss a juror, the rest of
24 the jurors are going to say something really bad about Nikishna
10:47AM 25 was in that document. And that's going to affect them,

1 especially when you combine it with Mrs. Ibanez Calderon
2 indicated they saw the seal. She couldn't say whether it was a
3 UC seal, but I think we all know that a document with a seal on
4 it comes from a government agency. And I think it's going to
10:48AM 5 have an effect on her. So I'd ask that she be excused. That
6 would leave us with the two alternates. But I think
7 Ms. De La Rosa should be excused because she saw "resignation."

8 In my mind and the context of this case, the word
9 "resignation" is the same as "termination." The Attorney
10:48AM 10 General of the United States just asked for his resignation and
11 gave it. But everybody knows that he was terminated.

12 So I think the same issue applies to Ms. De La Rosa.
13 And we don't want to be pitted having a right to testify,
14 pitted against or not, being put in a position where we might
10:49AM 15 be better off with a jury if we don't testify because of the
16 government's mistake.

17 So finally, if the Court disagrees, I would rather
18 have Mr. Cohen replace Mr. De La Rosa because Ms. De La Rosa,
19 in my mind, we have the same problem. Because termination
10:49AM 20 equates to -- I'm sorry -- "resignation," in my mind, in this
21 context, equates to termination.

22 THE COURT: I just -- I think what I'm having a
23 problem with, Mr. Khouri, is that this jury has heard a lot
24 about resignation. So I'm sensing from your argument is that
10:49AM 25 there's something inherent about "resignation" and

1 "termination" that's prejudicial. And I just don't see it in
2 this case.

3 You know, if this was sexual harassment with a minor
4 as referred to in this exhibit, those words are explosive. I
10:50AM 5 get it. And I meant what I said. Had they seen that, it would
6 have been a no-brainer for me. Mistrial. But I don't see the
7 word "resignation" given the facts of this case, given that
8 Mr. Polequaptewa himself resigned. I'm not seeing prejudice
9 from that.

10:50AM 10 MR. KHOURI: But the -- and that's where this issue
11 of whether he testifies or not comes in because as soon as he
12 gets on the stand like last time and he testifies about being
13 terminated from UCI, you put that together with one of the
14 jurors seeing the seal and the other alternate saying, "I saw
10:51AM 15 something in there about resignation" and it's a government
16 document being proffered by the government, now we're in the
17 position of "Do we testify or not?"

18 THE COURT: Well, you have to make your own
19 decision. And I don't in any way want to be suggesting what
10:51AM 20 that decision should be. That is a matter for you and
21 Mr. Polequaptewa alone. But again, I'm just not seeing this
22 issue in this case rising to the level of prejudice. There are
23 a lot of evidentiary calls that happen during a trial and
24 evidence is excluded or stricken, and the jury hears it, but
10:51AM 25 you tell them disregard it. And I don't think this is an issue

1 that is so explosive that the jurors can't follow that
2 instruction. And they've heard it.

3 MR. KHOURI: All right, Your Honor. Thank you very
4 much. However, could we request that Mr. Cohen replace
10:52AM 5 Mr. De La Rosa?

6 THE COURT: No, because I guess if there's a
7 stipulation to that effect, I would consider it. But I'm
8 always very concerned about the randomness of the jury. And
9 the first alternate is Ms. De La Rosa. And I'd be taking --
10:52AM 10 putting him ahead of the line, and I don't think it would be
11 proper if I did that on my own. It would be an issue for
12 appeal. What -- but if parties want me to replace
13 Mr. De La Rosa with Mr. Cohen, I'll consider that.

14 MR. MITTAL: Your Honor, before you -- I just want
10:52AM 15 to offer maybe a way to split the baby here. If the concern is
16 about the excusal highlighting the issue, one way to do it is
17 maybe to excuse Mr. De La Rosa at the end of today. And then I
18 don't know if the jury needs to be advised of why he was
19 excused and just make it irrelevant to them and remove that
10:53AM 20 from the instruction. Just tell them that -- and I'm
21 paraphrasing, but whatever the Court had, just strike the
22 portion that discusses his excusal.

23 THE COURT: Well, I think there is a model
24 instruction. When someone's excused during deliberation, you
10:53AM 25 just tell the jury the juror has been excused and don't

1 consider this. And I can do that if that's what the parties
2 would want. I take a very practical approach to these things.

3 We've obviously taken now -- it's almost going to be
4 two hours dealing with this, at least an hour and a half. So
10:54AM 5 it's in the jury's mind. And, you know, I just want to nip it,
6 deal with it and move on. And what you're suggesting, it's
7 making it linger. And I'm worried that that could have a
8 little prejudicial effect is well -- then they're going to
9 maybe start having bad thoughts, "Why did the judge get rid of
10:54AM 10 him."

11 I think given I had to do this individual colloquy
12 with them, that maybe best way to deal with it is, listen, this
13 happened. It shouldn't have happened, but it had happened.
14 And out an abundance of caution, he's gone.

10:54AM 15 MR. MITTAL: Understood, Your Honor. I don't think
16 we have an objection if the defense is adamant requesting
17 Mr. Cohen to be seated.

18 THE COURT: Okay. Well, there was two things, then,
19 you said, Mr. Khouri. Why don't you respond. First thing
10:55AM 20 Mr. Mittal is proposing is that I wait to excuse Mr. De La Rosa
21 until the end of the day. And then the second was, well, we're
22 willing, if you and the defense feel strongly, to replace
23 Mr. De La Rosa with Mr. Cohen.

24 MR. KHOURI: Right. May I have one moment,
10:55AM 25 Your Honor.

1 THE COURT: You may.

2 MR. KHOURI: Thank you.

3 **(Counsel and defendant conferred off the record.)**

4 MR. KHOURI: Your Honor, we believe that the Court
10:55AM 5 is correct, that it should be nipped in the bud right now and
6 Mr. De La Rosa should be excused. We also believe that
7 Mr. Cohen should replace Mr. De La Rosa.

8 THE COURT: All right. So pursuant to the parties'
9 agreement, I will replace Mr. De La Rosa with Mr. Cohen instead
10:56AM 10 of Ms. De La Rosa.

11 What I want to do, then, is I want to call
12 Mr. De La Rosa back in and let him know that I excused him.
13 It's unfortunate, but out of an abundance of caution, fairness
14 to both sides, I think this is the appropriate thing to do.
10:56AM 15 And as a courtesy, we will call him and let him know if there
16 is a verdict reached in this case and what the verdict is.

17 Melissa, would you be kind enough to get
18 Mr. De La Rosa back in here.

19 THE COURTROOM DEPUTY: Yes.

10:57AM 20 THE COURT: You're almost done with Mr. Mooers?

21 MR. MITTAL: I think I had maybe about ten minutes.

22 THE COURT: Okay. So I would want us, then, to pick
23 back up with his testimony.

24 Debbie, how are you doing?

25 THE REPORTER: I'm fine. Are we going to break at

1 12:00?

2 THE COURT: I will break at 12:00.

3 THE REPORTER: Then I'm fine to keep going.

4 THE COURT: Okay.

5 **(Mr. De La Rosa entered the courtroom.)**

6 THE COURT: Mr. De La Rosa, sir, after thinking
7 about it and getting input from the lawyers, out of an
8 abundance of caution, I'm going to excuse you from this case
9 because you did see some contents of the document. I'm truly
10:58AM 10 sorry if this frustrates you or upsets you. You obviously
11 didn't do anything wrong, but the case is obviously an
12 important case to the parties. And out of an abundance of
13 caution, I just -- I just think it would be better if you
14 didn't serve on the case. Given you did see a document, you
10:58AM 15 did see a notice of dismissal, I just would prefer and I think
16 it's safer if I excused you from the case. I'm sorry about
17 that.

18 THE JUROR: Yes, Your Honor. That's fine.

19 THE COURT: I will have Melissa call you and let you
10:59AM 20 know if a verdict is reached and what that verdict is. And I
21 can't tell you how much I appreciate your service. You were
22 great. You were here. You were diligent, I saw you were
23 paying attention. And truly it is regrettable that I feel I
24 have to excuse you because you did your duty. And I appreciate
10:59AM 25 it, sir.

1 THE JUROR: Thank you, Your Honor.

2 THE COURT: All right. Melissa, you want to take
3 Mr. De La Rosa --

4 Do you have to pick up your stuff? Do you have
10:59AM 5 stuff in there?

6 THE JUROR: Yes.

7 THE COURT: Get his stuff, excuse him, and then
8 bring all the jurors back.

9 **(Mr. De La Rosa was excused.)**

10:01AM 10 THE COURT: How is this impacting the time estimate?
11 Do you think we can still complete the government's case today?

12 MR. MITTAL: Today, no. Mr. Khouri indicated his
13 witnesses won't be here until Tuesday. He told me this
14 morning. I don't know if that's still true.

11:01AM 15 MR. KHOURI: One, Mrs. Polequaptewa is in Arizona at
16 the reservation. And so if she has to be here tomorrow, she's
17 going to have to drive during the night with her children. And
18 we were hopeful that she could drive Monday during the day and
19 testify. She's going to have to bring the children, pull them
11:02AM 20 out of school and testify on Tuesday.

21 There is one other witness that we would like to
22 call and it has to do with the issue of how well
23 Mr. Polequaptewa was doing at his employment. I believe she
24 was on the witness list. And we need to call her and tell her
11:02AM 25 when to come. And I'm thinking Tuesday or -- and on Friday if

1 we have time, Mr. Polequaptewa could testify.

2 THE COURT: Okay. So you don't think we'll -- if
3 the government's not going to -- sounds like you're going to
4 finish today. So you're going to be going into tomorrow?

11:03AM 5 MR. MITTAL: Yes, Your Honor.

6 THE COURT: That will be fine.

7 MR. KHOURI: Thank you, Your Honor.

8 **(In the presence of the jury.)**

9 THE COURT: Ladies and gentlemen, I'm sorry for the
11:03AM 10 delay. It's one of those things that happens. As you know, I
11 discussed with each of you a document that was inadvertently
12 put on the screen. This document, as I indicated, is
13 irrelevant to the case. Mr. De La Rosa, unfortunately, saw the
14 document and its contents, so that's why I excused him from
11:04AM 15 further service on this case. I am instructing you not to
16 discuss or consider this matter, the document, or
17 Mr. De La Rosa's excusal during your deliberations. It is not
18 evidence that you can consider. All right. Matter's done.

19 Mr. Mooers ready to retake the stand?

11:04AM 20 MR. MITTAL: Yes, Your Honor. Can we recall
21 Mr. Mooers?

22 THE COURT: Please do.

23 Mr. Mooers, if you would please take the stand
24 again, sir. And I'll remind you you're still under oath.

11:04AM 25 THE WITNESS: Yes, sir, Your Honor.

JOHN MOOERS, GOVERNMENT'S WITNESS, RESUMED THE STAND

DIRECT EXAMINATION (CONTINUED)

BY MR. MITTAL:

Q Mr. Mooers, before we broke, we were talking about
Exhibit 84. Do you recall that? It's published on the screen.

A Yes, sir.

Q And I'm publishing now Page 2 of Exhibit 84. What's the
total for the losses that Blue Stone incurred based on the work
that Blue Stone employees did in response to the deletions in
November of 2014?

A \$48,550.60.

Q Can you flip to Exhibit 85. Do you recognize Exhibit 85?

A Yes, sir.

Q What is Exhibit 85?

A It's a copy of what we call an e-blast. E-blast is a
communication out to our database that was held within our CRM
system. And it goes out to tribal leaders, influencers,
clients, and prospective clients within tribes. And it
explains about a particular service offering that we're
promoting or we believe they could have knowledge and benefit
from.

Q Is this an example of one that you would keep in the
regular course of your business?

A Yes. We try to do these monthly.

MR. MITTAL: Your Honor, I move to admit 85.

1 THE COURT: Any objection?

2 MR. KHOURI: No, Your Honor.

3 THE COURT: Exhibit 85 will be received into
4 evidence.

11:06AM 5 **(Exhibit No. 85 received.)**

6 Q BY MR. MITTAL: I'm publishing the bottom there. You see
7 that?

8 A Yes, sir.

9 Q So this was an e-mail from your general
11:06AM 10 bluestonestrategy.com e-mail address to yourself?

11 A That's correct.

12 Q Were these the type of campaigns that you used MailChimp
13 for?

14 A That is correct.

11:06AM 15 Q Can you just generally describe what this specific one
16 is.

17 A This particular e-blast, as we refer to it, is talking
18 about our strategic planning services. And there was a lot
19 going on with the economy at this particular time and
11:06AM 20 uncertainty are regarding tribal law and sovereignty. And so
21 it was an e-blast to really education the opportunity of
22 developing a strategic plan to help create jobs and businesses
23 on tribal reservations to help them -- encourage them to think
24 about the opportunities and the uncertainty that lies ahead and
11:07AM 25 how a plan would specifically help them accomplish that.

1 Q Starting on Page 6, is there another e-blast?

2 A That is correct.

3 Q Do you see the title there, "Building Capacity is Key to
4 Tribal Economies"?

11:07AM 5 A That is correct.

6 Q Can you briefly explain what's contained in this second
7 e-blast.

8 A It's thought leadership content, again, with the purpose
9 to educate and support and provide knowledge to tribal leaders
11:07AM 10 and tribes alike. This particular focus is on how to build
11 internal capacity for their team members, from training, to
12 understanding how to run businesses more efficiently. So this
13 is all helping them build their internal capacities in order to
14 run their businesses more efficiently.

11:08AM 15 Q Do you use these e-blasts to market to new and old
16 clients?

17 A That's correct.

18 Q Do you see the bottom there on Page 11, says, "You can
19 update your preferences or unsubscribe from this list"?

11:08AM 20 A That's correct.

21 Q Did you use MailChimp to store data regarding people's
22 opting out of your list?

23 A Yes. That's very important, especially the indian country
24 working with governments that we would send out an e-blast.

11:08AM 25 And then there are some individuals, for whatever reason, would

1 unsubscribe. So that information was captured in MailChimp.
2 So they never received another correspondence from us. That
3 was very important because we never wanted to come off as, you
4 know, that we were pushy or nagging. And they specifically had
11:09AM 5 to opt out.

6 Q And anyone who didn't want to be on this list or your
7 marketing campaigns could opt out, and Blue Stone would no
8 longer solicit them?

9 A That's correct.

11:09AM 10 MR. MITTAL: Nothing further, Your Honor.

11 THE COURT: Very well.

12 MR. KHOURI: One moment, please, Your Honor. Thank
13 you.

14 **CROSS-EXAMINATION**

11:09AM 15 BY MR. KHOURI:

16 Q Good morning, sir.

17 A Good morning.

18 Q I think you know who I am. I'm Mike Khouri. I'm

19 Mr. Polequaptewa's lawyer. We're familiar with each other from
11:10AM 20 the prior proceeding; correct?

21 A Yes.

22 Q And in that proceeding you testified under oath to tell
23 the truth. Remember that?

24 A Yes.

11:10AM 25 Q Just like you did today?

1 A Yes.

2 Q And you understood that obligation of that oath on each
3 occasion, didn't you?

4 A Yes.

11:10AM 5 Q Okay. We're going to get back to that.

6 I want to start out by showing you some documents
7 that the government showed you that had been -- have been
8 admitted into evidence. The first one is Exhibit 13. Could
9 you turn to that. I'll show you Page 3 of 7.

11:10AM 10 A Yes, sir.

11 Q Got it? This is a self-appraisal form that Nikishna
12 filled out when he was employed at Blue Stone; right?

13 A Yes.

14 Q And it looks like it was filled out on August 7, 2014; is
11:11AM 15 that correct?

16 A Yes.

17 Q And he started in April; true?

18 A Yes.

19 Q And this was the first formal appraisal or evaluation
11:11AM 20 that Blue Stone did of Nikishna's performance; correct?

21 A I'm not aware if there was one previous to this or not,
22 sir.

23 Q Well, you were CEO of the company?

24 A Yes.

11:11AM 25 Q Were you responsible ultimately for the performance

1 evaluations of the employees that you directly supervised?

2 A We have an HR person that administers that. But I was
3 obviously involved. I don't know if there was one previous to
4 this or not.

11:11AM 5 Q Okay. You were Nikishna's supervisor; correct?

6 A At the time, yes.

7 Q Wouldn't it make sense if there was one, you would know?

8 A I just don't recall. I would probably be aware if I -- if
9 there was one, but I just don't know for certain if there was
11:12AM 10 one before this or not.

11 Q Okay. All right. Now, this is a process where the
12 employee is asked to fill out a self-appraisal first; true?

13 A Yes.

14 Q And then sometime after that, the self-appraisal was
11:12AM 15 reviewed by yourself; is that correct?

16 A I would be one of the people to review it, yes.

17 Q Along with who else?

18 A Jake Bouie, who's involved in HR. And then in many cases,
19 if there is any other direct reports that he has in this case,
11:12AM 20 possibly Mr. Jamie Fullmer being chairman of the board
21 potentially could have reviewed this as well.

22 Q Now, do you know when you reviewed it, this document?

23 A Not a specific date, no, sir.

24 Q But you did review it?

11:12AM 25 A Yes.

1 Q And would it have been within a week of August 7 or --
2 yeah, August 7?

3 A I think that would be an estimate, sir.

4 Q Did you write an evaluation of Nikishna yourself on a
11:13AM 5 different form?

6 A I was involved in that.

7 Q And was one written?

8 A Yes. I believe it was, yes.

9 Q And you don't have it right now in court, do you?

11:13AM 10 A No, I don't have that with me.

11 Q And isn't it true that after their self-evaluation was
12 reviewed and after you performed your own self- -- or your own
13 evaluation along with Mr. Bouie and Mr. Fullmer, that Nikishna
14 received a raise of \$5,000?

11:13AM 15 A Yes. At this point in the relationship, he was doing a
16 good job.

17 Q Okay. And as a matter of fact, as a reward for doing a
18 good job -- and "reward" might be a bad word, but we can talk
19 about that -- he was given the opportunity to work on one of
11:13AM 20 the company's major clients, the Seminole Tribe project; right?

21 A That was an assignment in his normal job duties, yes.

22 Q And I think you said on direct examination that it was an
23 honor for him to be assigned to a client of such significance?

24 A Not just for him, but the community, the firm as a whole.
11:14AM 25 It's an honor to work at the Seminole Tribe of Florida.

1 Q And it was an honor for Nikishna to work for the Seminole
2 Tribe of Florida?

3 A I would agree with that.

4 Q And you certainly wouldn't put someone with a client of
11:14AM 5 that significance that you thought would be a failure, would
6 you?

7 A No, sir.

8 Q Okay. There was an individual who testified earlier in
9 this case. I think his name was Mr. Moon. Do you know
11:14AM 10 Mr. Moon, Bill Moon?

11 A Yes, sir.

12 Q Who is Bill Moon?

13 A Bill was a project manager at Blue Stone.

14 Q All right. And what type of authority, if any, did he
11:15AM 15 have over Mr. Polequaptewa?

16 A He had oversight -- daily oversight as far as his project
17 roles and responsibilities on strategic projects that Bill was
18 responsible for. So they worked very closely together on
19 projects that Nikishna and Bill were assigned to.

11:15AM 20 Q Okay. They worked closely together; right?

21 A Yes.

22 Q Is that "yes"?

23 A Yes.

24 Q Okay. I try to stay away from nodding the head and
11:15AM 25 things like that because the court reporter needs to take it

1 down.

2 Okay. And did you discuss Nikishna's performance
3 with Mr. Moon?

4 A Yes.

11:15AM 5 Q Did you discuss Nikishna's performance with Mr. Moon
6 prior to the time that you gave him the \$5,000 raise -- gave
7 Nikishna a \$5,000 raise?

8 A I actually have to look and see if Mr. Moon was hired on
9 that date or not, sir.

11:16AM 10 Q Okay. Do you know when Mr. Moon was hired?

11 A I don't have that date in my memory.

12 Q Was it -- was he hired before Nikishna was assigned to
13 work on the Seminole project?

14 A Yes.

11:16AM 15 Q All right. So do you know how long before that he was
16 hired?

17 A No. I know there was an earlier piece of evidence that
18 referred to an on-boarding process that might be helpful to
19 review if you want me to, but I don't want to guess at it.

11:16AM 20 Q That's okay. Does it make sense to you that you would
21 have discussed Nikishna's performance with Mr. Moon before
22 Nikishna was assigned to the Seminole project?

23 A Yes, sir.

24 Q All right. And at the time you assigned Nikishna to the
11:16AM 25 Seminole project, you believe Nikishna was doing a good job?

1 A I would need to explain my answer there, sir.

2 Q Well, did you believe he was doing a good job?

3 A I had concerns.

4 Q All right. I thought you said earlier that Nikishna was
11:17AM 5 doing a really good job.

6 A In August.

7 Q All right. And when was he assigned in September to the
8 Seminole project?

9 A I believe it was late October, if I'm not mistaken.

11:17AM 10 Q And didn't you just testify that you wouldn't have ever
11 signed anybody to the Seminole project if you thought he was
12 going to be a failure; right?

13 A That's correct.

14 Q Okay. Let's move on.

11:17AM 15 I would like to show you another exhibit. It's
16 Exhibit 30. And just so that -- well, let me know when you're
17 there. It's up on the screen too.

18 A Yes, sir.

19 Q Okay. That's a receipt for the purchase of a computer
11:18AM 20 used by Nikishna at Blue Stone; right?

21 A That's correct.

22 Q And that particular receipt relates to the desktop
23 computer that was located in Nikishna's office in Irvine,
24 California?

11:18AM 25 A Yes, sir.

1 Q Now, you testified earlier, and correct me if I'm wrong,
2 I don't want to put words in your mouth, that when files were
3 being -- when you perceive that files were being deleted, you
4 believe that the laptop that Nikishna had in Florida was Blue
11:18AM 5 Stone's property?

6 A At that time, I did.

7 Q Later on you learned that, in fact, it was not Blue
8 Stone's property; correct?

9 A That's correct.

11:18AM 10 Q How much later on?

11 A After the incident, trying to recollect exactly, probably
12 within several days.

13 Q Several more than ten or less than ten?

14 A I would think it would be less than ten.

11:19AM 15 Q More than five or less than five?

16 A I would think around five days would be an estimate.

17 Q Did you -- how did you learn that?

18 A There was two situations. One is that we provided the
19 serial numbers of the computers that were purchased by
11:19AM 20 Nikishna, and the serial number didn't show up on our list.

21 Q That's fine.

22 And did you find out that the computer did not
23 belong to Blue Stone before it was given to the FBI or after?

24 A No, it was after.

11:20AM 25 Q And I'm a little unclear. Who gave the computer to the

1 FBI agent? Did you or did your lawyer?

2 A The -- our lawyer.

3 Q You received the laptop computer from Florida by
4 overnight delivery; correct?

11:20AM 5 A Yes, sir.

6 Q It was received at the office in Irvine, California?

7 A That's correct.

8 Q And then you gave that computer in a sealed container, I
9 presume, to your lawyer in Irvine?

11:20AM 10 A Yes. We did not open the package once it arrived in
11 Irvine. And an attorney came by and picked it up.

12 Q Once you found out that Nikishna -- that Blue Stone did
13 not actually own that computer, did you try to get it back to
14 Nikishna?

11:21AM 15 A We notified the authorities, sir.

16 Q You notified the FBI that the computer actually did not
17 belong to Blue Stone?

18 A That's correct.

19 Q Then how do you know that your lawyer gave it to the FBI?

11:21AM 20 A Mr. Todd Munoz communicated with me that he was
21 coordinating the pickup of the computer directly from the
22 attorney. And the attorney confirmed that it was picked up as
23 scheduled.

24 Q Do you know how long the computer was at the lawyer's
11:21AM 25 office?

1 A I don't know. I know it's just a matter of logistics on
2 when the FBI was able to have it picked up.

3 Q Couple days?

4 A I don't know the answer to that. I would think it would
11:21AM 5 be within a couple of weeks. It's just logistics. I don't
6 know. I understand it was still sealed as well.

7 Q Well, you don't know that, do you?

8 A It was confirmed by the attorney that it was sealed. And
9 it was confirmed by the FBI when it was picked up that it was
11:22AM 10 still sealed.

11 Q That's what the lawyer told you; right?

12 A Yes.

13 Q Now the lawyer's office was in Irvine, California as
14 well; correct?

11:22AM 15 A That's correct.

16 Q Do you know where the lawyer kept the computer in his
17 office?

18 A I don't know specifically that answer. I know that it was
19 evidence, so he told me it was in a secure location. That's
11:22AM 20 all I know.

21 Q Did he know that it was in a locked location or secure
22 location other than what you were told?

23 A I don't know that. That would be something you could ask
24 him.

11:22AM 25 Q Okay. And that was a Mr. Berliner?

1 A That's correct.

2 Q And do you know if the FBI asked him that?

3 A I'm not aware of that.

4 Q Do you know if the FBI agent went to the office in Irvine
11:22AM 5 to check and see if it was kept in a secure location?

6 A All I know is the FBI did arrange a pickup of the laptop
7 in a secured package that -- that's what I was instructed.

8 Q Okay. Did you ever see that secure package that was
9 given to the FBI by Mr. Berliner, your lawyer?

11:23AM 10 A Once it left my office in a secured package, it was not
11 opened. Then it was given over, and that's the last time I saw
12 the laptop.

13 Q So you don't know if the secured package that
14 Mr. Berliner gave to the FBI was the same one that you gave to
11:23AM 15 Mr. --

16 A No, that would be an assumption.

17 Q Let's go back to some documents here. And you don't have
18 any idea about whether Mr. Berliner accessed that computer, do
19 you?

11:23AM 20 A He told me he did not.

21 Q Of course he did.

22 And he was the same lawyer that filed the civil
23 lawsuit against Mr. Polequaptewa; correct?

24 A That's correct.

11:23AM 25 Q Okay. We'll talk about that in a little bit.

1 Could you turn to Exhibit 129, please.

2 A Yes, sir.

3 Q I'm going to show you Page 2.

4 A Yes, sir.

11:24AM 5 Q This is an e-mail at the top from Nikishna to Mr. Palmer;
6 right?

7 A Yes.

8 Q And Mr. Palmer is who?

9 A Subject matter expert, as I stated earlier.

11:24AM 10 Q And what's a subject matter expert?

11 A So they come on to -- in Blue Stone's team for a specific
12 project. He has great financial analytic skills. So part of
13 the project at the Seminole Tribe of Florida was to run
14 numbers. So he was assigned on a project basis to that project
11:25AM 15 for the duration of the project.

16 Q Was he in Florida at this time, do you know?

17 A Yes.

18 Q Okay. And did you become aware that the people that were
19 in Florida at that time were having a problem accessing their
11:25AM 20 e-mails and other information on the computer?

21 A You know, I was aware of this particular e-mail that I was
22 copied on. I wasn't aware of all the other assumptions that
23 Nikishna stated in early e-mails that there were many people
24 having problems. I wasn't aware of those problems and not made
11:25AM 25 aware of those problems.

1 Q All right. So what prompted Nikishna's e-mail to
2 Mr. Palmer was an e-mail from Mr. Palmer to Nikishna which is
3 just below; right?

4 A Uh-huh.

11:26AM 5 Q See that one --

6 A Yes, sir.

7 Q -- dated November 15, 2014 --

8 A Right.

9 Q -- at 9:24 a.m.? And that would be Eastern Time; right?

11:26AM 10 A I don't know if that's Eastern.

11 MR. MITTAL: Objection. Lacks foundation. Calls
12 for speculation.

13 THE COURT: Overruled. Just if you know, sir.

14 THE WITNESS: I don't know if that's Eastern Time.

11:26AM 15 Q BY MR. KHOURI: It's November 14, 2014, and Mr. Palmer is
16 in Florida with the rest of the team, then; correct?

17 A That's my understanding, yes.

18 Q Okay. So he says -- read along with me --

19 "Hi, Nikishna. Do you know anything about
11:26AM 20 this password change? I've tried the new password
21 I was given below, but I'm unable to log in. I do
22 not recognize myself the name Eldad or the phone
23 number below, so I thought I would check in with
24 you. Could you help me figure out how to log in or
11:27AM 25 confirm that this is 100 percent legit."

1 So doesn't that tell you that Mr. Palmer is having
2 an issue with logging into his computer in Florida?

3 A That's what that represents.

4 Q Right? Okay.

11:27AM 5 And at that point in time, the IT responsibilities
6 had been transferred to Mr. Yacobi; right?

7 A That is correct.

8 Q Had the employees been told that they should be asking
9 these questions of Mr. Yacobi at this time?

11:27AM 10 A As referenced in the e-mail below, attached to the same
11 piece of evidence, they were all notified with a phone number.

12 Q Well, the e-mail below is a phone number; right?

13 A Uh-huh.

14 Q On November 14, 2014?

11:28AM 15 A Right.

16 Q And that's the e-mail where you notified the employees to
17 talk with Mr. Yacobi about IT problems?

18 A Amy Watson, our office manager, whose phone number and
19 name is stated in there, is the one that sent that e-mail out.

11:28AM 20 Q Okay. But do you know why Mr. Palmer decided to contact
21 Nikishna?

22 A I have no idea why, other than when I read the e-mail, he
23 was directed to obviously another number and a contact of
24 Eldad.

11:28AM 25 Q Okay. So there's another e-mail, too, that I'm going to

1 show you. Some of people were still contacting Nikishna with
2 IT questions; right?

3 A I'll have to see that evidence, yes.

4 Q And did it ever occur to you that that was because
11:28AM 5 Mr. Yacobi was not being responsive to their questions?

6 A No, I didn't assume that at all.

7 Q All right. So there's some information below at the very
8 bottom that I'd like to ask you some questions about.

9 A Yes, sir.

11:29AM 10 Q This comes from Amy Watson; right?

11 A That's correct.

12 Q And she says:

13 "We are updating our Blue Stone e-mail
14 passwords this evening. After 8:00 p.m. Pacific
11:29AM 15 Time, your password will be" -- and he tells
16 Mr. Palmer what his password is; right?

17 A Right.

18 Q Or she does. (Reading:)

19 "Any questions over the weekend, please
11:29AM 20 contact Eldad at the phone number. Thank you for
21 your assistance," blah, blah, blah. Okay.

22 So it's pretty clear from that that Amy Watson has
23 the new password for Mr. Palmer; right?

24 A So the answer is, sir, that as I mentioned earlier in
11:30AM 25 testifying, there was a decision after the change of

1 responsibility from Eldad to take over IT is that we reset all
2 passwords for a fresh start. And this is the result of that.
3 So all passwords were reset at that time. They were all
4 notified, and then they worked to set up their own personal
11:30AM 5 passwords, yes.

6 Q And Amy and Eldad had access to all those passwords;
7 right?

8 A Amy and Eldad had accessed to reset the passwords as they
9 were the administrators, to reset the passwords and then worked
11:30AM 10 with each team member to reset their own individual passwords
11 defined by the team member.

12 Q And Amy and Eldad were the ones after November 14 that
13 had the administrator responsibilities; correct?

14 A That's what we assumed.

11:30AM 15 Q Okay. And Amy -- well, Eldad was the one who had access
16 to everybody's computer; correct?

17 A When you say "access to everyone's computer," just with
18 regard to resetting passwords.

19 Q With regards to resetting passwords?

11:31AM 20 A Yes.

21 Q Okay.

22 A Yes, sir.

23 Q There's another exhibit. This is Exhibit 50, Page 2 of

24 2. That's another e-mail from Nikishna to Amy Watson; correct?

11:31AM 25 A Yes, sir.

1 Q And this is November 18th?

2 A Yes.

3 Q And Nikishna is indicating to Amy, and it looks like
4 you're copied on this, that there are a lot of problems in

11:32AM 5 Florida with the computers; correct?

6 A That's what he states.

7 Q Okay. And that's what Mr. Palmer stated too; right?

8 A Mr. Palmer said he was having an issue with his password
9 and was redirected to Eldad. Also in earlier testimony, there

11:32AM 10 was correspondence with Eldad addressing this with

11 Mr. Nikishna, and he could not remember who had issues.

12 Q Right. Mr. Palmer was having an issue; right?

13 A Mr. Palmer was the only one that I was aware of that was
14 having an issue, and he was redirected.

11:32AM 15 Q And Nikishna's telling you that there are other people
16 there having issues; right? Did you ever think that the team
17 members were going to Nikishna and asking him to fix the
18 computer problem?

19 A I actually -- just the opposite, sir. I felt that -- I
11:33AM 20 felt that this was a limited situation with Mark Palmer. It
21 was his clarification to deal with Eldad, and I felt that
22 Nikishna was trying to develop reasons to become the
23 administrator again and get access back into our system. And
24 this became very concerning to me.

11:33AM 25 Q All right.

1 A Because he was instructed not to.

2 Q Right. And you assume that to be true because you had
3 turned over the administrator responsibilities to Mr. Yacobi;
4 correct?

11:33AM 5 A That's correct.

6 Q Okay. Okay. Let's go to Exhibit 86. Let me know when
7 you're there.

8 A Yes, sir.

9 Q Okay. So what I heard you say on direct examination was
11:34AM 10 that the decrease in cash revenue of the company was because
11 that Nikishna was saying bad things about you all on the
12 Internet; true?

13 A That he had disclosed confidential documents that were
14 part of tribal projects; that he had taken those and posted
11:34AM 15 those and made those public, which broke confidentiality
16 agreements with the tribe, which, in turn, unfortunately, the
17 contracts were discontinued because of our breaking of that
18 nondisclosure agreement.

19 Q Okay. I got some questions to ask you about all of this.
11:34AM 20 Okay. You're sure that in your belief that the reason why Blue
21 Stone's cash revenues went down is because of what you call a
22 breach of a confidentiality agreement; correct?

23 A That is the main cause, absolutely, is Nikishna's actions
24 combined with breaking confidentiality agreements.

11:35AM 25 Q Okay. And the confidential information you say he

1 received, this is information that he had access to as an
2 employee; correct?

3 A No.

4 Q Well, he was -- he had worked there for months, hadn't
11:35AM 5 he?

6 A Not on this project.

7 Q Okay. And you say that there was a confidentiality --
8 well, okay. Not on this project. But he could access those --
9 that information on those Blue Stone computers when he worked
11:35AM 10 there; right?

11 A Not necessarily, sir. No.

12 Q Well --

13 A These are projects that are not assigned to him. He was
14 not involved in the data. He had to intentionally go into
11:36AM 15 other people's files to get that data in order to get that and
16 publish it.

17 Q Right. And he could have done that when he worked there;
18 right?

19 A As IT administrator, obviously, he did.

11:36AM 20 Q Got it. Got it. Okay.

21 And when he did that as IT administrator, nothing
22 was deleted or destroyed or anything like that. That occurred,
23 according to you, after he resigned; correct?

24 A When he downloaded the information, and I don't know if
11:36AM 25 that was prior to his resignation or during the event right

1 after his resignation, but he gained access to a lot of data in
2 which he went public with some of that confidential data. And
3 this was one example.

4 Q All right. Good. And it's your -- and you believe that
11:36AM 5 that was a violation of some sort of confidentiality agreement;
6 correct?

7 A Absolutely.

8 Q That's fine. That's fine.

9 Now, is this an agreement that Blue Stone had with
11:37AM 10 the tribes?

11 A That's correct.

12 Q Did Nikishna ever sign that agreement?

13 A Nikishna had his own nondisclosure agreement.

14 Q We're going to get to that.

11:37AM 15 Did Nikishna ever sign the agreement with the
16 tribes?

17 A That wasn't his responsibility.

18 Q Okay. So he didn't sign the agreement?

19 A Not with the tribe.

11:37AM 20 Q All right. And you're referring to the confidentiality
21 agreement that Nikishna had in his employment agreement?

22 A I'll have to see that.

23 Q Okay. Well let's look at it. Hold on. Go to the large
24 black exhibit book and let's start out with Exhibit 6. And I'm
11:38AM 25 going to direct your attention to Page 4 of 6 and specifically

1 Paragraphs 8 and 9, which I'll put on the Elmo. See it there?

2 A Yes.

3 Q Okay. So this is the Paragraph 8 and would be the
4 confidentiality agreement that is part of Nikishna's employment
11:39AM 5 agreement.

6 A I believe it's Paragraph 7, sir, is the relevant
7 paragraph.

8 Q Oh, 7? Okay.

9 A 7 would be the relevant paragraph.

11:39AM 10 Q So go ahead and read 7 and 8. Let me just try to
11 paraphrase for you. I don't mean to put words in your mouth.
12 But it essentially says that Nikishna has got to keep
13 information that he obtains during the course and scope of his
14 employment confidential for at least six months after
11:39AM 15 termination, if you put Paragraph 7 and 8 together; right?

16 A Excuse me. Let me just review this.

17 Q Sure. Go ahead. Take your time.

18 A So I see 7 is separate from 8, sir.

19 Q I get it. But I was just paraphrasing them both
11:40AM 20 together.

21 7 basically says that he's contractually obligated
22 to keep confidential information a secret; right?

23 A Yeah, for an unlimited period of time. Doesn't state a
24 timeline in that.

11:40AM 25 Q Okay. So -- but look at 8.

1 A Yes.

2 Q So do you agree with me that when you put 7, 8, and even
3 9, the noncompete agreement together, the information that
4 Nikishna gathered during the course and scope of his employment
11:41AM 5 has to be kept secret. And he can't use it for six months
6 until after he's terminated; right?

7 A I don't interpret it that way, sir.

8 Q Okay. How do you interpret it?

9 A I interpret it that unauthorized disclosure of
11:41AM 10 information, there is no timeline to that. He's never allowed
11 to disclose unauthorized information at any point.

12 Then with regard to confidentiality agreement, it's
13 six months. And then there's a noncompete that also has the
14 timeline.

11:41AM 15 Q Right. Well, Paragraph 8 -- and I don't want to get
16 bogged down in this, but Paragraph 8 states that the
17 confidentiality provisions of this employment agreement shall
18 remain in full force and effect for a six-month period after
19 termination of Nikishna's employment agreement, which tells me
11:42AM 20 that once he quits, six months later he can use whatever
21 information he wants to use. Do you disagree with me? And
22 it's okay if you do.

23 A I do.

24 Q Fine. Fine.

11:42AM 25 And who drafted this agreement?

1 A We had legal counsel draft this.

2 Q But the point I'm trying to make is that the decrease in
3 the revenues is the result of Nikishna utilizing confidential
4 information and putting it on the Internet; right?

11:42AM 5 A That was definitely a direct result of that, yes.

6 Q Okay. Good. Now we may come back to this, but I just
7 want to keep things tidy.

8 So the next set of exhibits I want to show you is
9 84. Essentially Exhibit 84 is a list of the time and hourly
11:43AM 10 rate plus taxes that each employee at Blue Stone spent to
11 restore information; correct?

12 A Try to recreate as well as restore, yes.

13 Q Okay. These are all -- with the exception of Mr. -- you
14 and Mr. Fullmer were actual employees of Blue Stone; correct?

11:44AM 15 A That's correct.

16 Q So they were on a salary; true?

17 A That's correct.

18 Q And how about you and Mr. Fullmer, did you take
19 distributions or did you take a salary or did you take both?

11:44AM 20 A We have distributions that were monthly.

21 Q All right. And the distributions were based upon profit?

22 A They were based upon what the value of our
23 responsibilities in the company are. And that's the main
24 driver.

11:44AM 25 Q Okay. But you took your distributions out of profit;

1 right?

2 A At the end of the year, if there's a profit left after
3 distributions, we received a profit. But before that, it's a
4 distribution as determined on value that we're bringing to the
11:44AM 5 firm.

6 Q All right. And who made that determination about your
7 value that you were bringing to the firm?

8 A The board. Board of directors.

9 Q The board of directors.

11:45AM 10 And the board of directors were composed by?

11 A Jamie Fullmer and myself.

12 Q And yourself. Okay.

13 So you all were set in your own value; right?

14 A That's correct.

11:45AM 15 Q Okay. And were taxes taken out of those distributions?

16 A Taxes are actually taken out. We pay those quarterly.

17 Q All right. So you set those aside. You pay them
18 quarterly?

19 A Uh-huh.

11:45AM 20 Q And were they 28 percent or more?

21 A That was an approximate number.

22 Q Okay. All right. Now, had you not been working on this,
23 I presume you would have been working on something else for the
24 company?

11:45AM 25 A Yes, sir.

1 Q Okay. And the same would be true for the employees that
2 are on the list in -- for the rest of Page 1 and Page 2 of this
3 exhibit, they'd be working on something else if they weren't
4 working on this; right?

11:46AM 5 A That's the goal, yes.

6 Q Okay. And they would have been paid the same hourly
7 rate; right?

8 A That's correct.

9 Q Okay. And you and Mr. Fullmer would have received the
11:46AM 10 same distribution; right?

11 A Yes.

12 Q Okay. So the only other out-of-pocket expenses, real
13 expenses you all had, and then Mr. Fullmer talked about his
14 flight from Phoenix out here when -- when it was discovered
11:46AM 15 that things were being deleted, and then there was -- what
16 else?

17 A I believe there's other evidence that shows the amount of
18 money that we had to pay to recreate some of these documents.
19 Not only our website from third party as well as Eldad's
11:47AM 20 immediate support to try to figure out and restore our
21 infrastructure.

22 Q Eldad support?

23 A Eldad would be one of those, but there's others as well.

24 Q Okay. By the way, has Blue Stone ever saved all this
11:47AM 25 information on the cloud?

1 A I'm not aware of that.

2 Q Are you not aware of the cloud or you're not aware if it
3 was saved on the cloud?

4 A I'm not aware. The technology initiative that was laid
11:47AM 5 out by Nikishna was very well-defined, very well-presented.
6 And he basically controlled where our IT infrastructure was,
7 where the information was stored, what databases were set up.
8 So he had the keys to the kingdom, if you will. So that would
9 be a question to ask Nikishna.

11:48AM 10 Q Before Nikishna was given the IT responsibilities, was
11 anything saved on the cloud, do you know?

12 A Not that I'm aware.

13 Q Okay. And the person that was responsible for the IT
14 before Nikishna came along was Mr. Yacobi; right?

11:48AM 15 A That's correct. That would be a question for Eldad.

16 Q Okay. And looking back on it, I know you wish this had
17 never happened, but wouldn't it have saved the company a lot of
18 money if Eldad had recommended that this information be saved
19 on the cloud?

11:48AM 20 A I think if Nikishna recommended it, it would have saved us
21 a lot of money.

22 Q Yeah. Wasn't he about to recommend it before he took the
23 responsibilities away from him?

24 A I don't see that in any other correspondence.

11:48AM 25 Q And you don't remember that either, do you?

1 A Absolutely not.

2 Q Okay. And it would have saved the company a lot of money
3 if Eldad made the same recommendation; right?

4 A We were at a different time in our growth. We didn't have
11:49AM 5 any IT infrastructure like we invested in here. So I don't
6 even know if that would be possible.

7 Q So you didn't have any method of saving the information
8 before Nikishna came along; right?

9 A That would be a question for Eldad.

11:49AM 10 Q Okay. Do you know of any, though?

11 A I'm not aware of the specific technology application that
12 we used prior to Nikishna.

13 Q So you don't know anything about it?

14 A That's what I stated.

11:49AM 15 Q Okay. Okay. You got a phone call from somebody or --
16 indicating that files were being deleted on her computer. Is
17 that Ms. Goodman?

18 A Yes.

19 Q What's her first name again?

11:49AM 20 A Mine?

21 Q No, not yours, sir. Ms. Goodman's.

22 A Janeen.

23 Q I'm sorry. I just couldn't remember.

24 Okay. So Ms. Goodman calls you -- and is this on
11:49AM 25 the 17th, 18th? 18th, I think, of November -- and says, "Hey,

1 there are files being deleted right now from my computer";
2 right?

3 A Including "Nikishna's in my system."

4 Q I'm getting there. I'm getting there.

11:50AM 5 And did she tell you that Nikishna's name was
6 appearing on her computer?

7 A She said that "Nikishna's in my file." And I walked into
8 her office.

9 Q We're going to get there.

11:50AM 10 You walked into her office. Did you look at her
11 desktop, her screen?

12 A I did. And I believe there was some indication of
13 Nikishna's login to her files.

14 Q Okay. Was Nikishna's name on the screen?

11:50AM 15 A I believe it was.

16 Q You sure about that?

17 A I believe it was.

18 Q Okay. Because yesterday we had somebody from the
19 Los Angeles Police Department, who's in a task force with the
11:50AM 20 FBI, and I asked him if it was possible for somebody to get in
21 a computer and have the names show up, and he said "No."

22 MR. MITTAL: Your Honor, I'm going to object to
23 questions that relate to other witnesses in this case.

24 THE COURT: Sustained.

11:51AM 25 MR. KHOURI: Thank you, Your Honor.

1 Q So I just -- I'm just trying to figure out how sure you
2 are of that answer.

3 MR. MITTAL: Objection. Same objection, Your Honor.

4 THE COURT: I think you need to reword your
11:51AM 5 question.

6 MR. KHOURI: All right.

7 Q Are you sure that you saw Nikishna's name on the screen?

8 A I believe I did.

9 Q Okay. Fair enough.

11:51AM 10 And then after that, did you -- you called Bill Moon
11 in Florida; right?

12 A Yes, sir.

13 Q And you asked him where Nikishna was; right?

14 A That's correct.

11:51AM 15 Q Did you tell him that he needed to go get that laptop?

16 A No, sir.

17 Q Are you absolutely positive about that?

18 A I instructed him. I asked, "Where is Nikishna?"

19 Q All right. And then you told him to call the police;
11:51AM 20 right?

21 A That's correct.

22 Q You never told him to get that laptop; right?

23 A I don't recall telling him to get the laptop. We just
24 wanted this to stop, whatever was happening.

11:52AM 25 Q And then you were told -- you had subsequent

1 conversations, and you were told that Nikishna was probably in
2 his hotel room; correct?

3 A That's correct.

4 Q You never -- you never told him to go into the -- get
11:52AM 5 inside the hotel room, did you?

6 A I told him to call the local authorities of Florida
7 police, in which he did.

8 Q Did you tell him to go to the hotel manager and go open
9 up the door to Nikishna's hotel room?

11:52AM 10 A I told him to call the local authorities, which he did.

11 Q And that's all you told him. All right.

12 Do you think that not telling -- being straight with
13 you, when I told you that he went to the hotel management and
14 they both went to open up the door to the hotel room?

11:52AM 15 MR. MITTAL: Objection. Argumentative. Compound.

16 THE WITNESS: I don't.

17 MR. KHOURI: You don't know?

18 THE COURT: The objection is sustained. Strike the
19 answer. If you want to ask the question again, phrase it
11:53AM 20 differently.

21 Q BY MR. KHOURI: Is all you told him was to call the local
22 authorities?

23 A Yes.

24 Q Okay. You never would have told him -- well, I'll move
11:53AM 25 on. Okay.

1 So you told him to call the local authorities. And
2 did you keep in communication with him after that?

3 A He called me back. He said he got ahold of the police and
4 they're on their way. And that was the end of that call. And
11:53AM 5 then he called me again. I asked for an update, and called me
6 again. And he said that the police are trying to communicate
7 with Nikishna.

8 Q Okay. Did he ever say anything about a search warrant?

9 A No.

11:53AM 10 Q Did he ever say anything about an arrest warrant?

11 A He said the police were trying to communicate with
12 Nikishna and he was nonresponsive.

13 Q By the way, when Nikishna put on the Internet these
14 documents that you say are confidential, were they on a social
11:54AM 15 media site? Or where exactly were they on the Internet?

16 A I understand they were on social media as well as he
17 provided them to local reporters and they were published in
18 their local blogs.

19 Q Did you ever -- did the company ever file a complaint
11:54AM 20 with any of the social media -- I think they call them
21 platforms?

22 A We contacted the individual that wrote the article in one
23 instance on the blog posting this confidential information.
24 And he confronted that Nikishna did give him that information
11:54AM 25 and said it was his right to publish it.

1 Q All right. And did you ever sue him?

2 A No.

3 Q Did you ever sue any of the social media platforms?

4 A The responsible party here is Nikishna.

11:55AM 5 Q Did you ever see any of the social media platforms?

6 A No.

7 Q And then a civil lawsuit was brought against Nikishna;
8 correct?

9 A That's correct.

11:55AM 10 Q I have some questions to ask you about that. There's a
11 small, white -- smaller white exhibit book up there on the
12 witness stand, if you could get that, please.

13 Before we start this line, Your Honor, would you
14 like -- is this a good time for lunch?

11:55AM 15 THE COURT: Sure.

16 Ladies and gentlemen, why don't we take our lunch
17 break. We'll pick back up no later than 1 o'clock. So if you
18 could be here about five or ten minutes before 1 o'clock.
19 Greatly appreciate it. Have a nice lunch.

11:55AM 20 And please remember, don't discuss the case with
21 anybody. Don't do any research or investigation. And please
22 keep an open mind until you've heard all the evidence, the
23 thoughts and views of your fellow jurors during deliberations.
24 Have a nice lunch.

11:56AM 25 THE COURTROOM DEPUTY: All rise.

1 (Out of the presence of the jury.)

2 THE COURT: You can step down, sir. Have a nice
3 lunch. We'll see you before 1 o'clock, please.

4 Mr. Mittal, tell me what you're thinking about as
11:56AM 5 far as other witnesses.

6 MR. MITTAL: For today?

7 THE COURT: Yes. I guess, actually, for the rest of
8 the case.

9 MR. MITTAL: So following Mr. Mooers, I was going to
11:57AM 10 confer with Mr. Marrett, but I believe we're going to try to
11 get Mike Lee and Adam Shaw on today.

12 THE COURT: What are they going to talk about?

13 MR. MITTAL: Mr. Lee is brief. He's going to be --
14 he works for Crestline, so he's essentially going to rebut the
11:57AM 15 claims and e-mail. I would imagine 10, 15 minutes. Mr. Shaw
16 is from Apple; he testified last time. He's going to talk
17 about the Find my iPhone application.

18 And then we have -- haven't decided on the order,
19 but Robert Mooers and Eldad Yacobi are here, and we were hoping
11:57AM 20 to get done this morning. But they're going to go after them
21 because Mr. Shaw's counsel flew down from the Bay area. I'm
22 hoping to get him in and out. Mr. Lee is from San Diego.

23 THE COURT: So there's a chance you can maybe still
24 get done today.

11:58AM 25 MR. MITTAL: We still have the forensic examiner for

1 the laptop, Beverly Mayo, and then the case agent.

2 THE COURT: Okay. All right. So you probably won't
3 get finished today. All right. And how much longer is the
4 cross-examination of Mr. Mooers going to be?

11:58AM 5 MR. KHOURI: 45 minutes to an hour.

6 THE COURT: Okay. See if maybe over the lunch you
7 can streamline it, huh?

8 MR. KHOURI: I will, Your Honor.

9 THE COURT: Okay. Have a nice lunch.

10 **(Further proceedings reported by Marea**
11 **Woolrich in Volume II.)**

12 **-oOo-**

13

14

15

16

17

18

19

20

21

22

23

24

25

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

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE CORMAC J. CARNEY, U.S. DISTRICT JUDGE

UNITED STATES OF AMERICA,)
)
Plaintiff,) CASE NO.
) 8:16-CR-00036-CJC-1
vs.)
) **VOLUME II**
NIKISHNA POLEQUAPTEWA,)
)
Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - DAY 3
THURSDAY, NOVEMBER 8, 2018
1:08 P.M.
LOS ANGELES, CALIFORNIA

MAREA WOOLRICH, CSR 12698, CCRR
FEDERAL OFFICIAL COURT REPORTER
350 WEST FIRST STREET, SUITE 4311
LOS ANGELES, CALIFORNIA 90012
mareawoolrich@aol.com

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF:

NICOLA T. HANNA
United States Attorney
BY: VIBHAV MITTAL
BRADLEY EDWARD MARRETT
Assistant United States Attorneys
United States Courthouse
411 West Fourth Street, Suite 8000
Santa Ana, California 92701
(714) 338-3708

FOR THE DEFENDANT:

KHOURI LAW FIRM
BY: MICHAEL JOHN KHOURI, ESQ.
24012 Calle de la Plata, Suite 210
Laguna Hills, California 92653
(949) 336-2433

ALSO PRESENT:

TODD MUNOZ, FBI SPECIAL AGENT

I N D E X

THURSDAY, NOVEMBER 8, 2018

VOLUME II**CHRONOLOGICAL INDEX OF WITNESSES**

WITNESS	PAGE
JOHN MOOERS	
CROSS-EXAMINATION BY MR. KHOURI	5
REDIRECT EXAMINATION BY MR. MITTAL	27
MICHAEL LEE	
DIRECT EXAMINATION BY MR. MARRETT	28
CROSS-EXAMINATION BY MR. KHOURI	31
ADAM SHAW	
DIRECT EXAMINATION BY MR. MITTAL	38
CROSS-EXAMINATION BY MR. KHOURI	57
REDIRECT EXAMINATION BY MR. MITTAL	62
RECROSS-EXAMINATION BY MR. KHOURI	63
ROBERT MOOERS	
DIRECT EXAMINATION BY MR. MARRETT	65
CROSS-EXAMINATION BY MR. KHOURI	82
ELDAD YACOBI	
DIRECT EXAMINATION BY MR. MITTAL	91

I N D E X

THURSDAY, NOVEMBER 8, 2018

VOLUME II

INDEX OF EXHIBITS

RECEIVED INTO EVIDENCE

EXHIBIT	PAGE
Exhibit Nos. 68 and 69	114
Exhibit Nos. 71 through 76	117
Exhibit No. 79 page 1	133
Exhibit No. 80 page 2	81
Exhibit No. 92	132
Exhibit No. 95	73
Exhibit No. 98	101
Exhibit No. 100	45
Exhibit Nos. 110 and 111	121
Exhibit No. 116	104

1 LOS ANGELES, CALIFORNIA; THURSDAY, NOVEMBER 8, 2018

2 1:08 P.M.

3 -oOo-

4
5 THE COURT: Please be seated, ladies and gentlemen.
6 Please proceed, Mr. Khouri.

7 MR. KHOURI: Thank you, Your Honor.

8 JOHN MOOERS,
9 called as a witness by the government, was previously sworn and
10 testified as follows:

11 CROSS-EXAMINATION

12 BY MR. KHOURI:

13 Q Good afternoon, Mr. Mooers.

14 A Good afternoon.

15 Q We were just about ready to start talking about
16 the civil litigation going on between Blue Stone and Nikishna.
17 Was there ever an offer that Blue Stone made to settle that
18 litigation after the first proceeding?

19 A I'm not aware of an offer. I know there was
20 discussions on both sides, but I'm not aware of an offer.

21 Q And did that -- did you have discussions with
22 Mr. Fullmer about it, about some sort of an offer to be made?

23 A Yes, I did. I don't recall the exact discussion,
24 but I know that it was brought up.

25 Q And you are sure that no offer was ever made?

1 A I'm not aware of a written offer that was made,
2 yes.

3 Q And you say there were discussions on both sides.
4 Did you have any discussions with Nikishna about it?

5 A No, sir. The discussions --

6 Q Did you have any -- did Mr. Fullmer, to your
7 knowledge, have any discussions with Nikishna?

8 A No, sir.

9 Q And did your lawyer, Mr. Berliner, have any
10 discussions with Nikishna?

11 A Not with Nikishna, the attorney.

12 Q And were there any discussions with anybody in my
13 office?

14 A I'm not aware of if you were the representing
15 attorney or not.

16 Q Oh, well, my firm is. But did Mr. Berliner tell
17 you that there were discussions between himself and a lawyer at
18 my office?

19 A I know there was dialogue in preparation for the
20 civil case. That's about all I can comment on.

21 Q Okay. Dialogue between who?

22 A Your firm, if you were the representative
23 attorney, and our firm.

24 Q Okay. That's news to me. But who told you that?

25 MR. MITTAL: I'm going to move to strike counsel's

1 characterizations and testimony.

2 THE COURT: Sustained.

3 BY MR. KHOURI:

4 Q Who told you that?

5 A Who told me what, sir?

6 Q That there was dialogue going on between the
7 lawyer representing Blue Stone and my office.

8 A Our attorney Mr. Berliner.

9 Q Oh, okay. Okay. But you don't recall any offer?

10 A I don't recall an offer, no.

11 Q Okay. And this was after the first proceeding;
12 correct?

13 A Could you define "proceeding" for me. I'm sorry.

14 Q The last time you testified in court.

15 A No, I don't believe there's been discussions
16 after the first time.

17 Q Okay.

18 A Yeah.

19 Q You had indicated -- you know that Nikishna is
20 making a -- suing Blue Stone for retaliation based upon
21 whistleblower complaints that he alleges he made; right? I'm
22 not asking you to agree with it. I'm just asking if you
23 understand the allegation.

24 A Yes, sir.

25 Q Okay. And I thought I heard you say on direct

1 that the FBI had investigated those allegations?

2 A From my understanding is that they were -- they
3 did do some due diligence or some investigative around some of
4 these claims.

5 Q All right. And how did you arrive at that
6 understanding?

7 A I was notified through discussions with the FBI.

8 Q And did the FBI agent look at the civil -- the
9 Complaint that Nikishna filed against Blue Stone?

10 A I don't know if they were able to reference that,
11 no.

12 Q And who was it who told you that an investigation
13 was done of the whistleblower claims against Blue Stone?

14 A There was not a full investigation. I know that
15 they look into it. And from what I understand, they found
16 nothing of any substance.

17 Q Okay. So no investigation but they looked into
18 it?

19 A Yes.

20 Q All right. Because on direct, I think you said
21 there was an investigation, and they had proven them wrong;
22 right?

23 A I don't know about proving them wrong. I did use
24 the word "investigation." But they went out and spent time on
25 it. I don't know how much time, but they looked into it.

1 Q And person who told you about that was the agent
2 who is sitting in court today?

3 A Uh-huh, yes.

4 Q All right. And did you ask them to go and
5 investigate those allegations?

6 A No, sir.

7 Q They just did it on their own?

8 A Yes, sir.

9 Q Okay. Did you get a report of that
10 investigation?

11 A No, sir.

12 Q Do you know if one was prepared?

13 A No, sir. Again, I don't believe it was a formal
14 investigation.

15 Q So the FBI acted informally to look into these
16 allegations? Is that it?

17 MR. MITTAL: Objection. Lacks foundation, calls for
18 speculation.

19 THE COURT: It's a question. Overruled.

20 THE WITNESS: I don't know the FBI's process of
21 formal and informal. So it would be speculation on my behalf.

22 BY MR. KHOURI:

23 Q Was this before Nikishna was formally charged in
24 this case?

25 A I don't know.

1 Q Do you have any idea when you had that
2 conversation with the FBI agent?

3 A I know it was early on. But I don't know if it
4 was formerly charged before or after.

5 Q Okay. Now, when was it when y'all returned
6 Nikishna's personal property to him?

7 A I don't have the exact date, but it was within --
8 after the FBI had done their questioning and looked at the
9 information that we had provided to them. And then we were --
10 it was released to Nikishna immediately after that.

11 Q Was it a matter of days after Nikishna resigned?

12 A I'd have to look at the date. But I think it was
13 within the first, I would say, four to six weeks. But it would
14 be a guesstimate at this point.

15 Q Okay. Was it around April of 2015?

16 A Again, I'd have to look at the correspondence on
17 that. I know that there was correspondence when everything was
18 turned over and a list of everything that we had had of his
19 possessions was given back to him.

20 Q Well, open up that small white exhibit book and
21 go to Exhibit 2 and turn to page 9 of the first amended
22 counterclaim.

23 A Yes, sir.

24 Q Look at paragraph 42. After you read
25 paragraph 42 which goes over to page 10, I have some questions

1 to ask you about it.

2 A Okay. Yes, sir.

3 Q So the Complaint or counterclaim alleges that in
4 April of 2018 -- or '15, I'm sorry -- Blue Stone still had
5 computers, high capacity storage devices, adapters, cables,
6 surge protectors, video equipment, software --

7 A I'm sorry.

8 Q Do you see all that?

9 A I'm reading on page 9 -- is it Item No. 40, sir?

10 Q Oh, I'm sorry. 42, please. Did I say 40? I
11 apologize.

12 A I'm sorry. Let me read 42. Sorry. Yes, I've
13 read that.

14 Q And then it goes on about editing software, wall
15 display kits, license tool kit. This was all the stuff that
16 Blue Stone had after Nikishna left; right?

17 A No, that's incorrect.

18 MR. MITTAL: Objection. Calls for speculation
19 foundation.

20 THE COURT: If you know, sir.

21 THE WITNESS: That's incorrect.

22 BY MR. KHOURI:

23 Q What was the personal property that was returned
24 then?

25 A There was a list provided. I don't have that

1 list in front of me. But there was a list. These items were,
2 as I recall, not existent. This is a list that Nikishna came
3 up with after the fact. And we did an inventory. There were
4 three people in the office that went through and inventoried
5 everything in his office immediately after the incident. And
6 it was all packed and put in one location in a secured office
7 under lock and key.

8 And then when it was released, all that
9 information was given in a detailed letter and shipped off to
10 Nikishna. These other items I'm not aware of --

11 Q You are not aware of. Items that were locked --
12 in a locked room for six to eight weeks?

13 A Yes.

14 Q And that's stuff that belonged to Nikishna;
15 right?

16 A Those were things that were being held until we
17 were authorized to release them.

18 Q You knew it belonged to Nikishna; correct?

19 A There was a pending investigation by authorities,
20 and we were not authorized, in my opinion as the CEO, we were
21 not authorized to turn that information over until we had an
22 agreement with the authorized authorities to do that.

23 Q Did the FBI ask you to keep that information --
24 those items of personal property under lock and key?

25 A Not under lock and key. I know that we had

1 discussions with the Irvine Police Department and as well as
2 the FBI on this subject.

3 Q Did the FBI ask you to keep those items of
4 personal property in Blue Stone's possession?

5 A They --

6 Q Did they ask you to keep the items in your
7 possession?

8 A I'm trying to understand the question to make
9 sure I answer it accurately. We provided them a list of
10 information that we had, of everything that we had. And they
11 were going through their investigation. And I know that once
12 we received approval that we could go ahead and release that,
13 we did immediately.

14 Q Did they tell you to hold onto it until you
15 received approval?

16 A It was a pending investigation. So I probably
17 made the judgment call to hold onto it.

18 Q You made that decision, didn't you?

19 A Yeah.

20 Q And you are not a peace officer, are you?

21 A No. But it was active investigation, and I made
22 a good judgment call I believe.

23 Q And you are not a reserve police officer or
24 anything like that?

25 A No.

1 Q You don't have any -- do you ever go to any kind
2 academy or have any training in law enforcement?

3 A No, sir.

4 Q Okay. Did you tell the FBI that you had all
5 these items of personal property in your possession?

6 A Yes, we did.

7 Q And did you describe them to the FBI?

8 A We provided a list.

9 Q And did the FBI agent say, hey, this is really
10 good evidence, we want to get it? We want to get ahold of it?

11 A No, I don't believe there was any comment on it.

12 Q Isn't it true that y'all didn't release
13 Nikishna's property until the counterclaim in federal court was
14 amended to sue Blue Stone because you were unlawfully holding
15 the property?

16 A I don't believe that's the case, sir.

17 Q All right. Fair enough. But you are aware of
18 the counterclaim against Blue Stone?

19 A Yes.

20 Q You are aware Nikishna is seeking money from
21 Blue Stone for various causes of action; correct?

22 A Yes, sir.

23 Q Now, eventually -- or right now I want to turn to
24 the 19th of November. And that is when Nikishna came back to
25 the office to get his personal property; correct?

1 A November 19th, yes, sir.

2 Q Okay. We have a video of what happened. Y'all
3 called the police as soon as he showed up; right?

4 A Absolutely, yes.

5 Q That's because you were concerned about him doing
6 something unlawful on the premises?

7 A I had actually been to the police department that
8 morning as I stated earlier in my testimony to get direction
9 from the authorities on what to do. It was a very chaotic
10 situation. A lot of harm had been done. First thing in the
11 morning, I went to the Irvine Police Department --

12 Q Sir, the question was did you call the police
13 because you believed Nikishna was going to cause some harm on
14 the premises?

15 A I was told by the Irvine Police Department that
16 if he showed up to notify them immediately, and that's what I
17 did.

18 Q Okay. Okay. And you notified the police; right?

19 A Yes, sir.

20 Q Did the police come out?

21 A Yes, they did.

22 Q Did they talk to Nikishna?

23 A Yes.

24 Q Did Nikishna go home?

25 A They escorted him off the property.

1 Q Did they take him off the property, and did they
2 tell him to go home?

3 A They escorted him off the property. That's all I
4 know.

5 Q That's all you know. Okay.

6 Isn't it true that the police then told him just
7 to go home?

8 A I'm not aware of that, sir.

9 Q Okay. So you don't know what happened?

10 A That's right.

11 Q Let's look at the video. If I could ask the
12 agent to please bring up the video, I've got some questions for
13 you.

14 (Video recording played in open court.)

15 BY MR. KHOURI:

16 Q Did Nikishna ever hit you or strike you?

17 A No, sir.

18 Q Did he ever destroy any property, anything like
19 that?

20 A No, sir. Other than taking all of our data and
21 infrastructure and destroying that, yes.

22 Q Yeah, I think that's not true.

23 MR. MITTAL: I'm going to move to strike counsel's
24 statements.

25 THE COURT: It's not evidence. So remember in the

1 preliminary instructions, comments, questions by lawyers is not
2 evidence, ladies and gentlemen.

3 BY MR. KHOURI:

4 Q Did you notice that Nikishna has a phone, right,
5 in his hand?

6 A Yes.

7 Q And he used the phone at work, correct, for work
8 purposes?

9 A He had a desk phone, and he had a personal
10 cell phone.

11 Q Sure. And the employees would use their personal
12 cell phone to receive e-mails when they weren't on the premises
13 and do business from their personal cell phone?

14 A Some would and some wouldn't.

15 Q Do you know if Nikishna did?

16 A I don't know that.

17 Q Okay. But it wouldn't surprise you if he did;
18 right?

19 A No.

20 Q And it wouldn't surprise you that if on his phone
21 were attachments to certain e-mails that you would consider
22 propriety; right?

23 A That would be correct.

24 Q Okay. And it would be covered by the
25 confidentiality agreement in the contracts; correct?

1 A Yes, sir.

2 Q Okay. And the agreement requires that when he
3 was terminated, that he would return any information that was
4 proprietary; right?

5 A That's correct.

6 Q And if that information was on his phone, it
7 would also be on his desktop; correct?

8 A I would assume so, yes, sir.

9 MR. KHOURI: Let's play the video again.

10 (Video recording played in open court.)

11 BY MR. KHOURI:

12 Q Prior to this time when the video begins and you
13 two are sort of face to face, did -- was there any discussion
14 between you and Nikishna?

15 A Not that I'm aware of any discussion.

16 Q Was there any discussion between Nikishna and
17 Mr. Fullmer before this video started?

18 A Not that I'm aware of.

19 Q The video was being taken by Eldad; correct?

20 A That's correct.

21 Q He was inside the room?

22 A I believe he was. It appears he is, yes.

23 Q Okay. And did you ask Nikishna if it was okay
24 that he was videoed?

25 A No. I asked Nikishna to leave the property

1 immediately.

2 Q Oh, okay. So did you ask him if it was okay if
3 he was videoed?

4 A No.

5 Q All right. Is there any policy at the company
6 that it's all right to videotape employees without their
7 consent?

8 A There's no policy against it.

9 Q Is there any policy that authorizes it?

10 A There's no policy against it.

11 Q Is there any policy that authorizes it?

12 A Not that I'm aware of.

13 Q Was Nikishna, when he started work, ever asked to
14 sign a consent to being videotaped by his employer whenever you
15 wanted to?

16 A No. He was no longer an employee at that point.
17 We asked him to leave the property immediately.

18 Q Now, did Eldad -- did you tell Eldad to videotape
19 this?

20 A No.

21 Q He just did it on his own?

22 A Yes.

23 Q Right? Okay.

24 Now, when did you first see any video of what
25 occurred in the office that day?

1 A About two seconds after Nikishna made his last
2 statement and turned to walk down the hall. Immediately
3 Nikishna -- immediately Eldad handed me the phone and clicked
4 the video. So I saw it within two to three seconds the entire
5 video.

6 Q All right. All right. Did you ask to look at
7 Eldad's phone to see if there was any additional video?

8 A It was all one video.

9 Q Did you ask to look at Eldad's phone to see if
10 there was any additional video?

11 A I asked him if this was all the video that he had
12 taken, and he said yes.

13 Q I'm going to ask you one more time. Did you ask
14 to look at his phone to see if there was any additional video?

15 A He showed me his phone.

16 Q Did you take the phone in your hands?

17 A Yes, I did.

18 Q Did you go to the video function?

19 A It was already on the video function when he
20 handed it to me.

21 Q Was the first frame of the video already up when
22 he handed it to you?

23 A It was the little button that you push to get the
24 video to move forward.

25 Q Okay. Okay. Now, did you ever go to someplace

1 else -- excuse me -- in the phone to see if there was any other
2 video?

3 A I did not search his phone, no, sir.

4 Q Okay. Okay. And then what happened to Eldad's
5 phone after that?

6 A I saw the video, and I handed the phone back to
7 him.

8 Q Do you know what Eldad did with it after that?

9 A No, I don't.

10 MR. KHOURI: Can we turn it back on? Thank you.

11 (Video recording played in open court.)

12 BY MR. KHOURI:

13 Q So you heard Nikishna say his personal artifacts
14 on top of the desk and then also his equipment. Did you have
15 an understanding what he was talking about when he said
16 "equipment"?

17 A I thought he was referring to the desktop
18 computer that was on his desk.

19 Q But that's Blue Stone's computer.

20 A I thought that's what he was referring to.

21 Q Did you ever ask him if there was other equipment
22 of his that was there?

23 A No, sir. We asked him to immediately leave the
24 property as we were instructed by the Irvine Police Department.

25 Q Did you assign somebody else to look for his

1 property?

2 A Yes. There was actually three people involved.

3 Q And who were they?

4 A Amy Watson, Janeen Gordon and myself.

5 Q What did Amy and Janeen do to see if -- to find
6 his equipment in the office? Do you know?

7 A What we did is we first went in together so no
8 one person was in there by themselves, and we did a complete
9 inventory of everything in that office.

10 Q All right. And that's stuff you put under lock
11 and key?

12 A The things that were clearly identified is
13 Nikishna's were put in a separate lock and key. There were
14 other things found that were also returned to other parties.

15 Q And these are things that you know Blue Stone had
16 no ownership interest in; right?

17 A They were his personal belongings.

18 Q Okay. Good.

19 Can we turn it back on?

20 (Video recording played in open court.)

21 BY MR. KHOURI:

22 Q So Mr. Fullmer said, "We'll let you get your
23 stuff." Was Nikishna ever allowed to go inside to get his
24 stuff?

25 A No. I was instructed by the Irvine Police

1 Department to not allow him on the property. And because it's
2 an active crime scene, not to allow him in his office to take
3 anything.

4 Q Okay. Do you know if the FBI has a report of
5 that instruction?

6 A That would be the Irvine Police Department.

7 Q Okay. And did you ever get a report of that
8 instruction?

9 A Not a report. I was told when I went there that
10 morning to make sure that that would be the case.

11 Q So the Irvine Police Department told you that
12 this was beyond their investigation and referred you to the
13 FBI; right?

14 A It was one of the things, yes.

15 Q And they told you to hold on to Nikishna's stuff?
16 Is that what you understood?

17 A Yes. In addition, that he was not allowed on the
18 property and he should not come into his office.

19 Q But I thought you said earlier that you were the
20 one that made the decision about holding onto his stuff.

21 A They gave me the initial direction on that, the
22 Irvine Police Department. But they didn't give me a timeline
23 on how long to hold onto it. So I made the decision to hold it
24 until -- several weeks obviously until that was resolved.

25 Q Right. And -- but in the meantime, you told the

1 FBI about everything. You gave them a list; right?

2 A That investigation was slow to start. And so
3 obviously they have a lot of caseload and they needed to do all
4 their homework. So eventually that was all turned over.

5 Q How long after this did you give the FBI the list
6 of the property?

7 A I would say within the first two to three weeks.

8 Q All right. And then did the FBI ever tell you to
9 keep the property?

10 A I thought we went through this before. But the
11 answer is they never told me to keep it. I made that decision.

12 Q Right. Good. Okay.

13 So let's turn it back on.

14 (Video recording played in open court.)

15 BY MR. KHOURI:

16 Q It looks like you said, "and you'll have your,"
17 and you pointed over your shoulder. What were you pointing at?

18 A Amy Watson's office is right next to Nikishna's,
19 and she handles the bookkeeping and payroll. So that's where
20 that would have been released from.

21 Q So you were talking about the money that y'all
22 owed him; right?

23 A His final paycheck after he resigned.

24 Q Do you know when he got his final paycheck?

25 A No. I know it was processed, I believe, on the

1 next pay period. But I couldn't give you an exact date.

2 MR. KHOURI: Can we put it back on again?

3 (Video recording played in open court.)

4 BY MR. KHOURI:

5 Q I think we missed something probably from turning
6 it on and off. There was a time when Mr. Fullmer said we want
7 our stuff and Nikishna said something like I deleted it.
8 That's the point. Do you remember that?

9 A Yes, sir.

10 Q Okay. Did you ever think at the time that
11 Nikishna was referring to deleting items on his phone?

12 A Absolutely not.

13 Q Did you ever ask him if he was talking about his
14 phone?

15 A We were not talking about a phone. Everybody in
16 the room knew that.

17 Q And is there any portion of the video where you
18 exclude the phone?

19 A No. It wasn't about a cell phone. We wanted all
20 of our stuff back, and the cell phone is his personal
21 information, his personal device. So we were not requesting
22 his cell phone back. We were requesting all of our
23 information, our data, all of our lost documents that we just
24 went through.

25 Q All of your -- and there was a conversation about

1 that at the office that day; right?

2 A I'm sorry. I'm not following you, sir.

3 Q Well, you said we weren't talking about a phone.

4 A No.

5 Q Right? You knew that; right? And you weren't
6 talking about a phone because you guys were talking about the
7 information that was deleted from the server and the desktop;
8 right?

9 A That is correct, sir.

10 Q Okay. At -- inside the office, right, that
11 conversation happened?

12 A That was the reference to all of the discussions
13 taking place. We were not asking for his cell phone back.
14 It's his cell phone. We were referencing all of our data.
15 That was our intent and that was the intent of our whole
16 discussion.

17 Q I get it. I understand your testimony that
18 that's what y'all were talking about.

19 After Nikishna went to Florida, did you ever talk
20 to him other than this time?

21 A After Nikishna went to Florida --

22 Q Right. So what was that? About the 15th, 16th
23 of November?

24 A Yeah, I don't recall if I spoke to Nikishna or
25 not after the meeting on the -- the Friday afternoon meeting.

1 Q And the next time you talked to him was when he
2 showed up at the office; right?

3 A That's correct.

4 MR. KHOURI: Thank you very much, sir.

5 THE COURT: Mr. Mittal?

6 REDIRECT EXAMINATION

7 BY MR. MITTAL:

8 Q You were asked, I think during cross-examination,
9 about the agreements that Blue Stone had with the defendant.
10 Do you recall that?

11 A Yes, sir.

12 Q Based on your understanding of those agreements,
13 did anything in the NDA or employment agreement authorize the
14 deletions that you believe the defendant did on November 17th
15 and 18th of 2014?

16 A No, sir, absolutely not.

17 MR. MITTAL: Nothing further, Your Honor.

18 THE COURT: Mr. Khouri, anything further?

19 MR. KHOURI: No more questions, Your Honor. Thank
20 you.

21 THE COURT: You may step down. You are excused.

22 Sir, if you could please come forward, stand right
23 by our court reporter for a moment. We are going to administer
24 an oath and have you take the witness stand.

25 MR. MARRETT: For the record, Your Honor, the

1 government calls Mike Lee.

2 THE CLERK: Please raise your right hand.

3 Do you solemnly swear that the testimony you shall
4 give in the cause now before this Court shall be the truth, the
5 whole truth, and nothing but the truth, so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Please state your full name and spell
8 your last name for the record.

9 THE WITNESS: My name is Michael Lee, L-e-e.

10 MR. MARRETT: May I proceed, Your Honor?

11 THE COURT: Please do.

12 MICHAEL LEE,
13 called as a witness by the government, was sworn and testified
14 as follows:

15 DIRECT EXAMINATION

16 BY MR. MARRETT:

17 Q Good afternoon, Mr. Lee. Can you tell the jury
18 who you work for and what your role is.

19 A I work for Crestline Funding. We are a
20 residential mortgage company based out of Irvine. We have an
21 office in Irvine and in San Diego. My role is vice president
22 of IT. So I'm in charge of everything computer related,
23 networks, information, data and that.

24 Q You said that Crestline has two offices, one in
25 Irvine and one in San Diego. Do you provide IT oversight to

1 both of those offices?

2 A I do, yes.

3 Q Is Crestline's office in Irvine, is that the same
4 office space in 2014 that a company called Blue Stone had an
5 office at?

6 A It is, yes.

7 Q Does Crestline own that building that Blue Stone
8 had office space in?

9 A We do, yes.

10 Q Blue Stone was a tenant of Crestline's?

11 A That's correct.

12 Q And does Crestline have its own dedicated
13 Internet connections at that Irvine office location?

14 A We do. We have two connections to the Internet
15 just for Crestline.

16 Q Does Crestline also have a tenant network?

17 A We do. It's a third connection separate from the
18 other two.

19 Q At some point in or around 2014, did Blue Stone
20 ask to set up its own router and its own ISP connection?

21 A They did, yes.

22 Q For the jury, what's an ISP?

23 A Internet service provider. They are the ones
24 that provide service to the Internet.

25 Q And did Crestline agree to allow Blue Stone to

1 set up its own router and ISP?

2 A Yes.

3 Q As the VP of technology, did you assist
4 Blue Stone in installing this router and IT by giving
5 Blue Stone access to the IT control room?

6 A Yeah. I generally would give -- it's a secure
7 room. So I would give access to the room, point out, you know,
8 rack space and where to put their equipment.

9 Q And then there was a Blue Stone representative
10 there hooking the equipment up into the Internet connection?

11 A Yeah. They would do the configuration and setup
12 and all of that.

13 Q Was that Blue Stone representative a person named
14 Eldad Yacobi?

15 A Yes. I have worked with Eldad in that capacity.

16 Q In 2014 are you aware of any security breaches
17 caused by Blue Stone's Internet connection?

18 A I am not.

19 Q In 2014 are you aware of any illegal Internet
20 connections that Blue Stone had?

21 A I am not aware of that.

22 Q As the VP of technology at Crestline, are you the
23 person who would be informed of serious IT or Internet issues
24 at Crestline's building?

25 A Generally, yes.

1 Q Do recall Crestline ever kicking Blue Stone off
2 the Internet in 2014?

3 A I do not.

4 MR. MARRETT: Just one moment, Your Honor.

5 Nothing further.

6 CROSS-EXAMINATION

7 BY MR. KHOURI:

8 Q Is it Mr. Lee?

9 A Yes.

10 Q Nice to meet you. I'm Mike Khouri. I represent
11 Nikishna Polequaptewa. Do you know Nikishna?

12 A I recall him, yes. I spoke to him a few times.

13 Q And did you speak with him about IT issues or
14 other issues?

15 A IT issues.

16 Q Now, when this -- when Blue Stone decided that it
17 wanted to have its own Internet connection, do you remember
18 when this was in 2014?

19 A No.

20 Q Was it football season, baseball season,
21 beginning of the year, end of the year?

22 A I mean, I don't. They've had service, as far as
23 I know, throughout that year.

24 Q And the person that you dealt with was
25 Mr. Yacobi; correct?

1 A Is that Eldad?

2 Q Eldad.

3 A Yes.

4 Q Did you deal with him on a paperwork basis, or
5 did you actually deal with him on connecting the Internet
6 connection?

7 A I recall pointing out how you can have this space
8 on a rack.

9 Q When you say on the rack, is that the server
10 rack?

11 A It is, yes.

12 Q Where is that located?

13 A In our server room in our building second floor.

14 Q And Blue Stone was located on the second floor
15 too?

16 A Correct.

17 Q You are an experienced IT person because you are
18 director of IT for Crestline; correct?

19 A Correct.

20 Q So why would you be showing Eldad the space that
21 he could have on the server rack?

22 A Well, we have a number of tenants and as well as
23 Crestline's equipment in the room. And so I'm the one that
24 organizes who goes where.

25 Q Would Eldad have been the one that would have

1 actually mechanically connected Blue Stone to the Internet in
2 that space of the server rack?

3 A I believe so.

4 Q Because that's why you told him what space he
5 could have?

6 A Yes.

7 Q And the Internet connection would also be the
8 connection that Blue Stone utilizes for e-mail purposes;
9 correct?

10 A Correct.

11 Q And Eldad, of course, would be the one who would
12 have access to all the e-mails because he knows about how they
13 are connected on the server; correct?

14 MR. MARRETT: Objection. Calls for speculation.

15 THE COURT: Overruled.

16 If you know, sir.

17 THE WITNESS: I wouldn't know that. A connection to
18 the Internet can do many things. So, you know, all that I
19 would know is that he was the one that set up the connection to
20 the Internet.

21 BY MR. KHOURI:

22 Q Right. And one of the many things that the
23 connection to the Internet would do would -- would the
24 e-mail -- the e-mail would be used through the Internet;
25 correct?

1 MR. MARRETT: Objection. Asked and answered.

2 THE COURT: Overruled.

3 THE WITNESS: E-mail travels over the Internet, yes.

4 BY MR. KHOURI:

5 Q Right. And if you have an e-mail address that
6 is, say, something dot com, then that means that the e-mail is
7 traveling over the Internet; right?

8 A Correct.

9 Q So an e-mail address that says
10 @Bluestonestrategy.com travels through the Internet; right?

11 A It potentially could.

12 Q Right. Through the server that's on the second
13 floor at Blue Stone; right?

14 A I don't know where their mail server is.

15 Q But through that space on the rack that you
16 showed Eldad; right?

17 A Well, I mean, just speaking -- because I don't
18 know the topology of their network, they could have a mail
19 server inside on their local LAN, and you could e-mail without
20 hitting the Internet. Or you could e-mail, and if you are
21 e-mailing somebody that's not part of your domain, it would
22 travel through the Internet.

23 Q All right. But if it travels through the
24 Internet like a dot com e-mail should, then it's going to go
25 through the space on the rack that you showed Eldad?

1 A Yes.

2 Q Okay. It's my fault because I can't -- I don't
3 know much about this. All right.

4 So did you -- do you know a guy name Scott Brown?

5 A I do.

6 Q Who is Scott Brown?

7 A CEO of Crestline Funding.

8 Q Would he have been one that may have received a
9 complaint from anybody at Blue Stone about the Internet going
10 down?

11 MR. MARRETT: Objection. Calls for speculation.

12 THE COURT: As framed, sustained.

13 BY MR. KHOURI:

14 Q You say you are the one that generally would
15 receive those complaints?

16 A Yes.

17 Q So if you didn't, who would receive them?

18 A Well, I mean, I suppose if it was mailed, it
19 could go to the receptionist, and the receptionist would then
20 forward it to me.

21 Q There are a lot of people at your company that
22 could get the complaint that the Internet has gone down; right?

23 A A verbal?

24 Q Yeah.

25 A Sure.

1 Q So how many?

2 A Well, I mean, when the Internet goes down, people
3 generally scream, and then you have everyone aware that the
4 Internet has gone down. But generally, you know, someone from
5 Blue Stone would call our receptionist and say, hey, you know,
6 Internet is down. And they would contact me.

7 Q And so if somebody complained that the Internet
8 was down, Nikishna would be able to fix it --

9 MR. MARRETT: Objection. Calls for speculation.

10 THE COURT: Let the question finish, please.

11 BY MR. KHOURI:

12 Q You had contact with Nikishna about IT issues;
13 correct?

14 A I did, yes.

15 Q And did they deal with the Internet?

16 A I don't recall if they were dealing with the
17 Internet or not. I recall that he helped in moving from, you
18 know, within our space different tenant offices.

19 Q What I'm getting at if there was a complaint
20 about the Internet and it got fixed before a complaint was
21 relayed to you, you would never know about it; right?

22 A That's true, sure.

23 Q And do you know how computers are remotely
24 accessed?

25 A I know of ways to access computers remotely, yes.

1 Q Does that require special software?

2 A It requires a computer. I don't know that it
3 requires special software.

4 Q Could computers be remotely accessed through the
5 Internet space on that rack?

6 MR. MARRETT: Objection. Calls for speculation,
7 improper hypothetical.

8 THE COURT: Overruled.

9 If you know, sir.

10 THE WITNESS: Could you repeat the question?

11 BY MR. KHOURI:

12 Q The space on the rack, the server rack, could
13 that be utilized to remotely access computers?

14 A The -- if there's a router in that space on the
15 rack, that provides a potential point of entry to the network.
16 So yes.

17 Q And you don't know whether there's a router
18 there?

19 A If it's not our network, I don't really have any
20 knowledge of what their equipment is. I just point them to
21 where they can set it up.

22 Q Got it. Thank you, sir.

23 MR. MARRETT: Nothing further, Your Honor.

24 THE COURT: Sir, you can step down. You are
25 excused.

1 THE WITNESS: Thank you.

2 MR. MITTAL: Your Honor, the government calls
3 Adam Shaw.

4 THE COURT: Sir, if you could please come forward.
5 Stand by our court reporter for a moment. We are going to
6 administer an oath to you and then have you take the witness
7 stand.

8 THE CLERK: Please raise your right hand.

9 Do you solemnly swear that the testimony you shall
10 give in the cause now before this Court shall be the truth, the
11 whole truth, and nothing but the truth, so help you God?

12 THE WITNESS: I do.

13 THE CLERK: Please state your full name and spell
14 your last name for the record.

15 THE WITNESS: Adam Shaw, S-h-a-w.

16 ADAM SHAW,
17 called as a witness by the government, was sworn and testified
18 as follows:

19 DIRECT EXAMINATION

20 BY MR. MITTAL:

21 Q Good afternoon, Mr. Shaw.

22 A Good afternoon.

23 Q Who do you work for?

24 A I work for Apple.

25 Q I'm sure the jurors know what Apple is. But what

1 does Apple make?

2 A Apple makes iPhones, iPads, laptop computers,
3 desktop computers, MP3 devices, accessories, technology.

4 Q And where do you work for Apple?

5 A I work at the Genius Bar.

6 Q And which particular Genius Bar do you work at?

7 A The genius bar at South Coast Plaza.

8 Q That's just down the road in Orange County?

9 A Correct.

10 Q How long have you worked for Apple?

11 A Over seven years.

12 Q During your time with Apple, have you become
13 familiar with Apple products?

14 A Very.

15 Q When you started with the company, what was your
16 title and responsibilities?

17 A I was a specialist. Basically responsibilities
18 of a specialist are to sell products, greet customers as they
19 come into the store, recommend relevant solutions to those
20 customers.

21 Q And after you were a specialist, what was your
22 next role?

23 A A Family Room Specialist.

24 Q What is a Family Room Specialist?

25 A A Family Room Specialist is an iPhone

1 troubleshooting technician. So if a customer has an issue with
2 their iPhone or iPad or a portable device, we troubleshoot that
3 device and get it checked in for the relevant repair.

4 Q When you were at the -- when you were a Family
5 Room Specialist, was that at the Genius Bar?

6 A Correct.

7 Q Did you receive training when you became a Family
8 Room Specialist?

9 A I did.

10 Q What kind of training?

11 A We received a mobile certification which
12 basically certifies us by Apple to troubleshoot Apple devices.

13 Q Did you become a Genius after that?

14 A I did.

15 Q What's a Genius?

16 A A Genius is top legal of troubleshooting. So
17 they do all the iPhone repairs, Mac repairs. They troubleshoot
18 the Macs. There's kind of a responsibility of them to help the
19 lower technicians out with things.

20 Q And is that -- as a Genius, do you work directly
21 with the customers?

22 A Correct.

23 Q Did you receive training when you became a
24 Genius?

25 A I did, yes.

1 Q Where was that training?

2 A That was up in Cupertino. They flew us up for
3 three weeks to train and become certified to work on Mac
4 computers and iPhones.

5 Q Is that where Apple is headquartered?

6 A Yes.

7 Q What are you currently?

8 A My title currently is Lead Genius.

9 Q What does a Lead Genius do?

10 A I oversee all Genius Bar operations including
11 training.

12 Q How do you oversee training?

13 A I onboard new technicians as they come in. So
14 when we hire new Geniuses, new Family Room Specialists or
15 iPhone technicians, we train all of them and approve them to
16 work with customers.

17 Q Are you familiar with the phrase "career
18 experience"?

19 A I am.

20 Q What does that mean with respect to your role as
21 a Lead Genius?

22 A Career experience is an opportunity to perform a
23 role outside of your normal role. So as a Lead Genius, I
24 haven't gone over a career experience yet. But previously in
25 my previous roles I was involved in two different career

1 experiences.

2 Q What did you do in those career experiences?

3 A In one career experience I was a trainer for the
4 entire store. So we trained all incoming employees, did their
5 orientation, taught them how to sell, how to troubleshoot
6 iPhones, general onboarding, new initiatives we would train
7 them in as well.

8 The second career experience I did was a manager
9 career experience where I was supporting the leadership team at
10 the store during the holidays.

11 Q Are you familiar with Apple's Find My iPhone
12 application?

13 A Yes.

14 Q Are you also familiar with Apple's iCloud
15 accounts?

16 A I am.

17 Q How many times roughly have you used the Find My
18 iPhone application?

19 A Thousands.

20 Q Can you explain what that application is.

21 A The Find My iPhone application allows a customer
22 to track their missing devices as well as lock the device if
23 it's lost or remotely erase it if it can't be recovered. We
24 use it to validate customers' devices that it belongs to them
25 if they have a log in information for that.

1 Q And even though the application is called Find My
2 iPhone, is it limited to iPhones?

3 A No, actually. It works for Mac computers, for
4 iPads, and iPhones and iPod touches.

5 Q So you could use it in 2014 to remotely erase or
6 lock a Mac Pro desktop or MacBook Pro?

7 A Yes.

8 MR. MITTAL: Can I have a moment, Your Honor?

9 THE COURT: You may.

10 MR. MITTAL: Can we publish 91?

11 Q Do you recognize what's shown in Exhibit 91?

12 A Yes. That's a Mac Pro desktop.

13 Q And generally what's a Mac Pro desktop?

14 A A Mac Pro desktop would be the highest end
15 computer that we would sell, typically used for professional
16 level video editing, photo editing, website creation, or even
17 being used as a server.

18 MR. MITTAL: Can we publish Exhibit 18?

19 Q Do you recognize that?

20 A That's a MacBook Pro.

21 Q What is a MacBook Pro?

22 A A MacBook Pro in this model would be a 15-inch
23 MacBook Pro -- is a professional level laptop again used for
24 typically high-end video editing, photo editing, gaming, things
25 of that nature.

1 Q How can you tell it's 15 inches?

2 A It's got speakers on the side.

3 Q Can you take a look at Exhibit 100? It's in the
4 binder in front of you. There's a second binder.

5 Do you have it in front of you?

6 A Yes.

7 Q In preparation for today, have you met with the
8 government including the FBI agent seated at counsel table and
9 reviewed these exhibits?

10 A Yes.

11 Q Do you recognize Exhibit 100?

12 A I do.

13 Q Generally speaking, what's contained within
14 Exhibit 100?

15 A This is the login window for Find My iPhone.

16 Q Does Exhibit 100 contain screen captures for
17 erasing or locking an iPhone?

18 A It does.

19 Q And does Exhibit 100 accurately represent what a
20 user would see if he or she was remotely wiping or locking an
21 iPhone in 2014 using the Find My iPhone application?

22 A Yes, that's accurate.

23 MR. MITTAL: Your Honor, I move to admit 100.

24 THE COURT: Any objection?

25 MR. KHOURI: None, Your Honor.

1 THE COURT: Exhibit 100 will be received into
2 evidence.

3 (Exhibit No. 100 received into evidence.)

4 MR. MITTAL: Can we publish 100, page 1?

5 Q Do you see what's in -- on page 1 there?

6 A Yes.

7 Q What is page 1 of Exhibit 100?

8 A This is the login window for Find My iPhone.

9 Q To log in to the Find My iPhone application, what
10 does the user have to enter?

11 A Your Apple ID or iCloud account as well as your
12 password.

13 Q To access any of the functions that are contained
14 within the Find My iPhone application, the user enters both the
15 Apple ID and the password?

16 A Correct.

17 Q I'm publishing page 2 of Exhibit 100. Do you see
18 that?

19 A Yes.

20 Q Is this the screen that the user would see after
21 entering their user name and password?

22 A That's correct.

23 Q What's shown in the top half of the exhibit
24 there?

25 A That's a map where those devices are located.

1 Q When you say "those devices," what are you
2 talking about?

3 A The devices listed below the map. So the
4 location of them.

5 Q So for page 2, there's three iPhones and an iMac
6 Retina. Those would be located in the map above?

7 A That's correct.

8 Q What's the significance of where it says
9 "sign out"?

10 A Sign out would allow you to physically sign out
11 of the application locking it again until you use your user
12 name and password to get back in.

13 Q Do you see on the left side the green and
14 the blue dots?

15 A Uh-huh.

16 Q What do those mean?

17 A The green dots mean that they are devices that
18 aren't being accessed physically. The blue dot indicates that
19 this iPhone is the iPhone that you are using to view this page.

20 Q Do you see the zero mile there?

21 A Yes.

22 Q What does that mean?

23 A That's the distance to those devices from your
24 current location.

25 Q If someone had assigned their Mac Pro desktop or

1 the MacBook Pro laptop to their Find My iPhone application,
2 would those be listed here on the bottom as well?

3 A Yes, they would.

4 Q So all the functions we are talking about today
5 in terms of locks and erases, in 2014 those all could have been
6 done to a Mac Pro or a MacBook Pro?

7 A That's correct.

8 Q Publishing page 3 of 100, do you see that in
9 front of you?

10 A Yes.

11 Q So is this what the user would see if they had
12 pushed the iPhone 5 that was on the previous page?

13 A That's correct.

14 Q Then do you see where it says "actions"?

15 A Yes.

16 Q If they push the actions button, then they get
17 the screen that's displayed on the right?

18 A That's correct.

19 Q So on page 3, the three different tabs on the
20 bottom, "play sound," "lost mode" and "erase iPhone," can you
21 explain what those mean?

22 A Yes. Play sound is something that you would use,
23 say, if your device was lost in the couch and you couldn't find
24 it. It plays a tone so that you can track that device down if
25 it's nearby.

1 The lost mode would be a mode that you would put
2 your device in that locks it out until you physically unlock
3 it, rendering the device useless.

4 And then finally, erase iPhone would allow you to
5 physically erase that device.

6 Q The arrows are, those are just for illustration?
7 They are not actually on the screen when the user pushes one of
8 those buttons?

9 A No.

10 Q Publishing page 4 of 100, is this the screen the
11 user would see if they pushed the "erase iPhone" we saw on the
12 last page?

13 A That's correct.

14 Q This is a warning that Apple provides them before
15 they initiate the erase?

16 A Yes.

17 Q Would the user have to push the red writing there
18 "erase iPhone" before the erase would actually happen?

19 A That's correct.

20 Q So this serves as a warning or confirmation
21 before you initiate the erase?

22 A Yes.

23 Q Do you see the "cancel" button up there?

24 A Yes.

25 Q What's the purpose of that button?

1 A It allows you to back out of this page if you
2 decide you don't want to erase the device.

3 Q If you do it by accident or you have second
4 thoughts, you can cancel it out?

5 A That's correct.

6 Q I'm publishing page 5 of 100. So if a person
7 pushed that red "erase iPhone" in the last page, they would see
8 page 5?

9 A Yes.

10 Q And so before they initiate the erase, they have
11 to enter again the password for the Apple ID account?

12 A Yes.

13 Q Publishing page 6 of 100, do you see that?

14 A Yes.

15 Q What's on page 6?

16 A Page 6 allows you to add a phone number if the
17 device is found to call that to get it back to the owner.

18 Q So after the person that was on page 5 where they
19 entered their password, this is the next screen they would see?

20 A That's correct.

21 Q And again, they could still cancel out if they
22 chose?

23 A Yes.

24 Q If they wanted to go forward, they just click the
25 "next" button?

1 A That's correct.

2 Q I'm publishing page 7 of 100. Do you see that?

3 A Yeah.

4 Q Is this the screen they would see if they had
5 pushed that next button we saw on page 6?

6 A Yes, that's correct.

7 Q What's the purpose of page 7 of Exhibit 100?

8 A This gives you an opportunity to write a short
9 message, perhaps naming who this device belongs to and how to
10 get in touch with them.

11 Q I'm going to publish page 9. So this is going
12 back to the start when you logged into the Find My iPhone
13 application. Do you recall that screen?

14 A Yes.

15 Q Then we can publish page 10 of 100. Now the
16 arrows are on the lost mode feature. Can you describe again
17 what is the purpose and what does the lost mode feature do?

18 A The lost mode systematically locks the device so
19 that it can't be accessed by anyone but the person that put it
20 in lost mode.

21 Q So what's the difference between doing the lost
22 mode and erase iPhone?

23 A Lost mode will maintain the information on the
24 phone until it's found. There's still -- you could erase it as
25 well. But if you feel that you have an opportunity to get the

1 phone back by putting it in lost mode, it basically locks the
2 phone so that it can't be used by anyone.

3 Q If the person pushes the lost mode button, do
4 they see page 11 on 100?

5 A Yes.

6 Q Again, they have to hit the green writing there
7 to turn on lost mode before going forward?

8 A Yes.

9 Q And there's opportunities to cancel out using the
10 cancel button if they want to?

11 A Yes, there is.

12 Q Publishing page 12, is this where the person
13 would enter the four digit passcode to lock the device?

14 A That's correct.

15 Q Does this passcode, does this sit on top of
16 whatever passcode may already be on the device?

17 A Yes, it would.

18 Q Publishing page 13 of 100, is this similar to in
19 the wipe feature that we talked about? The user can enter a
20 phone number and a message?

21 A That's correct.

22 Q I guess that's shown in page 14 of 100 as well?

23 A Yes.

24 Q What's the purpose in the lost mode for having
25 someone enter their phone number and a message?

1 A Again, so that the device could be returned to
2 the owner.

3 Q You are familiar with Mac Pros from 2014?

4 A I am.

5 Q When someone accesses a Mac Pro, do they always
6 need to enter a password to get into the Mac Pro?

7 A Not always.

8 Q How could someone access the Mac Pro desktop
9 without needing a password?

10 A There's an option in the security settings that
11 allows you to not require a password at login.

12 Q So you could still have the user profile set up,
13 but they could get right into the desktop of the computer and
14 run any applications that they needed to?

15 A That's correct.

16 Q Are you familiar with the two-factor
17 authentication and how it's used in iCloud accounts?

18 A Yes, I am.

19 Q What is two-factor authentication with respect to
20 iCloud accounts?

21 A It's an extra level of security that requires you
22 to enter in a code that is sent to your device further
23 validating that you are the one that is logging in.

24 Q How does it work? If someone had an iCloud
25 account and wanted to add it on functionally, what would they

1 do?

2 A When you set up an iCloud account, you add a
3 trusted phone number that will have the code sent to it as well
4 as other trusted devices. So the code could be sent to a phone
5 or an iPad or a laptop, whatever trusted device you have with
6 you. And you would use that code to authenticate the login.

7 Q To the iCloud account?

8 A Correct.

9 Q So that's a separate feature kind of unrelated to
10 the Find My iPhone application?

11 A Correct.

12 Q If someone sends an erase or wipe command using
13 Find My iPhone to a Mac Pro and that Mac Pro was not connected
14 to the Internet, what would happen?

15 A The erase would pend until it connects to the
16 network again.

17 Q So once the Mac Pro is turned on and connected to
18 the Internet, what would happen?

19 A That erase command would be initiated.

20 Q What would happen when it's initiated?

21 A All the information on the device would be
22 erased.

23 Q Could a person send a wipe or erase mode command
24 using the Find My iPhone application from Florida to a Mac Pro
25 desktop in Irvine, California?

1 A Yes.

2 Q Could those wipes or lock commands that you just
3 described from Find My iPhone, could those be sent essentially
4 anywhere in the world that accesses the Internet?

5 A That's correct.

6 Q If a device is never connected to the Internet
7 again like a MacBook Pro but there was a lock or an erase,
8 would any of the commands go through?

9 A No. It would have to connect to the Internet for
10 the erase to go through.

11 MR. MITTAL: Could I have a moment, Your Honor?

12 THE COURT: You may.

13 MR. MITTAL: Nothing further, Your Honor.

14 THE COURT: Mr. Khouri, how long do you expect your
15 examination, sir?

16 MR. KHOURI: Maybe 20 minutes.

17 THE COURT: Ladies and gentlemen, why don't we take
18 our afternoon break.

19 THE CLERK: All rise.

20 (Outside the presence of the jury.)

21 THE COURT: You can step down and take a break, sir.

22 I noticed some of the jurors were starting to get
23 heavy eyed. So I thought a break was necessary.

24 Melissa didn't give me any detail, but she also says
25 some of them are getting tired. We don't think the government

1 is going to finish its case today obviously. But you do
2 anticipate finishing it tomorrow?

3 MR. MITTAL: Yes, Your Honor. We were just talking
4 over lunch. We are cautiously optimistic maybe we can get done
5 the first half tomorrow?

6 THE COURT: You mean before lunch or before the
7 first morning break?

8 MR. MITTAL: I think realistically before lunch.

9 THE COURT: And then Mr. Khouri, you'll put on
10 Mr. Polequaptewa?

11 MR. KHOURI: Yes, Your Honor.

12 THE COURT: How long are you expecting his direct
13 examination to be?

14 MR. KHOURI: An hour.

15 THE COURT: How about cross?

16 MR. MITTAL: I'd say 30 to 45 minutes.

17 THE COURT: Let me tell you why I'm asking. Since
18 they've got to come back next week anyway, especially this
19 being a holiday weekend, it might be a nice gesture on our part
20 if I told them they could be released early. But I don't want
21 to do that if you know we really need a full day to get all the
22 evidence in. Because I would like to finish the case, closing
23 arguments, jury instructions all Tuesday and then give them
24 some time in the afternoon to at least start deliberations.

25 MR. MITTAL: I'll defer to the Court and the jurors.

1 If they want to come in earlier tomorrow, we would be okay with
2 that too to shorten the end.

3 THE COURT: They are going to come in -- I was
4 proposing again to give them an incentive to come in again at
5 8:00. We started at 8:10. But hopefully we can get the one
6 juror who showed up late to please be on time. The one who
7 showed up late before that showed up at 6:00 o'clock today
8 because she felt so badly. But hopefully they'll all show up
9 on time at 8:00.

10 And then I was thinking of breaking at 3:00. But,
11 again, I don't want to do that if we are not going to be able
12 to have everything plus a little time for at least starting the
13 deliberations on Tuesday.

14 What is your estimate or your response? Do you
15 think that's very doable?

16 MR. KHOURI: I think so. The witnesses I'll have on
17 Tuesday will be quick. I'm hoping to have two, but I might
18 only have one.

19 THE COURT: Okay. So you want me to tell them that
20 then?

21 MR. MITTAL: That's fine from the government,
22 Your Honor.

23 THE COURT: All right. That's what we'll do.

24 All right. We have to give our great court reporter
25 a break here. Sorry. We are in recess.

1 (At 2:13 p.m. a brief recess was taken.)

2 THE COURT: Please be seated, ladies and gentlemen.

3 Mr. Khouri, please proceed, sir.

4 CROSS-EXAMINATION

5 BY MR. KHOURI:

6 Q Good afternoon, Mr. Shaw. I'm Mike Khouri. I'm
7 Nikishna Polequaptewa's lawyer.

8 And I know I'm going to get in trouble for this.
9 But before you go back to South Coast Plaza in Costa Mesa can
10 you -- okay.

11 So I want to ask you some questions about this
12 erase and restore function on the iPhone, okay? What exactly
13 does it do?

14 A The erase function is basically exactly what it
15 sounds like where you could initiate that function to erase a
16 device that you couldn't access anymore.

17 Q Okay. And what's the restore function for?

18 A Restoring would be putting the information back
19 on there through a separate process unrelated to the Find My
20 iPhone.

21 Q As a matter of fact, Apple doesn't make any
22 software that would destroy or damage a computer; right?

23 A Not that I'm aware of.

24 Q The function, the erase function, erases
25 information, but that information can be restored; correct?

1 A Potentially.

2 Q And what determines whether it gets restored or
3 not? Whether you use that restore function?

4 A If you have a backup.

5 Q And the data would be backed up where?

6 A It could be backed up locally through an external
7 hard drive or backed up to a server depending on the
8 configuration.

9 Q Now, why does Apple offer that product to its
10 customers?

11 A Which product?

12 Q The erase and restore function?

13 A So that data can be erased from a device if it is
14 not accessible. If you lost it or --

15 Q I'm sorry. That was a bad question. And I know
16 you are a Genius and I'm nowhere near that.

17 But what are the circumstances under which the
18 erase function would be appropriate according to your
19 knowledge?

20 A A device is lost and can't be recovered so that
21 you would erase the device to prevent your data from being
22 accessed.

23 Q What about if your data is being hacked into by
24 some other computer?

25 MR. MITTAL: Objection. Vague, calls for

1 speculation.

2 THE COURT: Overruled. If you understand the
3 question. If not, let him no.

4 THE WITNESS: I would need to have that rephrased
5 maybe.

6 BY MR. KHOURI:

7 Q If your personal information on your computer is
8 being accessed by someone without authorization, would the
9 erase function be appropriate to use?

10 A I suppose.

11 Q You could use it as sort of a security function
12 to keep your data from being discovered by somebody who doesn't
13 have authorization; right?

14 A I suppose.

15 Q Okay. And how would you do that?

16 A By signing into the Find My iPhone application
17 and initiating erase command.

18 Q And that would take care of that data that you
19 want to protect?

20 A Yes.

21 Q If there's both personal data on a device and
22 also business-related data, can you erase the personal -- if
23 you go through with the erase function, it's going to erase
24 everything; right?

25 A Correct.

1 Q There's no function to say only certain data but
2 not other data?

3 A There's not.

4 Q But then what you could do is you could restore
5 the business data; correct?

6 A Assuming it was backed up.

7 Q Assuming it was backed up on a server or on the
8 cloud; right?

9 A Correct.

10 Q And what is the cloud?

11 A The cloud is an off-site server that stores
12 information for a customer.

13 Q It's an additional form of backup; right?

14 A Correct.

15 Q Kind of like wearing a belt and suspenders at the
16 same time?

17 A Correct.

18 Q Is that something that you recommend?

19 A For iPhones, yes. The cloud wouldn't back up a
20 computer at that time.

21 Q Because I seem to be getting messages on my
22 iPhone over and over your information isn't backed up on the
23 cloud. That's something that I think Apple probably
24 encourages; right?

25 A Correct, on iOS devices.

1 Q I'm sorry?

2 A On iOS devices.

3 Q Okay. And it's something that I think Apple
4 encourages businesses to do so that they have that extra
5 protection; right?

6 A Yes.

7 Q Is it possible for a computer to be remotely
8 accessed by another computer?

9 A Yes.

10 Q And do you need any specific software, or how
11 does that happen?

12 A To be honest, I'm not fluent in that process.

13 Q You're not? Okay.

14 With remote access can one computer send a
15 command to another computer to in turn send out a command?

16 A Again, I'm not fluent in that process.

17 Q You don't know at all?

18 A Not specifically.

19 Q All right. Then what about what you do
20 know about how remote access -- I asked you if it's possible
21 for one computer to remotely access another and you said yes.

22 A Yes.

23 Q How is that done?

24 A Through the Internet.

25 Q Through the Internet. Okay.

1 And would it be done through the Internet --
2 someone would have to have Internet connections; right?

3 A Correct.

4 Q What's a router?

5 A A router would provide Internet to a location, a
6 wireless router. It routes the Internet to an access point.

7 Q If you are going to connect -- for instance, if
8 you were assigned to connect an office to its own Internet
9 connection, would you use a router?

10 A Yes.

11 Q Under all circumstances?

12 A Under most circumstances. It depends on the
13 configuration at that office.

14 Q A regular office with 12 employees, you'd need a
15 router; right?

16 A If you were using wireless connection, yes.

17 Q And a wireless connection is the Internet?

18 A Correct.

19 Q Okay. Thank you very much, sir.

20 Thank you, Your Honor.

21 THE COURT: Mr. Mittal?

22 REDIRECT EXAMINATION

23 BY MR. MITTAL:

24 Q I just want to clarify one thing. You were given
25 a hypothetical about if you thought someone was accessing

1 personal information of yours on a computer what -- how you
2 could use the Find My iPhone application. Do you remember
3 that?

4 A Yes.

5 Q Instead of erasing the data using the erase
6 command, you could also lock the device, and that would prevent
7 anyone from using that device?

8 A That's correct.

9 MR. MITTAL: Nothing further, Your Honor.

10 THE COURT: Mr. Khouri, anything further?

11 MR. KHOURI: Yes, please.

12 RECROSS-EXAMINATION

13 BY MR. KHOURI:

14 Q Do you know what the Apple Remote Desktop 3
15 software is?

16 MR. MITTAL: Objection. Beyond the scope, Your
17 Honor.

18 THE COURT: Overruled.

19 THE WITNESS: It's a software that you would use to
20 remotely access a computer.

21 BY MR. KHOURI:

22 Q What's the observe mode?

23 A That I'm not familiar with.

24 Q Or the remote connect?

25 A (Inaudible response.)

1 Q You don't know?

2 A No.

3 Q But you do know that this particular software
4 helps you or makes it possible to remotely access another
5 computer?

6 A Yes, I'm aware of its existence, but its
7 functions I've never used it.

8 Q Do you know that if you have that software, would
9 it require the authorization of the other person?

10 A I'm not aware.

11 Q You don't know. Okay. Thank you.

12 THE COURT: Sir, you can step down. You are
13 excused.

14 THE WITNESS: Thank you.

15 MR. MARRETT: Your Honor, the government calls
16 Robert Mooers.

17 THE COURT: Hello, sir. Would you please just stand
18 by our court reporter for a moment. We are going to administer
19 an oath and have you take the witness stand.

20 THE CLERK: Do you solemnly swear that the testimony
21 you shall give in the cause now before this Court shall be the
22 truth, the whole truth, and nothing but the truth, so help you
23 God?

24 THE WITNESS: Yes.

25 THE CLERK: Please state your full name and spell

1 your last name.

2 THE WITNESS: Robert Mooers, M-o-o-e-r-s.

3 THE COURT: Please proceed.

4 ROBERT MOOERS,

5 called as a witness by the government, was sworn and testified
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. MARRETT:

9 Q Good afternoon, Mr. Mooers. Can you tell the
10 jury who you currently work for and what your role is.

11 A My company is RKM Marketing, and I'm a marketing
12 consultant.

13 Q And before working for RKM Marketing, did you
14 work for a company called Whole Products Marketing?

15 A Yes, I did.

16 Q What was Whole Products Marketing?

17 A A similar business, business strategy and
18 consulting.

19 Q What was your role at that company?

20 A I was a consultant.

21 Q As part of your job as a consultant, have you
22 done work for Blue Stone Strategy Group?

23 A Yes.

24 Q Did you do that work as an employee of Blue Stone
25 or as an outside consultant to Blue Stone?

1 A As a consultant, contractor.

2 Q How long did you do consulting work for
3 Blue Stone?

4 A My recollection, probably about six years.

5 Q Did you do some of the consulting work around
6 2014?

7 A Yes.

8 Q And around 2014 did you work at Blue Stone on a
9 retainer basis or a salary basis? How did you work for them?

10 A It was a combination. So it was project-based
11 work when it was client work and retainer work to support the
12 company's internal initiatives.

13 Q Around 2014 aside from Blue Stone, did you have
14 other clients as well?

15 A Yes.

16 Q And what type of work did you do for other
17 clients around 2014?

18 A Mainly marketing-oriented work, consulting,
19 advertising, public relations work as well.

20 Q And around 2014, was the majority of your
21 business from clients other than Blue Stone?

22 A Yes.

23 Q From working at Blue Stone or with Blue Stone,
24 are you familiar with Nikishna Polequaptewa?

25 A Yes.

1 MR. MARRETT: Your Honor, I'll note for the
2 record there's a stipulation.

3 THE COURT: The stipulation will be noted.

4 BY MR. MARRETT:

5 Q Before the defendant worked with Blue Stone, did
6 Blue Stone have a website?

7 A Yes.

8 Q Were you involved in the development of some of
9 the digital content for that version of the website?

10 A Yes, I was.

11 Q Are you familiar with what a website host is?

12 A Yes.

13 Q Generally, can you explain for the jury what a
14 website host is.

15 A From my understanding, a website host is a
16 company that will host your website data on their servers in a
17 secure location that's not necessarily in your office. It's in
18 a secure location that has a redundancy, and they take care of
19 certain maintenance issues associated with the servers so that
20 your website stays up all the time.

21 Q Before the defendant worked with Blue Stone, what
22 company provided hosting services to Blue Stone's website?

23 A It was a company called Bluehost.

24 Q And after the defendant began working with
25 Blue Stone, was there a change to where Blue Stone's website

1 was hosted?

2 A Yes.

3 Q Where was Blue Stones' website hosting moved to?

4 A To my knowledge, it was hosted on a server that
5 was internal to the company. It was a computer in the office.

6 Q Is that a Synology server at Blue Stone?

7 A It was referred to as a Synology server, yes.

8 Q Prior to the time the defendant worked at
9 Blue Stone, were you involved in your consulting work with
10 Blue Stone creating and working on marketing materials?

11 A Yes.

12 Q And did you, while you were working at
13 Blue Stone, use a service called MailChimp to distribute
14 marketing materials?

15 A Yes.

16 Q What is MailChimp?

17 A MailChimp is an e-mail distribution platform. So
18 basically you set up your e-mails in MailChimp. You upload
19 your mailing list or your e-mail list, and you are able to
20 distribute mass mailings to target audiences based on your list
21 and other criteria.

22 And they handle all the distribution. They
23 handle the opt out. So as a consumer, if you got an e-mail and
24 you say I don't like this and you hit "unsubscribe," then
25 MailChimp automatically makes sure you are taken off the list

1 so that the company is compliant and not spamming or sending
2 out erroneous e-mail.

3 And then there's analytics involved where you can
4 take a look at the -- they provide an online dashboard. So you
5 login on the Internet and you see all your campaigns and all
6 the -- how many people looked at, what actions they took, what
7 pages they looked at. So there's reporting data that comes
8 with it.

9 Q And you mentioned opt out. Is opt out something
10 that's important for a company like Blue Stone to be in
11 compliance with legal requirements?

12 A It's actually extremely important. As not even
13 business to business but as consumers it's been a point of
14 contention. It's right up there with do not call lists, right?
15 I don't want to get 800 number calls. There has to be a way to
16 get me off the list. Well, opt out is the same way. I don't
17 want to get your e-mails, take me off your list.

18 Q Blue Stone in around 2014 was relying on
19 MailChimp to manage its opt-out compliance?

20 A That's correct, yes.

21 Q And did Blue Stone keep a separate record of the
22 opt outs apart from MailChimp?

23 A Not to my knowledge, no.

24 Q So Blue Stone relied entirely on MailChimp for
25 that opt-out compliance?

1 A Yes.

2 Q After the defendant began working with
3 Blue Stone, was there a change in your role in working on the
4 website?

5 A Yes, there was.

6 Q What was that change?

7 A Well, the responsibility in terms of managing the
8 website and all things marketing were no longer my
9 responsibility.

10 Q After the defendant started working with
11 Blue Stone, did you still consult and work with the defendant
12 on some website content?

13 A Yes. Yes, we worked pretty closely together on
14 content.

15 Q You were paid for your consulting work?

16 A Yes, I was.

17 Q Were you ever paid for work that you didn't do?

18 A Paid for work I did not do? No.

19 Q Were you ever paid for work that the defendant
20 did?

21 A No.

22 Q After the defendant was hired at Blue Stone, who
23 had access to the back end of the website?

24 A Well, I would have had access at a point in time.
25 Are you -- if you could rephrase the question because there was

1 Bluehost was the point in time where I had access to the back
2 end. Then there was a new website that I wasn't immediately
3 given access to. So are you referring to the -- can you just
4 clarify the question for me.

5 Q Sure. The -- where -- was Blue Stone's website
6 managed using a product known as Word Press?

7 A Yes, it was.

8 Q And who had access to the Word Press features to
9 upload content and make changes to the website?

10 A At one point in time, I had access to that on the
11 Bluehost server. The original website when I was handling
12 marketing I had access.

13 Q At other points in time, who else had access to
14 the back end?

15 A I believe once Nikishna came onboard, Nikishna
16 had access.

17 Q When we are talking about the back end, is that
18 the administrative side of the website?

19 A That's -- yes. As far as what I had access to
20 and my level of knowledge, it was content management. So I
21 could put content up. I could put copy up or put images up on
22 the website.

23 Q Were you involved in a meeting with the defendant
24 on Friday, November 14th, 2014?

25 A Yes.

1 Q And who attended that meeting?

2 A I was -- John Mooers, Nikishna, Eldad, and
3 myself.

4 Q Was the purpose of that meeting to transition
5 roles from the defendant to you and Mr. Yacobi?

6 A Yes, it was.

7 Q Can you look at Exhibit 95 in the binder in front
8 of you. It should be -- there's a black binder up there.

9 A Oh.

10 Q There's actually two black binders. It may be in
11 the second one.

12 Can you briefly flip through the seven pages of
13 Exhibit 95.

14 A Okay.

15 Q Before today did you meet with the government and
16 review Exhibit 95?

17 A Yes.

18 Q Is Exhibit 95 a collection of e-mails and
19 messages that were between you and the defendant?

20 A Yes.

21 MR. MARRETT: Your Honor, the government moves to
22 admit 95.

23 THE COURT: Any objection?

24 MR. KHOURI: No, Your Honor.

25 THE COURT: Exhibit 95 will be received into

1 evidence.

2 (Exhibit No. 95 received into evidence.)

3 BY MR. MARRETT:

4 Q I'm putting up on the screen page 1 of
5 Exhibit 95. Do you see that?

6 A Yes.

7 Q Is this an e-mail that you sent to the defendant
8 on November 14, 2014, at 3:16 p.m.?

9 A Yes.

10 Q Why were you sending this e-mail to the
11 defendant?

12 A Because I wasn't successful in logging into the
13 Synology server or the website.

14 Q I'm putting up page 2 of Exhibit 95. And is this
15 page a page of that same e-mail chain?

16 A I believe so, yes.

17 Q On page 2, you asked the defendant, "Can I log
18 into the CRM app from quick connect?" What's the CRM app that
19 you are referring to in this e-mail?

20 A There was a CRM application that was reported to
21 be under development. It was called Vtiger, and it's basically
22 a customer relationship manager database.

23 Q In or before 2014, were you ever able to access
24 Vtiger?

25 A No.

1 Q Let's go to page 3. Is page 3 of Exhibit 95 an
2 e-mail between you and the defendant on November 14, 2014,
3 around 3:32 p.m.?

4 A Yes.

5 Q And defendant says, "Robert, I just got off the
6 phone with Cox online backup and was able to gain access to the
7 backed up files." Do you have an understanding of what backed
8 up files the defendant was talking about?

9 A Yes. My recollection is he was referring to the
10 backed up files of the website.

11 Q On November 14th, 2014, after this e-mail, were
12 you able to go to the website?

13 A Yes, I was.

14 Q Was there content on the website on
15 November 14th, 2014?

16 A Yes, there was.

17 Q And it appeared as it was supposed to appear?

18 A It presented correctly, yes.

19 Q This is page 4 of Exhibit 95. Who is the speaker
20 in the blue bubbles of the text?

21 A That would be me.

22 Q Who is the speaker in the gray bubble?

23 A That would be Nikishna.

24 Q And at 3:36 p.m. there's a text from the
25 defendant. "It's back up. Whew. LOL. Thank goodness for

1 backups." What is your understanding of the backups that are
2 being referenced in the text message?

3 A The website files.

4 Q The same backups that were being discussed in the
5 e-mail?

6 A Correct.

7 Q After the website was restored on Friday,
8 November 14th, between that time and Tuesday, November 18th,
9 2014, did you notice any problems with Blue Stone's website?

10 A No.

11 Q During that time, did you know of any reason for
12 the defendant to access the website files on Bluehost or
13 Synology?

14 A No.

15 Q This is page 5 of Exhibit 95. It's an e-mail
16 from the defendant to you on November 14th, 2014, at 4:02 p.m.
17 At the top it says, "Bluehost login details." What was your
18 understanding of what the defendant was providing to you in
19 this e-mail?

20 A My understanding was this was the user name and
21 login to the Bluehost hosted website.

22 Q This is one of the -- this is the host where the
23 older version of Blue Stone's website was stored before the
24 defendant worked at Blue Stone?

25 A Yes.

1 Q And in this e-mail, the defendant is not
2 providing any other login information to Blue Stone's other
3 servers?

4 A Correct.

5 Q I'm putting up page 6 of Exhibit 95. It's an
6 e-mail from the defendant to you and John Mooers and
7 Rosa Ruvalcaba on Tuesday, November 18th, 2014. Is this e-mail
8 discussing some of the testimonial videos that the defendant
9 was putting up on the website or working on for the website?

10 A Yes.

11 Q And that's some of the content that the defendant
12 was working on developing for the new version of Blue Stone's
13 website?

14 A Yes.

15 Q So let's move forward in time a few days to
16 November 18th, 2014. On the evening of the November 18th,
17 2014, were you able to access Blue Stone's website?

18 A No.

19 Q When you tried to access the website, what
20 happened?

21 A It just -- no credentials. No profile exists.

22 Q And based on your understanding of the meeting on
23 November 14th, 2014, was the defendant supposed to be working
24 on the website on November 18th, 2014?

25 A No.

1 Q After you were unable to access the website, did
2 you work with Blue Stone to try to regain website access?

3 A I did, yes.

4 Q And were you ever able to gain access?

5 A No.

6 Q Was the website gone?

7 A That website was gone, yes.

8 Q Was the website removed from the Synology Server?

9 A As far as I know, yes, it was not accessible.

10 Q And are you familiar generally from working with
11 Blue Stone's website that the database -- that the Word Press
12 application is database driven?

13 A I'm aware of that, yes.

14 Q And what does it mean to be a database driven
15 application?

16 A My knowledge of that is basically the front end
17 of the website presents the data. It's what presents what you
18 see. But all the information, all the copy, the text, the
19 pictures, any applications, everything resides in a database.
20 And so the Word Press front end pulls from that database to
21 present the site for viewers to see and interact with. But all
22 the information is really sitting in a database.

23 Q So if the information is no longer in the
24 database, then it won't present properly?

25 A Correct.

1 Q Were you ever able to restore Blue Stone's
2 website supporting databases?

3 A We were able to restore a version of Blue Stone
4 website, not that website.

5 Q Not the website that appeared on November 14th,
6 2014?

7 A No.

8 Q Is the website that was restored a version of the
9 website from before the time that the defendant started at
10 Blue Stone?

11 A It was an old version. I don't recall exactly
12 how old it was. But it was an old version that was on
13 Bluehost that we were able to then bring down and reinitiate
14 short term as a solution to get something up. It wasn't the
15 website that had been removed though.

16 Q Based on your recollection of the website
17 development, was the work lost between the two versions of the
18 website significant?

19 A Yes.

20 Q Was it months' worth of development?

21 A I would say in many cases, yes, there was a lot
22 of work put into that website.

23 Q Sometime after the website was down, did you try
24 to access Blue Stone's Synology server?

25 A Could you repeat the question?

1 Q Sure. Sometime on or after November 18th, 2014,
2 did you try to access Blue Stone's Synology server?

3 A I personally did not after the 18th. I
4 attempted -- I had no -- my credentials were removed. I had
5 the same situation. I could not log in whereas I could before.
6 But I could no longer log in, and I didn't try again after the
7 failed attempts.

8 Q So you learned at some point your login had been
9 removed from Synology?

10 A Correct.

11 Q Did you be delete yourself as a user in Synology?

12 A No.

13 Q Around the same time, the November 18th, 2014
14 time frame, did you go to Blue Stone's MailChimp account?

15 A Yes.

16 Q And when you went to that account, was all of the
17 data on the Blue Stone -- that Blue Stone had stored on the
18 MailChimp account, was it there?

19 A No. Everything for the past 12 months was
20 deleted. All campaigns, all e-mails that were sent out, all
21 reporting data, and all of the e-mail lists as well as the
22 opt-out lists, all of the lists were gone.

23 Q Was Blue Stone ever able to recover that deleted
24 data?

25 A I would say to some level. There were

1 spreadsheets from before that were, you know, originally input
2 to MailChimp. Those were recoverable. However, all of the
3 opt-in or opt-out data was gone. So it was all -- what was on
4 MailChimp was a lot cleaner, if I can use that term, than what
5 was in the old spreadsheets.

6 Q So Blue Stone had to start over from 12 months'
7 old data?

8 A Correct. Well, yes, that's correct.

9 Q And it lost those important opt-out compliance
10 information from MailChimp?

11 A The opt-out compliance information and all
12 reporting data on the success and readership trends of targets
13 that received all the e-mails were also deleted, yes.

14 MR. MARRETT: Just one moment, Your Honor. Thank
15 you, Your Honor.

16 Q After November 18th, 2014, did your company at
17 the time, Whole Product Marketing, do work for Blue Stone
18 rebuilding the Blue Stone website?

19 A Yes.

20 Q Can you look at Exhibit 80 in front of you?

21 A I'm sorry. Did you say 80?

22 Q 80. And in particular, page 2 of 80. Are you
23 there?

24 A Got it.

25 Q Is page 2 of Exhibit 80 a bill that your company,

1 Whole Product Marketing, submitted to Blue Stone for services
2 that it rendered to Blue Stone?

3 A Yes.

4 Q And based on your knowledge as the president of
5 Whole Product Marketing, was this bill paid by Blue Stone?

6 A Yes, it was.

7 Q Is this a document that's kept in the ordinary
8 course of business at Whole Product Marketing?

9 A Yes.

10 MR. MARRETT: Your Honor, the government moves to
11 admit Exhibit 80, page 2 into evidence.

12 THE COURT: Any objection?

13 MR. KHOURI: No, Your Honor.

14 THE COURT: That page of that exhibit will be
15 received into evidence.

16 (Exhibit No. 80 page 2 received into evidence.)

17 BY MR. MARRETT:

18 Q I'm publishing page 2 of Exhibit 80. The invoice
19 is dated November 25th, 2014, and is for the amount \$1,825. Is
20 that the amount that Blue Stone paid to Whole Product Marketing
21 for the services it billed?

22 A Yes.

23 Q Under the heading "Activity," the invoice states
24 "Blue Stone website recovery." What work generally did Whole
25 Product Marketing do relating to the Blue Stone website

1 recovery?

2 A We basically took the old Bluehost site and
3 dressed it up a bit and put it back up as the hosted site.

4 MR. MARRETT: Just one minute, Your Honor.

5 Q Were you in Florida on November 17th and 18th,
6 2014?

7 A No.

8 Q On November 17th and 18th, 2014, did you delete
9 any files from Blue Stone's website?

10 A No.

11 Q Did you delete files from Blue Stone's MailChimp?

12 A No.

13 Q Did you delete files from Blue Stone's Synology
14 server?

15 A No.

16 MR. MARRETT: I have nothing further, Your Honor.

17 THE COURT: Very well.

18 Mr. Khouri?

19 MR. KHOURI: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. KHOURI:

22 Q Good afternoon.

23 A Good afternoon.

24 Q I'm Mike Khouri. I'm Mr. Polequaptewa's lawyer.
25 You are Robert Mooers; right?

1 A Yes.

2 Q You are John's brother?

3 A Yes.

4 Q I imagine you got involved in Blue Stone
5 because -- through John?

6 A Yes.

7 Q Now, you have your own consulting company; true?

8 A Yes.

9 Q And you worked as an independent contractor for
10 Blue Stone from time to time in 2014?

11 A Yes.

12 Q Did you work with Mr. Polequaptewa?

13 A Yes, I did.

14 Q In what capacity?

15 A I worked with him in a marketing capacity, mainly
16 providing content development, writing -- some writing
17 services, basic content development though.

18 Q Over what period of time did you work with him?

19 A I would say fairly consistently for the
20 12 months.

21 Q He did a good job in your estimation, didn't he?

22 A Yes.

23 Q Did you ever report that he was doing a good job
24 to your brother John?

25 A I don't recall.

1 Q How about to -- you know who Jeremy Fullmer is;
2 right?

3 A Yes.

4 Q How about to Mr. Fullmer? Did you ever report
5 that he was doing a good job to Mr. Fullmer?

6 A I don't recall. I know if I was -- I would have
7 recalled if I was requested or inquired, but, no, I don't
8 recall if I really made a comment or not.

9 Q When you started working in 2014, you had a
10 marketing function; right?

11 A Well, it's -- I had a marketing function.
12 However, I also was a strategist.

13 Q Ultimately Nikishna was taken out of that
14 marketing function that he performed, that Nikishna performed?

15 A The direct answer is yes.

16 Q Sometime in November of 2014; right?

17 A Yes.

18 Q Did you assume Nikishna's duties in the marketing
19 area?

20 A In the marketing area, yes.

21 Q Had Nikishna -- was there any work that you took
22 over from Nikishna with respect to the website?

23 A Yes. I was assigned to manage the website from
24 there forward.

25 Q Had Nikishna added content to the website before

1 you took over that function?

2 A Yes.

3 Q Was there any work that was in progress for the
4 website?

5 A As of the date in question in November, the site
6 was complete. All -- everything was posted, and that's --
7 that's the way I wanted the handoff to be. The site was done,
8 posted, and complete.

9 Q Was there any additional -- was there any work
10 that Nikishna had done that hadn't been posted to the website
11 yet when you took over?

12 A I don't recall any work that needed to be posted.
13 There was -- there was questions of video, and I believe that
14 was a request. It was one of the exhibits I think I just
15 referred to. There was a question of a video that was
16 communicated by Nikishna that it was outside the scope of the
17 vendor that did the video production. But that was it. I'm
18 not aware of any content that was waiting to be posted that was
19 already developed, no.

20 Q Do you know who Eldad Yacobi is?

21 A Yes.

22 Q Who is that?

23 A Eldad is -- by my own definition, he's an IT
24 specialist.

25 Q Did he have everybody's -- or access to

1 everybody's e-mail accounts, if you know?

2 MR. MARRETT: Calls for speculation.

3 THE COURT: If you know, sir.

4 THE WITNESS: I would not have knowledge of that.

5 BY MR. KHOURI:

6 Q You don't have any idea?

7 A No.

8 Q Was he called upon to fix IT issues at Blue Stone
9 when you were there?

10 A Yes.

11 Q And that was after the handoff of the IT
12 responsibilities from Nikishna to Eldad; right?

13 A Correct.

14 Q Did you go to him when you saw that the website
15 had been deleted? Did you ask him what was going on?

16 A Yes. I know he and I spoke on several occasions
17 with regards to the -- all of the missing data, not just the
18 website, yes.

19 Q Did that data have to be -- was any of that data
20 retrievable?

21 A I do not recall with regards to the -- I just --
22 I don't know. I can only speak to what I was familiar with,
23 and that was the website.

24 Q Now, the website was hosted by some company
25 called Bluehost?

1 A Well, if you could be more specific because there
2 was a site in time that was hosted by Bluehost but --

3 Q Well, a site that was in existence when Eldad
4 took over the IT responsibilities.

5 A No. That site was hosted internally at the
6 company on what we refer to as the Synology server. It's been
7 talked about.

8 Q And the Synology server was located where?

9 A In the office. Physically in the office I
10 couldn't tell you. It was in an office.

11 Q Nikishna had an office; right?

12 A Correct.

13 Q And there was a desktop that Nikishna used in his
14 office; right?

15 A I don't recall.

16 Q Everybody had a computer; right?

17 A Well, I mean, desktop, laptop, if you could be
18 more specific.

19 Q Okay. There was either a desktop or a laptop?

20 A I would assume so, yes.

21 Q Okay. And the server was located someplace else.
22 Do you know, when you needed to make revisions to
23 the website, did you communicate those revisions directly to
24 the server?

25 A They would have been. Once the site was handed

1 off to the server, then any changes to that website would have
2 been on that server. That's the only place that existed was on
3 the server.

4 Q Okay. So in order to do anything with respect to
5 the information on the Synology server, you had to go directly
6 to the Synology server, not through Nikishna's laptop or
7 desktop in his office?

8 MR. MARRETT: Objection. Calls for speculation.

9 THE COURT: If you know, sir.

10 THE WITNESS: Well, I can tell you what I know. The
11 access to the Synology server was Internet based. You know,
12 you access it from a web portal. So I guess if you are asking
13 my opinion -- and again, I'm not an expert -- but you could
14 gain access to that server from anywhere if you had the
15 credentials to access it.

16 BY MR. KHOURI:

17 Q Right. And let me ask the question again. If
18 you wanted to put additional content on that website from your
19 computer, you would go to the Internet portal and that would go
20 on the server, then you'd go to the server; right?

21 A You would log in to the server, yes.

22 Q Now, what about -- I think you testified that you
23 tried to get into the MailChimp account?

24 A Uh-huh. Yes, I was successful.

25 Q And how did you get into the MailChimp account?

1 A MailChimp -- if you have the credentials, if you
2 are set up as a user, it's, again, you go to -- it's a software
3 as a service model. You go to the web platform. You access
4 it, and then you operate as if it's on your desktop.

5 Q Okay. Were there any other similar servers or
6 any other companies that you would access the same way through
7 the Internet portal?

8 MR. MARRETT: Objection. Vague.

9 THE COURT: Overruled.

10 If you understand the question, sir.

11 THE WITNESS: If you could be more specific. I'm
12 not sure I understood the question.

13 BY MR. KHOURI:

14 Q Well, there was a Synology server.

15 A Uh-huh.

16 Q There was the MailChimp account; right?

17 A Uh-huh.

18 MR. KHOURI: May I have a moment, Your Honor?

19 THE COURT: You may.

20 MR. KHOURI: Thank you.

21 Q Were there any other Internet based programs that
22 you used in the normal day-to-day performance of your job
23 besides MailChimp, Synology server?

24 A All Blue Stone e-mail was web based.

25 Q Okay.

1 A So the same.

2 Q The same thing?

3 A If you log in and it's kind of like using Hotmail
4 or what's another one? Yahoo. In the case of Blue Stone, it
5 was Google. I think it was either G Suite or Gmail. I'm not
6 sure which.

7 Q That's very significant what you said. You are
8 sure that all the e-mail was Internet based?

9 A The Blue Stone e-mail --

10 Q Internet based?

11 A Internet based.

12 Q All right. Thank you very much, sir.

13 Thank you, Your Honor.

14 THE COURT: Mr. Marrett?

15 MR. MARRETT: I have nothing further, Your Honor.

16 THE COURT: Sir, you can step down. You are
17 excused.

18 Ladies and gentlemen, please feel to stand and
19 stretch in place if you'd like before we have the next witness.

20 Do you want to call the next witness, please?

21 MR. MITTAL: Yes, Your Honor. The government calls
22 Eldad Yacobi.

23 THE COURT: Hello, sir. Please come over and stand
24 right by our court reporter for a moment. We'll administer an
25 oath to you and then have you take the witness stand.

1 THE CLERK: Please raise your right hand.

2 Do you solemnly swear that the testimony you shall
3 give in the cause now before this Court shall be the truth, the
4 whole truth, and nothing but the truth, so help you God?

5 THE WITNESS: Yes, I do.

6 THE CLERK: Please state your full name and spell
7 your last name for the record.

8 THE WITNESS: Eldad Yacobi, Y-a-c-o-b-i.

9 ELDAD YACOBI,
10 called as a witness by the government, was sworn and testified
11 as follows:

12 DIRECT EXAMINATION

13 BY MR. MITTAL:

14 Q Good afternoon, Mr. Yacobi.

15 A Good afternoon.

16 Q Who do you work for?

17 A I own my own company. The name is RunnerBoys.

18 Q What does RunnerBoys do?

19 A We do computer and IT services.

20 Q How long have you owned and operated RunnerBoys?

21 A I had the company for 14 years.

22 Q 14?

23 A Yes.

24 Q Currently how many people work for you at
25 RunnerBoys?

1 A Sorry. My mistake. 14 years I'm in the U.S. I
2 had the company 10 years.

3 Q I thought you said 40, and I was -- that's what
4 confused me.

5 How many people work for RunnerBoys currently?

6 A Currently four employees.

7 Q Four employees. And where is RunnerBoys located?

8 A We are located in Orange County in Irvine.

9 Q What services does RunnerBoys provide?

10 A We provide IT services for small businesses and
11 computer repairs for home users and small businesses.

12 Q Do you have a store front?

13 A Yes, we do.

14 Q How long have you had a store front?

15 A A year and a half ago.

16 Q Before you had a store front, how did RunnerBoys
17 operate?

18 A Our business is basically what we used to do we
19 used to do a lot of onsites, IT services, going to businesses
20 or going to home users. And we decided to open a front store
21 because we grew and had a lot of home users coming in and a lot
22 of business customers coming in, and we needed to open a lab
23 where we could repair their computers.

24 Q Your business has grown over the years?

25 A Yes.

1 Q Did you have IT experience before you opened
2 RunnerBoys?

3 A Yes.

4 Q Where did you start with RunnerBoys? Sorry.
5 Where did you start in IT?

6 A Since I was a kid, I always like computer parts
7 and fix my friend's computers, did some installations. That's
8 how I started running it. Always been into technology. And
9 I've been -- I came from Israel. So after the army, I've been
10 three years in the army, I went to a computer science
11 basically. I went to school for computer science.

12 And since then, I left the computer science. I
13 didn't want to be sitting all day on the computer and just
14 writing programs. So I decided to do something else with my
15 life. And when I came here to the U.S., I decided to go back
16 and work again in the computer field.

17 Q Where was -- what was your first formal job in
18 IT?

19 A In the U.S. I started at a company at Best Buy.
20 I worked at the Geek Squad.

21 Q What did you do for Geek Squad?

22 A It's they sort of have their computer genie or I
23 forgot the term they using in Best Buy. We used to be the guys
24 that work with the small businesses at Best Buy. So we weren't
25 at the stores that much. We were onsite most of the time. We

1 were called Special Agents, and we were one out of each
2 Best Buy store.

3 Q And did Best Buy have retained customers, or was
4 it just kind of like you called in and had a problem, and then
5 somebody from the Geek Squad would go out?

6 A With Best Buy they were trying to work with the
7 business industry. So they were trying to retain customers.
8 When I was there, I was with Best Buy for a year if I remember
9 correctly. We had some customers on retainer. Most of them
10 were new customers who came in and offered the services,
11 installed servers, and basically building infrastructure for
12 the small businesses.

13 Q Does RunnerBoys have retainer business?

14 A Yes, we do.

15 Q Is that kind of your -- as a business person, is
16 that your preferred line of business?

17 A Yeah. You always know what's coming in. You
18 know how many hours you need to apply for a business. You are
19 getting an X amount of money per year or per month. It's a
20 yearly contract. So, of course, it's better than having people
21 just coming in every once in a while and fixing their
22 computers.

23 Q It's a more stable set of business?

24 A Yes.

25 Q Have you worked for a company called Blue Stone?

1 A Yes, I did.

2 Q Are they a retainer client of yours?

3 A No.

4 Q Have they ever been a retainer customer of yours?

5 A No.

6 MR. MITTAL: Your Honor, I'll note there's a
7 stipulation as to identification.

8 THE COURT: The record will reflect the
9 identification.

10 BY MR. MITTAL:

11 Q Do you know John Mooers?

12 A Yes, I do.

13 Q Just briefly, how do you know John Mooers?

14 A I knew him -- I think I know him for like
15 13 years. I met him by repairing his computers at his house,
16 for his kids and family and then going into his business.

17 Q So he's been a customer for you on and off?

18 A Yes.

19 Q Before the defendant joined Blue Stone, did you
20 do work for Blue Stone?

21 A Yes, I did.

22 Q Before he joined, how big of a customer was
23 Blue Stone?

24 A Before who joined?

25 Q Sorry. Before the defendant joined Blue Stone,

1 how big of a customer was Blue Stone for RunnerBoys?

2 A About looking at the income that we got from
3 them, around like 3 percent or 2 and a half to 3 percent of the
4 income.

5 Q And before the defendant joined Blue Stone, what
6 kind of work did RunnerBoys do for Blue Stone?

7 A We did break/fix repairs. Every time they had a
8 problem, a printer went down or a customer had one of their
9 employees had a virus, we removed it. It was either I was
10 sending onsite to repair the computers or sending one of my
11 techs to repair the computers.

12 Q At some point were you asked to return to assist
13 Blue Stone in IT functions?

14 A Yes.

15 Q Did John Mooers ask you to return?

16 A I'm sorry?

17 Q Did John Mooers specifically ask you to return to
18 do IT work for Blue Stone?

19 A Yes. He contacted me.

20 Q When you returned to support Blue Stone in IT
21 functions in November of 2014, how large of a customer was
22 Blue Stone for RunnerBoys?

23 A When I returned, almost the same as before. I
24 would say like 2 to 3 percent of the income.

25 Q Had you been actively trying to get business from

1 Blue Stone during that time frame of 2014?

2 A No.

3 Q Who were your two primary customers in November
4 of 2014?

5 A Two major companies, one of them is called Home
6 Union. The other one Polymer Logistics.

7 Q Roughly how much business did you do with those
8 two customers?

9 A They were referring between 50 to 70 percent of
10 our income by then.

11 Q For those two customers, how many devices were
12 you supporting?

13 A Between 50 to 120, 130 devices.

14 Q For each of them?

15 A For each, yeah.

16 Q Was that the same size -- number of devices that
17 Blue Stone had as well?

18 A No.

19 Q Was there a big difference?

20 A Major difference, yes.

21 Q Blue Stone was smaller?

22 A Much more. Blue Stone had just basically
23 personal computers for employees. I would say five to ten at
24 the most.

25 Q Were you present for a meeting on November 14,

1 2014, at 12:00 p.m. Pacific in the Blue Stone office in Irvine
2 to discuss changes to IT and marketing assignments?

3 A Yes, I did.

4 Q Was your understanding? That you were going to
5 be taking over IT functions from the defendant?

6 A Yes.

7 Q Was John Mooers and Robert Mooers present along
8 with the defendant?

9 A Yes.

10 Q Following that meeting, did you meet with the
11 defendant individually?

12 A I don't recall. I think we met on June one time,
13 but I'm not sure about the dates.

14 Q I'm just talking about in November of 2014. Did
15 you meet -- assuming that you had this meeting where there's
16 four of you there, Robert Mooers, John Mooers, the defendant
17 and yourself?

18 A Yes.

19 Q Following that same day, November 14th, did you
20 also meet individually with the defendant?

21 A Yes. After the meeting, John asked me to meet
22 with the defendant and get information needed for all the IT
23 infrastructure.

24 Q And what -- were you getting the admin passwords
25 for the various IT systems that the defendant had put in place?

1 A Yes. John asked the defendant to provide
2 RunnerBoys all the information to access the computers, the
3 domains, the servers, everything to do with IT so we can take
4 full responsibility on the IT side of the business.

5 Q Was your understanding that the defendant was the
6 one with the best knowledge at that time of the IT systems for
7 Blue Stone?

8 A Yes.

9 Q What was the defendant's attitude when you met
10 with him on November 14, 2014, to get that information?

11 A He was not happy to hear that the title of
12 IT Admin is being taken away from him. And he was trying
13 not -- he was not cooperating with me at all. He was trying to
14 do everything not to give me the information I needed.

15 Q Did he give you every single admin password right
16 away?

17 A No.

18 Q Can you describe how you got some of the admin
19 passwords?

20 A Yes. I started asking him the basic questions of
21 who's managing the e-mails, do they have a server, do they have
22 a website, where are all the files existing. He gave me some
23 of the information. And when we started to check some of the
24 information, some passwords were wrong. And then I asked him
25 again for the password. He said he doesn't remember. I had to

1 stop the meeting at least one I think even two times to call
2 John and Amy. Amy is one of the employees. To ask them to
3 talk to the defendant and give me all the information needed.

4 Q Why did you involve Mr. Mooers and Mrs. Watson
5 when you were getting those admin passwords?

6 A Because I was asked to get all the information,
7 all the admin passwords from the defendant. Some of them he
8 was not willing to give to me. Some of them he told me he
9 doesn't remember. And some of them he didn't even -- didn't
10 even told me about them. I had to ask him the question so if
11 they have a specific service, for him to provide me the user
12 name and password for the service.

13 Q In November of 2014, did you become familiar with
14 Blue Stone's IT infrastructure?

15 A Yes.

16 Q In the binder in front of you, it's probably the
17 second one, there should be an exhibit marked 98.

18 A 88?

19 Q 98.

20 A Yes.

21 Q Did you meet with the government before today and
22 review some of these exhibits?

23 A Yes.

24 Q Do you recognize Exhibit 98?

25 A Yes, I do.

1 Q Does this accurately reflect Blue Stone's IT
2 infrastructure in November of 2014?

3 A Yes, it does.

4 Q Is this what you attempted to reconstruct
5 following the defendant's resignation on November 14, 2018?

6 A Yes.

7 MR. MITTAL: Your Honor, I move to admit 98.

8 THE COURT: Any objection?

9 MR. KHOURI: No, Your Honor.

10 THE COURT: Exhibit 98 will be received into
11 evidence.

12 (Exhibit No. 98 received into evidence.)

13 BY MR. MITTAL:

14 Q I'm going to publish page 1 of Exhibit 98. Do
15 you see that in front of you on the screen?

16 A Yes.

17 Q Can you briefly explain what's shown on these
18 three different icons.

19 A Yes. On the left side, we see the Synology
20 server. It was a physical server hosted at Blue Stone's
21 offices. It had some database files, some website files, and
22 some company files on the server. In the middle we see the
23 Apple Mac Pro desktop which was the defendant's computer. He
24 was using it to manage or accessing all the infrastructure. On
25 the right side, we see the Apple computers that were given to

1 each one of the Blue Stone's employees.

2 Q This is just an illustration. Obviously the
3 computers themselves and servers look different?

4 A Yes.

5 Q Would it be fair to say that servers and these
6 Apple computers are electronic devices that perform storage
7 functions and do high speed data processing?

8 A Yes.

9 Q Did Blue Stone also use third-party accounts at
10 Google, Bluehost and Cox?

11 A Yes.

12 Q All the data that Blue Stone had, were those also
13 stored on servers for those companies?

14 A Yes.

15 Q Could the devices that we are talking about, the
16 servers and computers, could they be accessed anywhere in the
17 world if someone had access to the Internet?

18 A Yes, they could.

19 Q Did you see the defendant use his Apple Mac Pro
20 in the Blue Stone office on November 14, 2014?

21 A Yes. In the meeting that we had, he used the
22 computer.

23 Q What did you see the defendant doing on the Apple
24 Mac Pro computer?

25 A One of the things that was going on in the

1 background, he was backing up the server information into a Cox
2 line account that they had for business. And he was in the
3 middle of transferring over -- not transferring but doing a
4 first backup of all the data from the server onto a Cox
5 account. That type of account.

6 Q Cox was the service that they used to back up
7 data?

8 A Cox is their Internet provider, and also they
9 offer the backup services for business clients which they paid
10 for and been using.

11 Q So when you said you saw him using that, you saw
12 something on the screen that indicated files were being backed
13 up to the Cox service?

14 A Yes.

15 Q Can you take a look at Exhibit 116. Do you
16 recognize Exhibit 116?

17 A Yes.

18 Q Does this summarize the admins as they were
19 following your meeting with the defendant on Friday,
20 November 14, 2014?

21 A Yes.

22 MR. MITTAL: Your Honor, I move to admit 116.

23 THE COURT: Any objection?

24 MR. KHOURI: No, Your Honor.

25 THE COURT: Exhibit 116 will be received into

1 evidence.

2 (Exhibit No. 116 received into evidence.)

3 BY MR. MITTAL:

4 Q On Friday, November 14th, that afternoon, you got
5 the admin information for some of the services that Blue Stone
6 used from the defendant; correct?

7 A That's right.

8 Q The Synology server that you were talking about
9 earlier, you were an admin as well as Janeen Goodman?

10 A Yes.

11 Q When you first got that information -- strike
12 that.

13 When you first got the admin information for the
14 Synology server, did you know Janeen Goodman also admin access?

15 A No, I didn't.

16 Q Was that something that the defendant had told
17 you when you met with him?

18 A No.

19 Q Did you later discover that she had admin access?

20 A I did.

21 Q In the second line there, it's referencing
22 Blue Stone's Apple Mac Pro desktop used by defendant. It says,
23 "Defendant has admin." Do you see that?

24 A I see.

25 Q Did you ever receive the defendant's iCloud

1 account for Nikishna@yahoo.com that related to that Mac Pro
2 desktop?

3 A No.

4 Q And then Google, you see your name listed next to
5 Google?

6 A Yeah.

7 Q Did you become the admin for the Google apps that
8 Blue Stone used?

9 A Yes.

10 Q Can you briefly explain how Blue Stone used
11 Google services at the time?

12 A Yes. Google provides a G Suite account for small
13 businesses where they can host their e-mails, documents, and
14 basically it's an online server. Blue Stone actually purchased
15 an e-mail services from Google and storage services from
16 Google.

17 Q So if someone sent an e-mail to one of -- an
18 e-mail account that was Amywatson@bluestonestrategy.com, would
19 that go to Google and be hosted by Google?

20 A Yes.

21 Q But to an external user, it would appear it's
22 coming from Bluestonestrategy.com?

23 A Yes. So the G Suite is for small businesses
24 where they can use their domain name like RunnerBoys and
25 Best Buy or any other domain name to be managed -- the e-mail

1 application is being managed by Google, and the e-mail server
2 is being managed by Google. But it's not a Gmail account.
3 It's a G Suite or a Google account.

4 Q And as part of that G Suite that Google offers,
5 do you also have a Google Drive?

6 A Yes.

7 Q What is Google Drive?

8 A It's a storage location. It's cloud storage
9 location that Google provides with the G suite and with Gmail.

10 Q Looking at the next line item there, MailChimp,
11 so those were the three individuals that were the admins as of
12 November 14th?

13 A Yes.

14 Q In the last item there's Cox. Is this the backup
15 service that we were talking about a moment ago?

16 A Yes.

17 Q During your meeting with the defendant, did he
18 provide you the admin login for the Cox service?

19 A No.

20 Q Did the defendant maintain his own individual
21 logins for the Blue Stone systems?

22 A Maintain you mean saved with him?

23 Q Let me rephrase it. So you got some of these
24 admin logins that we talked about a moment ago.

25 A Yeah.

1 Q Did the defendant have individual logins of his
2 own to get into Synology, Google, and some of these IT
3 services?

4 A Yes, he did.

5 Q So for his own logins where he was -- for his
6 use, did he turn over those logins and passwords to you?

7 A No, he didn't.

8 Q And he didn't have to. That wasn't part of the
9 meeting?

10 A Yeah, it's his private e-mail. Not private but
11 his company e-mail. It's not an admin account.

12 Q Mr. Mooers never asked to you take his own
13 individual logins?

14 A No.

15 Q And even though you got some of the admin logins
16 for these systems, could the defendant still write and delete
17 items using his own logins?

18 A Yes.

19 Q He still had the permission to do that using his
20 logins?

21 A Yes.

22 Q At that time the defendant was still working for
23 Blue Stone and may have needed to access some of these systems
24 at the time?

25 A Yes.

1 Q And an admin is like a profile, correct, for a
2 system?

3 A Yes. It's just to manage the accounts.

4 Q An admin doesn't necessarily have everyone's
5 password when they become an admin?

6 A No.

7 Q But an admin can reset everyone's password if
8 needed?

9 A Yes.

10 Q Were you provided a list of defendant and
11 everyone else's e-mail passwords and other passwords for
12 Blue Stone?

13 A No.

14 Q Did defendant provide you his personal passwords?

15 A No.

16 Q And he didn't need to do that. That wasn't part
17 of your job assignment?

18 A No.

19 Q I'm publishing page 7 of Exhibit 98. Does this
20 summarize kind of the types of files that Blue Stone stored
21 with Google?

22 A Yes.

23 Q So they had their project files and client
24 information as well as their e-mail accounts with Google?

25 A Yes.

1 Q On the evening of November 15th, 2015, the next
2 day after your meeting, did you reset all Blue Stone employees'
3 e-mail passwords except defendant's?

4 A Yes, I did.

5 Q And was this done in consultation with John
6 Mooers?

7 A Yes.

8 Q So Mr. Mooers was aware that you were going to
9 reset everyone's e-mail password except the defendant's?

10 A Yes.

11 Q Did you send Miss Watson a template of what to
12 send out to the employees that you were resetting?

13 A Yes.

14 Q Before the defendant resigned the following
15 Tuesday, did you back up his Mac Pro desktop?

16 A Yes.

17 Q Were you able to access that Mac Pro desktop
18 without a password?

19 A Yes, I did.

20 Q Based on what you had seen -- I'm publishing
21 page 3 of Exhibit 98. Based on what you had seen on
22 November 14th and when you were doing the backup, were these
23 the kind of files that were contained on the Apple Mac Pro
24 desktop?

25 A Yes.

1 Q Are you familiar with a product called
2 TeamViewer?

3 A Yes.

4 Q What is TeamViewer?

5 A It's a remote support software for anyone that
6 needs to access remote computers.

7 Q With your work at RunnerBoys, how do you use
8 TeamViewer?

9 A We have a license for TeamViewer. So we purchase
10 a license, and we can install a client -- on each one of our
11 client's computer so we can access them remotely when needed.

12 Q This is done with the permission and acceptance
13 of the customer?

14 A Yeah, it has to be approved by the customer.

15 Q In November of 2014, did you put TeamViewer or
16 any remote access tools or software on defendant's personal
17 MacBook Pro laptop?

18 A No.

19 Q Did you ever remotely access his MacBook Pro
20 laptop without his knowledge while he was in Florida?

21 A No.

22 Q Have you used Apple's protocol for remote access?

23 A No.

24 MR. MITTAL: Could I have a moment, Your Honor?

25 THE COURT: You may.

1 MR. MITTAL: Can we publish Exhibit 36, page 2. And
2 can we zoom in on the purple portion and the first full
3 paragraph there.

4 Q Can you see that on the screen?

5 A Yes.

6 Q Are you familiar with this e-mail?

7 A Yes.

8 Q Can you explain why you sent this e-mail to the
9 defendant and copied Mrs. Watson and Mr. Mooers?

10 A Yes. On the same day, I think it's around like
11 6:00 a.m. in the morning, I got a call from the defendant
12 saying that some users have problems logging in to their
13 e-mails. I asked him who are the users and who should I call,
14 if you can give me a contact number. He was not willing to
15 give me any names or any information. I tried to explain to
16 him that I'm doing the admin work and I need to help them out.

17 He basically just didn't provide me the
18 information. So I contacted John Mooers and Amy, CC'd them
19 making sure that they know that there are some people having
20 some issues that I cannot help because I don't know any details
21 about the problems that they are having.

22 Q And you had just reset everyone but the
23 defendant's e-mails on November 15th; correct?

24 A That's right, yes.

25 Q Some people may have had issues with that reset

1 process?

2 A They might have had issues. I'm assuming that's
3 why they called if someone called. I don't know.

4 Q But when had you that conversation on the morning
5 of Monday, November 17th, the defendant didn't provide you the
6 names of the individuals?

7 A No.

8 Q Why did you send this e-mail to Mrs. Watson and
9 Mr. Mooers as well?

10 A I'm supposed to do my job. I don't want to get a
11 phone call later on saying that since 6:00 a.m., people can't
12 access their e-mail, and it's like 10:00, 11:00 or the day
13 after and people still can't access them. I need to make sure
14 I can resolve problems that I'm getting paid for.

15 Q Can we take this down?
16 Did you learn around 5:30 p.m. Pacific on
17 November 18th, 2014, that the defendant had resigned while he
18 was in Florida?

19 A Yes.

20 Q How did you learn about that?

21 A I got a call from John Mooers saying that the
22 defendant had resigned, was no longer with the company, and
23 asked me to remove any access that he had to the company,
24 company files or company services.

25 Q And did you attempt to remove defendant's access

1 to Blue Stone systems?

2 A Yes.

3 Q Did you learn that the defendant was deleting
4 files?

5 A Yes. John Mooers mentioned to me that he sees
6 that some files are being deleted from the server. So he urged
7 me to do it as soon as possible.

8 Q How long did you work that night on November 18,
9 2014?

10 A It was a very long night. At least ten hours of
11 work of trying to find out what missing information I had from
12 the defendant on -- the meeting that we had on Friday and what
13 was deleted because deleting is easy. Finding out what's been
14 deleted sometimes it's even impossible. So it was a lot of
15 work on our end to try and find out exactly what happened.

16 Q I'm publishing page 2 of Exhibit 98. Do you see
17 that on the screen in front of you?

18 A Yes.

19 Q Does this summarize the files that were supposed
20 to be on the Synology server on November 18, 2014?

21 A Yes.

22 Q Did you find the website files on the Synology
23 server that evening?

24 A No.

25 Q Were those files present on November 14, 2014,

1 when you met with the defendant?

2 A Yes.

3 Q Were you able to recover those website files from
4 the server?

5 A No.

6 Q Can you take a look -- I'm going to read off a
7 couple exhibits. We'll start with 68, 69, and 71 through 76.

8 A 68, 69?

9 Q 71 through 76. Why don't we start with 68 and
10 69.

11 A Okay.

12 Q So for 68 and 69, do you recognize those?

13 A Yes.

14 Q Were these records you pulled from Blue Stone's
15 Google Drive account?

16 A Yes.

17 MR. MITTAL: Your Honor, I move to admit Exhibits 68
18 and 69.

19 THE COURT: Any objection?

20 MR. KHOURI: No, Your Honor.

21 THE COURT: 68 and 69 will be received into
22 evidence.

23 (Exhibit Nos. 68 and 69 received into evidence.)

24 BY MR. MITTAL:

25 Q I have a highlighted version here. But can you

1 explain just generally first before we zoom in what is shown in
2 Exhibit 68?

3 A Yes. This is a screenshot from a Google G Suite
4 or the Google drive. On the left side, you can see the files.
5 On the right side, you can see the action that happened or the
6 activity that happened on some folders or files on the same
7 date and time.

8 Q And the user name here is Nikishna on the top
9 right there?

10 A Yes.

11 Q This is what someone logged into the user account
12 for Nikishna would see?

13 A Yes.

14 Q And is this document that on Tuesday, November
15 18th, 2014, the user Nikishna moved 77 items to the trash?

16 A Yes.

17 Q Then on page 2, does that show there's additional
18 items that were moved to trash on that same Tuesday,
19 November 18th, 2014?

20 A Yes.

21 Q Publishing 69, can you explain what 69 is?

22 A Yeah. This is the log activity from the G Suite.
23 It shows if there is a password change, a login, the date,
24 time, and the location by the IP address.

25 Q So as the admin for the Google apps, you can kind

1 of see what users are doing in the Blue Stone G Suite?

2 A Yes.

3 Q And for the portions that are highlighted
4 starting on November 18th, and the time it looks like
5 6:31 a.m., what does that mean where it says "Nikishna
6 Polequaptewa successfully logged in"?

7 A Meaning that the user with the e-mail address of
8 Nikishna was able to log in on the same date.

9 Q And this IP address, is that the IP address that
10 the user -- their system would have sent to Google and it was
11 recorded by Google?

12 A Yes.

13 Q These times, you recorded this so this would have
14 been Pacific time on this exhibit?

15 A Yes.

16 Q And then later on in the evening, there's failed
17 logins by Nikishna Polequaptewa. Do you see that?

18 A Yes, I do.

19 Q So an invalid password was entered multiple times
20 that evening?

21 A Yes.

22 Q After the defendant resigned, you changed his
23 password to prevent him from logging into the system?

24 A Yes, I did.

25 Q Can you take a look at Exhibit 71 through 76.

1 Actually, can I back up? Sorry. Can you take a look at
2 Exhibit -- strike that. We'll just do those. 71 through 76.

3 A Yes.

4 Q Do you recognize Exhibits 71 through 76?

5 A Yes.

6 Q What are 71 through 76?

7 A Those are the log files from the Synology server,
8 the physical server that they had at their office.

9 Q These are logs that you pulled as you were
10 investigating what happened?

11 A Yes.

12 MR. MITTAL: Your Honor, I move to admit 71 through
13 76.

14 THE COURT: Any objection?

15 MR. KHOURI: None, Your Honor.

16 THE COURT: Exhibits 71 through 76 will be received
17 into evidence.

18 (Exhibit Nos. 71 through 76 received into evidence.)

19 BY MR. MITTAL:

20 Q Before we go into the specifics, can you explain
21 just generally what's shown in Exhibit 71?

22 A Yeah. The log file shows the date that something
23 happened, the name of the user that was trying to access the
24 specific service, the service that was accessed, and the
25 location. The IP is basically the location of where things

1 were done.

2 Q Now zooming in a little bit, you did this from
3 California. So the time here would be Pacific Standard time?

4 A Yes.

5 Q Do you see that when it's slightly in light blue
6 color?

7 A Yes.

8 Q That's a login on November 18th, 2014, at
9 11:58 a.m.?

10 A Yes.

11 Q Does that show that the user Nikishna from that
12 same IP address starting at 50 accessed the shared folder web?

13 A That's right.

14 Q Was that the website folder that was empty that
15 you mentioned earlier?

16 A Yes.

17 Q Publishing 73, does this show in the light blue
18 portion at 4:12 a.m. the user Bmoon accessing the shared folder
19 home?

20 A Yes.

21 Q Did you look at that folder for Bmoon?

22 A Yes.

23 Q Is that shown in Exhibit 72 that's published?

24 A Yes.

25 Q Was that folder also empty?

1 A It was -- yeah, no files inside.

2 Q Publishing Exhibit 74, do you see that portion
3 there?

4 A Yes.

5 Q And it shows that an admin failed to log in at
6 7:31 a.m. on November 17th?

7 A Yes.

8 Q And about nine seconds later, Nikishna logged in
9 from an IP starting with 198?

10 A Yes.

11 Q And then a minute later, a Jgoodman logged in
12 from the same IP address?

13 A Yes.

14 Q And you spoke to Mrs. Goodman on November 18th,
15 2014, the day he resigned?

16 A Yes.

17 Q Was she in Florida?

18 A No.

19 Q She was in California?

20 A Yes, she was.

21 MR. MITTAL: Can I have a moment, Your Honor?

22 THE COURT: You can.

23 MR. MITTAL: I'm publishing Exhibit 75 that's in
24 evidence as well.

25 Q Did you pull this when you saw that access

1 starting with 198, the IP address 198?

2 A Yes.

3 Q What's the significance of this document?

4 A This shows us on the map where the computer that
5 was accessing the services that were deleted earlier. It shows
6 the location of the IP address on the map.

7 Q I'm publishing 176. Sorry. 76, not 176. Did
8 you also pull this information from the Synology server?

9 A Yes.

10 Q What's the significance of this exhibit?

11 A It shows that files were deleted on 2014, 11/18
12 at 3:26 p.m.

13 Q This is for Nikishna's folder?

14 A Yes.

15 Q Can you take a look at Exhibits 110 and 111.

16 A Yes.

17 Q Do you recognize those?

18 A Yes, I do.

19 Q Are these also screen captures of logs that you
20 pulled while you were investigating what happened to the
21 Blue Stone IT systems?

22 A Yes.

23 MR. MITTAL: Your Honor, I move to admit 110 and
24 111.

25 THE COURT: Any objection?

1 MR. KHOURI: None, Your Honor.

2 THE COURT: Exhibits 110 and 111 will be received
3 into evidence.

4 (Exhibit Nos. 110 and 111 received into evidence.)

5 BY MR. MITTAL:

6 Q I'm not going to go through all of them. Do you
7 see the 64-page document that's in front of you?

8 A Yes, I see.

9 Q Does this document all of the deletions that the
10 defendant did to the Google Drive in November of 2014?

11 A Yes.

12 Q So there were a variety of folders and files that
13 the defendant deleted?

14 A That's right.

15 Q You were able to recover the materials from the
16 Google Drive account; correct?

17 A Yes.

18 Q Even though the defendant was no longer the admin
19 for the Google account, he still had access to many files on
20 the Google Drive?

21 A Yes. The way he set up everything was under his
22 account. So the main company files were under his main
23 accounts.

24 Q So he could access anything that anyone had put
25 on the Google Drive account for Blue Stone?

1 A That's right.

2 Q Even after you had become an admin, he still had
3 that access?

4 A Yes.

5 Q I'm publishing Exhibit 111, page 2.

6 So we talked briefly about the Jgoodman login for
7 Synology. Do you recall that?

8 A Yes.

9 Q Is 111, is that a log you also pulled from the
10 Synology server?

11 A Yes.

12 Q Just a different format, slightly different
13 information?

14 A Yes.

15 Q Do you see in these times here on this exhibit,
16 these are all Pacific Standard time?

17 A Yes.

18 Q In your meeting with the defendant, John Mooers,
19 Robert Mooers was around 12:00 p.m. on November 14th?

20 A Yes.

21 Q Can you explain what happened on that day between
22 10:50 and 10:51 a.m.?

23 A Yes. We can see that there was an admin login at
24 10:50 a.m., and the user Jgoodman was added to the
25 administrator group by the admin account and to another folder

1 called HTTP which is the websites -- where all the website is
2 being held.

3 Q And do you -- and this is a group. So these are
4 permissions rather than the folders?

5 A Yes.

6 Q What is the significance of the IP address
7 10.0.1.20?

8 A That's a local IP address, meaning that the admin
9 was accessing the server from inside -- from their offices not
10 from outside or anywhere else.

11 Q So it would have been someone sitting inside of
12 the Blue Stone offices?

13 A Yes.

14 Q Do you see November 15th, 2014, at 5:46 p.m.,
15 what I highlighted?

16 A Yes.

17 Q It says, "User admin login from 68.5.21.195"?

18 A Yes.

19 Q Are you familiar with that IP address?

20 A Yes. That's my IP address.

21 Q This would have been you logging in on
22 November 15th?

23 A Yes.

24 Q Then you changed the password for admin?

25 A Yes. That's after talking to John on the same

1 day asking me to change everyone's passwords and remove
2 permissions for -- admin rights for Nikishna.

3 Q Then if you go up a couple lines to 17:50 which
4 is 5:50 p.m. on the same day, admin user Jgoodman was removed
5 from the group of the administrators?

6 A Yes.

7 Q Was there any need for Jgoodman to be part of the
8 administrators?

9 A No.

10 Q Then after that you -- it looks like until about
11 5:57 p.m. changed a variety of user passwords as well?

12 A Yes. For security reasons.

13 Q Then it looks like the next day at the top on
14 November 16th, 2014, in the morning, between 11:16 and
15 11:31 a.m. you logged in again and removed Jgoodman from the
16 group HTTP?

17 A Yes.

18 Q And did you notice some of these things as you
19 were going through the system that weekend?

20 A Yes.

21 Q Do you see there at 7:17:09 on November 18th,
22 2014, it says, "Admin logged in from 68.521.195"?

23 A Yes.

24 Q Is this when you started exploring -- trying to
25 understand what was going on with the Synology server?

1 A Yes.

2 Q And then you log in again three hours later and
3 you change the password for Nikishna?

4 A Yes.

5 Q You didn't know Nikishna's password at that
6 point?

7 A No.

8 Q Was this part of your securing the system once
9 you realized things were being deleted?

10 A Yes.

11 Q And you disabled a series of different accounts
12 on the Synology server?

13 A That's right.

14 Q If someone no longer wants to have access to a
15 Google Drive account for a business on his personal phone, can
16 he simply sign out of that account on their phone?

17 A Yes.

18 Q When you were looking at Blue Stone's IT systems
19 after he resigned on November 18th, 2014, did you learn that
20 Blue Stone's files stored with MailChimp were also deleted?

21 A Yes, I did.

22 Q Were you involved in efforts to try to get the
23 files back?

24 A Yes.

25 Q Was MailChimp able to restore those files?

1 A No.

2 Q Did you also try to get access to the Cox
3 service?

4 A Yes.

5 Q Did you learn the defendant actually changed the
6 login for that account to his personal e-mail account between
7 your meeting and when he resigned?

8 A Yes.

9 Q Did you spend roughly two hours with Amy Watson
10 trying to get access to the Cox account?

11 A Yes, I did.

12 Q Were you able to restore backups from that Cox
13 account?

14 A No.

15 Q Did you contact Cox yourself?

16 A We've been on the phone for like almost
17 three hours with Cox with no success.

18 Q Did they refer you to Mozy at some point?

19 A Yes.

20 Q Who is Mozy?

21 A Mozy is the third-party company that provides
22 backup services. Cox is contracted with them to provide backup
23 services for the clients. When we called Cox, they told us
24 that Mozy is going to be the one -- if there is going to be any
25 backup from what's deleted, it's going to be with Mozy. But

1 they were unable to receive any data back from Mozy. So all
2 data that was on the Cox backup solution was lost.

3 Q Were you able to restore the Vtiger CRM system
4 ever that the defendant had been developing?

5 A No.

6 Q Were you able to restore an older version of the
7 website from a backup that Blue Stone still was able to
8 recover?

9 A No.

10 Q You never -- you never got an older version of
11 the website back?

12 A An older version? Maybe Robert Mooers had one.
13 Everything that was on the server was deleted. So we didn't
14 have any access to any file that was on the server.

15 Q On the Synology server?

16 A The Synology server, yes.

17 Q Were you present when the defendant returned to
18 the Blue Stone office on November 19th, 2014?

19 A Yes.

20 Q At some point, did you start recording the
21 defendant when he was there?

22 A Yes.

23 Q Why did you record him when he was there?

24 A The defendant and John Mooers were talking inside
25 one of their offices. The defendant wanted to take his

1 personal things from the office. John didn't allow him to do
2 that. It seems like it was aggravating and was about to be
3 like a fight between them. That's how it looked to me, like
4 the defendant was kind of pushing more and more, taking things
5 out from the office.

6 I've been in the military for three years, and
7 one of the tactics that we learn is when you have two people
8 about to fight, no matter who is fighting, you just join to the
9 same room, trying to relax, calm things down. I had a phone,
10 and I started recording everything just in case something
11 happens so we have everything also on recording.

12 Q Were you trying to deescalate or lower the
13 temperature on the situation?

14 A Definitely.

15 Q Can you take a look at Exhibit 66.

16 A Yes.

17 Q Have you reviewed Exhibit 66 before today?

18 A Yes.

19 Q Did you initial Exhibit 66?

20 A Yes.

21 Q Did you testify in a prior proceeding about this
22 video?

23 A Yes.

24 Q Have you reviewed your testimony from that prior
25 proceeding?

1 A Yes.

2 Q When you testified in that prior proceeding, were
3 you unsure if there was anything before the start of
4 Exhibit 66?

5 A Yes.

6 Q I should say it clearer, I guess. Were you
7 unsure if there was anything in the recording you took on
8 November 19th, 2014?

9 A Yeah, I wasn't sure.

10 Q During your testimony then, did you actually try
11 to retrieve the full version while you were testifying to
12 compare the two?

13 A Yes, I did.

14 Q Were you unable to do that during the testimony?

15 A I couldn't find the file I needed.

16 Q Since then, have you pulled a complete copy of
17 the video?

18 A Yes, I did.

19 Q Did you compare that with Exhibit 66?

20 A Yes.

21 Q Is Exhibit 66 at the start a complete and
22 unedited version of the start of your recording?

23 A The exhibit is the one -- Exhibit 66 is from the
24 start.

25 Q So it's complete at the start. There's nothing

1 missing from the start of the recording?

2 A Nothing is missing.

3 Q At the end of Exhibit 66, the door closes, and
4 you can't hear anything for the remainder of your recording?

5 A That's right.

6 Q Did Mr. Mooers ever twist defendant's arm on that
7 day, November 19th, 2014?

8 A No.

9 MR. MITTAL: I believe it's in evidence. Can we
10 publish Exhibit 91?

11 Q Are you familiar with the defendant's Apple Mac
12 Pro?

13 A Yes.

14 Q Was this the computer that you mentioned when you
15 met with him on November 14th, 2014, and you saw him doing some
16 backup functions on?

17 A Yes.

18 Q Did you try to turn this computer on on
19 November 19th, 2014, the day after his resignation?

20 A No.

21 Q Did you ever see on that day an erase command get
22 started?

23 A Yes.

24 Q What did you see when you saw the erase command
25 be executed on November 19th, 2014?

1 A There was a remote command initiated to delete
2 all the files on the server.

3 Q When you say "server," are you talking about the
4 Mac Pro desktop?

5 A Yes.

6 Q Are you familiar with the term "brick"?

7 A Yes.

8 Q What does that mean?

9 A You can't do basically that much with it.

10 Q Did the Apple Mac Pro computer become a brick
11 after the erase command was executed?

12 A Yes.

13 Q You never had access to defendant's
14 Nikishna@yahoo.com icloud account?

15 A No.

16 Q Can we go to -- actually in the book can you
17 first look at Exhibit 92?

18 A Yes.

19 Q Are you familiar with 92?

20 A Yes.

21 Q What is Exhibit 92?

22 A That's the back end of the Synology server
23 located at the Blue Stone offices.

24 MR. MITTAL: Your Honor, I move to admit Exhibit 92.

25 THE COURT: Any objection?

1 MR. KHOURI: No, Your Honor.

2 THE COURT: Exhibit 92 will be received into
3 evidence.

4 (Exhibit No. 92 received into evidence.)

5 MR. MITTAL: Can we just publish page 1 of
6 Exhibit 92?

7 Q We've been talking a lot about this internal
8 server. Is Exhibit 92 just pictures of that server that is
9 actually housed in Irvine at the Blue Stone office?

10 A Yes.

11 MR. MITTAL: We can take this down. Can we go to
12 98, page 5?

13 Q Does it reflect your understanding of what was
14 supposed to be housed at Bluehost for Blue Stone?

15 A Yes.

16 MR. MITTAL: Can I have a moment, Your Honor?

17 THE COURT: You may.

18 BY MR. MITTAL:

19 Q Can you take a look at Exhibit 79, page 1.

20 A Yes.

21 Q Do you recognize page 1?

22 A Yes, I do.

23 Q Is this a true and accurate copy of the bill that
24 you issued and were paid by Blue Stone for the work you did in
25 trying to restore and respond to the deletions that occurred in

1 November 17th and 18th of 2014?

2 A Yes.

3 MR. MITTAL: I move to admit 79, page 1.

4 THE COURT: Any objection?

5 MR. KHOURI: No, Your Honor.

6 THE COURT: Page 1 of exhibit 79 will be received
7 into evidence.

8 (Exhibit No. 79 page 1 received into evidence.)

9 MR. MITTAL: Can we publish 79, page 1? And can we
10 just zoom in on the balance portion, \$2,300?

11 Q Is this what you billed and were paid for by
12 Blue Stone for all the work that you did in response to the
13 deletions that happened in November 2014?

14 A Yes.

15 Q Does this reflect the full amount of the work you
16 did in response?

17 A Not even close.

18 Q Why didn't you bill the full amount of the work
19 you did?

20 A First of all, the amount is maybe 20 or
21 30 percent of the amount of what we would have charged for what
22 we did. But I saw the situation, and I felt that I need to do
23 something on my end at least just to give the customer just a
24 discount. I know John for many years.

25 I knew -- I already saw where it's leading into

1 and how much trouble he's going to have retrieving all the
2 data. And for me, I looked at the person that he sees his
3 whole company destroyed in front of his eyes. So what I can
4 do -- money is one thing that you can do. So giving him a huge
5 discount and not charging for all the services that we really
6 did in this situation.

7 MR. MITTAL: Nothing further, Your Honor.

8 THE COURT: It's 4:15. Mr. Khouri, I was going to
9 break at 4:30. Would you like to do 15 minutes or wait until
10 tomorrow?

11 MR. KHOURI: Your Honor, I think I'd like to start
12 tomorrow.

13 THE COURT: Okay.

14 MR. KHOURI: Because of the traffic back to
15 Orange County.

16 THE COURT: Okay.

17 Ladies and gentlemen, I have bad news and good news.
18 I'm going to give you the bad news first. We are not going to
19 finish the trial tomorrow. But there's some good news.
20 Assuming we are going to start promptly tomorrow at 8:00, we
21 will break at 3:00 so everyone can have a jump on the holiday
22 weekend. And then we will pick back up on Tuesday because
23 Monday is Veteran's Day.

24 I'm going to want to start again at 8:00 because
25 we'll have some witnesses. We'll have jury instructions. And

1 we'll have closing arguments. And I'd like you to get the case
2 for deliberations Tuesday afternoon. So that's the schedule.
3 Hopefully we'll stick to that schedule.

4 I do need to give you a jury instruction since we
5 are recessing again. Remember until the trial is over, do not
6 discuss this case with anyone including your fellow jurors,
7 members of your family, people involved in the trial or anyone
8 else, and do not allow others to discuss the case with you.
9 This includes discussing the case in Internet chat rooms or
10 through Internet blogs, Internet bulletin boards, e-mails, or
11 text messaging.

12 If anyone tries communicate with you about the case,
13 please let me know about it immediately. Do not read, watch,
14 or listen to news reports or other accounts about the trial or
15 anyone associated with it including any online information.

16 Do not do any research such as consulting
17 dictionaries, searching the Internet, or using other reference
18 materials. And do not make any investigation about the case on
19 your own.

20 Finally, keep an open mind until all the evidence
21 has been presented and you have heard the arguments of counsel,
22 my instructions on the law, and the views of your fellow
23 jurors.

24 Have a very restful and safe rest of the day and
25 evening. I greatly appreciate your patience today as we were

1 going through the issues and the evidence. I know at times it
2 was tedious. But I greatly appreciated your attention.

3 Hopefully everybody will be here on time tomorrow so
4 we can start promptly at 8:00 because I want to be able to
5 deliver on letting you go at 3:00. If you could get here no
6 later than about 7:45, and then we'll for sure start at 8:00.
7 Have, again, a great evening. We'll see you tomorrow.

8 THE CLERK: All rise.

9 (Outside the presence of the jury.)

10 THE COURT: Sir, you can step down. We'll see you
11 tomorrow, okay?

12 All right. Is there anything we need to discuss
13 this evening?

14 MR. KHOURI: I have a question. I can't remember if
15 the jury instructions were put on an electronic filing system.

16 THE COURT: They were. They were and my
17 intention -- Mr. Khouri, I'm glad you raised that -- is to go
18 over with you tomorrow when we break for the day. I don't
19 think it will be very long.

20 There's a couple changes I might make to them. I
21 don't -- I haven't heard any summary exhibit that has not been
22 received into evidence. So we'll have to get rid of that. I
23 don't believe, unless you correct me, that I've given any
24 instruction about evidence for a limited purpose.

25 And then, of course, I think our planning is that

1 Mr. Polequaptewa is going to testify. So we'll need to get rid
2 of the instruction or remove the instruction which says he's
3 not testifying. But other than that, I think the instructions
4 are ready to go.

5 MR. KHOURI: Could I ask for a little favor?

6 THE COURT: What's that.

7 MR. KHOURI: Before I give my opening tomorrow,
8 could I have a complete set? Otherwise I have to drive all the
9 way back to my office.

10 MR. MITTAL: We can also provide a copy.

11 THE COURT: Can you get him a copy?

12 MR. MITTAL: Yes.

13 MR. KHOURI: Thank you.

14 THE COURT: Okay. So we'll -- then we can go over
15 them one by one because there's not that many, or you can just
16 tell me we've looked at them all and with the changes that I
17 just said need to be made, they are good go.

18 MR. KHOURI: All right.

19 THE COURT: Either way it's not going to take us
20 long.

21 MR. MITTAL: Your Honor, we'll look at them tonight.
22 I think I agree. I don't recall any changes we were going to
23 propose.

24 THE COURT: All right.

25 MR. KHOURI: Thank you for letting us go at 4:30.

1 THE COURT: The jury is really tired. I don't know
2 if you could tell. I feel it's warm in here. Is it me?

3 MR. MITTAL: It is.

4 MR. KHOURI: I thought it was warm in the morning.

5 THE COURT: But the jurors were tired too. Okay.
6 See everybody tomorrow.

7 MR. MITTAL: Thank you, Your Honor.

8 (At 4:21 p.m. the proceedings adjourned.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 CERTIFICATE OF OFFICIAL REPORTER
2
3
4

5 I, MAREA WOOLRICH, FEDERAL OFFICIAL REALTIME COURT
6 REPORTER, IN AND FOR THE UNITED STATES DISTRICT COURT FOR THE
7 CENTRAL DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT
8 TO SECTION 753, TITLE 28, UNITED STATES CODE THAT THE FOREGOING
9 IS A TRUE AND CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY
10 REPORTED PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT
11 THE TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE
12 REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.
13
14

15 DATED THIS 30TH DAY OF JUNE, 2019.
16
17

18 /S/ MAREA WOOLRICH

19 MAREA WOOLRICH, CSR NO. 12698, CCRR
20 FEDERAL OFFICIAL COURT REPORTER
21
22
23
24
25