VOIR DIRE ✓

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE A. HOWARD MATZ, JUDGE PRESIDING

UNITED STATES OF AMERICA, Plaintiff, vs. STEVEN WILLIAM SUTCLIFFE, Defendant.	Case No. CR 02-350(A)-AHM

CERTIFIED COPY

REPORTER'S TRANSCRIPT OF JURY TRIAL PROCEEDINGS

Los Angeles, California

Wednesday, November 12, 2003

DAY 1

(Pages 1-241)

KAREN R. PINN, RPR, CSR 5574
Court Reporter

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LOS ANGELES, CALIFORNIA;

WEDNESDAY, NOVEMBER 12, 2003; 8:00 A.M.

THE CLERK: In the matter of calendar item No. 1, Criminal 02-350(A)-AHM, the United States of America v. Steven William Sutcliffe.

Counsel, please state your appearances.

MS. DUARTE: Good morning, Your Honor.

Elena Duarte with Case Agent Jeffrey Cugno on behalf of the United States.

THE COURT: Good morning.

MR. SUTCLIFFE: Good morning, Your Honor.

Steven William Sutcliffe.

THE COURT: Good morning to you.

MR. REED: Good morning, Your Honor.

David Reed, advisory counsel.

THE COURT: And good morning to you.

We have a number of matters to address or acknowledge before we bring down the jury, and not necessarily in order of importance. Here's what they are: I'm not sure if the courtroom deputy has circulated it yet, but over the break, I prepared a ruling denying the various motions that Mr. Sutcliffe made on November 7th, and no argument is necessary.

I reviewed the motion papers. I reviewed the government's response. I reviewed the law. And these are my

rulings: Earlier this morning, just a very few minutes ago, the courtroom deputy handed to me a document that has been filed today entitled "Notice and Demand for Hearing on the Jurisdiction of the Government's Authority to Proceed."

In that Notice and Demand, Mr. Sutcliffe demands that the government prove that there is jurisdiction to proceed on this case. I deny that notice or demand. I'll construe it to be a motion.

This has already been addressed and acknowledged -- not acknowledged, but addressed and dealt with. Title 18 of the United States Code permits the government to proceed on this basis. There is absolutely no issue about the Court's jurisdiction. And I don't think I need any argument on that point, Mr. Sutcliffe.

If this court lacks jurisdiction and depending on the outcome of the trial, you'll be entitled to challenge the very proceeding on appeal, but there is zero doubt that we have the authority and the jurisdiction to entertain a criminal case arising out of allegations of these violations, so I deny that motion.

You may be seated.

MR. SUTCLIFFE: May I be heard for a minute, Your Honor?

THE COURT: On that point, no. I'll hear from you about other points. I understand there are some you want to

raise.

MR. SUTCLIFFE: I would just ask that you ruling on that so I can appeal to the Ninth Circuit and get them to issue a writ of mandamus to compel this Court to provide a hearing, respectfully, so that I can challenge the jurisdiction --

THE COURT: Okay.

MR. SUTCLIFFE: -- of the government to even bring me into this courtroom. Thank you.

THE COURT: Okay. I deny that motion for a stay of the proceeding.

The issue is not one that warrants intermittent, interlocutory review, and a stay would be against the public interests, against the interests of justice, and I think it's against your interests, at least those that you have, to your credit, consistently advocated in seeking an early trial.

So for all of those reasons, I deny the motion for leave to file some kind of writ of mandate or interlocutory appeal to the Ninth Circuit.

The next thing I want to do -- is Mr. James Settle here? You are. Just so that we have a very clear understanding and record of what additional arrangements or equipment installations have occurred since last week, would you be good enough, please, to go to the lectern and tell us what has happened and what you have done or what has been done

under your authority.

MR. SETTLE: Thank you, Your Honor.

After our last meeting, we continued to provide some additional technology and labeling some of the technology that was in place before. The labeling occurred on the switch. We added a couple of additional ports for the government.

We also installed a printer for the use of the defendant, provided the defendant with a mouse pad to make it a little easier for him to navigate with the computer that we have provided.

We also provided a second monitor screen for the assistant counsel. And we provided headsets and audio connections for all parties involved.

THE COURT: Okay. I see that there are skirts around the counsel table. Did you extend those since last time?

MR. SETTLE: Yes, I did. The skirts were extended all the way around to include the farthest end of the counsel table where the assistant counsel is sitting.

THE COURT: Okay. "Assistant counsel," you are referring to Mr. Reed?

MR. SETTLE: Yes.

THE COURT: Do you want to be heard about that?

MR. SUTCLIFFE: No. I want to be heard about, I made a request that FrontPage be installed on this machine.

THE COURT: Yes, you did. And I initially indicated

that it would be.

MR. SUTCLIFFE: And I spoke to him this morning and he assured me that it had been. I'm searching right now. Can he come over here to show me where the application is? I cannot seem to find it.

THE COURT: I can respond to that, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: I authorized the MIS department, which came down and spoke to me about the capacity of FrontPage to enable a user to alter information on the system -- I instructed them not to install it or to remove it. Mr. Settle wasn't aware of that until a few minutes ago when I told him that, so FrontPage is not on the equipment you have.

MR. SUTCLIFFE: Your Honor, I would object at this point, because you have told me yourself that you have nothing but trust for me, and that you are assured that I would not manipulate any data, even after I brought to the attention of the Court that I had ample opportunity, as well as other people within the BOP, who go in and out of the computer room when I'm not there, to delete, alter, or modify data.

I would ask the Court, respectfully, to install that, as that application is necessary for my defense to show lack of intent on my part within this website.

THE COURT: Okay. Well, I deny that motion, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: I'm not making any finding you have done anything improper. I'm not necessarily making a finding at all that you would do anything improper. But I think that the interests of justice entitle you to have access to the evidence and to be able to display the evidence, as you see fit, in your defense.

The capacity that FrontPage would enable a user to take advantage of, if that user sought to manipulate the information or alter it, is not a risk that any court should or is required to take.

It's not so much a question of what you would do. It's a question of avoiding any confusion or issue. So I'm not going to change my mind. There won't be any FrontPage on that equipment.

MR. SUTCLIFFE: Thank you, Your Honor.

For the record, I wanted to note that I have no other means of manipulating this data, which is in a format which needs to be viewed in many different formats so that the jury can see the entire picture of what's going on, in front of the Webpage, as well as what's going on behind the Webpage. I have no application now with which to do that. Thank you.

THE COURT: Okay. I don't think that's a correct statement of what the capacity of this very, very elaborate system enables the user to do.

There will be no difficulty in you accessing or displaying any of the evidence that's quoted into the material, and a great deal has been, which we don't have to reiterate now. So that's my ruling on that.

Let the record reflect that Mr. Sutcliffe is wearing a very attractive shirt and tie and I assume some kind of slacks that match and fit to those.

It's my understanding that a member of the court staff was good enough to arrange for civilian garb to be brought to court. I want to acknowledge that Mr. Sutcliffe is wearing it. We even have a second set of clothing as a potential backup should that be necessary.

I want to thank those people, and it could well be the representatives of MDC and the marshals, as well, for assisting in that regard.

I also want to thank the marshals for graciously agreeing to bring over here this morning, a little bit beyond their ordinary responsibilities and expectations, the seven or so boxes of hard-bound documents in evidence that Mr. Sutcliffe asked about last week. Those boxes are in the courtroom and accessible.

I think that members of both the MDC and the U.S. Marshals Office have been exemplary in acting responsibly in this somewhat unusual case, and I thank them for that.

Mr. Settle, was there something more that you needed

to --

MR. SETTLE: No, I'm fine.

THE COURT: You are welcome to sit down, if you'd like.

MR. SETTLE: Thank you, Your Honor.

THE COURT: Mr. Sutcliffe?

MR. SUTCLIFFE: Yes, Your Honor.

I'd like the record to reflect that the slacks I'm wearing are nothing more than jailhouse blues with an elastic waistband, which do not match this shirt at all as any kind of attire.

Furthermore, I'd like the record to reflect that last Friday -- excuse me, on the 7th, right after the Court adjourned into his chambers, your clerk at the time, Stephen, handed me back the letter I had hand delivered to your chambers, which I provided to him as a courtesy copy.

And he said he would wait for the one to come in the mail. He handed me back the original of the November 3 letter that I had written to you regarding Mr. Reed, stating he would wait for the mail.

If Your Honor has not received it yet --

THE COURT: No, I don't think I have.

You can hand it to the courtroom deputy.

MR. SUTCLIFFE: I'd like this to be entered now. It is -- excuse me. It consists of one letter dated November 3,

2003, regarding David R. Reed, included within it is an attachment, an October 22nd letter, two pages long, and a letter titled "David Reed" dated 09, colon, 29, colon, 2003.

THE COURT: Okay. Those will be filed.

MR. SUTCLIFFE: I would also like the record to reflect that after the Court went into his chambers, I attempted to follow the Court's instruction regarding subpoenas, and I turned to the marshal to my left and I attempted to hand him a subpoena for Jeffrey Raymond Cugno, who was in the courtroom at the time.

I instructed the marshal to assist me in serving that subpoena on Mr. Cugno, and the marshal refused. The head marshal then -- I think his name is Mr. Martin -- spoke with your clerk at the time. Mr. Martin came back to me and told me that the clerk had informed him that I was to go through counsel.

I informed him that I am my own counsel. And I requested he again assist me. He refused. I turned around to see Ms. Duarte and Agent Cugno laughing. I was then removed from the courtroom after that.

I would move -- excuse me, Your Honor. I would move at this time for an ex parte hearing regarding subpoenas I need assistance with which need to be issued out of state.

That will be all, Your Honor. Thank you.

THE COURT: Okay. The request for a hearing is

denied. Your rights and opportunities to effectuate service were set forth a long time ago.

Mr. Cugno is in the courtroom. If you wish to have him testify in your case, you'll have an opportunity to do so. I'm instructing him to remain available.

Are you the witness who has a vacation problem?

MR. CUGNO: Yes, sir.

THE COURT: Okay. You'll have to let the courtroom deputy know when you are not going to be available, and if it's going to be at a time when Mr. Sutcliffe otherwise would call you, then we'll have to take you out of order before you are no longer available.

MS. DUARTE: Additionally, Your Honor, I would propose to the Court I would be quite willing to make Mr. Cugno -- Mr. Cugno is going to testify in the government's case-in-chief -- to waive any objection to beyond the scope and open him up for any examination that Mr. Sutcliffe desires on cross-examine.

THE COURT: That will be done, then.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: That's the way it will enable Mr. Sutcliffe to question Mr. Cugno.

MR. SUTCLIFFE: One last thing, Your Honor.

I have here with me both of your orders, which was -- well, October 21 and September 17. On September 17th, you

said, "Accordingly, upon presentation by defendant for the clerk of any properly issued subpoena, the marshal shall serve such subpoenas without payment of fees."

After that day, I tried to serve the subpoenas to your clerk. You instructed me that your clerk would not take my subpoenas.

You then issued the minute order on October 21st, where you stated the exact same thing. "Accordingly, upon presentation by defendant" -- then you omitted the words "for the clerk" -- "of any properly issued subpoena, the marshal shall serve such subpoenas."

At this time, I want the record to reflect I'm holding 28 properly issued, filled-out subpoenas. I'm going to place them upon the desk behind me next to the marshal. I've instructed somebody to assist me in my compulsory right to subpoena witnesses in my defense under the Sixth Amendment of the Constitution in the Bill of Rights.

Respectfully, thank you.

THE COURT: Okay. Yes, Ms. Duarte?

MS. DUARTE: If I may, Your Honor, it's my understanding that one of the reasons that this Court authorized an investigator to be appointed in this case -- and I remember receiving the paperwork. I don't think it was filed under seal or I wouldn't have received it -- was in order to facilitate things, such as service of subpoenas.

It's my understanding that Mr. Sutcliffe has refused to work with the investigator or with advisory counsel, Mr. Reed.

And I would ask that the Court inquire perhaps of defendant as to other avenues he has had to have his subpoenas served before the Court makes any findings as to the propriety of serving them at this time.

THE COURT: Okay. Well, what I'm going to do about these subpoenas is have them lodged as a Court exhibit so that Mr. Sutcliffe's record can be intact. So, at an appropriate time, they'll be handed to the courtroom deputy and they'll be lodged as exhibits.

Mr. Reed, is the investigator still available?

MR. REED: Yes, he is, Your Honor.

THE COURT: What's that individual's name?

MR. REED: It's Armando Cruz and he's present in the courtroom, Your Honor.

THE COURT: Okay. I'm going to instruct Mr. Cruz, after the record has been reinforced by having these lodged, to take a copy of the subpoenas, and I'll have to determine whether or not I'm going to order that he attempt to serve those.

I don't know who is on this list of 28 and where they are and whether it's feasible to effectuate service, but they will be given to the investigator for further follow-up. And I

will rule on just how that needs to be done later on.

But let the record reflect, as it inherently does, that this request is coming on the morning of the trial, weeks and weeks and weeks after the trial date was set, at Mr. Sutcliffe's request.

Have you been given any information by Mr. Sutcliffe to the effect that he would like you to use Mr. Cruz to serve any subpoenas?

MR. REED: Your Honor, as early as October 8th, I sent a letter to Mr. Sutcliffe, indicating to him that I wanted to, in all my power, help him serve subpoenas and sent that letter to him at MDC. And in combination with that letter, I wanted to bury all the hard feelings that we had between each other, and I wanted to do everything in my power to work for him.

I told him that I would serve his subpoenas. I told him that I had a licensed investigator, Armando Cruz -- who works for other attorneys in the federal system as well, Your Honor, just not me -- aid me to serve his subpoenas. And then I sent that letter to Mr. Sutcliffe.

And not only within that letter, I indicated the procedures that he had to follow with respect to out-of-district subpoenaing. I put the local rule down with respect to the service of out-of-district subpoenaing. And then I followed that letter up.

Mr. Cruz and I went to meet with Mr. Sutcliffe on October 14th, about six days after the letter was sent, so that we could confer with him and follow-up on the witnesses that he wanted us to subpoena. I don't want to get into what occurred, Your Honor.

At that point, the Court wanted to talk to -- have Mr. Cruz indicate what occurred, because he was the witness. The Court is very -- is invited to do so, to find out from Armando Cruz, because if I just tell the Court what occurred, Mr. Sutcliffe will probably accuse me of lying to the Court.

THE COURT: Well, let's not make any --

MR. SUTCLIFFE: Object.

THE COURT: Let's not make any predictions about what somebody will do in the future. I don't think that you need to report on whatever happened.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: That's not necessary.

Do you have a copy of that October 8th letter in the courtroom here?

MR. REED: Yes, I do, Your Honor.

THE COURT: Do you have any objection to it being lodged, Mr. Sutcliffe?

MR. SUTCLIFFE: May I see a copy of it, please?

Yes, I object to this.

THE COURT: What's the basis for the objection?

MR. SUTCLIFFE: I have never seen this letter.

MR. REED: He acknowledged that he saw the letter when we met him, Your Honor.

THE COURT: Don't volunteer information until I call upon you, please, Mr. Reed.

The objection is overruled. The letter is lodged because I think we need to have a complete record as to this last-minute issue about subpoenas. So please hand the letter to the courtroom deputy, Mr. Sutcliffe.

MR. REED: Well, Your Honor, the letter also incorporates the reports from my investigator with respect to what occurred and that's part of that exhibit.

THE COURT: This will be filed under seal. None of it will be made available to the prosecutor. It will be filed under seal. So any concerns about privilege or work product are allayed in that regard.

I'm instructing the courtroom deputy not just to lodge it, but to file it in camera and under seal.

Let's move on to some other matters.

MR. SUTCLIFFE: Excuse me.

THE COURT: Just a minute, Mr. Sutcliffe. Sit down. I'll call upon you shortly.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: I think that the courtroom deputy may have already handed to the parties, to Ms. Duarte and to

Mr. Sutcliffe, but I don't see a working copy up here, a document entitled "Reiteration of Court's Instructions Re: Conduct of Pro Se Defendant."

At last week's hearing, Mr. Sutcliffe expressed some difficulty in writing down the admonitions that I was giving him orally. I'm sure nobody could have taken them down verbatim. So I went to the effort of attaching a written statement of what I told him on Friday concerning the rights and limitations and proper ways of proceeding for a pro se defendant.

That written iteration is attached to this document, which has been filed today. You are welcome to keep it at counsel table for guidance, if you think it provides guidance, during the course of this trial, Mr. Sutcliffe.

Okay. Now, I have received the trial witness estimate list from the prosecutor, and I will have to read the names of the witnesses to prospective jurors to make sure that no juror has a relationship or knowledge about anybody who may be testifying.

Is this list the complete list of possible government witnesses?

MS. DUARTE: No, Your Honor.

There are three additional witnesses which I do not anticipate testifying, but I put them on the government's second amended witness list just in case.

THE COURT: I have that, too.

MS. DUARTE: That would be probably the better list to read, Your Honor, just to be sure.

THE COURT: On the second amended witness list, there are 26 names.

MS. DUARTE: Correct, Your Honor.

THE COURT: And if I read all of those 26 names, that will cover the prospective witnesses that the government may call in its case-in-chief?

MS. DUARTE: Correct, Your Honor.

THE COURT: Okay. That's what I'll do.

Now, I'm trying to become familiar with some of the individuals who are part of this proceeding.

Is Mr. Hesselrode here?

MR. HESSELRODE: Yes, sir.

THE COURT: Mr. Hesselrode, could you just describe on the record, please -- and you can do it from where you are standing -- what kind of leg restraints Mr. Sutcliffe has been placed in?

MR. HESSELRODE: Yes, Your Honor.

He's wearing the standard what we call leg irons. It's very similar to a large pair of handcuffs with a longer chain so that he can walk. We put duct tape around the chains, what we always do, to keep them from making noise so that a potential juror -- or when the jury is selected, they won't --

it won't be obvious that he's in custody.

THE COURT: Okay. Thank you.

But I do reiterate the instructions that we discussed last week about Mr. Sutcliffe having the duty to remain at and behind counsel table.

Now, Mr. Sutcliffe, you rose a few minutes ago. I said I would turn to whatever you wanted to say later. What would you like to say?

MR. SUTCLIFFE: Well, as I reiterated before, Your Honor, when I try to make a timely objection, you don't hear me out, and I tend to forget what my original objection was about. I really don't appreciate the Court not extending me the same courtesy as is extended to the prosecution.

And on that note, I would like to lodge several objections at this point regarding issues that were brought up during the November 7th hearing. And I'll call the Court's attention to the document, which was provided to me, which is called -- the title of it says "Statement of the Case." And there was also a limited instruction regarding "killercop.com".

I noticed, when I got back to my prison cell, that there were two additional papers attached within but I don't believe we touched upon. One of them was called "Limiting Instructions Regarding Weapons," and the other one was "Statement Regarding Pro Per Logistics."

I would like to lodge my objection at this time to

the limiting instruction regarding "killercop.com".

I point to, specifically, the last paragraph following the semicolon, which says, "Intended to threaten anyone through the material available on the "evilgx.com" website; and planned or prepared to communicate such threats."

I would object. The content of "killercop.com", as related to any inference of intent to threaten on "evilgx.com", is improper, it's highly suggestive, and it's a prejudicial statement to make to a jury in advance of any evidence but for the fact that the defendant is alleged to have created both at different times.

The "killercop.com" website has no relationship to the charges being brought against the defendant, and this is just -- this is only to suggest that past conduct proves present conduct and intent.

And I would submit, as proof of that, two letters from the AUSA that were sent: One is dated August 19th, addressed to Hilary Potashner, Deputy Federal Public Defender; and the other one is dated September 14th, addressed to Marilyn Bednarski, Deputy Federal Public Defender. And they are almost identical. And on page 2 -- in fact, they are identical.

On page 2, at the top of the paragraph, the last sentence says, "Evidence of your client's involvement with the website "killercop.com" is evidence of knowledge, intent, identity, and preparation in the instant case."

So it's obvious that the government is bringing in instructions on "killercop.com" specifically for that purpose. I would object to it strenuously.

THE COURT: Okay. The objection is noted and overruled.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: The full limiting instruction makes it explicitly clear that the jury may not consider any evidence related to "killercop.com" as evidence of any propensity on the part of Mr. Sutcliffe to commit any crime.

There are other provisions in the limiting instruction that address Mr. Sutcliffe's concern. We've been through this before. We don't have to go through it again.

At the appropriate time, if there is a proffer or reference to "killercop.com", I'm going to give that limiting instruction. The same is true on the weapons.

What is your next point, Mr. Sutcliffe?

MR. SUTCLIFFE: I know you've already ruled regarding the weapons, but for the record, I would like to object that the introduction of any evidence that the defendant had possession of any weapon or ammunition, for any purposes of proffer, are, again, highly prejudicial. Whether the defendant had the ability to act on any threat is not an element of any crime which the defendant is charged.

Possession of any weapon and ammunition is not

relevant to the issue of specific intent under any statute charged against the defendant.

Would you like to be heard on the statement regarding "Pro Per Logistics" at this point?

THE COURT: No, I don't think there is any need for that. I'm simply going to instruct the jury about the constitutional rights that you have both to present a defense and to represent yourself.

The language that I'm going to use has been changed from what you have there anyway. There was never a ruling that I was going to use that. So you can object to it at the appropriate time.

Are you saying you don't want anything said?

MR. SUTCLIFFE: No, Your Honor.

I'm saying, I took the liberty of anticipating you were going to change it anyway, so I made changes to it and --

THE COURT: Hand them to the court clerk, please.

MR. SUTCLIFFE: There is three copies there, Your Honor.

THE COURT: Okay.

MR. SUTCLIFFE: One for the AUSA and one for myself and one for the Court.

I would object to the way it's currently put together on the page that I'm looking at, not the one I created, but the one that was created for me. I object to any of that being

read to the jury.

I would object to Mr. Reed sitting at my table. It creates an inference that he's my attorney. I would object to the statement that "Mr. Sutcliffe will be representing himself." The problem with this statement is it not only suggests but states that I've chosen to represent myself. That's clearly not the case.

I also would request that the prosecution conduct its case from her table and not from the lectern. That disparate treatment will cause prejudice in that the jury is going to see Ms. Duarte, you know, back and forth to the lectern, moving around the courtroom, and I'm stationary. I can't move. That's clearly disparate treatment. And I would object to her having any more privilege in this courtroom than I would.

I would ask the Court to please read the instruction that I provided for him, which I spent several hours preparing for the Court, revising it over and over until I believed it was a fair representation.

THE COURT: I'm happy to do that. I'll read the statement that you gave me. I'm going to supplement it, but I'll read every word of it.

MR. SUTCLIFFE: That's fine, Your Honor. I appreciate that.

The last thing was, there was two other --

THE COURT: You made some subtle changes, and one is

that whereas I had proposed saying, "He will not be required to use the lectern," you have said, "He will not be allowed to use the lectern."

I'm not going to use the verb "allowed" because that is actually going to risk the possibility that the jury will think that there is security or other risks if you were allowed. So it's actually against your interests, and I'm not going to do that.

But if I see any other changes that shade the neutral presentation -- I, at the moment, see none -- I reserve the right to make those changes, too.

I think that takes care of everything.

Can you -- is there anything from the government? Are you ready to proceed?

MS. DUARTE: Ready to proceed, Your Honor.

THE COURT: Mr. Sutcliffe?

MR. SUTCLIFFE: No, Your Honor.

I request a ruling on the --

THE COURT: The government lawyer will be permitted to use the lectern, as is standard.

MR. SUTCLIFFE: Okay. Then that brings me to my last point which would be, there was a Certification of Regularly Conducted Activity which was attached to those -- the statement of the case. It was also attached to that -- a Certification of Regularly Conducted Activity that the Government had handed

me that morning.

One of them was a Certificate of Regularly Conducted Activity by a Patricia L. Gedney, G-e-d-n-e-y. There was nothing attached to this. And I would request that if the AUSA has a copy, I would like a copy of what was supposed to be attached to this.

MS. DUARTE: I can speak to that, Your Honor.

It's Exhibit 30 in the defendant's exhibit book.

THE COURT: Is the attachment in Exhibit 30?

MS. DUARTE: Yes, Your Honor.

THE COURT: Okay. That addresses that.

MR. SUTCLIFFE: The other one was a Certification of Regularly Conducted Activity by a Steve Orosz, spelled O-r-o-s-z. I would object to this exhibit and this certification. It precludes my cross-examination of information contained in the document, which is submitted as an exhibit, which is attached to this Certification of Regularly Conducted Activity.

THE COURT: What exhibit is that, Ms. Duarte?

MS. DUARTE: It should be Exhibit 44, Your Honor.

MR. SUTCLIFFE: It precludes me from cross-examining how the document was created, who submitted it. There is a name within that exhibit of a cc and a MasterCard number. It doesn't explain whether the name, which is under the cc, which is Richard Weatherman -- it doesn't explain whether he

submitted this information on this credit card.

Did I use his credit card? Did he allow me to use his credit card? Was there authorization for me to use the credit card, if I did use the credit card?

It creates a lot of inferences, and I have no way of cross-examining this witness. And I would object to it.

THE COURT: I assure you that any appropriate cross-examination both sides will be permitted to conduct.

What exhibit did you say it was?

MS. DUARTE: It is Exhibit 44, Your Honor.

It's a subscription record in the form of an e-mail.

THE COURT: The objection is overruled.

MR. SUTCLIFFE: May I be heard, Your Honor, for a moment?

THE COURT: No, not on that point. Once I have ruled, there is no further argument.

MR. SUTCLIFFE: It's not on that point at all, Your Honor.

THE COURT: All right. What's your next point?

MR. SUTCLIFFE: Thank you, Your Honor.

I would like the Court to be aware at this time that at the November 7th hearing, it was -- I noticed that the Court was conspicuously silent on its own order that Armando Saavedra from the MDC BOP Computer Center be present. And I want the record to clearly reflect that he was not present and nobody

made any kind of inquiry into the Court's own order that he be present.

I want the Court to also know that the timely discovery which was ordered by this Court and which was assured by Mr. Saavedra from the BOP that would be provided to me for viewing on the 21st, or whatever day he promised this court it would be available, was not made available to me. That the SCSI drive -- both SCSI drives, excuse me, came to me in an IDE format.

I've had no chance to subject him to any meaningful examination. In fact, the second SCSI drive was only provided to me on Monday at 9:20 a.m. My computer access ended at ten o'clock. I was not brought back in the afternoon because I had to pack up all of my boxes; so therefore, I've seen that drive for all of, oh, 20 minutes, tops.

THE COURT: Okay.

MR. SUTCLIFFE: I am still not in possession of the audiotapes. I am still not in possession of quite a bit of discovery, which I have asked the AUSA to provide to me.

I get smart little answers from her, but no meaningful discovery.

THE COURT: Okay. Have you turned over all the discovery that you have represented you have turned over?

MS. DUARTE: Yes, Your Honor.

THE COURT: Okay. Your objection is noted,

Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Okay. I'm going to instruct the courtroom deputy to bring down the jurors. Just let me review, for both sides, what the procedure will be. And I see already that the monitor that is near the exit door containing the seal will have to be removed before the process of jury questioning begins so that I can eyeball the jurors and so can Mr. Sutcliffe.

We're going to have the first 14 names who are called, after I complete round one, enter the jury box. We're going to have the next seven names sit in the seats in front of the jury box. Each of those seats has had placed on it the standard juror background information form.

We're going to have six people sit in the bench near that door, bringing the number to 27. And we're going to have three people sitting in the front bench, center aisle, close to where the prosecution sits. That's going to be a total of 30 people.

I will do all of the questioning. I'm not going to reiterate everything I did on Monday -- I mean, on Friday.

Now, after I have completed the questioning, I will excuse the jurors with instructions that they are not to discuss the case and to wait outside.

I will entertain requests for additional questions,

and I will entertain objections based on cause. And if I think that there is further questioning that is necessary, then, of course, I will bring the jurors back and engage in that further questioning.

If there is no further questioning that's necessary or appropriate, then the process of noting your objections -- your peremptory objections or strikes will begin outside the presence of the jurors.

If either side thinks there is a constitutional violation that the other side is attempting to commit by striking a given juror, I'll hear that argument at that point. That's how we are going to proceed with voir dire.

Okay. The clerk will let me know when the jurors are back.

Mr. Sutcliffe, what is it?

MR. SUTCLIFFE: Thank you, Your Honor.

Would the Court like to -- has the Court read my letter that I just entered regarding David Reed?

THE COURT: No, I haven't read it. I have given it to the clerk -- or I'm about to give it to the clerk to file.

MR. SUTCLIFFE: In there I'd like to bring your attention to the fact that I brought to this Court's attention, when I dropped off a courtesy copy last week, that I have not yet received the transcript from September 26th, which the Court ordered be provided to me.

THE COURT: Okay.

MR. SUTCLIFFE: I would also like the Court to read that letter at this time. It's a very brief letter, a couple of paragraphs.

THE COURT: I will read it over the break. There is no ruling that's necessary. Mr. Reed will be required to sit at the end of counsel table or in the front bench, whichever is sufficient that will enable him to follow and view the evidence as it's presented on the monitors.

The jury will be told about Mr. Reed's very limited role. I will read the statement that Mr. Sutcliffe has drafted.

Okay. Let me know when the jurors are back and we'll begin.

(Recess taken at 9:25 a.m. to 9:54 a.m.)

(Prospective jurors entered the courtroom.)

THE CLERK: The matter of calendar item No. 1, the United States of America v. Steven William Sutcliffe, Criminal 02-350(A)-AHM.

Counsel, please state your appearances.

MS. DUARTE: Good morning, Your Honor.

Elena Duarte and Jeffrey Cugno, Case Agent, on behalf of the United States.

THE COURT: Good morning.

MR. SUTCLIFFE: Good morning, Your Honor.

Steven William Sutcliffe, defendant.

THE COURT: Good morning to you.

MR. REED: Good morning, Your Honor.

David Reed, advisory counsel.

THE COURT: Good morning to you and good morning and welcome to all the prospective members of this jury. Can you all hear me? If you can't, I'll try to speak clearly into the microphone.

As you know, my name is Judge Matz, and you've been sent down to this courtroom because we are going to be picking a jury. In just a moment, I'll tell you about what the case involves, and I'll explain to you how we are going to go about picking the jury for this case.

But I want to tell you a little bit about the very concept of picking a jury because it's so important to who we are as a nation and how our court system functions.

The process of picking a jury sometimes is referred to, and lawyer's commonly mention it, as "voir dire." Those are two French words which, if they were translated literally, mean "to see" and "to say."

What we all know the phrase now means is picking a jury, and there are certain ways we go about it. There are certain requirements that we have to follow. But I think it won't come as a surprise to any of you that the basic objective is real simple. We want to pick people to sit in judgment,

whether it's a civil case or a criminal case, who are fair and who are impartial.

So the "seeing" and the "saying" and the questioning and the process that leads up to the actual selection of those people who wind up serving is all about making sure that people are in a position to rule on the case, after looking at the evidence, hearing the evidence, applying the law that the judge tells them about, and making their own judgments about who is telling the truth or what's been proven and what hasn't been proven.

We are the first nation on earth to give that awesome power to ordinary citizens. The idea of having a jury was first conceived in England more than 800 years ago. But when we framed our own Constitution in 1787, we made it a constitutional right that people enjoy and have.

And we could not have functioned as a nation, and we could not have developed our system, which has problems in it, which isn't perfect, lots of flaws and difficulties that we encounter all the time, but the central point is that we give a lot of power to you.

And you, in turn, have a need to assure us that you are going to exercise that power fairly and impartially. So that's what this is all about.

Now, the way we are going to go about picking a jury in this case is as follows: First, I'm going to have the

people who are sitting at counsel table, after I tell you what the case is about, stand up and face you. And you should look carefully at them because I'm going to be asking you if you know them. I'll have them reiterate their names.

And then, while you are all sitting where you are currently sitting, I'm going to ask you certain questions about general issues.

I'll be reading you the names of the people who are expected to testify in the government's case. I'll be telling you about how long this trial will last. I'll be giving you information about the dates that we will be in trial and the dates during the course of the trial that we cannot be in trial, that you would be free to go about your business.

When you have information to give me and answers to give me, while you are still sitting where you are currently sitting, please signify that you have something that you need to let me know simply by raising your hand.

I'll call upon you. When you stand up from where you are currently sitting, please speak up in a real loud voice because -- we have a microphone for use later on, but it won't be passed around the back of the courtroom. And then give us your name and tell me what the information is that you wish to respond to.

After that process is completed, the names of 30 people will be called. As that process is underway, I'll tell

those 30 people where they should proceed to sit for further questioning. And when we're about to begin further questioning of those specific 30 people, I'll tell you how we are going to handle that phase of it.

Now, let me tell you a little bit about this case. It's a criminal case. The plaintiff, the United States of America, has accused the defendant, Steven William Sutcliffe, of violating two different federal laws:

First, the government alleges in Counts One through Four that Mr. Sutcliffe transmitted in interstate commerce threats to injure various persons, intending that those persons would feel threatened. The alleged threats were posted on an Internet website known as "evilgx.com".

Second, the government alleges in Counts Five through Nine that Mr. Sutcliffe obtained and transferred to the Internet the social security numbers of various individuals, and that in doing so, he intended to aid and abet the making of false representations, that those social security numbers were assigned to people other than the persons to whom they actually had been assigned.

In committing these alleged acts, the government charges, Mr. Sutcliffe acted with the intent to deceive.

Now, Mr. Sutcliffe denies these allegations. And I want to say right at the outset that he is to be presumed innocent. He's merely been accused of a crime.

An indictment was returned after certain evidence was presented. And when indictments are returned by grand juries, the individuals who are being investigated or about to be accused of a crime don't even have a right necessarily to be present.

So an indictment is a charge. It's an accusation. Somebody who is accused of a crime, as Mr. Sutcliffe has been accused, is presumed innocent.

And what that means is that he doesn't have to prove he's innocent. He doesn't have to testify if he doesn't want to. He doesn't have to present witnesses if he doesn't want to. He doesn't have to introduce other kinds of evidence.

Instead, the government, which brought these charges, must prove him guilty, and it must do so beyond a reasonable doubt. Those of you who are picked to serve as jurors, I will tell you what that means. But the standard of proof is beyond a reasonable doubt. And all of the jurors unanimously have to agree that the government met that burden of proof.

This presumption isn't a fiction. Right now, as we are about to begin this process of picking a jury and starting this trial, Mr. Sutcliffe, as to these charges, is an innocent man. It will be up to the jury, those of you who are picked to serve, to determine whether the evidence that the government introduces establishes that, in fact, he committed these crimes.

Now, is there anyone who, based only on what I told you -- I gave you a real brief statement of what the case is about, and I told you who has the burden of proof -- is there anyone who thinks that she or he cannot fairly apply that burden of proof to the defendant in this case?

If so, please raise your hand.

Okay. I'm going to state on the record now that no prospective juror has raised her hand or his hand.

As we proceed this morning and in order to save time, if I ask questions on the record and no prospective juror raises her hand or his hand, I'll just move on to the next question. I won't keep saying, "No one raised their hand." And the record will reflect in that fashion that no one did raise their hand.

Now, obviously, in any case, whether it's a fender-bender case or a federal criminal trial, there are certain factors that would preclude prospective jurors from being considered for service. One of them is that they have some knowledge about the case.

Have any of you ever heard anything about this case?

If so, please raise your hand.

Okay. Another factor that would obviously excuse people, preclude them from being seriously considered for selection on the jury, is if they know the people who are involved. The primary people who are involved are the lawyers

for the government and the people who help them put together their case, and they are the two individuals sitting at the government's counsel table.

I'm going to ask the prosecutor to stand up, identify herself again, and identify the individuals sitting with her.

MS. DUARTE: Good morning, ladies and gentlemen. My name is Elena Duarte. I'm an assistant U.S. Attorney and with me at counsel table is FBI Special Agent Jeffrey Cugno.

THE COURT: All right. You may be seated.

Do any of you know either Ms. Duarte or Mr. Cugno?

All right.

Now, I'm going to ask Mr. Sutcliffe to do the same thing. He's the individual accused of these crimes. Please stand up and identify yourself by name.

MR. SUTCLIFFE: Good afternoon. My name is Steven William Sutcliffe. I've been accused of this crime.

THE COURT: Okay. Do any of you know or recognize Mr. Sutcliffe?

You may be seated.

MR. SUTCLIFFE: Thank you.

THE COURT: Now, Mr. Sutcliffe will not be represented at trial by a lawyer.

Under our Constitution, every defendant in a criminal case has a right to represent himself. Because there will be no attorney representing Mr. Sutcliffe, he is entitled to

perform the functions an attorney typically performs, such as to give an opening statement, question witnesses, object to the introduction of evidence, offer evidence, although there is absolutely no duty to offer evidence, and deliver a closing argument, and all the other things a lawyer does in a typical case.

I have arranged for a standby counsel, Mr. David Reed, to be present in the courtroom to consult with Mr. Sutcliffe if Mr. Sutcliffe chooses.

Will you stand up and identify yourself, please.

MR. REED: I'm David Reed.

THE COURT: Do any of you know Mr. David Reed?

Okay.

Now, for the course of this trial, I have directed Mr. Sutcliffe to participate in all respects from the table where he sits. He will not be required to use the lectern.

I'll instruct you in advance, even though none of you have yet been sworn as an actual juror on this case, that in carrying out your prospective duties, including answering the questions in the course of voir dire or jury selection, you may not take into account that Mr. Sutcliffe is representing himself and you may not hold it against him. You may not infer anything at all from the fact that he is not represented by a lawyer.

If you serve on this jury, the parties and I will all

expect that you will scrupulously adhere to this requirement.

Now, in addition to exercising his right to represent himself, Mr. Sutcliffe understands, and I have informed him, that he will receive no special privileges and that he will be treated the same as any other attorney ordinarily would be.

Are there any of you who feel that you could not be a fair and impartial juror on this case in light of the fact that Mr. Sutcliffe will be representing himself and will not be represented by counsel?

Are there any of you who believe that the decision that -- the fact, I should say, that Mr. Sutcliffe is representing himself is something that will constantly be in your mind as you evaluate the evidence and as you carry out your obligation to return a verdict based on that evidence and the law; anybody who would have difficulty with that fact?

Okay. Now --

MS. DUARTE: Your Honor, there are some hands raised.

THE COURT: I didn't see your hand. There were maybe two hands.

There is a woman in the front row wearing a red blouse. Would you stand up and identify yourself, please.

PROSPECTIVE JUROR ANSELL: Diana Ansell.

THE COURT: Ansell?

PROSPECTIVE JUROR ANSELL: Yes.

THE COURT: Yes, Ms. Ansell.

PROSPECTIVE JUROR ANSELL: The reason I don't think I would be able to is because I'm property manager for a house next-door. I recently had a tenant who was so abusing to me and arrogant, that I think I would look at this gentleman trying to -- and see this guy.

THE COURT: You would see -- suppose the defendant were a woman and nothing else was different about this case, the fact that she, in my hypothetical example, was representing herself and didn't have a lawyer would remind you of the property manager?

PROSPECTIVE JUROR ANSELL: Well, yes. The property manager constantly had police over -- or I had, you know, a dispute between the boyfriend and girlfriend. Every time that I would go over, he would call a citizen's arrest for the officers there. This went on for months until we finally got him evicted.

And I just think the arrogance of him trying to be his own police officer and lawyer himself, I wouldn't want to give him an unjust --

THE COURT: Well, you need to understand and all the jurors need to understand that there is no basis to find or infer or speculate or guess that there is any arrogance that plays here whatsoever.

You would have the right -- we all have the right, under our Constitution -- it comes as a surprise because

everyone knows that a defendant in a criminal case has a right to a lawyer. But what some people don't know is that there is a constitutional right not to have a lawyer and to defend yourself.

If someone exercises that right or is found to have been in the position to be representing himself, there is not any basis to infer arrogance.

Now, having explained that, I can tell, Ms. Ansell, by your own words, that whoever is the property manager is not in this courtroom.

Do you still think that the fact that Mr. Sutcliffe is not going to be represented by a lawyer except by this advisory or standby counsel, who will not be representing him but will merely be available, that that would prevent you from being fair?

PROSPECTIVE JUROR ANSELL: The thing is, I was the property manager and I had no control.

THE COURT: What is it about the circumstance -- now that I have explained to you something, in light of what you have told me, what is it about this dispute with the -- is it a tenant?

PROSPECTIVE JUROR ANSELL: Yes, it was a tenant.

THE COURT: What is it about the dispute with the tenant that you think has some bearing on whether you can be fair and impartial in this case?

PROSPECTIVE JUROR ANSELL: Even though what you have said, the tenant took it into his own hands, I mean, thought that he was above -- he said he had every right and he was above the law and that he could make all the judgments. And the officers' hands were always tied. There was nothing they could do. And everything I had to go through.

THE COURT: Okay. Thank you. I'll respond to your concern a little bit later.

Yes, sir, what's your name?

PROSPECTIVE JUROR ESCOBAR: Juan Escobar.

THE COURT: What is it about what I have invited you to inform me that you want to say?

PROSPECTIVE JUROR ESCOBAR: I don't really believe that he can properly defend himself. If he was just going to represent himself, I don't think it's fair.

THE COURT: You don't think it's fair to whom?

PROSPECTIVE JUROR ESCOBAR: It's not fair to him. He's not going to be able to defend himself properly versus these lawyers that are trained. I don't think someone can just go and try to defend himself who is not a lawyer, and I don't think he will properly be able to defend himself.

THE COURT: The degree of representation, the effectiveness of representation -- or the effectiveness of self-representation or self-defense is something that remains to be seen.

Does your view in any way -- is your view in any way affected by the fact that from the Supreme Court downward, our system of juris prudence, our system of law in this country, has made the determination and found many times that a person who is not a lawyer is entitled to represent himself and justice can be achieved?

PROSPECTIVE JUROR ESCOBAR: The thing is, I would be impartial towards, you know, the person prosecuting them because they would have an advantage, so I would definitely be impartial.

THE COURT: Thank you, Mr. Escobar.

Counsel and Mr. Sutcliffe, I intend to proceed accordingly.

Mr. Escobar, report back up to the third floor, back up to the jury room.

MR. SUTCLIFFE: Your Honor --

THE COURT: Yes.

MR. SUTCLIFFE: -- may I be heard?

THE COURT: I'll give you an opportunity to be heard at the break.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Yes, sir. Stand up and tell us your name, please.

PROSPECTIVE JUROR FOSTER: Kim Foster. I'm just asking if I can be excused for a moment. I'm on medication.

It's a diuretic.

THE COURT: Surely. Go right ahead, Mr. Foster.

PROSPECTIVE JUROR FOSTER: Thank you.

THE COURT: Will you just be a couple of minutes?

PROSPECTIVE JUROR FOSTER: Yes.

THE COURT: Let's just wait for Mr. Foster to come back and then I'll proceed.

The parties should know, incidentally, because there was one open matter left just before the break, that I did read the material that I was asked to read, that had been previously brought up last week, and I have read it.

I can comment about it at another time in the trial, but it has been read, all the material.

Thank you for being patient. Members of the jury, it's only fair that all of you who may ultimately serve as actual jurors be entitled to participate fully throughout the proceeding. Even though Mr. Foster doesn't appear to have any information in response to this last question, we are going to wait until he comes back as a courtesy to him.

I would ask representatives of -- a court security officer to check on Mr. Foster's welfare. Make sure he's okay, please.

Welcome back, Mr. Foster.

PROSPECTIVE JUROR FOSTER: Sorry for the interruption.

THE COURT: We understand. No problem.

Now, I think there was, in response to the last question, somebody's hand was raised.

Yes, in the front row. Please state your name.

PROSPECTIVE JUROR JI: My name is Michelle Ji.

THE COURT: Please speak loudly.

Michelle Ji?

PROSPECTIVE JUROR JI: Yes.

THE COURT: All right. Number 5.

PROSPECTIVE JUROR JI: Okay. You say something, but I didn't get all.

THE COURT: Okay. You mean you didn't understand what the -- well, this is one of the things that I was going to be asking some jurors about.

Are you a person who was born in another country before you became a citizen here?

PROSPECTIVE JUROR JI: Yes.

THE COURT: You can relax, Ms. Ji. You are doing fine. It's a little bit difficult for newcomers, but you are doing a service as a citizen, so please feel comfortable. I don't want you to feel embarrassed.

Would you like to -- we can discuss this a little bit later, but -- why don't we do that. I will make sure that you understand things a little bit later. We'll deal with that question in a moment, so please be seated.

I would direct the court clerk to give Ms. Ji a glass of water, please.

Okay. Anybody else have a hand raised in response to the last question?

Okay.

Let's turn to the issue that I think Ms. Ji was planning to raise with me. We're blessed in this community with having people who come to the United States, become citizens, and carry out their duties as citizens, which include jury service. And we're realistic enough to know that some of them have difficulty with language, even though they are citizens and entitled to all of the rights that other citizens enjoy.

I have to tell you, just as an aside, that one of the greatest pleasures that someone who has my job can ever perform is swearing in new citizens at naturalization ceremonies. Maybe some of you are new citizens who went through that process. It's a beautiful, very inspiring process.

But we know that new citizens understand that if they are going to carry out their job as jurors, they are going to be required to follow the evidence and understand the evidence. And some of them have difficulty. Some of them shade things a little.

So I'm not inviting people, who may be thinking it would be great if they could avoid a trial, to say something

that isn't true. But if somebody thinks that she or he could not understand what's being said in court, either because of a language difficulty or some other kind of physical handicap, please raise your hand.

Is there any person who is concerned about that?

Now, Ms. Ji, would you tell me whether you are having difficulty understanding what I'm saying.

PROSPECTIVE JUROR JI: I didn't -- what you say, I didn't get it.

THE COURT: About the defendant having -- being his own lawyer or representing himself? Is that what you did not understand?

PROSPECTIVE JUROR JI: You say in front you select the case. I didn't get it.

THE COURT: Thank you for telling me that.

Counsel, I intend to proceed accordingly.

Ms. Ji, would you be good enough to go back up to the third floor, the jury department, please, for further instructions. You don't have to serve on this case. I make a finding that Ms. Ji is having some difficulty with following the Court's instructions.

PROSPECTIVE JUROR JI: Thank you.

THE COURT: Now, I'm about to read to you the names of people that we think may testify. It's possible that not all of these people will, but just in case, I'll read their

names. They are not here for you to eyeball. Some of them have names that may be, if not common names, at least they are not that unusual. So if you think you know somebody with the name I'm about to read or any of the names I'm about to read, please raise your hand.

Mark Bishop, Gary Carr, David Chavarri, Jeffrey Cugno -- you saw Mr. Cugno before -- James Durie, Cathleen Fuller, Maurice Gilmer, Elizabeth Greenwood, Tracy Hall, Frank Harrill, Linda Isley, David Johnson, Steven Katz, Mary Leiter, John Medeiros, Orly Mann, Michael Orosz, Steve Orosz, Andrew Ramsey, Richard Saly, Donald Schmidt, William Siebert, Kevin Swindon, Janet Troxell, Bruce Wieseltier, Terry Willis.

Okay. Those are the individuals that we think will be testifying as witnesses.

Let me tell you about the duration of this trial. And what I'm about to say is a little bit different than what I told the parties last week, in one slight way.

Today we're going to go into the afternoon session. We'll at least pick a jury today. We may proceed to later stages of the trial. Beginning tomorrow, the trial schedule for those people who are picked will be that they have to be here, have to be here at 8:15 in the morning, in the jury room that you will be accustomed to. And we will continue with the trial. And they have to be in the box, in their assigned seat -- the box referring to the jury box -- at 8:30, because

I'm coming out into the courtroom at 8:30, and we'll all be ready to proceed at 8:30 and we'll need the jurors in the box. The day will end at 1:30.

It will be from 8:15 to 1:30. There will not be a lunch break. There will be various breaks, at least two 15- to 20-minute breaks during the course of the presentation of evidence from 8:30 to 1:30. We will not break for lunch.

The primary reason for doing this is that I have many matters that I have to deal with in the afternoon. And I have found that although the hours are a little bit unusual in some courts, most jurors, most lawyers, most witnesses, most people who experience it, find that it's actually more convenient for them, even though people may get a little bit hungry toward the end of any given day. So it will be 8:15 to 1:30 beginning tomorrow.

Now, we will be in session not only today, but tomorrow and Friday, November 13th and 14th. I'm going to do something unusual, and this is the change. All the people affected need to know. I am going to have a trial date on Monday of next week. So you'll be needed on Monday and Tuesday and Wednesday of next week for those hours, November 17th, 18th, and 19th.

Thursday and Friday of next week, I have to -- I serve on a certain committee for the courts, and I have a meeting out of town, so we cannot be present for the trial on

Thursday and Friday. That would be the 20th and the 21st. No trial on those days. Then we resume the following week on Tuesday and Wednesday only. That will be November 25th and November 26th.

If necessary, and it may not be necessary, we would expect that the trial could spill over into the following week. And I think it's a very, very safe estimate, but I can't humanly guarantee it, although I am very confident that the trial will end not later than December 3rd, which is a Wednesday. So there will be certain days between today and December 3rd that you won't be needed.

The reason that we don't have -- by the way, there will be no trial on Thanksgiving or the day after Thanksgiving. No trial on either of those days.

So there will be a trial on Wednesday and Tuesday of that Thanksgiving week. There isn't a trial on a Monday, because, typically, in this courthouse, judges deal with all kinds of cases of a different nature, especially civil cases, with hearings and motions and other matters, on Monday. So we don't bring jurors in. But to speed things along, I'm going to bring you in next Monday.

Just to reiterate, the last date that I think it would take would be December 3rd, and there is a good possibility that the case would go to the jury during the Thanksgiving week, but I'm not sure of that at all.

Given that schedule, those days of the week and those days in which we'll be in court, is there any prospective juror who, for good cause, thinks that she or he cannot serve on the trial in this case?

If so, please raise your hand.

Okay. Let's start with the woman in the blue jacket in the front row, please.

PROSPECTIVE JUROR COY: My name is Nancy Coy and tomorrow and Friday I'm going to be out of town. I have to go to my sister's funeral.

THE COURT: Your sister's funeral?

PROSPECTIVE JUROR COY: Yes.

THE COURT: She just passed away very recently, I guess?

PROSPECTIVE JUROR COY: Saturday.

THE COURT: Well, I'm going to proceed accordingly, Counsel.

You may return to the jury room for further instructions. You won't be excused altogether from jury service, but no one is going to impose upon you at this difficult time. So please go up to the third floor.

How do you spell your last name?

PROSPECTIVE JUROR COY: C-o-y.

THE COURT: Okay. Who else -- you may go up to the third floor.

Before I turn to the people on the right side, anybody else in the center aisle?

Please stand up and tell me your name.

PROSPECTIVE JUROR MAGDALENA MARTINEZ: My name is Magdalena Martinez. I'm a human resources director for a nonprofit, locally. I have a fairly small department and we're understaffed at this point. I know that it would be a hardship on my employer to have me out for all of those days.

THE COURT: What's the name of your employer?

PROSPECTIVE JUROR MAGDALENA MARTINEZ: AIDS Healthcare Foundation in Hollywood, California.

THE COURT: What kind of work do you do there?

PROSPECTIVE JUROR MAGDALENA MARTINEZ: I'm the director of human resources. I handle everything from hiring and firing and everything in between. We're an organization of 600.

THE COURT: Surely, there are vacations, family commitments, and others, when you are not at work, and the work of the organization continues. Am I correct about that?

PROSPECTIVE JUROR MAGDALENA MARTINEZ: You are.

THE COURT: Ms. Martinez, I'm not minimizing the importance that you suggest you have at your office, but I need to tell you that, inherently, for many people being away from work or away from your ordinary routine creates some kind of an imposition, and we would like to help people or accommodate

people. We work very hard to do so as the trial is ongoing, but we can't excuse people on that basis, so I'm not going to excuse you.

All right. How about anyone else?

Yes, sir. What's your name, please?

PROSPECTIVE JUROR KENNEDY: Richard Kennedy.

THE COURT: Okay. What's your problem, Mr. Kennedy?

PROSPECTIVE JUROR KENNEDY: Friday, the 21st, I'm flying to Massachusetts. On Saturday, the 22nd, my nephew is getting christened. I'm the godfather.

THE COURT: No problem. We are not going to be in trial on Friday, the 21st.

PROSPECTIVE JUROR KENNEDY: My flight is booked through Thanksgiving, Saturday, the 29th.

THE COURT: You are staying --

PROSPECTIVE JUROR KENNEDY: That's where I'm from. I'm going home for the christening and Thanksgiving.

THE COURT: It's the christening of?

PROSPECTIVE JUROR KENNEDY: My nephew. I'm the godfather.

THE COURT: Are your tickets nonrefundable?

PROSPECTIVE JUROR KENNEDY: Yes.

THE COURT: Well, it's a nice event. So I don't think it will be fair to the parties to have you sitting in judgment regretting that you would miss that. So, Counsel, I

intend to proceed accordingly.

Report back up to the third floor for further and different jury service, please.

PROSPECTIVE JUROR KENNEDY: Thank you.

THE COURT: Anybody else thinks that she or he -- the hands keep popping up. This always happens.

Please rise and give us your name, the woman in the black jacket, please.

PROSPECTIVE JUROR DORA MARTINEZ: Dora Martinez. I have a nonrefundable cruise booked for the week of Thanksgiving. It's been booked for a while. It's my birthday.

THE COURT: For how long were you planning to be on the cruise?

PROSPECTIVE JUROR DORA MARTINEZ: It leaves on the 24th, which is a Monday, and comes back on the Friday after Thanksgiving. It leaves around noon, I think, or something like that, on Monday.

THE COURT: Before I respond to -- your name is Ms. Martinez also; right?

PROSPECTIVE JUROR DORA MARTINEZ: Right.

THE COURT: Before I respond to her, is there anyone else who thinks that he or she is not going to be able -- it's not going to be that long a trial, especially given the fact that, unfortunately, there are some days in between which would entitle people to go about their business, including their

jobs.

Anyone else who thinks that she or he cannot sit in this case for the time estimate I gave you?

All right. Counsel and Mr. Sutcliffe, I intend to proceed accordingly with Dora Martinez.

You should report back up to the third floor for further instructions.

PROSPECTIVE JUROR DORA MARTINEZ: Thank you.

THE COURT: Now, here's what we are going to do, ladies and gentlemen:

The names of 30 individuals will be called. And if your name is called, please proceed to where I direct you to proceed. When you get to that place, you will find a page that's entitled "Juror Background Information." On it, there are listed about 11 questions, some of them with some subparts.

Look over that Juror Background Information form because, for each of these 30 people, I'm going to be asking you the questions -- most of the questions that are reflected on that form. After I do that, I'll be asking additional questions, and I'll explain how that will work later.

Now, when we finally pick a jury, the jurors, including the alternates, will all be able to sit inside the jury box.

During this process of questioning the 30 people

whose names are going to be called, for various reasons, we are not going to do that. So you'll be answering these questions, some of you, not from the jury box, but from other places.

Now, let's start with the first seven names to be called, and the first person whose name is called should sit in the jury box underneath the sign that says "Jurors" to your left, the next person should sit next to the first person, and the names that follow, each should sit in the next vacant seat in the back row.

Let's call seven names, please.

THE CLERK: Manuel Alviso, juror seat No. 1. For juror seat No. 2, Patricia Wanner. For juror seat No. 3, Carlos Fandino.

THE COURT: You could pick up the pace a little, Cindy.

THE CLERK: For juror seat No. 4, Paulina Thompson.

THE COURT: Is Paulina Thompson here? Yes, there she is.

THE CLERK: For juror seat No. 5, Carmen Zakaryan.

THE COURT: Zakaryan, is that the way it's pronounced?

PROSPECTIVE JUROR ZAKARYAN: Yes.

THE COURT: Okay.

THE CLERK: Melissa Vargas, Helen Gonzalez.

THE COURT: Stop there for a second.

To assist the parties in this case, I'll do this intermittently. I'll just review who is sitting where.

Mr. Alviso is in No. 1, Ms. Wanner, then Mr. Fandino, then Ms. Thompson, then Ms. Zakaryan, then Ms. Vargas, and then Ms. Gonzalez.

Okay. Now, the next seven names, sit in front of the ones who are already in the box, with the first person whose name is going to be called next sitting in front of juror No. 1 and filling in the front row accordingly.

THE CLERK: Robert Ramirez, Brian Ellis, Richard Brown, Kathleen Gilmer, Kim Foster, Benjamin Levine, Fayrouz Malki.

THE COURT: Is your last name pronounced Malki?

PROSPECTIVE JUROR MALKI: Yes.

THE COURT: You can stop there, please.

Let me help the parties by reviewing who is sitting where in the front row: Mr. Ramirez, Mr. Ellis, Mr. Brown, Ms. Gilmer, Mr. Foster, Mr. Levine, Ms. Malki.

Now we're going to call the names of six more people -- excuse me, seven more people, and we would appreciate, if your name is called, you are going to these folding chairs which are temporarily in front of the jury box.

The person whose name is called first should sit on the chair closest to where each of you is currently sitting; in other words, toward the back of the courtroom.

THE CLERK: Frank Farone, Dewitt Ross, Marta Knittel, Arthur Dayoan, Carmelita Medina, Kenneth Klippert, Kenneth Wilson.

THE COURT: Okay. Again, I will, after Mr. Wilson is seated, review the names of these jurors.

Sitting in the chair that will be considered, for current purposes, to be No. 15 from here on in is Mr. Farone, next to him is Mr. Ross, then Ms. Knittel, Mr. Dayoan, Ms. Medina, Mr. Klippert, and Mr. Wilson.

This all looks very, very odd and peculiar. You'll see later on why we are doing it this way. Thank you for participating so responsively so far.

Now we may do a little bit of musical chairs because we are going to sit the next six names in the front row on what is your left side of the courtroom closest to the door with the seal.

So, if your name is called, proceed to sit in that front row. Those of you who are currently there, just stand up and move into the aisle for a moment. Your name may be called. I'm not sure. But if your name is called, the first person whose name is called should sit closest to the door and the next five people should sit next to that person.

Let's go.

THE CLERK: Mary Ann May, John Cleek, Jill Lewis-Fine, Aladino Vinas, Miller Lee, Johanna Kingsley.

THE COURT: The person who will be deemed to be juror No. 22, or sitting in seat No. 22, is Ms. May, next to her is Mr. Cleek, and then Ms. Lewis-Fine, then Mr. Vinas, Mr. Lee, and Ms. Kingsley.

Okay. Now we're going to ask three people to respond if their names are called. If your name is one of those three, sit in the front row, in the center aisle, next to the six individuals whose names we last called.

THE CLERK: Actually, if I could have all of you step into the aisle, I would appreciate it. Thank you.

THE COURT: Yes.

THE CLERK: Dawniel Hermanson, Chiquita Taborn, Samuel Kent.

THE COURT: Okay. Now, those of you whose names weren't called should pay very careful attention as we go through the process of hearing the answers to this questionnaire form from those whose names were called because it's quite likely that, for one reason or another, you may have a need to come forth and answer these questions as well.

So let me explain to all of you, including those who don't have the form before them, how we expect you to go about answering this questionnaire.

Those people whose names were called, take a look at the questionnaire. Some of the information is quite obvious, like your name.

Now, in question 2, "The area of residence," that means area. You don't and should not give us your street address. If you live in Hollywood, you say "Hollywood." If you live in West Covina, you say "West Covina." If you live somewhere in San Luis Obispo County, just tell us that. You don't have to and should not give us your street addresses. Just tell us the area. If you live somewhere in the City of Los Angeles, but it's a neighborhood that has a name, like Van Nuys, tell us that.

"The highest educational degree or training" means the last stop on your path toward acquiring education. If you did one year of college, that's what you would say. If you are a Ph.D., that's what you would say. If you went to medical school, fine. If you graduated high school, fine. Just tell us what the last educational degree or training was.

Then tell us your kind of work, the kind of firm that you work for, and the name of your employer. But don't tell us anything about the precise location of the employer or any information that really isn't necessary.

Give us who you work for. If you work for the U.S. Postal Service, if you work for a small restaurant, you can tell us that.

Tell us what your occupation is. "I am a letter carrier. I am the head of the physics department," whatever your occupation is. If you are no longer working, say, "I'm no

longer working. I'm retired" or "I'm not in the workforce," and I'll ask you what you did before you stopped working.

Tell us if you are married or divorced or single.

If you are living with another adult, tell us that. You may be living with a sister. You may be living with a companion. You may be living with an adult child. Because if you are living with another adult, I am likely to ask you what that person's occupation is. I won't be asking you more questions than that, but we need to know what the occupation is of adults that are living with you.

If minors are living with you, you don't have to tell us that. But do tell us if you have children and what the range of their ages is. If you have four kids and the youngest is 10 and the oldest is 20, just say "Four kids between 10 and 20." You don't have to tell us their names. You don't have to tell us whether they are in school or anything like that.

Question 7 asks about prior jury service. That's a little bit different than the preceding question. We need to know a little bit about your experience as jurors.

In answering question 7, only answer if you were actually picked to serve on a jury. If, at an earlier time, you were called to answer questions and then excused, or for some reason you weren't picked, you don't have to tell us about it.

But if you served on a jury, then tell us that you

did and then tell us what kind of case. Just say, if it was a civil case, it was a fender-bender or somebody slipped on a banana peel at Ralphs or a breach of contract action between AT&T and SBC. You don't even have to tell us the parties, actually. And just tell us what kind of civil case it was. If it was a criminal case, just say it was a bank robbery, or whatever the case may have been.

And tell us whether the jury on which you sat actually returned a verdict, but please do not tell us what the verdict was. Don't say, "We found for AT&T." Don't say, "We found that the lady was really badly injured because the banana peel was left on Ralphs' floor." Just tell us that you returned a verdict. The same is true if you served on a criminal case. Don't say, "We acquitted the person." Don't say, "We convicted the person."

Now, the next question asks about whether you yourself were ever a party in a lawsuit. That means that you brought a lawsuit against somebody or somebody brought a lawsuit against you.

If you brought the lawsuit, then you are called the plaintiff. If somebody sued you, you are called the defendant. If you were brought up on charges, not arrested -- you don't have to tell us about arrests -- but if you were actually prosecuted, whether or not you were convicted, you need to tell us that, too, because you were then a party; you were the

defendant in a criminal case. So tell us about your prior experience as a plaintiff or a defendant.

In question No. 9, we need to know what kind of ties, if any, you have with law enforcement officers.

Are there any law enforcement agencies, other than the FBI, which figure into the evidence in this case?

MS. DUARTE: The L.A.P.D., Your Honor.

THE COURT: Okay. Don't confine your answers to whether you have ties with the FBI or L.A.P.D. For all I know, one of you is an FBI agent. It's conceivable, but not likely that you would be.

But if somebody close to you -- and it doesn't have to be just a family member. It could be. It could be your brother. It could be your daughter. It could be your spouse. It could be yourself -- has a position in law enforcement or had one, in a way that affected the way you look at the outside world, how you think about stories you hear involving alleged crimes, a way that can influence your thinking, we at least need to know about what those ties are.

So just give us information about connections you have with people, or in your own rite, that could influence the way you evaluate the evidence here.

The same is true in question 9(b). We need to know whether -- you'll tell us if you are a lawyer. But if you are a court employee, if you have a job like our court reporter

does or the courtroom deputy does or somebody who is very close to you, who can really influence you, has such a job, tell us about that, too.

If any of you has been the actual victim of a crime, whether or not there was a trial, tell us about that. If there is some information, by the way, that is so personal and so difficult to discuss in public, just tell me that you would prefer to be heard privately, and I will arrange for the information to be disclosed in a way designed to avoid any embarrassment.

But please understand that in our society -- we live in a very large metropolitan area or in a district that has got a lot of common ties with the city, like Los Angeles -- it is not unusual and it is not a stigma to either have been a victim of a crime or to have somebody in your family who was prosecuted for a crime. So try to be forthright, please, in your answers.

Number 11 gets back to what I told you all when you first walked in the courtroom about what this is all about. It's about picking people who are fair, picking people who can be impartial.

I can't ask all the questions that I probably should ask if I knew anything about any of you. So I'm relying on you and so are the parties to this case to tell us about factors in your background that may make you question whether you can be

fair to both sides, both sides, whether you'll have any difficulty in applying the law, once I tell you what it is, whether, for some reason that has not already been explored, you are going to have difficulty in following the evidence, whether something else that you would want to know if you were Mr. Sutcliffe or you were Ms. Duarte representing her client, something that would affect your ability to be fair. Those are the kinds of questions that I want to ask in this round of questioning.

So let's start with you, Mr. Alviso. Wait for the clerk to give you the microphone. And please do your best to speak into the microphone.

PROSPECTIVE JUROR ALVISO: My name is Manuel Alviso. I'm a resident of Azusa, California. My highest degree at the present time, I have a master's degree.

THE COURT: What's the master's in, Mr. Alviso?

PROSPECTIVE JUROR ALVISO: I'm sorry, I didn't hear you.

THE COURT: What is the master's in? Is it engineering?

PROSPECTIVE JUROR ALVISO: Business administration.

THE COURT: Okay.

PROSPECTIVE JUROR ALVISO: I'm employed by P and O Cold Logistics, USA. And my occupation is, I'm the Director of Environment, Health, Safety and Security. I am married. The

only adult living with me, obviously, would be my wife. She is self-employed.

THE COURT: What kind of work does she do?

PROSPECTIVE JUROR ALVISO: She does event coordination.

THE COURT: Event coordination; is that what you said?

PROSPECTIVE JUROR ALVISO: That's correct.

We have three children, ages 9 to 18.

THE COURT: Okay.

PROSPECTIVE JUROR ALVISO: No prior jury service.

THE COURT: Not civil or criminal?

PROSPECTIVE JUROR ALVISO: No.

THE COURT: Have you ever sued someone, in answer to No. 8?

PROSPECTIVE JUROR ALVISO: I have not.

THE COURT: Has anyone ever sued you?

PROSPECTIVE JUROR ALVISO: NO.

THE COURT: Can you answer question No. 9, please?

PROSPECTIVE JUROR ALVISO: I have a nephew that's employed by the Los Angeles Police Department.

THE COURT: Okay. What's his position? Is he an officer?

PROSPECTIVE JUROR ALVISO: He's an officer.

THE COURT: Do you know what division he works out

of?

PROSPECTIVE JUROR ALVISO: South Central.

THE COURT: Is he a patrolman or --

PROSPECTIVE JUROR ALVISO: He is a patrolman.

THE COURT: Do any of the expected witnesses or any part of the evidence involve a person who works out of the South Central Division of L.A.P.D.?

MS. DUARTE: I don't believe so, Your Honor.

The only possible witness would be a detective from Robbery/Homicide, and I think that's local.

THE COURT: What's that detective's name?

MS. DUARTE: That's the division. Pardon me?

THE COURT: What's that detective's name?

MS. DUARTE: There are two on the witness list. Steven Katz and Terry Willis.

THE COURT: Have you ever heard of those people? You didn't raise your hand.

PROSPECTIVE JUROR ALVISO: No, I have not.

THE COURT: Okay. Do you know what kinds of crimes your nephew is assigned to investigate?

PROSPECTIVE JUROR ALVISO: No, sir, I do not.

THE COURT: Do you talk about his work often with him?

PROSPECTIVE JUROR ALVISO: Very little.

THE COURT: Okay. If you heard testimony from

somebody who is employed by the L.A.P.D., would you be able to evaluate that testimony and see how persuasive or credible it is and how important to your thinking, as if it were any other witness?

PROSPECTIVE JUROR ALVISO: Yes, I would.

THE COURT: Okay. Keep going. Do you know any people who are in the legal system other than law enforcement?

PROSPECTIVE JUROR ALVISO: My wife has a cousin who is an attorney.

THE COURT: Does that attorney practice in Los Angeles?

PROSPECTIVE JUROR ALVISO: Yes, she does.

THE COURT: What kind of law does she practice?

PROSPECTIVE JUROR ALVISO: Family law.

THE COURT: She's not a prosecutor?

PROSPECTIVE JUROR ALVISO: No.

THE COURT: She doesn't represent defendants who are accused of crimes either; right?

PROSPECTIVE JUROR ALVISO: No.

THE COURT: That is correct?

PROSPECTIVE JUROR ALVISO: That's correct, yes.

THE COURT: Could you -- anybody else besides that cousin?

PROSPECTIVE JUROR ALVISO: No.

THE COURT: How about No. 10?

PROSPECTIVE JUROR ALVISO: No experience as a crime victim.

THE COURT: And No. 11?

PROSPECTIVE JUROR ALVISO: Yes, I feel I could.

THE COURT: You could be fair to both sides?

PROSPECTIVE JUROR ALVISO: That's correct.

THE COURT: Okay. And that would be the gist of your response to all of 11(a) through (d)?

PROSPECTIVE JUROR ALVISO: Yes.

THE COURT: Nothing else you can think of that the parties would have an interest in knowing?

PROSPECTIVE JUROR ALVISO: Not at this time.

THE COURT: All right. Thanks very much, Mr. Alviso.

Now let's turn to -- is it pronounced Wanner?

PROSPECTIVE JUROR WANNER: Wanner, yes.

THE COURT: All right.

PROSPECTIVE JUROR WANNER: My name is Patricia Wanner. I live in North Hollywood. My highest education is college, four years. I work for an advertising --

THE COURT: Did you actually graduate?

PROSPECTIVE JUROR WANNER: Yes.

I work for an advertising agency called OMD. My occupation is, I'm associate broadcast director. I'm single.

THE COURT: Wait. Slow down. There is one thing I haven't yet said, but I'll say it now. It's really important

for all of us, throughout this trial, to remember.

We have a court reporter who has got a really tough job. She has to take down everything that everybody says. And she's very skillful, real hard-working, but if we talk too fast, it screws it all up. Please slow down a little bit.

I got through the part that you work for an advertising agency.

PROSPECTIVE JUROR WANNER: I work for an advertising agency. I'm an associate broadcast director. I am single. I do not have any adult children, small children, or anyone else living with me at the moment. I have not served on a prior jury, whether it be civil or criminal. I was a defendant in a lawsuit for a fender-bender.

THE COURT: Did an insurance company handle that matter for you?

PROSPECTIVE JUROR WANNER: Yes. But the plaintiff did sue me.

THE COURT: Was the case eventually settled?

PROSPECTIVE JUROR WANNER: Yes, it was.

THE COURT: Did you wind up testifying in court in that case?

PROSPECTIVE JUROR WANNER: Yes.

THE COURT: Before it was settled, there was a trial?

PROSPECTIVE JUROR WANNER: It was like a small claims court.

THE COURT: Did you represent yourself?

PROSPECTIVE JUROR WANNER: Yes.

THE COURT: Okay. As a result of that experience, did you form any views about how the justice system works generally that might affect how you would serve on this case?

PROSPECTIVE JUROR WANNER: I don't think so.

THE COURT: Were you satisfied with the way the system worked?

PROSPECTIVE JUROR WANNER: Yes.

THE COURT: Keep going.

PROSPECTIVE JUROR WANNER: I have no ties to law enforcement. In the criminal cases, I've neither been a victim or know anyone that was. And I think I could be fair to both sides.

THE COURT: Okay. You don't have any ties to people who work for the court system?

PROSPECTIVE JUROR WANNER: No.

THE COURT: As the associate broadcast director, can you just give us a very brief description of what your job entails?

PROSPECTIVE JUROR WANNER: Sure. I supervise about six or eight people that buy radio and television time and negotiate.

THE COURT: Okay. So these are people who negotiate with broadcasters to buy time on which clients of your firm

then wind up placing ads?

PROSPECTIVE JUROR WANNER: Correct.

THE COURT: Okay. Thank you, Ms. Wanner.

Mr. Fandino.

PROSPECTIVE JUROR FANDINO: Good morning, Your Honor. My name is Carlos Fandino. I live in Acton, California.

THE COURT: Acton?

PROSPECTIVE JUROR FANDINO: Acton, A-c-t-o-n.

THE COURT: What county is that in?

PROSPECTIVE JUROR FANDINO: Los Angeles.

I have a four-year college degree in business. I am presently employed by F. Gavina and Sons. I'm the vice president of operations. I'm married.

THE COURT: What kind of work, in general, does that company perform?

PROSPECTIVE JUROR FANDINO: We're a custom coffee roaster.

THE COURT: Does that mean that the firm roasts beans that it imports and then sells them to wholesalers and retailers?

PROSPECTIVE JUROR FANDINO: Yes, Your Honor.

THE COURT: Okay.

PROSPECTIVE JUROR FANDINO: I have no prior jury service.

THE COURT: I missed one thing, Mr. Fandino. Forgive

me. Did you say you are married?

PROSPECTIVE JUROR FANDINO: Yes, sir.

THE COURT: Is your wife currently working?

PROSPECTIVE JUROR FANDINO: She's a housewife.

THE COURT: Any other adults living at home with you?

PROSPECTIVE JUROR FANDINO: No, sir.

THE COURT: All right.

PROSPECTIVE JUROR FANDINO: No prior jury service.

THE COURT: Do you have children even though they are not living at home?

PROSPECTIVE JUROR FANDINO: Yes, I do.

THE COURT: How many?

PROSPECTIVE JUROR FANDINO: I have four.

THE COURT: The range of their ages, please?

PROSPECTIVE JUROR FANDINO: From 30 to 34.

THE COURT: Okay. You say you have no prior jury service of any type; is that correct?

PROSPECTIVE JUROR FANDINO: Yes, sir.

THE COURT: Okay.

PROSPECTIVE JUROR FANDINO: I was a defendant in a lawsuit due to a wrongful termination, and it was settled out of court.

THE COURT: Okay. So somebody who worked for the firm that you were working for claimed they had been fired wrongfully; is that correct?

PROSPECTIVE JUROR FANDINO: Correct, sir.

THE COURT: Were you named as an actual individual defendant as well as the firm?

PROSPECTIVE JUROR FANDINO: I was one of the individual defendants as well as the firm.

THE COURT: And it was settled?

PROSPECTIVE JUROR FANDINO: It was settled out of court.

THE COURT: And you had the same lawyer that the firm had?

PROSPECTIVE JUROR FANDINO: Yes, sir.

THE COURT: Were you satisfied with the way the justice system worked in that case?

PROSPECTIVE JUROR FANDINO: Yes, I was.

THE COURT: Okay. Could you answer No. 9, please?

PROSPECTIVE JUROR FANDINO: Number 9, I have a total of 26 years of law enforcement experience, 14 years with the Los Angeles Police Department, and 13 years with the Los Angeles County Sheriff's Department. I retired in 1998.

THE COURT: Okay. Now, with the L.A.P.D., were you at one point -- were you at all points an actual police officer?

PROSPECTIVE JUROR FANDINO: Yes, sir.

THE COURT: And you began as a uniformed patrol officer?

PROSPECTIVE JUROR FANDINO: Yes, sir.

THE COURT: And you ended as what?

PROSPECTIVE JUROR FANDINO: I ended as a detective in the Los Angeles Police Department.

THE COURT: What were those years, approximately?

PROSPECTIVE JUROR FANDINO: 1971 to 1986.

THE COURT: And then in '86 or so you began work with the sheriff's office?

PROSPECTIVE JUROR FANDINO: I was out of law enforcement for approximately 18 months, and then I went to the Los Angeles County Sheriff's Department reserve forces.

THE COURT: So what does it mean to have been in the reserve forces? Was that your full-time job?

PROSPECTIVE JUROR FANDINO: It was a full-time peace officer status, and I did work hours as I could.

THE COURT: Okay. Now, at any time that you were performing these law enforcement responsibilities during those 27 years, was it part of your task to investigate crimes involving uses of computers for the Internet?

PROSPECTIVE JUROR FANDINO: No, sir.

THE COURT: Did you ever get involved in investigations of people who were suspected of violating laws arising out of computer usage or Internet?

PROSPECTIVE JUROR FANDINO: No, sir.

THE COURT: What was your rank at the sheriff's

office?

PROSPECTIVE JUROR FANDINO: I was a reserve detective sergeant.

THE COURT: Now, when did you last function for the sheriff's department?

PROSPECTIVE JUROR FANDINO: 1998.

THE COURT: Since then, have you done any work, such as a private consultant or any other kind of work, as a law enforcement officer?

PROSPECTIVE JUROR FANDINO: I am presently involved with the City of San Fernando Police Department.

THE COURT: What's your current involvement there?

PROSPECTIVE JUROR FANDINO: I will be swearing in as a reserve officer there in the next couple of weeks.

THE COURT: And you'll continue to work at the F. Gavina and Sons position as well?

PROSPECTIVE JUROR FANDINO: Yes, Your Honor.

THE COURT: What do you think would be the impact on you in this case, what little you know about this case, of the fact that you have spent so many years and are about to resume serving in some capacity as a law enforcement officer?

PROSPECTIVE JUROR FANDINO: None whatsoever.

THE COURT: Could you explain why you don't think it will have any impact?

PROSPECTIVE JUROR FANDINO: Just based on the facts

presented by the Court, we will have to make judgment based on that.

THE COURT: Did it ever happen, in your experience, Mr. Fandino, that you personally learned about individuals who were suspected of crimes who may have been arrested but wound up not being guilty or not being found guilty of those crimes?

PROSPECTIVE JUROR FANDINO: Yes, sir.

THE COURT: Do you understand that the presumption of innocence is designed to make sure that before any jury convicts any defendant, the evidence is there to justify the conviction?

PROSPECTIVE JUROR FANDINO: Yes, I do.

THE COURT: So you wouldn't think that just because it happens to be Mr. Sutcliffe in this criminal case that's about to begin and he's sitting in court, he's guilty, would you?

PROSPECTIVE JUROR FANDINO: I'm sorry, sir?

THE COURT: Would you think that he's guilty just by being here?

PROSPECTIVE JUROR FANDINO: No, sir.

THE COURT: Would you answer No. 9 further. You must have ties with lawyers and judges and court employees.

PROSPECTIVE JUROR FANDINO: Yes, I do. I know a couple of them. My son is a reserve officer with the San Fernando Police Department. He works patrol there.

THE COURT: Do you have friends or relatives who are lawyers or judges?

PROSPECTIVE JUROR FANDINO: Yes, I do, sir.

THE COURT: Tell us about them, please.

PROSPECTIVE JUROR FANDINO: Well, I -- in the morning, I work out with Judge Munoz from the 11th floor at the Pled Club (phon).

THE COURT: You don't really -- you did the right thing by telling us who. I don't want to know where you work out with that judge. It's not the 11th floor in this building, I can tell you that, because he's not a judge in this system.

PROSPECTIVE JUROR FANDINO: All right.

THE COURT: Are there they other close ties you have, social or family?

PROSPECTIVE JUROR FANDINO: Well, I do have social ties with ex-Los Angeles police detectives who are personal friends of mine who are now retired.

THE COURT: Nobody else who works either in law enforcement or for the court system that's close to you other than your son who works for the San Fernando Police Department; is that correct?

PROSPECTIVE JUROR FANDINO: That's correct.

THE COURT: Have you yourself ever been a crime victim?

PROSPECTIVE JUROR FANDINO: No, sir.

THE COURT: How would you answer No. 11?

PROSPECTIVE JUROR FANDINO: I can be totally fair to both sides. I don't have any difficulties in following evidence, and I don't have anything else that the Court should know.

THE COURT: Thank you, Mr. Fandino.

Now we move on to Ms. Thompson.

PROSPECTIVE JUROR THOMPSON: My name is Paulina Thompson. I live in Long Beach, California. I graduated from high school, had one year of college. I worked as a secretary, but I'm retired. I'm married. I live with my husband.

THE COURT: Ms. Thompson, when you were working as a secretary, was it ever for a law firm or lawyers?

PROSPECTIVE JUROR THOMPSON: Yes, sir. For my husband.

THE COURT: You were a secretary in your husband's law firm?

PROSPECTIVE JUROR THOMPSON: Yes.

THE COURT: So he's a lawyer, obviously?

PROSPECTIVE JUROR THOMPSON: Correct.

THE COURT: What kind of law does your husband practice?

PROSPECTIVE JUROR THOMPSON: Civil litigation.

THE COURT: Is he still practicing as a lawyer?

PROSPECTIVE JUROR THOMPSON: No. He's retired.

THE COURT: Okay. Did your husband take cases to court?

PROSPECTIVE JUROR THOMPSON: Yes, sir.

THE COURT: Did you participate in any way in those cases that did go to court?

PROSPECTIVE JUROR THOMPSON: No.

THE COURT: Did your husband ever get involved in criminal practice, either as a prosecutor or a defense lawyer?

PROSPECTIVE JUROR THOMPSON: No.

THE COURT: So when did you retire?

PROSPECTIVE JUROR THOMPSON: About five or six years ago.

THE COURT: Okay. Please keep answering the questions.

PROSPECTIVE JUROR THOMPSON: We have two children, ages 31 to 35. No prior jury service. No criminal experience. No prior experience as a plaintiff or a defendant. My close ties to the legal system is my husband who is a retired attorney. I don't know anyone -- "no" is the answer to No. 10. And I think I can be fair to both parties, no doubt, I promise. I do follow...

THE COURT: You will follow the law --

PROSPECTIVE JUROR THOMPSON: I will follow the law as instructed. And I have no difficulties following the evidence. And I don't have anything else to say.

THE COURT: Suppose I stated a legal principle that the jury was required to follow that struck you as odd, that you didn't think it worked that way because of whatever you may have learned or thought you learned when you were working in that law firm, what would you do?

PROSPECTIVE JUROR THOMPSON: Well, I understand we're supposed to follow your instructions.

THE COURT: You are. That's absolutely critical. Would you be able to do so?

PROSPECTIVE JUROR THOMPSON: Yes, sir.

THE COURT: Okay. Thank you, Ms. Thompson.

Now let's move on to Ms. Zakaryan.

PROSPECTIVE JUROR ZAKARYAN: My name is Carmen Zakaryan. I live in North Hollywood. My highest education is eleventh grade. I work for University Imaging Center. My occupation is billing. I am married.

THE COURT: What kind of business is that company or firm in?

PROSPECTIVE JUROR ZAKARYAN: An imaging center where they do MRIs and CAT scans.

THE COURT: And you handle the billing --

PROSPECTIVE JUROR ZAKARYAN: Yes, I do.

THE COURT: -- to insurance companies and to patients?

PROSPECTIVE JUROR ZAKARYAN: Yes.

THE COURT: Okay.

PROSPECTIVE JUROR ZAKARYAN: I am married. I have three children, ages 4 1/2 and 17. No prior jury service, civil or criminal. No prior experience as a plaintiff or a defendant. I have no ties to law enforcement or the legal system. Also, No. 10 is no. And yes, I can be completely fair to both sides without any doubt. And yes, I do promise to follow the law as instructed by you. I have no difficulty in following evidence. Anything else the Court should know? Nothing.

THE COURT: Ms. Zakaryan, could you tell us what kind of occupation your husband has?

PROSPECTIVE JUROR ZAKARYAN: He's unemployed at the moment.

THE COURT: Before that happened, what kind of work was he doing?

PROSPECTIVE JUROR ZAKARYAN: He was delivering.

THE COURT: A driver?

PROSPECTIVE JUROR ZAKARYAN: A driver.

THE COURT: Okay. Thank you very much.

Let's move on, then, to Ms. Vargas.

PROSPECTIVE JUROR VARGAS: My name is Melissa Vargas. I'm from Cerritos. The highest education would be two years of college. My employer is Pacific Maritime Association. I'm a stevedore. I am single. I live with my father and my mother

and my sister.

THE COURT: Are any of those three persons employed?

PROSPECTIVE JUROR VARGAS: Yes, they are. My sister and my father are also employed by Pacific Maritime Association, and they are also stevedores.

THE COURT: Okay. And a stevedore works on the docks; is that correct?

PROSPECTIVE JUROR VARGAS: Yes.

My mother is a housewife.

THE COURT: All right.

PROSPECTIVE JUROR VARGAS: No children living in the house.

THE COURT: Okay.

PROSPECTIVE JUROR VARGAS: No prior jury service. No lawsuits -- no prior lawsuits.

THE COURT: You never sued someone and no one ever sued you?

PROSPECTIVE JUROR VARGAS: No.

THE COURT: Okay.

PROSPECTIVE JUROR VARGAS: No ties to law enforcement or the legal system. And no on No. 10; I have never been a crime victim. And yes, I can be completely fair to both sides, no doubts. I promise to follow the law as instructed by you. And I do not have difficulty following evidence. And that's all you should know.

THE COURT: All right. Thanks very much, Ms. Vargas. And now we go to Ms. Gonzalez.

PROSPECTIVE JUROR GONZALEZ: My name is Helen Gonzalez. I live in Montebello. I have a bachelor's degree.

THE COURT: In business or --

PROSPECTIVE JUROR GONZALEZ: In business administration.

My employer is Wells Fargo Bank. I'm a trust administrator. I'm married. My husband is a mechanic. I have three children, ages one through six.

THE COURT: You are a busy woman.

PROSPECTIVE JUROR GONZALEZ: Yes.

THE COURT: Okay.

PROSPECTIVE JUROR GONZALEZ: I do have prior jury service in criminal.

THE COURT: Okay. What kind of case was it, Ms. Gonzalez?

PROSPECTIVE JUROR GONZALEZ: One was first-degree murder and we did reach a verdict. And the second one was a rape case and no verdict. We did not reach a verdict.

THE COURT: Okay. Those were both cases that were prosecuted and tried in the state court system; is that correct?

PROSPECTIVE JUROR GONZALEZ: Yes, that's correct.

I have no jury service in civil. No prior experience

as a plaintiff or a defendant in any lawsuit. No ties to a law enforcement officer or the legal system. And no to No. 10. And yes, I could be fair to both sides. And I do promise to follow the law instructed and no difficulty in following the evidence.

THE COURT: Okay. Thanks very much.

Just so that you know what to anticipate, I think we can finish up the questioning of the next seven jurors, those who are sitting in the front row of the jury box, and break for a rest room break at 11:30. So please hang in there unless there is a major problem. We'll give a break to the court reporter and to all of you at around 11:30, possibly sooner.

Okay. So I think we're up to you, Mr. Ramirez, juror No. 8.

PROSPECTIVE JUROR ROBERT RAMIREZ: My name is Robert Ramirez. I live in Santa Fe Springs. Two years of college, no degree. I work for a theme park.

THE COURT: You work for who?

PROSPECTIVE JUROR ROBERT RAMIREZ: A theme park.

THE COURT: What kind of work do you do at that theme park?

PROSPECTIVE JUROR ROBERT RAMIREZ: I work at security.

THE COURT: Are you a uniformed officer?

PROSPECTIVE JUROR ROBERT RAMIREZ: Yes -- not an

officer, but we are -- they call it costume.

THE COURT: You call it a costume?

PROSPECTIVE JUROR ROBERT RAMIREZ: Yeah. It's -- it has security on it.

THE COURT: Do you carry a weapon?

PROSPECTIVE JUROR ROBERT RAMIREZ: No.

THE COURT: This is one of the theme parks around Southern California?

PROSPECTIVE JUROR ROBERT RAMIREZ: Yes, sir.

THE COURT: Okay. And do you have the capacity -- not the capacity, but do you have the right, the authority, to place people under arrest?

PROSPECTIVE JUROR ROBERT RAMIREZ: No, sir.

THE COURT: Okay. If you see a problem that requires someone, in your judgment, to be arrested, what do you do?

PROSPECTIVE JUROR ROBERT RAMIREZ: We call an officer.

THE COURT: What is the local police department that has jurisdiction over your theme park?

PROSPECTIVE JUROR ROBERT RAMIREZ: They are called in.

THE COURT: Which department is it? Is it L.A.P.D.?

PROSPECTIVE JUROR ROBERT RAMIREZ: Buena Park.

THE COURT: And how long have you had that position?

PROSPECTIVE JUROR ROBERT RAMIREZ: Two years.

THE COURT: What did you do before that?

PROSPECTIVE JUROR ROBERT RAMIREZ: I worked for Boeing Aircraft Company.

THE COURT: What was your job there?

PROSPECTIVE JUROR ROBERT RAMIREZ: I was a fabricator.

THE COURT: Okay. And that means that you helped manufacture certain kinds of products; right?

PROSPECTIVE JUROR ROBERT RAMIREZ: Yes, sir.

THE COURT: Fabricator doesn't mean a liar. I'm just joking with you, Mr. Ramirez. Because some people talk about fabricating evidence. That's not at issue here.

Are you married?

PROSPECTIVE JUROR ROBERT RAMIREZ: No, sir. Divorced.

THE COURT: When you were married, did your wife have an occupation?

PROSPECTIVE JUROR ROBERT RAMIREZ: Did she have an occupation?

THE COURT: During the period you were married.

PROSPECTIVE JUROR ROBERT RAMIREZ: Yes.

THE COURT: What was it?

PROSPECTIVE JUROR ROBERT RAMIREZ: She was a clerk.

THE COURT: Are there any adults currently living with you?

PROSPECTIVE JUROR ROBERT RAMIREZ: Yes, I have one son.

THE COURT: Does he work?

PROSPECTIVE JUROR ROBERT RAMIREZ: Yes, sir.

THE COURT: What's his job?

PROSPECTIVE JUROR ROBERT RAMIREZ: A designer for a paper company.

THE COURT: Any other children?

PROSPECTIVE JUROR ROBERT RAMIREZ: I have another son.

THE COURT: You don't have to tell us what that son does if he's not living there.

And so they are adults, both of these sons; is that correct?

PROSPECTIVE JUROR ROBERT RAMIREZ: Yes, sir.

THE COURT: Have you ever served on a jury, Mr. Ramirez?

PROSPECTIVE JUROR ROBERT RAMIREZ: Yes, I did. Criminal. I was on two juries.

THE COURT: What were the charges in those cases?

PROSPECTIVE JUROR ROBERT RAMIREZ: Attempted murder and murder.

THE COURT: Did the jury return a verdict in the attempted murder case?

PROSPECTIVE JUROR ROBERT RAMIREZ: Yes, sir.

THE COURT: And did the jury return a verdict in the other case, the murder case?

PROSPECTIVE JUROR ROBERT RAMIREZ: Yes, sir.

THE COURT: Okay.

PROSPECTIVE JUROR ROBERT RAMIREZ: I had no lawsuit or criminal cases.

THE COURT: No experience as a party in a lawsuit; is that correct?

PROSPECTIVE JUROR GONZALEZ: That's correct.

THE COURT: Mr. Ramirez, do you have any ties to people who are law enforcement officers?

PROSPECTIVE JUROR ROBERT RAMIREZ: My son has a brother-in-law that's a police officer at Anaheim.

THE COURT: I'm sorry that I missed this. The brother-in-law is?

PROSPECTIVE JUROR ROBERT RAMIREZ: My son's brother-in-law.

THE COURT: So your son is married to someone and her brother is a police officer --

PROSPECTIVE JUROR ROBERT RAMIREZ: Right.

THE COURT: -- for the Anaheim Police Department?

PROSPECTIVE JUROR ROBERT RAMIREZ: Yes.

THE COURT: Do you see that individual a lot?

PROSPECTIVE JUROR ROBERT RAMIREZ: At family gatherings.

THE COURT: The fact that he's serving as a police officer in Anaheim, do you think it's going to have any influence on the way you carry out your duties in this case?

PROSPECTIVE JUROR ROBERT RAMIREZ: No.

THE COURT: Okay. Keep going.

PROSPECTIVE JUROR ROBERT RAMIREZ: Where am I at?

THE COURT: I think you are at No. 8(b). Do you have ties to lawyers, judges, and court employees?

PROSPECTIVE JUROR ROBERT RAMIREZ: Only the ones where -- when I mentioned about the Buena Park police.

THE COURT: When you have a problem, you call in certain Buena Park police officers?

PROSPECTIVE JUROR ROBERT RAMIREZ: Right.

THE COURT: How do you think that would affect the fact that as part of your job, you deal with cops, at least cops from Buena Park? How do you think that would affect what you are doing or would be expected to do in this case?

PROSPECTIVE JUROR ROBERT RAMIREZ: It wouldn't have any effect at all.

THE COURT: Do you participate with officers from Buena Park in questioning any suspects at the theme park?

PROSPECTIVE JUROR ROBERT RAMIREZ: I haven't, no.

THE COURT: You don't even do interrogation, do you?

PROSPECTIVE JUROR ROBERT RAMIREZ: Not yet.

THE COURT: Okay. Keep going.

PROSPECTIVE JUROR ROBERT RAMIREZ: Okay. I do have experience of a crime. It was a robbery at gunpoint.

THE COURT: You were once held up at gunpoint?

PROSPECTIVE JUROR ROBERT RAMIREZ: Yes.

THE COURT: Did you file a complaint with any police department?

PROSPECTIVE JUROR ROBERT RAMIREZ: Yes.

THE COURT: What police department?

PROSPECTIVE JUROR ROBERT RAMIREZ: Compton.

THE COURT: Were you -- how did you feel about however the police department in Compton handled the matter thereafter? Do you think that they handled it in a way that met your expectations, and were you satisfied, or did you have any complaints?

PROSPECTIVE JUROR ROBERT RAMIREZ: Well, I wasn't satisfied. He wasn't caught.

THE COURT: Did you find that you were dissatisfied with the way the Compton police officers carried out their duties?

PROSPECTIVE JUROR ROBERT RAMIREZ: Well, I really didn't think of it that way. I just felt, you know, that maybe something else should have --

THE COURT: You felt they could have done something else to track down the leads?

PROSPECTIVE JUROR ROBERT RAMIREZ: Right.

THE COURT: Would you look negatively at police officers who testified in this case because of whatever you think were the shortcomings of the Compton police officers?

PROSPECTIVE JUROR ROBERT RAMIREZ: No.

THE COURT: Do you think there would be any connection between your experience on that robbery case and whatever you might learn about in this case?

PROSPECTIVE JUROR ROBERT RAMIREZ: No.

THE COURT: Okay. Keep going. Can you answer the remaining questions?

PROSPECTIVE JUROR ROBERT RAMIREZ: I can be fair to both sides. I can follow instructions about the evidence; although, I don't have a computer, so I really don't know anything about computers.

THE COURT: Well, I have one and I don't know a lot either. So I think we're all, those of us who serve on the jury, going to be in for a little bit of an education, but I'm glad you mentioned that. There may be some testimony that requires some kind of special evidence to explain. I'm not even sure whether there will be expert testimony exactly.

If there is something that is beyond the experience of some jurors in this case, that will not be at all unusual. It happens all the time. And it will be up to the parties to make sure that they do their best to make things clear and comprehensive. Don't worry about it.

PROSPECTIVE JUROR ROBERT RAMIREZ: And that's it.

THE COURT: Okay. Let's move on to Mr. Ellis.

PROSPECTIVE JUROR ELLIS: My name is Brian T. Ellis. I live in Gardena. I have one year of college. I'm employed with ManTech Aegis Research Corporation. My occupation is national security. I am married. One adult living with me. I have four children, ages between 6 and 11.

THE COURT: The adult who lives with you is your wife?

PROSPECTIVE JUROR ELLIS: Yes.

THE COURT: Is she currently working?

PROSPECTIVE JUROR ELLIS: Yes.

THE COURT: What kind of work does she do?

PROSPECTIVE JUROR ELLIS: Residential manager.

THE COURT: She manages apartment buildings?

PROSPECTIVE JUROR ELLIS: Yes.

THE COURT: Okay. Keep going.

PROSPECTIVE JUROR ELLIS: I have never been on a jury. I have never been a plaintiff or a defendant. I have an uncle who works in the Omaha Police Department as captain of the SWAT team.

THE COURT: Omaha, Nebraska?

PROSPECTIVE JUROR ELLIS: Yes.

THE COURT: How often do you speak to him about his --

PROSPECTIVE JUROR ELLIS: I don't.

THE COURT: You don't have any continuing communication with him?

PROSPECTIVE JUROR ELLIS: No.

THE COURT: Okay. Keep going.

PROSPECTIVE JUROR ELLIS: Legal system, I have none -- well, I take that back. I'm sorry. For law enforcement officers, I was in the Air Force and I worked for the Air Force Office of Special Investigations.

THE COURT: That's what you do now?

PROSPECTIVE JUROR ELLIS: No. I'm out now of the Air Force.

THE COURT: When you were in the Air Force, you worked for OSI?

PROSPECTIVE JUROR ELLIS: Yes.

THE COURT: And just tell us, generally, what kind of work that involved, please.

PROSPECTIVE JUROR ELLIS: I worked as an administration specialist.

THE COURT: And help me out with that, please. What did that involve?

PROSPECTIVE JUROR ELLIS: I looked into cases, I filed, typed, helped with the report of the investigations, worked on some searches.

THE COURT: Did you question people who were

suspected of misconduct?

PROSPECTIVE JUROR ELLIS: No.

THE COURT: Did you have the authority to bring charges against people who were suspected of misconduct?

PROSPECTIVE JUROR ELLIS: No.

THE COURT: In your current capacity, you said something about national security. I'm not expecting you to reveal any state secrets. I don't have a clue what you do. But tell me whether part of your current job with this search corporation involves uses of computer technology, electronic evidence, and Internet material.

PROSPECTIVE JUROR ELLIS: Somewhat, yes.

THE COURT: Do you troll the Internet to find out certain things as part of your job?

PROSPECTIVE JUROR ELLIS: Sometimes, yes.

THE COURT: Do you have any special ability and experience involving electronic communications over the Internet: Websites, creation of Websites, computer programming, anything like that?

PROSPECTIVE JUROR ELLIS: No.

THE COURT: Have you ever been a computer programmer?

PROSPECTIVE JUROR ELLIS: I took one year of college in computer. Beginning computer.

THE COURT: And you are not licensed to function as a computer programmer or as a computer mechanic or anything like

that?

PROSPECTIVE JUROR ELLIS: No.

THE COURT: Okay. Keep going.

PROSPECTIVE JUROR ELLIS: Where are we at? No. 10?

THE COURT: I think we are at 9(b). You may have completed your answer. But you started to tell me about your work in the Air Force. Any other ties that you had?

PROSPECTIVE JUROR ELLIS: No. For No. 9(b), no, none. 10, for a crime victim, my brother was -- my brother died in '88. They claimed it to be suicide, but I think otherwise.

THE COURT: You think that somebody actually murdered him?

PROSPECTIVE JUROR ELLIS: Yes.

THE COURT: Okay. Was that fatality investigated, Mr. Ellis, by some law enforcement agency?

PROSPECTIVE JUROR ELLIS: Yes.

THE COURT: Was it the L.A.P.D. or the FBI?

PROSPECTIVE JUROR ELLIS: No. This was back in Nebraska.

THE COURT: Does the fact that you drew a different conclusion than the officials drew suggest that you have some resentment about law enforcement?

PROSPECTIVE JUROR ELLIS: No.

THE COURT: Do you think it would have any bearing

whatsoever on how you would act in this case?

PROSPECTIVE JUROR ELLIS: No.

THE COURT: Okay. Keep going. Any other experiences, either yours or somebody really close to you, as a crime victim?

PROSPECTIVE JUROR ELLIS: Yes. My uncle, he died in '99, I believe. I think it was 1999. He was robbed and killed.

THE COURT: Was that also back in Nebraska?

PROSPECTIVE JUROR ELLIS: Yes.

They ruled that one a suicide also.

THE COURT: Okay. How do you answer No. 11?

PROSPECTIVE JUROR ELLIS: I can be fair to both sides, with no doubts. I do promise to follow the law. No, I don't have difficulty in following the evidence. That's it.

THE COURT: Thanks very much, Mr. Ellis.

Now we're up to Mr. Brown.

PROSPECTIVE JUROR RICHARD BROWN: My name is Richard Brown. I live in Long Beach. I have a B.A. degree. I work for the City of Anaheim as a librarian. I live with -- I'm single. I live with another adult who is a systems analyst. No children. I was on a civil case and a criminal case.

THE COURT: You were?

PROSPECTIVE JUROR RICHARD BROWN: Yes.

THE COURT: As a juror?

PROSPECTIVE JUROR RICHARD BROWN: As a juror, yes.

THE COURT: Let's start with the civil case, please, Mr. Brown.

PROSPECTIVE JUROR RICHARD BROWN: The jury reached a verdict.

THE COURT: What kind of case was it?

PROSPECTIVE JUROR RICHARD BROWN: It was a traffic accident.

THE COURT: Okay. It actually went to trial?

PROSPECTIVE JUROR RICHARD BROWN: Yes.

THE COURT: Okay.

PROSPECTIVE JUROR RICHARD BROWN: And the criminal case was a robbery/murder, attempted murder, a bunch of stuff. And the jury reached a verdict there, too.

THE COURT: Okay. Both of those cases were in the state court system; right?

PROSPECTIVE JUROR RICHARD BROWN: Yes.

THE COURT: Okay. Please answer No. 8.

PROSPECTIVE JUROR RICHARD BROWN: I was in a small claims court case as a plaintiff a long time ago.

THE COURT: What did you think about the way the small claims court system functioned?

PROSPECTIVE JUROR RICHARD BROWN: It worked well.

THE COURT: You were satisfied with the way the justice system worked in that case?

PROSPECTIVE JUROR RICHARD BROWN: Yeah.

THE COURT: You are smiling. You must have won.

PROSPECTIVE JUROR RICHARD BROWN: I won, but I didn't get anything from them.

THE COURT: Okay.

PROSPECTIVE JUROR RICHARD BROWN: It was a paper win.

No ties to law enforcement or the legal system. I had a house theft.

THE COURT: Somebody once burglarized your house?

PROSPECTIVE JUROR RICHARD BROWN: Yes.

THE COURT: Did you report that crime?

PROSPECTIVE JUROR RICHARD BROWN: Yes.

THE COURT: To what police department?

PROSPECTIVE JUROR RICHARD BROWN: The City of Long Beach.

THE COURT: And what did you think about the way they followed up?

PROSPECTIVE JUROR RICHARD BROWN: They did a fine job.

THE COURT: Okay.

PROSPECTIVE JUROR RICHARD BROWN: I can be fair to both sides. I can follow instructions as given. I won't have difficulty following the evidence. And that's it.

THE COURT: Okay. I think we're up to you, Mr. Foster -- I'm sorry. I skipped someone. And the person I

skipped is Ms. Gilmore.

PROSPECTIVE JUROR GILMORE: My name is Kathleen Gilmore. I live in Northridge. I have a high school education. I work for Lockheed Martin. I am a manager in the security department. I am married. My husband is an electrician. I have two children, 31 and 33. I did serve on a criminal case. It was a murder case and there was a verdict.

THE COURT: There was? The jury did return a verdict?

PROSPECTIVE JUROR GILMORE: Yes, they did.

No prior experience as a plaintiff or a defendant. My son-in-law is a DEA agent in San Diego.

THE COURT: He's a DEA agent. This is a man who is married to your daughter?

PROSPECTIVE JUROR GILMORE: Correct.

THE COURT: Where does he function as a DEA agent?

PROSPECTIVE JUROR GILMORE: In the San Diego area.

THE COURT: There is not going to be any evidence involving the DEA or from the DEA; is that correct?

MS. DUARTE: Yes, Your Honor.

THE COURT: Do you talk to your son-in-law about his work as a law enforcement officer?

PROSPECTIVE JUROR GILMORE: Occasionally.

THE COURT: How do you think the stories he tells you and the events he describes are going to have a bearing on what

you do in this case?

PROSPECTIVE JUROR GILMORE: I don't think any -- any bearing whatsoever.

THE COURT: Okay.

PROSPECTIVE JUROR GILMORE: I don't know anyone else in the legal system.

THE COURT: Can you hear, Mr. Sutcliffe?

MR. SUTCLIFFE: Yes, Your Honor. Thank you.

PROSPECTIVE JUROR GILMORE: I have never been a crime victim. And the answer to No. 11, I can follow all the instructions and be fair. And no difficulty in following the evidence.

THE COURT: Fair enough. Okay.

Now we're up to you, Mr. Foster.

PROSPECTIVE JUROR FOSTER: My name is Kim Foster. I live in Manhattan Beach. High school graduate. I'm currently employed by Patient Distribution Services in Carson, California, for four months. My occupation is Director of Fleet Operations. I'm married. My wife is living with me. She is a manager of medical and human resources at Boeing. I have a son, 40 years old.

Prior jury service, no. I've many times been summoned, but never been -- never sat on a jury, criminal nor civil. Law enforcement, none. Legal system, none. Victim, never.

Something that may be pertinent to this case was, I was vice president and general manager of a trucking company where we had employees that experienced identity theft, and I had to deal with that, administratively.

THE COURT: What does it mean you had to deal with it, administratively? Tell us what you personally got involved in doing.

PROSPECTIVE JUROR FOSTER: I had to oversee, through our office manager, to change their bank accounts, change their payroll, which was direct deposit, the social security numbers that had been used by other parties, and so the employees' lives got kind of messed up for a while. So we had to go through the process of changing all of the -- and re-creating.

THE COURT: These people were fellow employees of the firm that you then worked for?

PROSPECTIVE JUROR FOSTER: No. These were truck drivers that worked for me at the trucking company that I managed.

THE COURT: Okay. How long ago did that happen, Mr. Foster?

PROSPECTIVE JUROR FOSTER: Two years.

THE COURT: Are you still working with that trucking company?

PROSPECTIVE JUROR FOSTER: No.

THE COURT: Can you give us the trucking company's

name? Because I want to make sure that none of the people who were involved --

PROSPECTIVE JUROR FOSTER: Automobile Transport Company of California, based in Gardena, California.

THE COURT: Does the government anticipate that there will be any connection between that company and whatever the evidence is in this case?

MS. DUARTE: No, Your Honor.

THE COURT: Okay. The firm that you work for now is a trucking firm also?

PROSPECTIVE JUROR FOSTER: Yes.

THE COURT: And when you tell us that you are the Director of Fleet Operations, that means that you organize and supervise the schedules and the arrangements for delivery of whatever the products are that the firm carries?

PROSPECTIVE JUROR FOSTER: Right. I'm in the process now of developing a trucking division for this international company.

THE COURT: I see. Okay.

Now, you were good enough to tell us about that experience with the fellow employees a couple years ago, three or four years ago. Any other information you can think of that might be pertinent?

PROSPECTIVE JUROR FOSTER: No, sir.

THE COURT: Now, Mr. Foster, if we made arrangements

to stick to a prescribed daily schedule in terms of intervals and breaks, would whatever your medical condition is be something you would be able to accommodate without the need for other breaks?

PROSPECTIVE JUROR FOSTER: Yes, sir.

THE COURT: Okay.

PROSPECTIVE JUROR FOSTER: I'm just getting over a cold and the flu.

THE COURT: Okay. I hope you feel better.

PROSPECTIVE JUROR FOSTER: Thank you.

THE COURT: Let's move on to Mr. Levine.

PROSPECTIVE JUROR LEVINE: My name is Ben Levine. I live in Los Angeles.

THE COURT: What part of Los Angeles, Mr. Levine?

PROSPECTIVE JUROR LEVINE: Near Ladera Heights. I have a master's degree. I work for the L.A. Community College District as an hourly instructor.

THE COURT: What do you teach?

PROSPECTIVE JUROR LEVINE: Trigonometry.

THE COURT: Okay.

PROSPECTIVE JUROR LEVINE: I'm single. I live with my girlfriend who is retired.

THE COURT: What kind of work -- did she ever work at a time when you were living with her?

PROSPECTIVE JUROR LEVINE: Yes.

THE COURT: What kind of work did she do during --

PROSPECTIVE JUROR LEVINE: She was an elementary school teacher.

THE COURT: Okay.

PROSPECTIVE JUROR LEVINE: I have no children. I have been on three criminal and two civil cases.

THE COURT: Let's start with the criminal. If you can remember what the charges were and tell us whether the jury --

PROSPECTIVE JUROR LEVINE: Yes. The first one was child molestation. That came to a verdict. The second one was selling marijuana. That came to a verdict. The third one was a mugging. That was a hung jury.

THE COURT: And in the civil cases?

PROSPECTIVE JUROR LEVINE: The first one, I believe, was something about somebody suing for back pay. And the second one was a pedestrian hit by a motorist.

THE COURT: Did the juries in those cases return verdicts?

PROSPECTIVE JUROR LEVINE: Yes.

THE COURT: Both cases; correct?

PROSPECTIVE JUROR LEVINE: Yes.

THE COURT: Okay.

PROSPECTIVE JUROR LEVINE: I have been a plaintiff in a small claims case. I don't have any ties to law enforcement,

but I have two cousins who are lawyers. My sister was a paralegal for a while. And I also have friends who are lawyers.

THE COURT: Are any of the people you just referred to -- your cousins and your sister and your friends -- are any of them involved in the criminal justice side of practicing law? Prosecutors? Defense attorneys?

PROSPECTIVE JUROR LEVINE: Yes. My cousin in Emeryville is the district attorney.

THE COURT: Emeryville is up North; is that right?

PROSPECTIVE JUROR LEVINE: Near Oakland.

THE COURT: He's the elected district attorney or one of the deputies?

PROSPECTIVE JUROR LEVINE: I believe he's the elected district attorney.

THE COURT: Do you talk to him about his responsibilities?

PROSPECTIVE JUROR LEVINE: No.

THE COURT: How often do you even see him?

PROSPECTIVE JUROR LEVINE: Very rarely.

THE COURT: Okay.

PROSPECTIVE JUROR LEVINE: I have been a victim of a burglary and my girlfriend has been a victim of identity theft and credit card fraud. And I believe I can be fair to both sides.

THE COURT: The fact that your girlfriend was a victim of something that may be associated with one of the allegations in this case, how do you think that would affect your ability to focus only on what you heard in this courtroom and not make conclusions and draw inferences from whatever you learned about what happened to your girlfriend?

PROSPECTIVE JUROR LEVINE: I would be very sympathetic to the people who have been victimized, but I would listen to the evidence and proceed on that basis.

THE COURT: Okay. No matter how much sympathy you may feel for the impact if something like that actually happened to someone, would you be able to honestly evaluate whether or not what the government is alleging did happen in this case and --

PROSPECTIVE JUROR LEVINE: Yes, I belive so.

THE COURT: Okay. Keep going.

PROSPECTIVE JUROR LEVINE: I will follow the instructions. I will not have difficulty in following the evidence. And beyond what I have said, I don't think there is anything else unless -- I don't know whether this is pertinent or not. But in the first case, the first criminal case I was ever on, the defendant did not have a lawyer. He represented himself.

THE COURT: Okay. It's obviously a different case. That was the child molestation case you told us about?

PROSPECTIVE JUROR LEVINE: Yes.

THE COURT: The other case where the defendant was convicted of selling marijuana, he did have a lawyer; right?

PROSPECTIVE JUROR LEVINE: Yes. He had a public defender.

THE COURT: Okay. But given what I've explained already about a citizen's right to represent himself in trial in our system and under our Constitution, would you be able to put that out of your mind and --

PROSPECTIVE JUROR LEVINE: Yes.

THE COURT: You would?

PROSPECTIVE JUROR LEVINE: Yes.

THE COURT: Okay. Let's just hear, if we can, then, from Ms. Malki and then we'll take a break.

PROSPECTIVE JUROR MALKI: My name is Fayrouz Malki. I live in Pasadena. I have a high school -- equivalent of high school education. I'm in child development at a preschool and --

THE COURT: Wait. Speak a little bit more directly into the microphone. I heard you say you were in child development at a preschool?

PROSPECTIVE JUROR MALKI: Yes.

THE COURT: Does that mean you are like a nursery school teacher?

PROSPECTIVE JUROR MALKI: Yes.

THE COURT: Where is that school located?

PROSPECTIVE JUROR MALKI: In South Pasadena.

THE COURT: Okay. And when you say you had the equivalent of a high school education, I take it that was in another country?

PROSPECTIVE JUROR MALKI: Yes.

THE COURT: Would you answer question 5, please.

PROSPECTIVE JUROR MALKI: I'm a widow right now. It's been almost two years.

THE COURT: During the period of your marriage with your former husband, your deceased husband, what kind of work did he do?

PROSPECTIVE JUROR MALKI: He had a gas station and import/export and construction.

THE COURT: Okay. So he had several different kinds of jobs?

PROSPECTIVE JUROR MALKI: Yes.

THE COURT: Okay.

PROSPECTIVE JUROR MALKI: I have six children, ages 24 to 36. And I have two of my sons living with me. One of them is 35, the other one is 27. And the 35 one -- they both are working, but the 27 one, he's on sick leave because he got hurt in the business. And my other son is working in Pavilions Market.

THE COURT: One of them works at Pavilions?

PROSPECTIVE JUROR MALKI: Yes.

THE COURT: Keep going. Have you ever served on a jury before, Ms. Malki?

PROSPECTIVE JUROR MALKI: No, I have not.

THE COURT: Did you ever sue anyone previously?

PROSPECTIVE JUROR MALKI: No, I have not.

THE COURT: Did anyone ever sue you?

PROSPECTIVE JUROR MALKI: Yes. Well, I was -- I was victimized because of my husband and -- kind of personal, and I ended up in jail because of it. And I was victimized, but --

THE COURT: Is it something you want to talk about privately?

PROSPECTIVE JUROR MALKI: Yes.

THE COURT: We'll do it that way, then. We'll hold off. Answer the other questions.

PROSPECTIVE JUROR MALKI: My son is -- he has been accused of criminal, like misdemeanor, and he's, right now, on probation.

THE COURT: Okay.

PROSPECTIVE JUROR MALKI: And I have no ties -- for law enforcement, I have my niece; she's a deputy sheriff in El Monte.

THE COURT: What kind of work does she do as a deputy sheriff? Does she work on the streets? Does she work in the jails? What does she do?

PROSPECTIVE JUROR MALKI: She patrols and sometimes she's in the jails.

THE COURT: Does she talk to you about her work as a deputy sheriff?

PROSPECTIVE JUROR MALKI: Not often. Sometimes.

THE COURT: Okay. What kind of influence do you think she's going to have on you if you sit on this case?

PROSPECTIVE JUROR MALKI: None.

THE COURT: Have you ever been a crime victim?

PROSPECTIVE JUROR MALKI: Yes, once.

THE COURT: What was the crime?

PROSPECTIVE JUROR MALKI: My husband.

THE COURT: We'll talk about that later.

Could you please answer No. 11.

PROSPECTIVE JUROR MALKI: I have no problem of taking either side.

THE COURT: Okay. Ladies and gentlemen, we're going to take a 15-minute break. I appreciate your patience so far. There are rest rooms out in the corridor. Don't come into the courtroom, please, until the courtroom deputy clerk notifies you that you may do so. Just stay outside in the corridor.

During the break -- and this is something I'll go over again with those of you who are actually picked to serve -- please don't discuss this case, don't make any statements about what you think probably happened, don't talk

about the lawyers and the parties to the case. And I'll explain why later.

But come back in around 15 minutes, assemble in front of the courtroom, and we'll proceed further.

Ms. Malki, if you could just stay aside for two minutes while the other jurors leave the courtroom.

(All prospective jurors left the courtroom except prospective juror Malki.)

THE COURT: Let the record reflect that except for court security officers, I believe the courtroom now has been vacated.

Just let me ask you a couple of questions, please, Ms. Malki. And thank you for your patience.

Could you explain what happened that led up to you being placed in jail.

PROSPECTIVE JUROR MALKI: My husband -- it was my daughter's 21st birthday and he had been drinking. He had his -- he had a gun and he shot it, like a 21-gun salute to my daughter. And then our house was surrounded and he was captured. Because I was in front of him, they said that I was resisting arrest or something like that. They took me to jail with him. So I had some kind of record on my record.

THE COURT: Were you actually ever convicted of any crime?

PROSPECTIVE JUROR MALKI: No. We had -- I was --

they booked me and I was there for about a few hours, overnight, and they -- I was fingerprinted and everything. We had a very close friend, he was an officer, and he passed away right now, two years ago, and he intervened and got me home.

THE COURT: That was the end of it?

PROSPECTIVE JUROR MALKI: Yes.

THE COURT: Was there anything else that we agreed that I told you you could tell us about later on that you want to add?

PROSPECTIVE JUROR MALKI: Well, we did appear in court. I mean, I had to pay a fine and everything. Just my concerns. My son, right now, he's been accused of theft and he's on a probation misdemeanor. So I don't know if I would be able to -- I mean, to be fair to this guy --

THE COURT: Could you explain what you mean -- when you say "this guy," do you mean Mr. Sutcliffe?

PROSPECTIVE JUROR MALKI: Yes.

THE COURT: What is it about your son's current circumstance that makes you wonder whether you could be fair to the defendant in this case?

PROSPECTIVE JUROR MALKI: I don't know all the details of my son's affairs. He is living with me right now, but I don't know much about the legality.

THE COURT: Has he actually been convicted of a crime?

PROSPECTIVE JUROR MALKI: Yes. He was in prison for six months. He's on probation.

THE COURT: Now he's on probation. He's not facing any new charges; is that correct?

PROSPECTIVE JUROR MALKI: No.

THE COURT: That is correct?

PROSPECTIVE JUROR MALKI: Yes.

THE COURT: That means "yes"?

PROSPECTIVE JUROR MALKI: "Yes."

THE COURT: So your son went through the criminal justice system and was placed on probation. Do you know what the charge was, the misdemeanor charge, that he was convicted of?

PROSPECTIVE JUROR MALKI: He was charged for theft.

THE COURT: Theft, taking someone's property?

PROSPECTIVE JUROR MALKI: Yes.

THE COURT: Do you know what kind of property was taken?

PROSPECTIVE JUROR MALKI: They accusing him of some electrical stuff, computers, a Rolex watch, and an officer's badge.

THE COURT: Ms. Malki, the situation that your son got involved in and the situation that we'll hear about in this trial are obviously totally different and not connected. Do you understand that?

PROSPECTIVE JUROR MALKI: Yes.

THE COURT: Would you be able to sit on the jury here and listen to what the evidence was and decide what to do when it came to voting on the verdict based only on that evidence?

PROSPECTIVE JUROR MALKI: Yes.

THE COURT: I realize that you would have some experience that some of the other jurors don't because of what happened with your son and with yourself. But all jurors have some experience that could affect the way they think and feel about the world generally.

The real question is whether you could put aside any views or any worries that you had relating to your son or your husband and just be fair to both sides in this case.

Do you understand what I'm driving at?

PROSPECTIVE JUROR MALKI: Yes.

THE COURT: Please tell me, as best you can, whether you think you could be fair to both sides.

PROSPECTIVE JUROR MALKI: I think I could, but I just don't know how my emotions would be at this point. I'm trying to be as honest as I can.

THE COURT: You are being wonderfully honest. I appreciate it. You are doing a fine job.

I'll explore this matter further with the parties. You are entitled to a break now, too. Why don't you feel free to walk outside and come back in 15 minutes.

PROSPECTIVE JUROR MALKI: Thank you very much. I appreciate it.

(Prospective juror Malki left the courtroom.)

THE COURT: Let the record reflect that Ms. Malki has left the room.

Mr. Hesselrode, how much time, in fairness to Mr. Sutcliffe and to your team, should I assume will be necessary for him to get a bathroom break?

MR. HESSELRODE: 15, 20 minutes, Your Honor.

THE COURT: Well, I think you should take it now. Come back when you can. Make sure -- and this is the direction to the clerk that is never to be changed. Make sure that Mr. Sutcliffe is at his counsel table before I come out and before the jurors are brought in. Okay?

THE CLERK: Yes, sir.

THE COURT: That means that after Mr. Sutcliffe has been given an opportunity to have his break, you lock the doors.

THE CLERK: Yes, sir.

THE COURT: And I'll ask your views about this juror and about other things at the appropriate break when we finish questioning the other jurors.

I do want to just take a quick advantage of the fact that we are still on the record to note that Mr. Sutcliffe seems to be still demanding a ruling as to why I found that he,

by his conduct, had waived the assistance of counsel.

I already stated, and deemed on the record, more than once, that the views expressed in the September 29th letter which he had expressed in court were the primary bases for my finding and for my ruling.

If I had heard only from Mr. Reed, I wouldn't have reached that conclusion, but I didn't hear only from Mr. Reed. I heard from Mr. Sutcliffe as well. I'm not going to revisit that, but that is the response.

The words and the conduct that you displayed at that hearing, when I made that finding, were the primary bases for my determination, and they are confirmed and reflected in the letter that has now been filed that's dated September 29, 2003, as well as other things.

Lastly, I just want to note that I could not and still cannot, even though Mr. Sutcliffe is rising -- and I appreciate him doing so -- make any determination whatsoever that the pants he is wearing -- the trousers he is wearing are in any way part of any prison garb. He looks perfectly respectable and I am pleased that he does.

We'll be back in 20 minutes.

(Recess taken from 11:53 a.m. to 12:17 p.m.)

(Prospective jurors entered the courtroom.)

THE COURT: Welcome back, everyone. Thank you for being punctual and responsive.

We'll resume with the questioning, and I think we are now up to Mr. Farone, juror No. 15.

PROSPECTIVE JUROR FARONE: My name is Frank Farone. I live in Whittier, California. I completed twelfth grade. My employer is Norwalk/La Mirada Unified School District. I'm a senior custodian. I'm married. My wife is a housewife and a student. I have no children. I have had prior jury service, criminal. One murder trial, one robbery assault trial. There were verdicts rendered in both cases. I have never been a plaintiff or a defendant in any lawsuit.

I have no ties to anybody in law enforcement or the legal system. I have had no experience as a crime victim. I can be completely fair to both parties. I will follow the law as it is instructed. I would have no difficulty in following any evidence. That's about it. Thank you.

THE COURT: Thank you, Mr. Farone. I hope the students on the campuses that you are responsible for are as attentive as you've been. Very responsive. So I appreciate that.

Let's move on to the next individual.

PROSPECTIVE JUROR ROSS: My name is Dewitt Ross. I'm a resident of Los Angeles. I live in the Wilshire District. I have a high school diploma and one year of college. I'm currently retired, disability retirement, from the City of Los Angeles.

THE COURT: Before you became disabled, Mr. Ross, what kind of work did you do?

PROSPECTIVE JUROR ROSS: Maintenance work for the City of Los Angeles.

THE COURT: Okay. Does the condition or illness that resulted in you being classified as disabled have anything to do with your capacity to follow the evidence and sit as a juror in this case?

PROSPECTIVE JUROR ROSS: No.

THE COURT: Okay.

PROSPECTIVE JUROR ROSS: I had a pinched nerve and back surgery.

THE COURT: Now, jurors have to sit for quite long periods sometimes. I give jurors who are actually chosen a chance to stretch while they are in the jury box. We take periodic breaks. But does sitting for periods of an hour and a half or sometimes even two yours at a time bother you?

PROSPECTIVE JUROR ROSS: It would take about three or four hours.

THE COURT: That won't happen.

PROSPECTIVE JUROR ROSS: Okay. Where am I? No kids.

THE COURT: Are you married?

PROSPECTIVE JUROR ROSS: No. I'm single. Divorced.

THE COURT: Divorced?

PROSPECTIVE JUROR ROSS: Yes.

THE COURT: While you were married, did your wife have an occupation when you were living together?

PROSPECTIVE JUROR ROSS: Yes. She pretty much did utility work for an oil company in their corporate offices in Century City.

THE COURT: Okay. Keep going.

PROSPECTIVE JUROR ROSS: Okay. No prior jury service. No prior experience as a plaintiff or a defendant. No ties to law enforcement. I have a close family friend that's a lawyer in Los Angeles.

THE COURT: Do you know what kind of law that person practices?

PROSPECTIVE JUROR ROSS: Litigation.

THE COURT: Is it a man or woman?

PROSPECTIVE JUROR ROSS: Man.

THE COURT: What kind of litigation does he engage in? Is it criminal or civil?

PROSPECTIVE JUROR ROSS: It can be both. Most of the time it's like against someone who is an apartment owner whose dog bit someone or that -- he had the case against General Motors where the kid got burned up. He was the mother's attorney in that case.

THE COURT: Personal injury cases?

PROSPECTIVE JUROR ROSS: Yes.

THE COURT: Does he get involved in representing

individuals accused of crimes, that you know of?

PROSPECTIVE JUROR ROSS: Criminal cases, no, not as a rule. No.

THE COURT: Do you speak to him about his views about how --

PROSPECTIVE JUROR ROSS: Actually, he was on the O.J. case, one of the lawyers there.

THE COURT: One of the defense lawyers?

PROSPECTIVE JUROR ROSS: Yeah.

THE COURT: Is his first name Carl?

PROSPECTIVE JUROR ROSS: Yeah, Carl Douglas. Do you know him?

THE COURT: Yes.

PROSPECTIVE JUROR ROSS: Carl is like a cousin to me.

THE COURT: Does Mr. Douglas talk to you about --

PROSPECTIVE JUROR ROSS: Not -- no, we don't talk much.

THE COURT: Would you be willing not to discuss this case with him? In fact, you would be required because that's what I'll tell the lawyers.

PROSPECTIVE JUROR ROSS: No problem.

THE COURT: Let me finish my questions. No court reporter can take down words of two people speaking at the same time.

Would your relationship and friendship with

Mr. Douglas have any bearing on your ability to be fair to both sides in this case?

PROSPECTIVE JUROR ROSS: No, it wouldn't, Your Honor.

THE COURT: Please keep going with your answers.

PROSPECTIVE JUROR ROSS: Where am I?

THE COURT: I think you are either up to 9(b) or 10.

PROSPECTIVE JUROR ROSS: 10, criminal cases, no. No, I haven't had any experiences as a crime victim, not to speak of. And yes, I can be completely fair to both sides. And I will follow all the instructions given to me. And I have no difficulty following instructions. And there is nothing else that the Court should know.

THE COURT: Thanks very much, Mr. Ross.

PROSPECTIVE JUROR ROSS: You are welcome.

THE COURT: Ms. Knittel.

PROSPECTIVE JUROR KNITTEL: Hi. My name is Marta Knittel. I live in West Hollywood. I have a college degree. My employer is DreamWorks. I'm a script coordinator there. I am living with an adult.

THE COURT: What occupation is that person in?

PROSPECTIVE JUROR KNITTEL: Publicity coordinator over at Fox.

THE COURT: Okay. No children?

PROSPECTIVE JUROR KNITTEL: No children.

I have not served on a jury. I was a defendant in a

lawsuit.

THE COURT: What kind of claim was asserted against you, Ms. Knittel?

PROSPECTIVE JUROR KNITTEL: It's hard to say. I mean, it was -- we owned property together, and my ex wanted to own both houses and have me walk away.

THE COURT: So it was a property dispute arising out of the dissolution of a marriage?

PROSPECTIVE JUROR KNITTEL: Dissolution of a relationship.

THE COURT: Did you have a lawyer represent you in that?

PROSPECTIVE JUROR KNITTEL: Yes. I had two.

THE COURT: Two lawyers. Okay.

PROSPECTIVE JUROR KNITTEL: Not at the same time.

THE COURT: And how did you feel about the way that dispute was handled by the courts at the end of it?

PROSPECTIVE JUROR KNITTEL: Extremely frustrating.

THE COURT: What was it that frustrated you?

PROSPECTIVE JUROR KNITTEL: Well, this was in New York, and I moved back to California. So I kept going back and forth. It was just the length it took. It felt like it was just going in circles. Rarely saw the judge. It didn't go to trial. We settled out of court. Incredibly frustrating experience with the attorneys.

THE COURT: Okay. This, unfortunately, happens to a number of people who get caught up in lawsuits. And I understand how upset it must have caused you to be.

What kind of impact do you think it will have today on this case and in your possible service as a juror in this case?

PROSPECTIVE JUROR KNITTEL: Well, to be honest, coming into a courtroom is not my favorite thing after having gone through, you know, the court system in New York. I mean, just driving down here, the whole time was like, "Ugh, do I have to go back?" That was my reaction.

As far as an impact, I don't think it would impact the evidence for me.

THE COURT: I used to practice a long time ago in the courts of New York, so I'll try my best to make sure you get the California experience. Will that help?

PROSPECTIVE JUROR KNITTEL: I can only say thank you.

THE COURT: Keep going with your answers, please.

PROSPECTIVE JUROR KNITTEL: I'm not sure if this is actual ties to law enforcement. But where I work there is a lot of law enforcement coming in and out, and there was actually a U.S. district attorney who came in on several different occasions in the past two months for research purposes.

THE COURT: Did you deal with that person from the

U.S. Attorney's Office?

PROSPECTIVE JUROR KNITTEL: I did not personally. However, part of my job, as a script coordinator, dealing with the scripts, my boss likes to record every conversation and then he had me type them. So I heard a lot of information coming from the attorneys --

THE COURT: Whatever that individual was doing, did it have anything to do with this case?

PROSPECTIVE JUROR KNITTEL: Well, no, not personally with this case. No. I just heard a lot of opinions.

THE COURT: Well, do you know anything about any involvement that your office has with DreamWorks, Ms. Duarte, in any investigation or activities that may be going on? Just say "yes" or "no."

MS. DUARTE: Not specifically, no.

THE COURT: And you don't even know the name of the assistant U.S. attorney, if that is who it was?

PROSPECTIVE JUROR KNITTEL: Yes, I do.

THE COURT: Okay. But you didn't deal directly with that individual?

PROSPECTIVE JUROR KNITTEL: No. Just met in the hallway.

THE COURT: Okay. Well, I'll hear from the parties later about whether anything further is appropriate, but I think that's sufficient information to proceed. So give us the

answers to the remaining questions.

PROSPECTIVE JUROR KNITTEL: My cousin is an attorney.

THE COURT: In California?

PROSPECTIVE JUROR KNITTEL: Yes. I believe -- we haven't spoken in about six months. I believe he's here in the Los Angeles County system. He -- I'm not exactly sure what type of law he practices. We really don't discuss it that much. I just know he has to come down here a lot.

No relatives or anybody close to me who was a crime victim.

THE COURT: And you weren't yourself?

PROSPECTIVE JUROR KNITTEL: No.

I think I can be fair to both sides. I believe I can. Sometimes I let emotions take over and decide people are guilty right away, but that would be from watching TV.

THE COURT: You would be expected and all the jurors would be expected to keep an open mind. The case isn't over until it's over. You never know what you are going to learn the next hour or the next day.

Would you be able to abide by that? That's just common sense.

PROSPECTIVE JUROR KNITTEL: Of course, I understand that. And I would do my best to be able to do that.

THE COURT: Okay.

PROSPECTIVE JUROR KNITTEL: Of course, I promise to

follow the law as you instruct. I don't believe I have any difficulty following evidence. And I don't think there is anything else.

THE COURT: Okay. Ms. Knittel, this incident or these occasions when somebody from the U.S. Attorney's Office was out at your employer, do you know whether any of it involved usage by anybody or abuse supposedly by anybody of computer systems and electronic evidence?

PROSPECTIVE JUROR KNITTEL: Yes. They did use electronic evidence in a case they were talking about.

THE COURT: And did this involve a case that had already become public in the sense that somebody had been accused, in writing, of committing some crime?

PROSPECTIVE JUROR KNITTEL: I believe she said it had been settled, so -- I can't -- I don't know if it was public or not, but it did involve wiretaps and everything else and all that stuff.

THE COURT: Okay. Let's move on and speak to Mr. Dayoan. How do I pronounce your name?

PROSPECTIVE JUROR DAYOAN: Dayoan.

My name is Art Dayoan. I live at -- in Los Angeles, the mid-Wilshire area. I finished the equivalent of three years of college. And I work with the California Club in downtown Los Angeles as a front desk clerk. I'm married and my wife works at LAX as an airline supervisor.

THE COURT: For a particular airline?

PROSPECTIVE JUROR DAYOAN: Yes, sir.

THE COURT: You don't have to tell us which one.

PROSPECTIVE JUROR DAYOAN: Okay. And her younger brother lives with us. He's a civil engineer by training and he works in construction. We have no children. I did not have any prior jury service. I have never -- I have no experience as a plaintiff or a defendant in any lawsuit. I have no ties to law enforcement or to lawyers, judges, and court employees.

I have never been a crime victim nor members of my family. I believe I can be completely fair to both sides without any doubts. And I promise to follow your instructions. And I don't think I have any difficulty in following evidence. That's it.

THE COURT: Okay. Thank you very much, Mr. Dayoan.

Now we'll hear, please, from Ms. Medina.

PROSPECTIVE JUROR MEDINA: My name is Carmelita Medina. I live in Pomona, California. I'm a high school graduate. I work with the United Postal Service and SIU, and my occupation is a clerk and caregiver. I'm married.

THE COURT: So you have two positions, then, Ms. Medina?

PROSPECTIVE JUROR MEDINA: Yes.

THE COURT: One is working for UPS and one is working for an institution where you are giving care to patients?

PROSPECTIVE JUROR MEDINA: Yes.

THE COURT: Okay. SIU is the second job --

PROSPECTIVE JUROR MEDINA: Yes.

THE COURT: -- where you are a caregiver?

PROSPECTIVE JUROR MEDINA: Yes.

THE COURT: Is this to elderly people?

PROSPECTIVE JUROR MEDINA: Yes.

THE COURT: Okay.

PROSPECTIVE JUROR MEDINA: And I live with my husband. His occupation is mail carrier. And I have three children, 14, 11 and 7. And no prior jury service. And I have experience as a plaintiff.

THE COURT: Tell us about that.

PROSPECTIVE JUROR MEDINA: It's a car accident.

THE COURT: You sued the other driver or the other person involved?

PROSPECTIVE JUROR MEDINA: Yes. She hit me behind and she run away.

THE COURT: You are a scary person.

PROSPECTIVE JUROR MEDINA: I tried to find her, but -- I will find her, but she's on the Welfare. The court, they said you can do it, take her stuff away from her husband. We cannot do that.

THE COURT: So you dropped the lawsuit?

PROSPECTIVE JUROR MEDINA: We just let her go. We

were safe anyway.

THE COURT: Other than that unfortunate circumstance, have you ever been involved in a lawsuit?

PROSPECTIVE JUROR MEDINA: No. And I'm not tied to law enforcement, and I don't have nobody working for the legal system, and no criminal cases. And I can be completely fair to both sides. And I promise to follow the law as instructed by you. And no difficulty in following evidence.

THE COURT: Thanks very much, Ms. Medina.

We move on now to Mr. Klippert.

PROSPECTIVE JUROR KLIPPERT: Yes. My name is Kenneth Klippert. I live in Hollywood. I have two years of college. No degree. I work as a sales administrator for a records management company.

THE COURT: This is not a retail operation, it's a label -- it's a company that manages record labels?

PROSPECTIVE JUROR KLIPPERT: It's like records, document records, that type of thing.

THE COURT: We are talking about recordings, sound recordings?

THE WITNESS: Yes, as well.

I am single. No children. No prior jury service. Ties to law enforcement --

THE COURT: Are you currently living with any adult?

PROSPECTIVE JUROR KLIPPERT: No, I am not.

THE COURT: Okay. No prior jury service, I think you said; is that correct, Mr. Klippert?

PROSPECTIVE JUROR KLIPPERT: That's correct.

THE COURT: And you --

PROSPECTIVE JUROR KLIPPERT: No prior experience as a plaintiff or a defendant.

THE COURT: All right.

PROSPECTIVE JUROR KLIPPERT: My father was the marshal of San Diego County. And he -- prior to that, he was -- I don't remember his position specifically with the marshal's department here in L.A., but it was security, something along those lines. He was with L.A.P.D. for pretty much my entire life.

THE COURT: Was he a uniformed officer?

PROSPECTIVE JUROR KLIPPERT: When I was younger, yeah.

THE COURT: What kind of bearing do you think that will have on the way you look at the world that you are going to learn about in this case?

PROSPECTIVE JUROR KLIPPERT: I mean, I have a general negative viewpoint of police and law enforcement. Not just because of him, but just growing up around police. You know, without going into details, just seeing a lot of -- a different side, I think, than other people saw, especially when I was younger. Not so much in my adult life.

THE COURT: You think that the individuals you came into contact with as a result of your father's occupation had an impact on you, and the impact was that you are skeptical about law enforcement officers; is that a fair way of putting it?

PROSPECTIVE JUROR KLIPPERT: Yeah, I think so.

THE COURT: And are you skeptical about how honest they are?

PROSPECTIVE JUROR KLIPPERT: Yeah, definitely.

THE COURT: Do you think that just because somebody is a law enforcement officer who might testify in this case, you would say, starting out from the back, before you heard him even say his name, but you learned that he or she was a law enforcement officer, "I've got to raise my eyebrows about this person because I don't think I can believe him"? Would that be your silent thought?

PROSPECTIVE JUROR KLIPPERT: I can't say with a hundred percent that I would not -- I just -- I would be suspicious.

THE COURT: But if you concluded, after listening to whatever the witness said, or whatever the representative of the government argued, that the facts were there to support it and nothing had been shown to you that made you think that the individual was suspect, hadn't told the truth, hadn't told the whole truth, or whatever, would you be able to believe that

witness and take that into account in rendering your verdict?

PROSPECTIVE JUROR KLIPPERT: Yes.

THE COURT: Is it fair to say, then, Mr. Klippert, that even though your experience has been negative for many law enforcement officers, you are able to judge each law enforcement officer on an individual basis?

PROSPECTIVE JUROR KLIPPERT: No, not really. I've had -- recently, I had a situation in the last year where I was investigated for fraud with my previous employer, and I wasn't found to be guilty. There weren't charges, but it was kind of a nightmare and there were police involved.

THE COURT: From what agency?

PROSPECTIVE JUROR KLIPPERT: Pasadena P.D.

And just, I mean, that whole -- it was just resolved six months ago. And there were -- I don't even know where to begin. There were just a lot of situations with that, I mean, where the police -- during the investigation early on, I mean, just the police were relentless with me, telling me I was going to go to jail, that I should, you know, admit to certain things, that type of thing.

There were also interviews that I was involved in where they had told me -- they pretty much led me to believe that there was testimony from people -- my former boss and other employees -- against me when they had actually not even spoken to them. Things like that.

THE COURT: So you would be on the lookout for any suggestions of that kind of conduct on the part of witnesses in this case?

PROSPECTIVE JUROR KLIPPERT: The whole experience, honestly, I thought I was going to jail. So it was really traumatic, early on, until I got an attorney. I mean, this just happened six months ago, so it's still, like, fresh with me.

I actually quit my job. I mean, I really didn't have a choice even though, you know, no charges were brought against me and I didn't feel that I was guilty. But it just was a very negative situation.

THE COURT: That's important information for us to learn about, so thank you for that.

Why don't you proceed to answer -- and to some extent, you already have been giving answers -- the remaining questions.

PROSPECTIVE JUROR KLIPPERT: Ties to the legal system, I used to work for a litigation support company, so I know a few attorneys. No. 10, a close --

THE COURT: Do those attorneys get involved in criminal cases?

PROSPECTIVE JUROR KLIPPERT: I don't -- I honestly don't know. We don't really -- I don't know.

THE COURT: Okay. No. 10.

PROSPECTIVE JUROR KLIPPERT: A close friend of mine was stabbed recently. I mean, I don't know that it's relevant, but --

THE COURT: Was a report made or a complaint filed with the --

PROSPECTIVE JUROR KLIPPERT: Yes. I think it was filed as an attack.

THE COURT: With what police agency?

PROSPECTIVE JUROR KLIPPERT: I don't know. It happened, I think, in Venice. It was in this area, like --

THE COURT: Did you personally form any views about how the law enforcement agency involved handled itself?

PROSPECTIVE JUROR KLIPPERT: No.

THE COURT: Okay.

PROSPECTIVE JUROR KLIPPERT: 11(a), should I just skip that one?

THE COURT: For the time being, yes.

PROSPECTIVE JUROR KLIPPERT: 11(b), yes, I promise to follow the law as you instruct me. No difficulty in following evidence. And no, I don't think there is anything else.

THE COURT: Okay. We're going to hear now from Mr. Wilson. And after we do, I'll be excusing all of you for a lunch break, so hang in there a little bit longer.

PROSPECTIVE JUROR WILSON: My name is Ken Wilson. I live in Venice. I have several years of college. No degree.

I work as a property master in --

THE COURT: Could you speak a little bit louder, please, Mr. Wilson.

PROSPECTIVE JUROR WILSON: Sure. I work as a property master and as a production designer. I'm currently not working. I'm married.

THE COURT: The first part of what you said, I didn't hear. A property master?

PROSPECTIVE JUROR WILSON: Uh-huh.

THE COURT: Could you explain what that is, please? It is a term in the movie industry?

PROSPECTIVE JUROR WILSON: It's a position on a film crew on television or a movie.

THE COURT: You help work on the props or the sets --

PROSPECTIVE JUROR WILSON: Yes.

THE COURT: -- for something being filmed?

PROSPECTIVE JUROR WILSON: Correct.

THE COURT: Right now you are not working?

PROSPECTIVE JUROR WILSON: Correct.

THE COURT: Okay. Were you previously connected with any studio or production company on a full-time basis or do you freelance?

PROSPECTIVE JUROR WILSON: I freelance and have worked for most all of them.

THE COURT: You are married, I think you said?

PROSPECTIVE JUROR WILSON: Yes, that's right. I'm married. I have three children, ranging in ages from 11 to 36.

THE COURT: And does your wife currently work?

PROSPECTIVE JUROR WILSON: Yes. She's a producer on a television series.

THE COURT: Okay.

PROSPECTIVE JUROR WILSON: I have served on a criminal case. We did reach a verdict. It was drug sales and assault on a police officer. I was a plaintiff in an automobile accident case. It's 35 years ago probably now. I have no close ties to law enforcement or anyone in the legal system. I have experienced some crime, petty theft and burglary sorts of things, of my home or my vehicle.

THE COURT: Did you report those thefts and burglaries?

PROSPECTIVE JUROR WILSON: I did, yes.

THE COURT: To L.A.P.D.?

PROSPECTIVE JUROR WILSON: Well, to the appropriate police department. Yes, some were L.A.P.D. and some were in other cities.

THE COURT: As a result of those experiences, Mr. Wilson, did you form any views about how those law enforcement agencies conducted themselves?

PROSPECTIVE JUROR WILSON: I think they did the best they could. I have some distrust of both the Los Angeles

Police Department and the Federal Bureau of Investigation.

THE COURT: On what is that distrust based?

PROSPECTIVE JUROR WILSON: It's based on abuses of both agencies and personal experience with a lot of people in law enforcement over the years in a previous career I had.

THE COURT: Was the personal experience someone who was being investigated or were you working with these people?

PROSPECTIVE JUROR WILSON: No. It was just being in the presence of and -- I was working as a firefighter at that time, and there were a lot of police officers, you know, in the fire station and around different places that I got to know very well.

THE COURT: Those officers were from L.A.P.D.?

PROSPECTIVE JUROR WILSON: None of them.

THE COURT: You said you had a distrust of the FBI and the L.A.P.D.

PROSPECTIVE JUROR WILSON: I'm sorry. I meant --

THE COURT: Of law enforcement?

THE WITNESS: -- that would be police officers, law enforcement in general and --

THE COURT: In general?

PROSPECTIVE JUROR WILSON: Yes.

THE COURT: And the distrust is based on a view that you formed that they can't be expected to tell the truth, or is it about the way they acted in their personal lives, or what?

PROSPECTIVE JUROR WILSON: Well, the abuses of those two agencies, you know, that I think have been publicized in the media is one of those.

THE COURT: Investigations that were conducted inappropriately or in violation of the law and instances that you read about or may have heard about involving the law?

PROSPECTIVE JUROR WILSON: Correct. And the last case -- the last criminal case I was involved in as a juror.

THE COURT: The drug sales case?

PROSPECTIVE JUROR WILSON: The drug sales and assault on a police officer, yes.

THE COURT: And how long ago did you serve on that jury?

PROSPECTIVE JUROR WILSON: It's been just maybe three months.

THE COURT: Okay. Now, would you be able to sit in the jury box in this case, watch what unfolds, study the witnesses, look them over, listen to what they said, see to what extent you found it believable or not believable, see to what extent it was corroborated, make a judgment based upon what you heard only in this case about whatever the evidence is, and apply the law that I give to you even though, in a different circumstance, you might have had distrust about these kinds of people? "These kinds of people" meaning law enforcement officers.

PROSPECTIVE JUROR WILSON: I would make every attempt to be fair, but I have an underlying distrust which I can't just dispose of.

THE COURT: Okay. All right. I think what we should do, because you've all been waiting for a long morning, is break now and come back at two o'clock. It will be almost a 75-minute break. We'll be ready to resume at 2:00.

We are going to select this jury today, there is no doubt about it. The reason that we're going through 30 people is designed actually to assist and make more efficient and speedy the selection.

As I mentioned earlier, I can't be sure whether those people who are picked will be from the 30 who will be questioned. We have nine more people to be questioned. Then I ask some questions of the 30 as a whole and people respond only if they have a particular answer. I don't have to ask those questions individually.

So I think the process will definitely result in the selection of a jury this afternoon. We will probably stop at that point, but we'll see what time it is.

Lunch is available on the fourth floor of this building. It's available downstairs and there are close-by places across the street at the mall. The court security officers can help you with some information in that regard.

Please come back, return to where you are at, in 75

minutes, at 2:00 o'clock, and we'll resume then.

Thank you very much for your patience. Don't talk about the case in the meantime.

THE CLERK: All rise, please.

(Prospective jurors left the courtroom.)

THE COURT: Let's take advantage of the time at the moment to save time later on.

As to the 21 people who have been questioned so far, I know there is the last round of questioning that I have yet to do. But based upon the information elicited so far, is there any of the 21 people I questioned as to whom either side wishes to have additional questions posed?

I'll start with you, Ms. Duarte.

MS. DUARTE: Your Honor, only insofar as I would be concerned that if some things weren't flushed out, I would have a challenge for cause. Is that the kind of question the Court is talking about?

THE COURT: Yes. That's not the only kind, but tell me who you are talking about and what questions you want asked.

MS. DUARTE: Juror No. 14, Ms. Malki, I think that when she last left, she had said that she thought she could be fair, but she got very emotional, and -- the Court's notes are probably better than mine. I apologize. I was going to get this together over the lunch break.

THE COURT: What question do you want me to follow up

on with her?

MS. DUARTE: I would just like her to specifically answer the question as to whether she can put all of these things in her life aside, including the fact that she was arrested unjustly, her son was accused of theft and is on probation, all these things she was discussing, if she can put all that aside and be fair to the parties without letting her emotions take over.

THE COURT: I didn't ask the question about the emotions in an explicit way. I did ask her whether she could put, maybe not using those terms, whether she could put it aside.

I thought that she made it pretty clear that, at the very least, she would do her best. I think she felt she could answer No. 11 in a way that permitted her to be considered. I'll think about it further.

Anybody else?

MS. DUARTE: Your Honor, No. 17, Marta Knittel. She had -- she talked a little bit about how she -- she heard a lot of things, she saw a lot of things, when she was transcribing.

I understand that the Court didn't want to get -- transcribing the taped conversations, that was all a very -- that was kind of a very strange interchange with her.

THE COURT: Well, I don't know what was going on. I think over the break you can find out what was going on or at

least try to. I don't know if there is something pretrial and grand jury and whether there is secrecy attached. I don't have a clue. I do know that it has nothing to do with this case.

What specific question do you want me to ask her?

MS. DUARTE: Whether, despite what she's seen or heard at DreamWorks, she could be fair to both parties. The Court did ask her that and she said, "I would try." I guess if the Court wants to leave it at that, that's fine.

If I could have just a second, Your Honor.

That's all I had as to specific follow-up, Your Honor.

THE COURT: Now, I don't know whether I'll return to questioning those two witnesses. Since I'm starting with you, let me continue.

Based upon the information so far -- and I realize we have more information to elicit, even from these 21 jurors -- do you have any motion to excuse any juror for cause?

MS. DUARTE: I do, Your Honor.

Numbers 20 and 21, which would be Kenneth Klippert, who said he could not be fair; and No. 21, Kenneth Wilson, who said he could not dispose of his underlying mistrust, according to my notes.

THE COURT: I think you got that straight. Wilson and who else?

MS. DUARTE: Number 21 was Wilson. No. 20, the

gentleman directly prior to him, was Kenneth Klippert. He was the gentleman whose father was in law enforcement, and he said he had a negative view. And then in the end, he said he could not be fair.

THE COURT: Okay. Anybody else?

MS. DUARTE: For cause, Your Honor -- those are the only ones for cause, Your Honor.

THE COURT: Now, Mr. Sutcliffe, I'll ask you all those questions too, but let's work backwards.

What's your position as to excusing juror No. 21, Mr. Wilson, for cause?

MR. SUTCLIFFE: I kind of like the guy. I would object. I would like to keep him on. I think he said he could be fair.

THE COURT: Well, I make the finding. And it was very evident, both in terms of his responses orally and his body language, that his mistrust would contaminate his capacity and prevent him from carrying out his obligation to be fair to -- one needs to be fair to both sides in this case. It would be unfair to the prosecution.

He specifically singled out the FBI and the L.A.P.D. And he made it very clear that although he would follow the law -- and he answered 11(b), (c), and (d) in an appropriate way, he failed to demonstrate that he could answer 11(a) or was answering 11(a) and would not be fair.

So he will be excused for cause. We'll call up the next person in number and start the process anew.

Now, please, Mr. Sutcliffe, give me your views as to the government's motion as to juror No. 20. That's Mr. Klippert. Klippert is the fellow from Hollywood who is the sales administrator.

MR. SUTCLIFFE: I would agree with the government.

THE COURT: Mr. Klippert will be excused for cause, and we'll replace him -- we'll replace Klippert first since he is No. 20. We'll call the next name, and that person will go to seat No. 20 and seat No. 21 as well, and I'll start all over with them.

I now need to give you an opportunity based only on what's happened so far. You won't be foreclosed from raising other objections after we hear their responses, if any, to round 3. But based on what you have heard so far, is there any juror that you propose to excuse for cause?

MR. SUTCLIFFE: Yes, there is, Your Honor.

Give me one minute here. Juror No. 1, juror No. --

THE COURT: Let's go through them as you give the number.

Juror No. 1 is Manuel Alviso. What's the basis for excusing him for cause that you say currently exists?

MR. SUTCLIFFE: Based on the fact that one of the alleged victims in this case is an attorney. We've got the

police -- L.A.P.D. through "killercop.com" involved. He has two direct or indirect communications. His wife is an attorney. His nephew is in the L.A.P.D.

THE COURT: No. His wife has a cousin who is an attorney.

MR. SUTCLIFFE: Okay. I wrote it down wrong, then.

THE COURT: Any other basis so far?

MR. SUTCLIFFE: No. Those are the two things.

THE COURT: That doesn't constitute a sufficient basis to excuse Mr. Alviso for cause. If he discloses additional information, when we get to round 3, you'll have the opportunity to renew your motion as to him.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Let's move on to the next one, please.

MR. SUTCLIFFE: Juror No. 3, Fandino. He has extensive law enforcement in his background, a detective in the L.A.P.D. As you know, some of the government's primary witnesses are detectives from the L.A.P.D., Detective Katz and I know there is another detective involved.

THE COURT: Steven Katz is with the L.A.P.D.?

MS. DUARTE: He is. Steven Katz and Terry Willis. They are not primary witnesses, Your Honor. They are extremely brief and --

THE COURT: That doesn't matter.

MS. DUARTE: And one of them -- he is right. One of

them will probably testify. Most likely not both.

THE COURT: I'm going to ask Mr. Fandino whether he knows those people.

Let the record show that Mr. Fandino stopped working for the L.A.P.D. 17 years ago. He continued in law enforcement, but not with the L.A.P.D.

I think that the defendant -- now, I read the names of witnesses and nobody raised her hand or his hand from the back of the room, so probably he doesn't know those people.

Where does Katz work out of, what division?

MS. DUARTE: Katz works out of downtown, right here at Parker Center.

THE COURT: Who is the other L.A.P.D. officer?

MS. DUARTE: Terry Willis, Detective Terry Willis. He's in the computer crime section. I don't know where his office is physically located. I think it's downtown, but I'm just not sure.

THE COURT: I'll ask Mr. Fandino whether he has any ties with those people. I kind of doubt whether there was even a Computer Crimes Unit at L.A.P.D. by the end of '86, but maybe there was, so I'll reserve a ruling on that.

Just the fact that he had a background and experience in law enforcement doesn't constitute a sufficient basis to excuse him for cause, although you would have the opportunity to exercise your peremptory rights to excuse him if you want.

Who is the next juror?

MR. SUTCLIFFE: There is a Mr. Brown. He seemed to indicate that when he was questioned about the -- you asked him how he liked the police, how they did their job, and he said they did the best they could. I'd like to question the juror further on that, if the Court would allow me.

THE COURT: Nobody is going to ask questions except me. You are referring to juror No. 10? What question do you want me to ask him?

MR. SUTCLIFFE: Is it the ruling of this Court that I'm not allowed to conduct any type of jury questioning, Your Honor?

THE COURT: Yes, that's the ruling. And neither is the prosecution.

MR. SUTCLIFFE: I would object to that.

THE COURT: Okay. Your objection is noted.

You can propose questions you want me to ask, and if you want to propose one, do it now.

MR. SUTCLIFFE: No. I propose that I be allowed to ask the questions, individually, just like the Constitution provides, Your Honor.

THE COURT: It doesn't provide that, Mr. Sutcliffe, and it's almost never done in federal court. The judge asks all the questions.

MR. SUTCLIFFE: I respectfully disagree, but I heard

you almost.

THE COURT: We've done jurors 1 and 3. Are there any other jurors, based on what has been disclosed so far, that you propose to excuse for cause?

MR. SUTCLIFFE: Yes. Mr. Levine, juror No. --

THE COURT: 13?

MR. SUTCLIFFE: Yes, Your Honor.

No. Actually, I have him down as 12.

THE COURT: He's actually 13, I believe. Benjamin Levine?

MR. SUTCLIFFE: Yes, Your Honor.

He implied that people who represent -- he indirectly implied that people -- the guy who represented himself in his first case was a child molester. If you combine that with the first lady who stood up over there and said that people who represented themselves are arrogant, I mean, there is a lot of prejudice going on there. I think he pretty much tainted the jury, that people who represent themselves are like child molesting, arrogant people. That's the type of testimony we've been getting from these jurors.

THE COURT: The juror who cast doubts about someone who represents himself has not been called and probably won't be. She is --

MS. DUARTE: I believe she's No. 37, Your Honor, on the list.

THE COURT: Diana Ruth Ansell. She's No. 37. We are not close to getting to her, but we'll see.

If she's put in the box, I'll entertain your objection, then, because you may have a valid one as to her, but not as to Mr. Levine.

I think you are misstating what he said. We don't know what the jury voted for on the child molestation case. It could have been an acquittal, for all we know. So I deny your motion to excuse him for cause. Again, you are welcome to renew on different grounds only.

Once we finish phase 3, where I ask them questions about ties with Global Crossing and all of that, if there is new evidence, you'll have your opportunity, both sides will, to renew their objections. But if there isn't, I'm not going to go over any of this ground again. So this is your only opportunity.

MR. SUTCLIFFE: I'm not finished with Mr. Levine. His girlfriend was a victim of identity theft and credit card fraud. His sister is a D.A. I believe that shows cause.

THE COURT: No. His sister is a paralegal.

MR. SUTCLIFFE: Somebody is a D.A. He said someone is a D.A. I wrote that down.

THE COURT: It was a cousin in Northern California. That doesn't constitute a basis for excusing him for cause.

MR. SUTCLIFFE: What about the girlfriend who was a

victim of identity theft and credit card fraud?

THE COURT: This doesn't either.

It's a very clear fact that the fact that somebody has some kind of personal experience in the kind of crime that's being alleged does not in itself constitute a basis to excuse that prospective juror.

MR. SUTCLIFFE: Okay.

THE COURT: Anyone else?

MR. SUTCLIFFE: No, Your Honor. That's it.

THE COURT: Okay. I would ask the marshals to bring back -- and there are no other questions you want me to ask of anybody?

MR. SUTCLIFFE: Yes, I would, actually. I'd like you to inquire if anyone has ever stood up for a position that was not popular, such as a political party, a school, or a church. And I would like to ask them, without getting personal, how did it feel standing up for a position that was not popular.

THE COURT: Okay. I decline to ask that question.

MR. SUTCLIFFE: Okay. Would you ask anyone if they ever built a computer or created a website?

THE COURT: I will ask that.

MR. SUTCLIFFE: Can you ask them, has anyone ever experienced a time when they misunderstood something that they heard that caused them to get angry, to later learn that they had misunderstood?

THE COURT: No, that's an inappropriate question.

MR. SUTCLIFFE: Would you inquire as to -- is there anyone on the jury who doesn't understand that words have more than one meaning?

THE COURT: No, that's a totally inappropriate question. If the evidence warrants it and the inferences would permit it, you can argue that on your closing argument.

MR. SUTCLIFFE: Would you ask if there is anybody who does not believe that the context in which a statement is made is not important?

THE COURT: No, I won't do that.

MR. SUTCLIFFE: Would you ask them if they've ever heard of the artist known as "Eminem" or the broadcaster known as Rush Limbaugh?

THE COURT: No.

MR. SUTCLIFFE: Would you ask them if there is anybody who believes that broadcasters on the radio and TV should not have a right to voice their statements or opinions in a public forum?

THE COURT: None of these are relevant.

MR. SUTCLIFFE: I believe they are, Your Honor.

THE COURT: Well, I don't think that they are. The permissible scope of questioning doesn't extend to that. It's not saying that if you can't elicit evidence that would warrant an argument on closing argument, you would be denied that

right. In fact, you'll be given the right.

But I'm not going to be subjecting this process, this jury, to any kind of abstract vacuum-type questions that are not directly related to specific factual or evidentiary issues in the case. And even then, that standard would not be applied in a sweeping fashion, to begin with.

Anything else?

I must say, by the way, that these are questions that you are asking be put to the jury panel as a whole. Your opportunity to file proposals for that vanished long ago. I'm giving you the opportunity now, although I don't have the obligation to. So finish making your oral requests and then we'll break for lunch.

MR. SUTCLIFFE: Your Honor, no, I have nothing further.

THE COURT: Okay. I will ask Mr. Fandino about those ties with the L.A.P.D. officers. I am rejecting the motions for cause that Mr. Sutcliffe has expressed.

Yes?

MS. DUARTE: I have one scheduling question, Your Honor. I have two witnesses that --

THE COURT: We are not going to get to witnesses today.

MS. DUARTE: Okay. I'll dismiss them. Thank you.

MR. SUTCLIFFE: Your Honor, may I be heard before you

vacate?

Before you vacated the bench last time for the break, you mentioned that -- regarding the letter you had reviewed regarding Mr. Reed that I submitted to you.

THE COURT: Yes, I read it all.

MR. SUTCLIFFE: You mentioned that based on my actions and my conduct on October 1st, I believe, and I would like you to please clarify it for me, because I have no recollection of any conduct I did that day that would have constituted grounds for removal of my counsel.

And the speech that you said -- that you referred to, the only speech I have a recollection of that went with that conduct was my denying the three allegations that Mr. Reed had raised, which was that I had threatened him, which he admitted was a threat of a lawsuit; two, that he had articulated that I had refused to assist him in preparation of documents; and three, that I had refused to articulate specific files within the discovery to assist him.

And so, of that speech and of that conduct, I still can't ascertain what the Court is referring to. I'd like the Court to please clear that up for me.

THE COURT: Mr. Sutcliffe, you may be seated.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: It's tough for anybody to remember exactly what happens at an earlier stage, and it's equally

tough for me. And it's impossible for anybody, always, to understand what the other guy says.

The record will reflect very clearly what I said. If you don't understand it, it is not my obligation to clarify it. I tried to explain it to you last week. This is the last time I'm going to be heard about this.

You, by your conduct, you, by your statements, much of which is graphically confirmed in a letter that you insisted I read and that you sent to the prosecutor and that has now become part of the open court records in this case, have made it very clear that your view of representation is -- that what you consider to be representation is totally unacceptable to you. You've said it many times. You've said it in open court. And you've said it in writing.

You want assistance. You don't want representation. You said all those things after I explained what the proper role and rights and authority of a lawyer is. And you said it in the context of a series of events that has gone on for a very long time.

The record is very clear on why I found that you had waived your right to the further appointment of counsel. And that's all I'm going to say about it. It is not based only on, and even not based primarily on, what Mr. Reed said.

Now, that's it. You can challenge it. I want you to know I read what you wrote, and I read it before I looked at it

today. You had previously sent me those things. So I considered everything you had to say.

And we are adjourned. Please have Mr. Sutcliffe back here by two o'clock.

Let me say to the court security officers, just to assure, as I think we are all trying to, with no margin for error, that the conditions in which Mr. Sutcliffe is brought to the courtroom -- I'm referring to the cuffs and the re-shackling at the conclusion of the proceeding -- never comes to the attention of any prospective or actual jurors.

When he's being prepared for transport to the lockup or anywhere else, please have somebody outside the courtroom making sure that no prospective or actual juror can look through the windows to see that happening.

Thank you.

(Lunch Recess taken at 1:12 p.m. to 2:07 p.m.)

(Prospective jurors entered the courtroom.)

THE COURT: Good afternoon. Welcome back, everyone.

Before we proceed with questioning additional jurors, there are a couple of follow-up things that I'll turn to first.

Mr. Fandino, there are, I believe, two anticipated possible witnesses who currently work for your long-ago employer, the L.A.P.D.

I know you didn't raise your hand when I read the names of witnesses, but I just want to make sure that you don't

know these people or have any -- does somebody have a cell phone? That's a major no-no. Turn off cell phones. If anybody has a cell phone in here now, turn it off right now.

Let's proceed. I want to make sure, Mr. Fandino, that you don't know these individuals and have had nothing to do with them. One is named Steven Katz. I think he works out of Parker Center.

PROSPECTIVE JUROR FANDINO: Your Honor, I have no recollection at all of knowing these officers.

THE COURT: The other is a detective named Terry Willis. He's in the computer crime section.

PROSPECTIVE JUROR FANDINO: I have no recollection, Your Honor.

THE COURT: Okay. Now, Mr. Wilson, I'm going to excuse you from further possible participation on this case and direct you to go up to the third floor jury department for further instructions, please. You may leave now. And the same is true with you, Mr. Klippert. Please return to the third floor jury department.

I'll direct the clerk to call the name of someone who will sit in seat No. 20.

THE CLERK: For seat No. 20, Carol Zetina.

THE COURT: Ms. Zetina, are you here?

PROSPECTIVE JUROR ZETINA: Yes.

THE COURT: Call another name, please, to sit in seat

No. 21.

THE CLERK: For seat No. 21, Diana Ruth Ansell.

THE COURT: Ms. Ansell, I'm going to make your journey brief. Given what you told me before, I don't think you are qualified to be considered for eligibility on the service.

I am totally puzzled by why you think that your experience dealing with these tenants has any bearing at all on this case, but I don't think you should be given the opportunity to qualify for service.

So please go back to the third floor and await for further instructions. There may be another jury that will make better use of your services. I excuse that juror for cause.

Call another name, please.

THE CLERK: Karla J. Triska.

THE COURT: Let's proceed, then, before we go any further. With new juror 21 -- excuse me. Let's proceed with new juror 20, Ms. Zetina or Zetina?

PROSPECTIVE JUROR ZETINA: Zetina.

THE COURT: Carol Zetina, am I correct?

PROSPECTIVE JUROR ZETINA: Yes.

THE COURT: Would you please give us your answers to the information that's asked for on that questionnaire. Before you do so, I just want to gather my papers together. Go ahead, Ms. Zetina.

PROSPECTIVE JUROR ZETINA: My name is Carol Zetina.

THE COURT: Do you have the microphone?

PROSPECTIVE JUROR ZETINA: Yes.

THE COURT: Please speak loudly into it.

PROSPECTIVE JUROR ZETINA: L.A.

THE COURT: What part of Los Angeles do you live in, Ms. Zetina, what area or section?

PROSPECTIVE JUROR ZETINA: Adams. I'm not sure.

THE COURT: The Adams District?

PROSPECTIVE JUROR ZETINA: Uh-huh.

THE COURT: That "uh-huh" means "yes"?

PROSPECTIVE JUROR ZETINA: "Yes."

High school. Employer, Kaiser.

THE COURT: Kaiser Permanente?

PROSPECTIVE JUROR ZETINA: Uh-huh. Home health.

THE COURT: Just let me explain to you, Ms. Zetina -- and this is meant for the benefit of all of us. When a person says "uh-huh," it could mean "yes," it could mean "no." The court reporter doesn't know.

Everything that's being said is being recorded by the court reporter because we need to have an official history of this trial. Sometimes there are cases that result in review by appellate courts, and they look at these transcripts.

So it's the obligation of the judge to try to do his best or her best to make sure that what's being said is

accurately recorded and put down in the transcript. So if you hear me say from time to time something that you think is unnecessary, in the way of clarification, it's because I'm just trying to make sure everybody knows accurately what happens in this courtroom.

So when you say it's "Kaiser Permanente, uh-huh," that means "yes," that's your employer?

PROSPECTIVE JUROR ZETINA: Yes.

THE COURT: Please tell us your occupation.

PROSPECTIVE JUROR ZETINA: Nurses aide.

Divorced.

THE COURT: Are there any adults currently living with you?

PROSPECTIVE JUROR ZETINA: Yes.

THE COURT: How many adults are there living with you now?

PROSPECTIVE JUROR ZETINA: One.

THE COURT: Is that person working?

PROSPECTIVE JUROR ZETINA: Yes.

THE COURT: What kind of work?

PROSPECTIVE JUROR ZETINA: Clerk, accounting clerk.

THE COURT: A clerk?

PROSPECTIVE JUROR ZETINA: Yes.

THE COURT: A clerk for what kind of business?

PROSPECTIVE JUROR ZETINA: City of L.A.

THE COURT: Okay. Do you have any children, Ms. Zetina?

PROSPECTIVE JUROR ZETINA: Three, between 9 and 18.

THE COURT: Have you ever served on a jury before?

PROSPECTIVE JUROR ZETINA: No.

THE COURT: Have you ever sued someone before?

PROSPECTIVE JUROR ZETINA: No.

THE COURT: Did anyone ever sue you before?

PROSPECTIVE JUROR ZETINA: No.

THE COURT: Do you know people who are close to you or to members of your family who work in law enforcement?

PROSPECTIVE JUROR ZETINA: I just have my brother that works at downtown Parker Center.

THE COURT: Does he work for the Los Angeles Police Department?

PROSPECTIVE JUROR ZETINA: Yes.

THE COURT: And what kind of work does he do for the L.A.P.D.?

PROSPECTIVE JUROR ZETINA: I think he's a clerk. I'm not sure.

THE COURT: You think he's a clerk?

PROSPECTIVE JUROR ZETINA: Yes.

THE COURT: Is he a police officer?

PROSPECTIVE JUROR ZETINA: No.

THE COURT: This is your brother?

PROSPECTIVE JUROR ZETINA: Yes.

THE COURT: Okay. And if he is a clerk, do you know in what division or what kind of department of the L.A.P.D. he clerks for?

PROSPECTIVE JUROR ZETINA: Homicide robbery.

THE COURT: And he does office work inside the office?

PROSPECTIVE JUROR ZETINA: Yes.

THE COURT: Do you talk to him about his job from time to time?

PROSPECTIVE JUROR ZETINA: Sometimes.

THE COURT: Do you think whatever you talk about with your brother will have any impact on how you serve as a juror on this case?

PROSPECTIVE JUROR ZETINA: No.

THE COURT: Ms. Zetina, do you know people in the legal system, judges or court officers?

PROSPECTIVE JUROR ZETINA: No.

THE COURT: Are there people very close to you or you yourself who have been subjected to being a victim of crime?

PROSPECTIVE JUROR ZETINA: I was burglarized, my home.

THE COURT: Was that here in Los Angeles?

PROSPECTIVE JUROR ZETINA: Yes.

THE COURT: Did you report the burglary?

PROSPECTIVE JUROR ZETINA: Yes.

THE COURT: Did you report it to the Los Angeles Police Department?

PROSPECTIVE JUROR ZETINA: Yes.

THE COURT: How would you describe the way you felt about how the L.A.P.D. handled it?

PROSPECTIVE JUROR ZETINA: Terrible.

THE COURT: Terrible?

PROSPECTIVE JUROR ZETINA: Yes.

THE COURT: What was so bad about it? What upset you?

PROSPECTIVE JUROR ZETINA: They took long to come to my home to see what happened.

THE COURT: They took a long time?

PROSPECTIVE JUROR ZETINA: Yes.

THE COURT: Okay. How long ago did that happen that your house was burglarized?

PROSPECTIVE JUROR ZETINA: About a year.

THE COURT: About one year ago?

PROSPECTIVE JUROR ZETINA: Yes.

THE COURT: There may be testimony by one or two people who currently work for the Los Angeles Police Department. Would you hold it against them that you think that the police department took too long to get to your home?

PROSPECTIVE JUROR ZETINA: No.

THE COURT: Do you think that your unfortunate experience in that case involving the house burglary will not be something that affects you in this trial; you'll keep it out of your mind?

PROSPECTIVE JUROR ZETINA: Yes.

THE COURT: Would you be good enough to answer question 11, please. Question 11 asks you whether you can be completely fair to both sides.

PROSPECTIVE JUROR ZETINA: Yes.

THE COURT: You think you can? I need you to speak up.

PROSPECTIVE JUROR ZETINA: Yes.

THE COURT: If I give you the law and you have to apply the law the way I give it to you, would you do so? Would you apply the law that I tell you about?

PROSPECTIVE JUROR ZETINA: Yes.

THE COURT: Okay. Are you having any difficulty in understanding my questions or following what's going on here in court?

PROSPECTIVE JUROR ZETINA: No.

THE COURT: Is there anything else about your background that you think either side should know before we go on to the next juror?

PROSPECTIVE JUROR ZETINA: No.

THE COURT: Okay. Thanks very much, Ms. Zetina.

Now we'll hear from Ms. Triska.

PROSPECTIVE JUROR TRISKA: My name is Karla Triska. West Los Angeles. 12 years of schooling. Hotel Bel Air, restaurant manager. Married. Living with my husband. He is a self-employed actor.

THE COURT: He's an actor?

PROSPECTIVE JUROR TRISKA: Yes.

THE COURT: Okay.

PROSPECTIVE JUROR TRISKA: Children, 30 and 34, not living with us. Never served as a juror. I was never experienced in a lawsuit. I don't know any law enforcement officers, any lawyers.

THE COURT: Do you know other people who work for the court system, such as judges or court reporters?

PROSPECTIVE JUROR TRISKA: No.

THE COURT: No ties at all?

PROSPECTIVE JUROR TRISKA: No, no ties.

THE COURT: Have you ever been the victim of a crime?

PROSPECTIVE JUROR TRISKA: No. My daughter was. She was held at gunpoint in her boyfriend's apartment.

THE COURT: Did you get involved in the investigation of that?

PROSPECTIVE JUROR TRISKA: No. I know they reported it immediately after, but they never found those guys.

THE COURT: Was the report given to the Los Angeles

Police Department?

PROSPECTIVE JUROR TRISKA: Yes, West Los Angeles.

THE COURT: In West Los Angeles?

PROSPECTIVE JUROR TRISKA: Yes.

THE COURT: Do you personally have any feelings about how the Los Angeles Police Department handled that report?

PROSPECTIVE JUROR TRISKA: No.

THE COURT: Okay.

PROSPECTIVE JUROR TRISKA: I know they did whatever they could do, but they never found them.

THE COURT: Okay. Would you answer No. 11, please. Can you be completely fair to both sides?

PROSPECTIVE JUROR TRISKA: I can be completely fair on both sides, no doubt.

THE COURT: And all of the other answers would be that you could follow the law and you could follow the evidence, too?

PROSPECTIVE JUROR TRISKA: As instructed by you, sir, yes.

THE COURT: Can you think of anything else that you would want to know if you were one of the parties to this lawsuit?

PROSPECTIVE JUROR TRISKA: No.

THE COURT: Okay. Thanks very much, Ms. Triska.

Now we turn to Ms. May, and the courtroom deputy will

give you the microphone. You can speak from where you are.

PROSPECTIVE JUROR MAY: My name is Mary Ann Coleman May. I live in the City of Los Angeles in the south Crenshaw area. I am currently about halfway finished of a master's in organizational management.

My employer is Verizon Communications. I am a directory assistance telephone operator. I'm married, living with my husband as the only adult -- or the only other person in the home. My husband is a bus operator for Long Beach Transit.

And I do have four daughters, no sons. The ages are from 22 to 35. And I do not have any prior jury service. And my prior experience as a plaintiff in a civil lawsuit was very minor, in small claims court.

And I have a brother that is a prison officer in the State of Michigan and a brother-in-law that is a police officer also in the State of Michigan.

THE COURT: Is the brother-in-law married to your sister?

PROSPECTIVE JUROR MAY: That is correct.

The legal system, I have a few cousins that are attorneys in other states, Michigan and also in New York, and a daughter here in California that is a paralegal for a civil law firm.

THE COURT: Is that law firm here in Los Angeles?

PROSPECTIVE JUROR MAY: In Torrance.

THE COURT: And they don't handle any kind of criminal cases, that law firm; is that correct?

PROSPECTIVE JUROR MAY: That is correct, to my knowledge.

And I have been a victim of a crime. I was held up at gunpoint more than 10 years ago, I think, and nothing was really done with it. When I called the police, they just -- they said, based on the information I had, they really weren't able to do anything, so I never even went into their office. I just took care of it over the phone.

THE COURT: Which police department did you speak to on the phone?

PROSPECTIVE JUROR MAY: Los Angeles, near the airport area -- or Hollywood Park area.

Oh, also, my house was burglarized many years ago in the State of Michigan. And I believe I can be completely fair on both sides. I do have some misgivings for the government and for government officials and authority, but I don't believe I would allow that to influence my judgment or my serving as a juror in this case.

I do promise to follow the law as instructed to me. And I don't have any difficulty in following evidence. And I don't believe there is anything else the Court should know.

THE COURT: Very responsive answers. Thank you,

Ms. May.

Let me ask you, you said you had misgivings about certain government officers. I take it that means reservations about whether they should be believed or trusted?

PROSPECTIVE JUROR MAY: Exactly.

THE COURT: And does that arise out of things you would hear about and read about it or a personal experience?

PROSPECTIVE JUROR MAY: Some of both.

THE COURT: Do any of the experiences that you may have encountered or been part of prompt you to think that if a representative of a law enforcement agency testifies in this case, he's going to be behind the eight ball starting out because you are just going to be inclined not to believe him?

PROSPECTIVE JUROR MAY: No. I trust individuals on their own merit.

THE COURT: Okay. That's what we would expect you to do. That's what the jurors all would be expected to do. You're confident you can do that?

PROSPECTIVE JUROR MAY: Yes, I am.

THE COURT: Thanks very much, Ms. May.

PROSPECTIVE JUROR MAY: You are welcome.

THE COURT: Now we move on to juror No. 23, and that's Mr. Cleek.

PROSPECTIVE JUROR CLEEK: Right. My name is John Cleek. I live in Torrance. My highest education is a Bachelor

of Science. My employer is Honeywell Engine Systems and Services.

THE COURT: Honeywell Engineering?

PROSPECTIVE JUROR CLEEK: Honeywell Engine Systems and Services. It's a division of Honeywell Corporation.

THE COURT: What do you do for Honeywell?

PROSPECTIVE JUROR CLEEK: I'm an electronic systems engineer.

THE COURT: Could you tell us what that involves?

PROSPECTIVE JUROR CLEEK: I do circuit design. I do system design for what goes into electronics used in aircraft.

THE COURT: Do you design Websites or create them?

PROSPECTIVE JUROR CLEEK: No, I don't.

THE COURT: Have you ever built a computer?

PROSPECTIVE JUROR CLEEK: Yes.

THE COURT: Just for home use?

PROSPECTIVE JUROR CLEEK: No.

THE COURT: For work?

PROSPECTIVE JUROR CLEEK: Yes. They are special-purpose computers.

THE COURT: What is the special purpose to which those computers are used?

PROSPECTIVE JUROR CLEEK: Usually control systems for things like gap-pressure controllers used on submarine actuation controls.

THE COURT: Okay. Are you married, Mr. Cleek?

PROSPECTIVE JUROR CLEEK: Yes, I'm married. My wife is a retired school teacher.

THE COURT: Okay. Any adults living with you?

PROSPECTIVE JUROR CLEEK: Just my wife. I have two children, ages 25 through 30. I have had prior jury service on three criminal cases, two burglaries, and one drunk driving. On two of the three occasions, the jury reached a verdict. On the third one, the case was cancelled partway through.

THE COURT: So the case never went to the jury for deliberation?

PROSPECTIVE JUROR CLEEK: That's correct.

THE COURT: The ones where the jury did reach a verdict, were those the two burglary cases?

PROSPECTIVE JUROR CLEEK: One was a burglary and one was a drunk driving.

THE COURT: Have you ever served on a civil jury?

PROSPECTIVE JUROR CLEEK: No, I have not.

THE COURT: Would you please answer No. 8.

PROSPECTIVE JUROR CLEEK: I have no prior experience as either a plaintiff or a defendant in either a lawsuit or criminal case. I have a neighbor who is a policeman in the Manhattan Beach Police Department and a former friend who was a Palos Verdes police officer who was killed in the line of duty.

THE COURT: Okay. Your friendship with those people,

do you think it's going to affect the way you consider the evidence in this case if you are picked to serve?

PROSPECTIVE JUROR CLEEK: I don't believe so.

THE COURT: What kind of responsibilities does your neighbor with the Manhattan Beach Police Department have?

PROSPECTIVE JUROR CLEEK: He does some vice, and I'm not sure what all other things he does.

THE COURT: I think he would have preferred it if you said he does some vice investigation, but we'll understand what you meant.

PROSPECTIVE JUROR CLEEK: Right.

THE COURT: Could you answer No. 9, please.

PROSPECTIVE JUROR CLEEK: Number 9(b), my son's father-in-law is a lawyer, real estate law, in Portland, Maine.

THE COURT: That's your son's father-in-law, not your father?

PROSPECTIVE JUROR CLEEK: That's correct.

THE COURT: Okay.

PROSPECTIVE JUROR CLEEK: I've never been the victim of a crime or nobody close to me has. And I believe I can be completely fair to both sides. I will promise to follow the law as you instruct. I don't have any difficulty, that I know about, following evidence. And I don't think there is anything else you need to know.

THE COURT: Thanks very much, Mr. Cleek.

Now I move on to Ms. Lewis-Fine.

PROSPECTIVE JUROR LEWIS-FINE: My name is Jill Lewis-Fine. I live in West L.A. I have completed one year of college. I am currently unemployed and trying my hand at retirement. Prior to that, I had an educational service business where I recruited and provided tutors and counselors for the private sector.

I am married. I live with my husband, who also just recently retired. And even though he's semiretired, he also has an eBay business that he works on.

THE COURT: Could you tell us what you mean by that, please?

PROSPECTIVE JUROR LEWIS-FINE: He sells -- he retired from the craft supply business and he has a lot of merchandise and he sells it on eBay.

THE COURT: Okay. But when he finishes exhausting that supply of inventory, does he expect to sell other products on eBay?

PROSPECTIVE JUROR LEWIS-FINE: We don't know.

THE COURT: Okay.

PROSPECTIVE JUROR LEWIS-FINE: We also have a 20-year-old son living with us. He works for a law office, a family law office.

THE COURT: What kind of work does he do there?

PROSPECTIVE JUROR LEWIS-FINE: He's the copy boy.

You know, he does a little bit of everything, from answering phones, to making copies, to getting things shredded, all that stuff.

THE COURT: Is that a family law firm in L.A. somewhere?

PROSPECTIVE JUROR LEWIS-FINE: Yes. In Beverly Hills.

I have another son, 28, who doesn't live with us. I have not had prior jury service even though I did serve in L.A. Superior Court earlier this year, but I was not selected. Didn't get that far.

I have no prior experience as a plaintiff or a defendant in any lawsuit. I do not have any ties to law enforcement officers. But as far as the legal system goes, I have a very close friend who works for the City Attorney.

THE COURT: The City Attorney for the City of Los Angeles?

PROSPECTIVE JUROR LEWIS-FINE: Uh-huh.

THE COURT: Does that friend work as a lawyer?

PROSPECTIVE JUROR LEWIS-FINE: Yes.

THE COURT: Is it a woman or a man?

PROSPECTIVE JUROR LEWIS-FINE: A man.

THE COURT: What kind of work does he do?

PROSPECTIVE JUROR LEWIS-FINE: I don't know. Just dealing with whatever is going on in the city. We don't really

talk about his work.

THE COURT: Okay. Please continue with your answer.

PROSPECTIVE JUROR LEWIS-FINE: Also, on my husband's side of the family, there are six attorneys. Only one works really in criminal and he's a public defender.

THE COURT: Where does he work?

PROSPECTIVE JUROR LEWIS-FINE: L.A.

THE COURT: You have a brother-in-law who is a public defender?

PROSPECTIVE JUROR LEWIS-FINE: He's actually my husband's nephew.

THE COURT: So a nephew by marriage is a public defender?

PROSPECTIVE JUROR LEWIS-FINE: Uh-huh -- yes.

THE COURT: Do you talk to him about his work in representing his clients?

PROSPECTIVE JUROR LEWIS-FINE: Not really.

THE COURT: Do you think that you learned information from him or were influenced by what you've learned about his job in a way that might affect your ability to be fair in this case?

PROSPECTIVE JUROR LEWIS-FINE: Absolutely not.

THE COURT: Okay. These six lawyers on your husband's side, he must be a great guy to have been married to him this long with all those lawyers surrounding him.

Are any of them very close to him, either in blood ties or in personal ways?

PROSPECTIVE JUROR LEWIS-FINE: Yes. His brother is a PI attorney.

THE COURT: Also in Los Angeles?

PROSPECTIVE JUROR LEWIS-FINE: Yes. They are all in Los Angeles.

THE COURT: But apart from the nephew by marriage, none of them engages in criminal law practice?

PROSPECTIVE JUROR LEWIS-FINE: No.

THE COURT: No prosecutors?

PROSPECTIVE JUROR LEWIS-FINE: No. Either PI cases or contract law or collection.

THE COURT: Okay.

PROSPECTIVE JUROR LEWIS-FINE: As far as criminal cases, I've been the victim of a crime in that my -- I've had one car that was stolen and one that was broken into. My husband has -- came home in the middle of a robbery and got shot three times. My parents have also been robbed. I guess that's about it.

THE COURT: That's quite a lot.

Without breaking down every single incident -- I won't subject you to that -- can you tell me whether, as a result of any response by any law enforcement agency, you formed, personally, any views about how cops or law enforcement

and police departments are supposed to work?

PROSPECTIVE JUROR LEWIS-FINE: No. I think it's a very hard job. In none of the cases was the perpetrator found or prosecuted in any way, but, you know, they ran away. It's really hard.

THE COURT: Okay.

PROSPECTIVE JUROR LEWIS-FINE: Can I be completely fair to both sides? Absolutely. I promise to follow the law as you instruct it to me. I have no difficulty in following evidence. And there is nothing else that I can think of.

THE COURT: All right. Thanks very much, Ms. Lewis-Fine.

Now we're up to you, Mr. -- is it pronounced Vinas?

PROSPECTIVE JUROR VINAS: Vinas.

My name is Aladino Vinas. I live in Van Nuys. High school. I'm retired from Lucent Technologies. I'm married and live with my wife.

THE COURT: Just let me intercede. What kind of job did you do for Lucent before you retired?

PROSPECTIVE JUROR VINAS: I'm retired.

THE COURT: I know, but before you retired.

PROSPECTIVE JUROR VINAS: Systems tech.

THE COURT: Give us a little description --

PROSPECTIVE JUROR VINAS: Installing telephones and repair in businesses.

THE COURT: You installed telephones and repaired them. Okay. Keep going.

PROSPECTIVE JUROR VINAS: Where was I? My wife is a homemaker. I've got two children, ages 30 to 38. I've been on prior jury duties. On criminal, the charge was murder one and the jury reached a verdict.

THE COURT: Mr. Vinas, let me ask you this: Do those sons live with you or either of them?

PROSPECTIVE JUROR VINAS: No. They got their own place.

THE COURT: Okay. Keep going.

PROSPECTIVE JUROR VINAS: No prior experience as a plaintiff or a defendant. No ties to law enforcement. No legal systems. Any criminal cases, I got my house burglarized about a year ago.

THE COURT: Did you report it to the L.A.P.D.?

PROSPECTIVE JUROR VINAS: Yes, I did. The Valley Division.

THE COURT: How would you describe the way you feel about the way they handled it?

PROSPECTIVE JUROR VINAS: Very good. They got them within a half an hour.

On No. 11, "yes" on (a) and (b) and "no" on (c) and (d).

THE COURT: Thank you, Mr. Vinas. If I mispronounce

your name, forgive me.

We are up to Mr. Lee.

PROSPECTIVE JUROR LEE: My name is Miller Lee. I live in Diamond Bar. I have a college degree and I'm retired for five years. I'm married, living with my wife.

THE COURT: Wait. Let's back up, please, Mr. Lee. Did you say you have a bachelor's degree?

PROSPECTIVE JUROR LEE: A college degree.

THE COURT: A college degree?

PROSPECTIVE JUROR LEE: Yes.

THE COURT: And you also told me that you're retired?

PROSPECTIVE JUROR LEE: Yes.

THE COURT: Before you retired, what kind of work did you do?

PROSPECTIVE JUROR LEE: Air cargo and ocean freight.

THE COURT: What kind of work involving that industry did you do?

PROSPECTIVE JUROR LEE: I managed a company -- actually, I worked in Taiwan.

THE COURT: Yes.

PROSPECTIVE JUROR LEE: I managed a company in Taiwan.

THE COURT: You managed a company in Taiwan that was engaged in shipping products abroad?

PROSPECTIVE JUROR LEE: Yes.

THE COURT: Since you came to the United States to live, have you worked here?

PROSPECTIVE JUROR LEE: No.

THE COURT: You started to tell me you're married?

PROSPECTIVE JUROR LEE: Yes. I'm married and living with my wife. We have one child and he's 22 years old.

THE COURT: Does he live at home with you?

PROSPECTIVE JUROR LEE: Actually, he's now in East Coast in college.

THE COURT: Does your wife currently work?

PROSPECTIVE JUROR LEE: No. She quit 20 years ago.

THE COURT: Okay.

PROSPECTIVE JUROR LEE: I haven't served jury service before. I do not have any experience in any lawsuit.

THE COURT: Speak up a little louder, if you can, because the court reporter and I are having some difficulty hearing you.

You said you have no experience serving on a jury; correct?

PROSPECTIVE JUROR LEE: Yes.

THE COURT: And that you have no ties to people who are working in law enforcement?

PROSPECTIVE JUROR LEE: No, not in law, law enforcement officer or in legal system.

THE COURT: Okay.

PROSPECTIVE JUROR LEE: I presently do not have any experiences as a crime victim, but my son, he had once when he buy on the Internet. He sent our money to buy a computer system, but never received the merchandise.

THE COURT: So somebody supposedly sold him a product on the Internet. Your son attempted to pay for it or did pay for it and never got the product?

PROSPECTIVE JUROR LEE: Yes.

THE COURT: What did your son do, if anything, after he failed to get the product? Did he file a complaint with anyone?

PROSPECTIVE JUROR LEE: Yes. He filed a complaint and he was told to contact the FBI, and the FBI, you know, passed the case to the police office in Riverside. And the office also contact him for, you know, further investigation, but finally they told him no evidence enough.

THE COURT: They told him no what?

PROSPECTIVE JUROR LEE: No evidence.

THE COURT: How did you feel about the way the FBI and the Riverside Police Department handled your son's complaint?

PROSPECTIVE JUROR LEE: They made several calls. But I think it was just routine, you know, not so abrasive, I think, because the office told us this guy did a lot of illegal matters, but they cannot catch him.

THE COURT: You know, Mr. Lee, that a lot of business is done on the Internet. That you understand; right?

PROSPECTIVE JUROR LEE: Yes.

THE COURT: And a lot of times the people on both sides of the transaction are honest and they do what they set out to do and said they would do. Do you understand that?

PROSPECTIVE JUROR LEE: Yes.

THE COURT: So does the fact that your son was ripped off on a matter involving the Internet -- how do you think that will affect your ability to be fair to both sides in this case where some of the evidence is going to be about things that were supposedly posted or made available on the Internet?

PROSPECTIVE JUROR LEE: I think the buyer -- I think my son, he should be -- he should take the full responsibility because he just -- he don't ever check the seller's background. After that, I check with him and he say very bad reputation on that seller.

THE COURT: The seller had a bad reputation?

PROSPECTIVE JUROR LEE: Yes. After that, he found out.

THE COURT: In this case, there is no allegation that the defendant failed to deliver something that he had agreed to sell. That's not involved in this case at all.

Will you be able to look at the evidence in this case in a way that -- I know you are not going to forget what

happened to your son, but that's a different story and that's a different crime, different people. Will you be able to sit in that jury box, listen to what people say, look at all the evidence, listen to Mr. Sutcliffe, listen to the prosecutor, and decide only on the basis of what happens in this case; can you do that?

PROSPECTIVE JUROR LEE: Yes. I try.

THE COURT: You think you can do it?

PROSPECTIVE JUROR LEE: Yes.

THE COURT: Okay. Let's move on, then, to -- I think you've answered No. 11 sufficiently.

So let's move on to juror No. 27, and I think that's Johanna Kingsley.

PROSPECTIVE JUROR KINGSLEY: Yes. My name is Johanna Kingsley. I live in Agoura Hills. I have a B.S. in math. I work for Digital Insight, which is an Internet banking service provider. I am a project manager for that company.

I'm single. I do not live with any other adults. I do not have children. I have not had prior jury service experience. I have not been a plaintiff or a defendant in any lawsuit.

I have several friends who are in law enforcement and the legal system. Within the law enforcement, I know a couple of people who are in the FBI and I know a couple of people who are Los Angeles sheriffs.

THE COURT: The people in the FBI, are they agents of the FBI?

PROSPECTIVE JUROR KINGSLEY: Yes.

THE COURT: What is their connection to you?

PROSPECTIVE JUROR KINGSLEY: I play softball with one woman who is an agent and her husband is also an agent.

THE COURT: Are they agents here in Los Angeles somewhere?

PROSPECTIVE JUROR KINGSLEY: Yes.

THE COURT: Do you know what kind of assignment they have?

PROSPECTIVE JUROR KINGSLEY: The woman is in human resources and her husband, I believe, does investigations on embezzlement, something like that.

THE COURT: Do you talk to them about their work for the FBI?

PROSPECTIVE JUROR KINGSLEY: Only once a long time ago, but not normally.

THE COURT: Mr. Cugno, who is sitting here at the prosecution table, is an FBI agent. There may be some others in this case.

Does -- the fact that you're friends with some FBI agents, how will that affect your ability to --

PROSPECTIVE JUROR KINGSLEY: It shouldn't. I mean, the fact that they are FBI agents doesn't really affect

anything with me.

THE COURT: And you said that some other friends work for a different law enforcement agency?

PROSPECTIVE JUROR KINGSLEY: Los Angeles Sheriff.

THE COURT: Are they sheriff deputies or are they civilian employees of the sheriff?

PROSPECTIVE JUROR KINGSLEY: They are officers or deputies. One, I believe, works in Valencia at the prison up there, and the other one works in the Lennox District.

THE COURT: The one in the Lennox District, is he a uniformed officer out on the streets?

PROSPECTIVE JUROR KINGSLEY: Yes.

THE COURT: Do these friends from the sheriff's department talk to you about their jobs?

PROSPECTIVE JUROR KINGSLEY: Not normally.

THE COURT: Do you think their friendship with you would have any bearing on your ability to be fair in this case?

PROSPECTIVE JUROR KINGSLEY: It should not, no.

THE COURT: Do you know any lawyers or judges or court employees?

PROSPECTIVE JUROR KINGSLEY: Yes. I have several friends who are lawyers, one who is a public defender in Orange County, which I don't talk to regularly at all about his work, several others who are in corporate law, doing acquisitions and things like that. Again, it shouldn't influence anything here

in this case. I did know a judge who has since passed away, and he worked in Beverly Hills.

THE COURT: Okay. Have you ever been a victim of crime?

PROSPECTIVE JUROR KINGSLEY: No, I've never been a victim of crime, and I believe I could be fair to both sides. I promise to follow the law as you instruct it. And I would not have any difficulty following evidence. And there is nothing else.

THE COURT: You told me that Digital Insight is an Internet banking service provider; is that correct?

PROSPECTIVE JUROR KINGSLEY: Yes.

THE COURT: What does that mean? What kind of business is it in?

PROSPECTIVE JUROR KINGSLEY: Our company provides Internet banking software for smaller financial institutions, regional banks and credit unions. Those companies usually don't have their own Internet group that would develop a banking system for them online.

THE COURT: Is this for purposes of internal management, or is it for purposes of dealing with customers of the bank?

PROSPECTIVE JUROR KINGSLEY: Consumers for the bank. If you have an account with a credit union and you want to do transactions online with that credit union, my company would be

the company that provides that service for your financial institution.

THE COURT: Okay. What is your responsibility for Digital?

PROSPECTIVE JUROR KINGSLEY: I'm a project manager, and the department I'm in is called Interfaces. We manage the transactions between our Internet banking software and the banking systems, the financial institution banking systems. Those are usually run by a third party, not the system that actually posts the transactions.

THE COURT: Within the office where you work and among your fellow workers, do you know whether you're considered to be a "techie"?

PROSPECTIVE JUROR KINGSLEY: Yeah. Well, I'm not a programmer. I manage the programmers that do the work.

THE COURT: Thank you, Ms. Kingsley.

Now we're going to go through our remaining three jurors at this stage. No. 28 is Dawniel Hermansen. Am I correct in pronouncing your name?

PROSPECTIVE JUROR HERMANSEN: Dawniel. My name is Dawniel Hermansen. I live in Palmdale. I am currently enrolled in college to get my bachelor's in business administration. I work at Antelope Valley Hospital. I am the manager of environmental services there.

THE COURT: You are going to school part time?

PROSPECTIVE JUROR HERMANSEN: Yes. At night.

THE COURT: Your job as manager of environmental services, is that a full-time job?

PROSPECTIVE JUROR HERMANSEN: Yes.

THE COURT: Okay. And please tell me again for whom you work as an environmental manager.

PROSPECTIVE JUROR HERMANSEN: Antelope Valley Hospital.

THE COURT: Okay. Keep going.

PROSPECTIVE JUROR HERMANSEN: I'm divorced. I am currently staying with my parents. My father is a pastor and my mother owns her own commercial janitorial company. I have two children, ages four and six. I have no prior jury service. I have not been a plaintiff or a defendant in any lawsuit.

I have two uncles that are L.A. County sheriffs and my grandfather is a retired L.A. County sheriff sergeant, and I have another uncle that's an attorney in Washington, D.C.

THE COURT: Let's slow down a little bit. You have two uncles who work for the sheriff's department?

PROSPECTIVE JUROR HERMANSEN: Yes.

THE COURT: Are they deputies?

PROSPECTIVE JUROR HERMANSEN: Yes. One of them is a sergeant.

THE COURT: And do you talk to them about their work?

PROSPECTIVE JUROR HERMANSEN: No.

THE COURT: Knowing that it's their responsibility to, among other things, investigate supposed crimes, do you think that that would cause you to lean in the direction of the prosecution in this case?

PROSPECTIVE JUROR HERMANSEN: No.

THE COURT: Who besides your uncles are in law enforcement?

PROSPECTIVE JUROR HERMANSEN: My grandfather is a retired sergeant for L.A. County Sheriffs.

THE COURT: Any other law enforcement ties that you have?

PROSPECTIVE JUROR HERMANSEN: No.

THE COURT: How about ties to people who work in the legal system?

PROSPECTIVE JUROR HERMANSEN: I have an uncle that's an attorney in Washington, D.C.

THE COURT: What kind of work does that uncle do?

PROSPECTIVE JUROR HERMANSEN: I don't know. I don't talk to him.

THE COURT: Okay. Could you answer No. 10, please.

PROSPECTIVE JUROR HERMANSEN: Neither myself nor anyone I know has been a victim of a crime.

THE COURT: I don't remember if you answered No. 8. Perhaps you did. Have you ever sued someone?

PROSPECTIVE JUROR HERMANSEN: No.

THE COURT: Did anyone ever sue you?

PROSPECTIVE JUROR HERMANSEN: No.

THE COURT: Okay.

PROSPECTIVE JUROR HERMANSEN: Yes to 11(a) through (c). And I don't think there is anything else that you need to know.

THE COURT: You said, "Yes to 11(a) through (c)." Would you have difficulty in following evidence?

PROSPECTIVE JUROR HERMANSEN: No. Oh, sorry.

THE COURT: No problem. This is all new to all of you. Sometimes it's a little confusing or intimidating.

Let's move on to Chiquita Taborn.

PROSPECTIVE JUROR TABORN: My name is Chiquita Taborn. I live in Van Nuys. I have a master's degree in business administration. I work for the Queensland Government Trade and Investment Office.

THE COURT: Which government office?

PROSPECTIVE JUROR TABORN: Queensland, Australia.

THE COURT: Okay. I need the full name again. The Queensland Government Trading Office?

PROSPECTIVE JUROR TABORN: Trade and Investment Office.

THE COURT: What kind of work do you do for them?

PROSPECTIVE JUROR TABORN: Office manager.

Single. I share an apartment with my aunt who

currently works as a musical director for a dance company. No children. No prior jury service. I have prior experience as a plaintiff in a public -- excuse me, in a personal injury lawsuit in New York, which was about 19 years ago, so it doesn't have a big effect. No ties to law enforcement officers or anyone in the legal system.

I know quite a few people who have been crime victims. I myself have been the victim of identity theft and robbery, but none of it really has an effect on this case.

THE COURT: I need to ask you some questions about the identity theft incident. Can you tell me a little bit about what happened to you?

PROSPECTIVE JUROR TABORN: On several occasions, money has been taken out of my bank account.

THE COURT: Electronically?

PROSPECTIVE JUROR TABORN: Electronically, yes.

THE COURT: And what did you do when that happened?

PROSPECTIVE JUROR TABORN: Contacted the bank and they handled it, investigated it. I'm not sure if they caught anybody or not.

THE COURT: Did you report those removals of money to any law enforcement agency?

PROSPECTIVE JUROR TABORN: No. Actually, the bank did. It was something they instructed me to just -- I filled out whatever paperwork I needed to for them and they handled

it.

THE COURT: Okay. Did you learn anything about how these removals of money had been accomplished, what the individual or persons had done to get your money out of your accounts?

PROSPECTIVE JUROR TABORN: No, I didn't.

THE COURT: Did any representative of any law enforcement agency interview you about anything relating to those removals of money?

PROSPECTIVE JUROR TABORN: No.

THE COURT: Okay. Please continue.

PROSPECTIVE JUROR TABORN: Yes, I can be completely fair to both sides, I have no doubts. I do promise to follow the law as you instruct. And I have no difficulty in following evidence. And there is nothing else I think you should know.

THE COURT: All right. Thank you.

Mr. Kent.

PROSPECTIVE JUROR KENT: My name is Davis Kent. I live in Long Beach.

THE COURT: Do you use your middle name?

PROSPECTIVE JUROR KENT: I use my middle name.

I have a Ph.D. in electrical engineering. I work for TelASIC Communications as a systems engineer. I am single. I live alone. I have no children. I have no prior jury service. I have never been a plaintiff or a defendant in a lawsuit.

The only lawyer I know is a coworker who just got his law degree to practice animal rights law, and he's studying for the patent bar.

THE COURT: That's a wonderful combination.

PROSPECTIVE JUROR KENT: He has a Ph.D. in electrical engineering, and that, with the patent law...

THE COURT: He's going to be an animal rights lawyer?

PROSPECTIVE JUROR KENT: That, too.

THE COURT: Okay. If a chicken lays a patentable egg, he's going to patent it. Okay.

PROSPECTIVE JUROR KENT: Criminal cases, let's see. Someone charged several hundred dollars on a credit card. The insurance company found it and removed the charges. And in about 1997 or 1998, four teenagers broke into my car, along with 30-some others, stealing hood ornaments and taillights and such. And I was awakened in the morning at 4:00 a.m. by the police having them pin downed on the street with a gun, and they found the fourth guy hiding on a roof.

THE COURT: Which police department got involved in that?

PROSPECTIVE JUROR KENT: Long Beach.

THE COURT: Did you tell me that you live in Long Beach?

PROSPECTIVE JUROR KENT: Yes, sir.

I was called down, I guess, to testify in the case,

and one of the lawyers never showed and they sent me home. And I never heard anything more about it.

THE COURT: That's not the way it should have been treated. Somebody should have let you know something.

As a result of that experience, did you acquire or currently have any views about the justice system?

PROSPECTIVE JUROR KENT: No. No. I've just -- I've been impressed by the Long Beach Police Department. They are very responsive.

THE COURT: Okay.

PROSPECTIVE JUROR KENT: I can be completely fair to both sides without any doubts. I promise to follow the law as you instruct. I will not have difficulty in following evidence. And there is nothing more the Court should know.

THE COURT: Okay. Now, I'm going to call you Dr. Kent if that's acceptable to you.

PROSPECTIVE JUROR KENT: That's fine.

THE COURT: Tell me the name of the company for whom you work.

PROSPECTIVE JUROR KENT: It's TelASIC Communications.

THE COURT: Spell that, please.

PROSPECTIVE JUROR KENT: T-e-l-a-s-i-c Communications.

THE COURT: Now, you said that you are a systems engineer. Could you, in plain language, tell us what you do?

PROSPECTIVE JUROR KENT: I design, at a high level, circuits and systems for -- from integrated circuits to larger prototype systems for the communications industry -- for products to support the communications industry.

THE COURT: A lot of that must involve computer work?

PROSPECTIVE JUROR KENT: A lot.

THE COURT: Do you program computers?

PROSPECTIVE JUROR KENT: Yes, sir.

THE COURT: Have you ever built a computer?

PROSPECTIVE JUROR KENT: Yes, sir.

THE COURT: For personal use?

PROSPECTIVE JUROR KENT: Building computers for personal use, designing and analyzing systems for professional use.

THE COURT: Have you ever built a website?

PROSPECTIVE JUROR KENT: Yes, sir.

THE COURT: For personal use?

PROSPECTIVE JUROR KENT: For personal use.

THE COURT: Okay. Did you already answer questions 11(a) through (d)?

PROSPECTIVE JUROR KENT: Yes, sir. I can be completely fair. I'll promise to follow the law as you instruct. I will not have difficulty in following evidence. And there is nothing else the Court should know.

THE COURT: Okay. Now, for those of you, the 30

people, who have already provided answers to questions that I asked you directly and individually, I now am about to ask questions to the group of you as a whole. And only if you actually have information that responds to the question I'm asking to you as a whole, as a group, should you raise your hand.

If you do raise your hand, then I'll give you an opportunity to respond to the question. In other words, I'm not going to be repeating the questions I'm about to turn to 30 times separately. I'm just going to ask the question. If you have an answer to the question, please raise your hand. And then I'll identify who you are and we'll proceed accordingly.

The first question I want to ask -- and I've already asked it to two people this afternoon -- have any of you ever built a computer? If you already answered the question, as Dr. Kent did, you don't have to answer it again.

Okay. Let's start with juror No. 1. Give him the microphone. That's Mr. Alviso.

PROSPECTIVE JUROR ALVISO: Yes.

THE COURT: Under what circumstances did you build a computer?

PROSPECTIVE JUROR ALVISO: For personal home use.

THE COURT: Did you ever build a website?

PROSPECTIVE JUROR ALVISO: No.

THE COURT: Are you still using that computer?

PROSPECTIVE JUROR ALVISO: Yes.

THE COURT: Anybody else in the back row who has built her or his own computer?

Yes. It's Mr. Fandino.

PROSPECTIVE JUROR FANDINO: Yes, I have, Your Honor, for my personal use.

THE COURT: Did you ever build a website?

PROSPECTIVE JUROR FANDINO: Yes, sir, I have.

THE COURT: Okay. Are you currently using those?

PROSPECTIVE JUROR FANDINO: Yes, sir.

THE COURT: Anyone else in the back row built a computer or a website?

How about people in the front row -- if you did, just raise your hand -- the front row of the jury box itself?

How about people who are good enough to be seated at the chairs in front of the jury box; did any of you ever build a computer or a website?

Okay. And those of you in the front row near the door, did any of you ever build a computer?

Okay. That would be Mr. Cleek; right?

PROSPECTIVE JUROR CLEEK: Yes.

THE COURT: What did you do? You built your own computer?

PROSPECTIVE JUROR CLEEK: Yes.

THE COURT: Did you ever build a website?

PROSPECTIVE JUROR CLEEK: No, I didn't.

THE COURT: Anybody else in that front row?

Okay. And in the center row, the last three jurors I spoke to. We already got the information from Dr. Kent. Either of you ever built your own computer or website?

Each of those two individuals are shaking their head "no."

Here are the next questions I want to ask of the group as a whole. I've already just asked some of you -- all of you, really, whether you built computers or websites. Now tell me if you have any advanced or specialized training or background beyond what it took to just learn how to be proficient at using the computer or accessing the Internet or sending and receiving e-mails.

Apart from that, do any of you have any additional training or skill or expertise in computer technology, electronic technology, or computer usage? If so, please raise your hand.

If you have already, by virtue of your prior answers, given us that kind of information, as Dr. Kent did, you don't have to raise your hand again.

Do any of you have additional information about real sophisticated insight into computer technology and computers, electronic evidence, that you haven't yet told us about?

Okay. Do any of you contribute to or advocate the

views of any organization which advocates the right to privacy?

There are a number of different groups, and they all perform a valid and sometimes very important function in society. Some of those groups believe that the information that people have about themselves should be protected and kept private at all cost.

Do any of you advocate or belong to any group that expresses that position?

Yes. Okay. We're now -- can you tell us your name, sir?

PROSPECTIVE JUROR ELLIS: Brian Ellis.

THE COURT: Yes, Mr. Ellis. You are juror No. 9.

PROSPECTIVE JUROR ELLIS: As I said before, I work on national security for -- where I work at.

THE COURT: What is it about that job that you need to explain in response to the last question?

PROSPECTIVE JUROR ELLIS: Well, I do look up some people on the computer, find out what their background is.

THE COURT: You do background checks?

PROSPECTIVE JUROR ELLIS: Correct.

THE COURT: And how do you go about doing that?

PROSPECTIVE JUROR ELLIS: I log onto the computer and find out their name and socials and then find out what they -- what they have as far as special access clearances.

THE COURT: When you, sir, talk about "socials," you

are talking about social security numbers?

PROSPECTIVE JUROR ELLIS: Yes.

THE COURT: As a result of the -- do you work for a governmental entity? Is that research corporation you told us about part of the government?

PROSPECTIVE JUROR ELLIS: Yes.

THE COURT: It has the information that you need to check out their backgrounds as prospective employees?

PROSPECTIVE JUROR ELLIS: Well, for special accesses that they hold.

THE COURT: For clearances and various rights?

PROSPECTIVE JUROR ELLIS: Correct.

THE COURT: Okay. Anybody else besides Mr. Ellis? Yes, Ms. May. That would be juror No. 22, I believe.

PROSPECTIVE JUROR MAY: Yes, sir. I work for Verizon Communications as a telephone directory operator, and we are required to restrain from giving information about customers that have requested that information from being -- they have requested the information to be withheld or not to be given. So when we're talking to individuals on the telephone, if they would like additional information about a person, we are not allowed to give it if we do have that information available.

THE COURT: You follow that practice as part of your job?

PROSPECTIVE JUROR MAY: Yes, I do.

THE COURT: Do you have any strong views one way or the other as to whether that is a good practice to follow?

PROSPECTIVE JUROR MAY: I have a strong view that that is a good practice to follow. That's what I'm required to do.

THE COURT: Okay. Thank you.

Anybody else have a response to that last question I asked about, contributing to or advocating the views of an organization that advocates free speech?

Let me explain that, because that could take on lots of different dimensions. Do any of you belong to an organization or advocate the views of an organization that think that any effort by any governmental agency to interfere with the rights of a citizen to say or do anything he wants and to put it on the Internet should be disallowed, that the government should have no business interfering in any way whatsoever with somebody's putting a message out there before the public, especially on the Internet?

Do any of you belong to or advocate the views of any organization that expresses that as their position?

Mr. Ellis.

PROSPECTIVE JUROR ELLIS: I sometimes know information before the public -- it's released to the public.

THE COURT: But you don't -- do you believe that the kind of work you do in your firm should not be allowed?

PROSPECTIVE JUROR ELLIS: To release it?

THE COURT: No. Do you believe that there should be any limitations that a governmental agency might impose on the rights of or the opportunities -- I won't say that they are rights -- on the opportunities of someone to put information out there on the Internet?

PROSPECTIVE JUROR ELLIS: No.

THE COURT: Anybody else have an answer to the last question?

Ms. May.

PROSPECTIVE JUROR MAY: I'm a vice president and past president of the Long Beach Chapter of the United Nations Association. And I'm not too sure I thoroughly understand your question. However, I do believe in the freedom of speech and the freedom of press. And I believe that any information that is negative or derogatory toward the government should be known to individuals or should be made available to people.

So if I'm understanding you correctly, then I believe we should not be restricted from saying or offering any information that we feel is true.

THE COURT: Okay. I didn't make myself clear. I'm glad that you invited me to clarify it.

What I'm trying to find out is whether there is any prospective juror who thinks that anything goes or should be allowed to go, that anybody should be allowed to put any kind

of information about any person or any event or anything else without having any interference or regulation provided by any governmental agency. That's not necessarily an issue about criticizing the government.

Does anybody have that view that I just expressed, that there should be no limitations and no authority given to any governmental agency to regulate what a person can put out there on the Internet?

If so, please raise your hand.

PROSPECTIVE JUROR MAY: I'm still not sure I understand. But, no, I don't believe that we should be restricted from allowing access to information that is made available publicly.

THE COURT: What about -- I didn't say public information. I said any information. Suppose somebody wanted to put down information about the addresses and social security numbers and employment information of the children of the prospective jurors sitting next to you and they hadn't been given authorization to, would you think that that presents an issue of free speech?

PROSPECTIVE JUROR MAY: No, I do not.

THE COURT: Okay. Any other answers to the questions I just posed?

Okay. Now, there is going to be testimony in this case about a company called Global Crossing. Global Crossing,

I'm not sure what its current status is. But in some measure, it was involved in some aspect of the telecommunications industry; is that correct, Mr. Sutcliffe and Ms. Duarte?

MS. DUARTE: Yes, Your Honor. It was a telecommunications company.

MR. SUTCLIFFE: That's correct, Your Honor.

THE COURT: Have any of you ever had any experience of any type in dealing with Global Crossing, as a customer, as a vendor selling a product to them, as an employee, as a neighbor, anything at all to do with a company called Global Crossing?

If so, please raise your hand.

Now I'm asking an entirely different question. Have any of you ever had a dispute with an employer, a company or an individual who employed you as its employee or her employee, have any of you ever had such a dispute with somebody employing you which resulted in a lawsuit or a claim that was made against the employer?

If so, please raise your hand.

Have any of you ever been an employer of somebody else, an employee of yours, who raised a claim involving your employment practices or filed a lawsuit having to do with that employment relationship? In other words, did any employee of yours make a claim or a complaint about employment practices that the employee was saying you were responsible for?

If so, please raise your hand.

Yes, Dr. Kent

PROSPECTIVE JUROR KENT: My church had a workers' compensation claim brought against it by an employee that was settled by the insurance company. That was not an officer of the church.

THE COURT: That had to do with an injury -- a work-related injury?

PROSPECTIVE JUROR KENT: A harassment suit.

THE COURT: And it went to workers' compensation?

PROSPECTIVE JUROR KENT: Yes.

THE COURT: Okay. Were you personally involved in it?

PROSPECTIVE JUROR KENT: No.

THE COURT: Did any of you ever have a claim made about employment practices or conduct that you engaged in that somebody else was claiming violated his rights or her rights?

Did any of you ever make a claim against an employee where you said that the employee violated his duties or her duties and may have violated the law in connection with that employee's work?

If so, please raise your hand.

We've heard some information from Mr. Ellis. But apart from what we've already heard and what any of you may have already disclosed, have any of you ever worked for or in a

company or for a firm or government agency that's involved in some way or another in the field of security -- securing information, securing premises, securing individuals from bodily harm -- any kind of security at all that you personally became responsible for as part of your job?

If you haven't told us about it and the answer would be "yes," please raise your hand.

I mentioned this company -- oh, yes.

PROSPECTIVE JUROR KINGSLEY: I'm not sure if this applies.

THE COURT: We need your name.

PROSPECTIVE JUROR KINGSLEY: Johanna Kingsley.

THE COURT: Okay.

PROSPECTIVE JUROR KINGSLEY: Two jobs ago I worked for another Internet company, and my group was responsible for securing human resources data. I don't know if that applies to your question or not.

THE COURT: Were you personally involved in the securing of that data?

PROSPECTIVE JUROR KINGSLEY: No, I -- well, no. Not --

THE COURT: By referring to "human resources data," you mean dates of birth, social security number?

PROSPECTIVE JUROR KINGSLEY: Salary information.

THE COURT: And the company that you worked for two

companies ago had, as part of its operations, the providing of services to make sure that that information was kept secure?

PROSPECTIVE JUROR KINGSLEY: Well, actually, no. Our business was completely -- it was a different business, but my job within that company was related to human resources data. I don't know if it applies.

THE COURT: Now, I asked you before whether any of you had ties with Global Crossing. I should also ask you whether any of you have close friends or members of your immediate family who have ties with Global Crossing, either as an employee, maybe as a stockholder, maybe as an officer, any ties at all that you know of that people close to you might have had with a company called Global Crossing?

Dr. Kent.

PROSPECTIVE JUROR KENT: I can't be certain, but I seem to recall my uncle was an investor in Global Crossing back -- three years ago or so.

THE COURT: But you are not even sure?

PROSPECTIVE JUROR KENT: I'm not sure, but I'm pretty sure.

THE COURT: Has he talked to you at all about anything having to do with that investment?

PROSPECTIVE JUROR KENT: No, sir. We talk often about investment opportunities, and that is one -- I'm pretty sure we talked about it, but I decided not to invest in it

myself.

THE COURT: Any other people have a response to that last question?

Okay. Here's what we are going to do now, ladies and gentlemen. I'm going to excuse you. I'm going to explore with the parties to this case possible additional questions and other aspects of reaching the final stage of jury selection.

We're going to pick the jury today, I promise you that, and we will. But there are certain things that would be done most efficiently without having to subject you to remaining present.

So you are excused for at least 15 minutes. You don't have to come back for 15 minutes. And even if you do come back 15 minutes from now, I can't be sure that we'll be ready to bring you back in, but I think we will. I'll try to make sure we are.

In any event, please wait outside if you come back. Don't talk about the case. When you do come back, return to where you are currently sitting. For the time being, you are excused.

THE CLERK: All rise, please.

(Prospective jurors left the courtroom.)

THE COURT: Everyone else may be seated.

Ms. Duarte, are there any critical questions that you think any of these 30 jurors needs to be asked that hasn't yet

been asked?

MS. DUARTE: No, Your Honor.

THE COURT: Are there any jurors of these remaining 30 for whom you seek to -- for whom you intend to make a motion to excuse that juror for cause?

MS. DUARTE: No, not for cause, Your Honor.

THE COURT: Mr. Sutcliffe, are there any additional questions that you think are critical that need to be asked to any of these remaining 30 jurors?

MR. SUTCLIFFE: Yes, Your Honor, there is.

I have seven additional questions I would like the Court to ask because I'm being refused the right to ask them. I would also like the record to reflect that I object to the judge's -- the form of the judge's question to -- I believe it was Juror Ms. May.

The form of the question that asked: Does anybody think that everybody should be able to post the information -- or the personal information of the address of the child of the juror next to you? I want the record to reflect that the judge is aware that one of the victims in here has alleged that a picture of her child and her are on the website. There is an inference of a direct threat from that. And the judge knows that that picture is going to come out and that the witness has testified -- because she finds that her address is posted and connected to that picture or below that picture or somewhere

connected to that, the inference is that this entire jury pool was just tainted by your question, Your Honor. I would move that this entire pool be stricken based on the form of that question that you just posed.

THE COURT: Okay. That motion is denied.

MR. SUTCLIFFE: Thank you, Your Honor.

As to my other seven questions, I would like the Court to inquire as to, knowing now that the burden of proof is for the prosecution to establish, would you require the defendant at any time to satisfy you as to his innocence?

The second question is, do you understand and accept the principle that the defendant in a criminal case is not required to explain his or her side of the case since the burden of proof does, in fact, rest with the prosecution?

The third question, if the defendant chose to exercise his constitutional rights --

THE COURT: I think, in fairness to you, I should rule on these questions when you read them so I have them in mind.

MR. SUTCLIFFE: I was just going to lay them out.

THE COURT: Let's do them one by one.

The first request about asking them whether, in light of the burden of proof, they have any expectation that you have to -- what was the precise question?

MR. SUTCLIFFE: The precise question is, knowing now

that the burden of proof is for the prosecution to establish, would you require the accused at any time to satisfy you as to his innocence?

THE COURT: Okay. That's already been covered in the first phase, so I decline to give that question.

MR. SUTCLIFFE: It's a two-part question.

THE COURT: But I've ruled on it, Mr. Sutcliffe.

MR. SUTCLIFFE: Okay.

THE COURT: You should know this. In case it's not clear, the jury will be reminded more than once and in writing as well about the burden of proof and the presumption of innocence and the right of any accused to benefit from that presumption and the right of that accused not to have to introduce any evidence to establish his own innocence, not to have to explain anything. So I decline to give the second additional -- or ask the second additional question you had already mentioned a couple of minutes ago.

But now I would appreciate you going to the third one.

MR. SUTCLIFFE: The third one is directly tied to the second one, so I'll just skip that one and move to the fourth one.

The fourth question would be, if, after you hear all of the evidence and you thought the defendant was probably guilty, but you weren't convinced and you thought the evidence

showed he was probably guilty, would you nonetheless be able to return a verdict of not guilty?

THE COURT: Okay. That is a question that essentially gets to the standard of proof that the government is required to satisfy here, which is proof beyond a reasonable doubt.

The jury will be told, in very plain language, that this is not a case where probable guilt is sufficient. This is not a case where you put the thumb on the scales and if it tilts slightly in one direction, you vote in that fashion. The jury is going to understand that. It's not necessary to explore that further.

I've already told them, at the very beginning of the proceedings this morning, long ago, about the presumption of innocence and the burden of proof and what the standard is, so I decline to give that one.

MR. SUTCLIFFE: Just so the record is clear, I would object to you declining these questions because I think it goes to show bias and to rule that bias out being provided by that.

The next question would be, do you realize that you are the sole and exclusive judge of the facts, and that you are to judge the case solely on the evidence before you and not allow the fear of later criticism to affect your verdict?

THE COURT: I decline to give that as well. That's something that will be adequately addressed in the jury

instructions. They will be told the gist of all of that. And I think they have been sufficiently questioned about whether they will apply the applicable standards and whether they will evaluate the evidence in fairness to both sides, so I think that would be redundant.

MR. SUTCLIFFE: Thank you, Your Honor.

The next question would be, would you -- excuse me. Would any of you change your verdict if a majority of the other jurors believed that a person was guilty and you were in the minority?

THE COURT: Okay. I told the jurors, at the beginning, that they would all have to agree on the verdict, and it would have to be unanimous. I will tell them again, during instructions, those who wind up serving on the jury, that the instruction has to be unanimous.

They will be given instructions as to what the rights are of each juror and to independently evaluate the evidence and to vote on the basis of that juror's view, regardless of the views of the other jurors.

All of them have agreed, and when they take the oath again, if they are sworn, will agree to follow the law. So I think that that, too, has been covered and is unnecessary and would be redundant.

MR. SUTCLIFFE: I would just like the record to reflect, Your Honor, who, I'm sure, is very aware, that many

times people say they can be unbiased and they can be unprejudiced, but until you actually put the question to them, as has been evident throughout the Court's questioning -- you rooted out some very good prejudices and some very good biases which were not readily apparent -- we really don't know until the question is posed, and I would ask the Court just to reconsider that.

THE COURT: I have thought about it, and I must salute you for acting very professionally in proposing these questions and responding to my rulings, but I'm not going to change my mind on that one.

MR. SUTCLIFFE: I'm sure you are not.

Thank you, Your Honor.

THE COURT: Last question, go ahead.

MR. SUTCLIFFE: It's similar to the last one, but I'm going to pose it to you anyway. Would the fact that you were in the minority influence your vote at all?

THE COURT: My ruling on that request is the same is on No. 6 as well.

Now, Mr. Sutcliffe, are there -- among the 30 people that we're about to begin the process of excusing, each of you with your respective amount of rights, are there any that you think, based upon the -- not the evidence, the answers that have been given, the information that's been disclosed so far, are subject to being excused for cause, other than the ones you

spoke to me about this morning? Those were 1, 3, and 13.

MR. SUTCLIFFE: No, Your Honor.

THE COURT: Okay. So I think what we should do now, because of the special circumstances of this case, as I already reviewed with both sides last week, the process of exercising peremptories will take place here, now. Neither side has to go to the lectern.

The way it works is that the government goes first and then the defendant has two. Then the government goes again, and the defendant again has two. Altogether, of these 30 prospective jurors, the defendant has the right, for any reason he wishes, so long as it's not a constitutional violation, to excuse a total of ten, not including alternates. So you'd have really 11. There will be two alternates. The government has six, and also one strike for an alternate.

So the way I think we need to do this, do either one of you want me to repeat the names of the jurors by number? Will that help you?

MS. DUARTE: I think we are okay on them, Your Honor.

THE COURT: And you are too, Mr. Sutcliffe?

MR. SUTCLIFFE: Yes. Can you just clarify the last thing you said? I get ten strikes?

THE COURT: No. They go first. One, then you get two.

MR. SUTCLIFFE: And then you said something at the

end about two alternates or two strikes, so a total of 12?

THE COURT: No. You get 11. There are two alternates that are serving. Each of you will have a chance to excuse one.

MS. DUARTE: Your Honor, Mr. Sutcliffe may not realize that it's actually laid out at the bottom of his jury seating chart.

THE COURT: Well, thank you for noting that.

MR. SUTCLIFFE: Thank you.

THE COURT: So what we're going to do is start with the government. Please give us the name and the number. And let me get my own working materials together here.

Are there any jurors you wish to excuse --

MS. DUARTE: Yes, Your Honor.

THE COURT: -- Ms. Duarte?

MS. DUARTE: The government exercises its first challenge against juror No. 9, Brian Ellis.

THE COURT: Okay. Mr. Ellis will be informed that he's been excused.

And now you have two.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: You can sit, if you want. I don't mind.

MR. SUTCLIFFE: Thank you, Your Honor.

The defendant will exercise against juror No. 28, Ms. Kingsley.

THE COURT: I think Ms. Kingsley is No. 27. Is it Johanna Kingsley that you want to be excused?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: Okay. She will be excused. And you have another turn, if you'd like.

By the way, I should tell you something, both of you. I forgot to say this the other day. It's not too late. The same principle applies to each of you. If it's your turn and you say to me that you accept the panel as constituted -- that's the usual language; it means you don't want to excuse anybody else -- what will happen, at that point, if the other side says the same thing, the first 12 jurors will be the jury, meaning not necessarily the first 12 whose names have been called, but the ones who were left after other people have been excused in this process, according to the number and sequence in which they were called.

If you say to me, "I accept the panel as constituted," and then the other side has a turn and exercises a challenge, then I'll give you a turn again. But you will have been deemed to have used up one of those strikes.

If you have any strike left, you can strike another person. But if you say you accept the panel as constituted on your fourth turn, then you've used up your fourth.

If you change your mind after the other side has excused a juror, you can go back and you can excuse anybody you

want, but you'll have used up that fourth turn.

Do you understand that, Ms. Duarte?

MS. DUARTE: Understood.

THE COURT: Do you understand that, Mr. Sutcliffe?

MR. SUTCLIFFE: Understood, Your Honor.

THE COURT: I think we are up to Mr. Sutcliffe's second turn.

MR. SUTCLIFFE: Thank you, Your Honor.

Second challenge will be Mr. Levine, juror No. 13.

THE COURT: Mr. Levine will be stricken.

Back to you. Now, hold on just a second, Ms. Duarte.

Okay. Your turn, Ms. Duarte.

MS. DUARTE: Yes, Your Honor.

The government exercises its second challenge against juror No. 14, Fayrouz Malki.

THE COURT: Okay. She will be excused.

Now, your first one was No. 9; right?

MS. DUARTE: Correct, Your Honor.

THE COURT: Okay. And Mr. Sutcliffe, your first one was No. 28?

MR. SUTCLIFFE: Correct.

THE COURT: And your second one was number --

MR. SUTCLIFFE: 27.

THE COURT: Kingsley, it was. I'm sorry. 27. Okay.

Your first one was No. 27, Kingsley. And your second

one was No. 13, Levine.

Now you have two more.

MR. SUTCLIFFE: Thank you, Your Honor.

Defendant moves to strike juror No. 3, Mr. Fandino and Mr. Alviso.

THE COURT: He's No. 1?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: So Mr. Sutcliffe has exercised his third and his fourth.

Your turn, Ms. Duarte.

MS. DUARTE: Your Honor, the government strikes for its third strike Marta Knittel, No. 17.

THE COURT: Marta Knittel, No. 17, will be stricken.

Back to you, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

Juror No. 5, Zakaryan.

THE COURT: Carmen Zakaryan, you want to strike her?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: That will be done.

MR. SUTCLIFFE: And juror No. 4, Ms. Thompson.

THE COURT: Okay. That will be done. Ms. Thompson will be your sixth and Zakaryan will be your fifth.

Now we are back to the government for its fourth.

MS. DUARTE: Your Honor, the government strikes No. 22, Mary Ann May.

THE COURT: Okay. Mary Ann May, No. 22, will be stricken.

Just hold on before you go, Mr. Sutcliffe. You can think about it. If you need some time, you tell me. If you are ready, then you can go with your number seven.

MR. SUTCLIFFE: I would like just a minute here, Your Honor. Thank you.

The defense moves to strike juror No. 12. I believe it's Mr. Foster.

THE COURT: Mr. Foster, okay.

MR. SUTCLIFFE: Yes.

Have I striked juror 15, Mr. Farone?

THE COURT: No, Farone has not been stricken.

MR. SUTCLIFFE: Mr. Farone, No. 15.

THE COURT: You want to strike Mr. Farone?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: He'll be your eighth strike.

MS. DUARTE: I'm sorry, Your Honor. What was his seventh strike?

THE COURT: Juror No. 12, Mr. Foster.

Am I correct, Mr. Sutcliffe?

MR. SUTCLIFFE: You are correct, Your Honor.

THE COURT: We're up to the government's fifth.

MS. DUARTE: Could I have just a moment, Your Honor?

THE COURT: You may.

MS. DUARTE: Your Honor, the government strikes No. 14 -- I'm sorry --

THE COURT: She's been stricken.

MS. DUARTE: -- No. 16. I was reading the wrong number. Mr. Dewitt Ross.

THE COURT: That's the government's fifth.

Back to you, Mr. Sutcliffe. You have two more.

MR. SUTCLIFFE: If I could have one moment, Your Honor.

The defense will strike juror No. 10, Mr. Brown.

THE COURT: That's Mr. Brown; right?

MR. SUTCLIFFE: That's correct, Your Honor.

THE COURT: Is there somebody else you want to strike?

MR. SUTCLIFFE: Yes, Your Honor.

Defense will strike juror No. 29, Chiquita Taborn.

THE COURT: The government has its last remaining peremptory before we discuss alternates.

MS. DUARTE: Your Honor, the government strikes No. 20, Carol Zetina.

THE COURT: Okay, Carol Zetina.

Now, here's what I want to do. First of all, I think it would be fair to both sides to consider the remaining 14 people as having equal stature so that any one of them, if you wanted to excuse somebody further, you may do so. They are all

subject to being struck. There should be, I think, 16 people left. We are going to go with a jury of 12, plus two alternates. That means each of you has the right to excuse one remaining juror, and you can excuse any juror from the panel. It doesn't have to be the ones who were called at the end of the process with the highest numbers.

Do you understand that, Ms. Duarte.

MS. DUARTE: I do, Your Honor.

THE COURT: Do you understand that, Mr. Sutcliffe?

MR. SUTCLIFFE: I do, Your Honor.

THE COURT: Now, just to make sure everybody is absolutely clear about who is left, I'm going to read the jurors that I think are still left in the order in which they were called or given seat numbers.

Juror -- the person in seat No. 2, Ms. Wanner, is still left. The juror in what was seat No. 6, Ms. Vargas, is still left. In No. 7, Ms. Gonzalez is still left. And No. 8, Mr. Ramirez is still left. In No. 11, Ms. Gilmore is still left. In No. 18, Mr. Dayoan is still left. No. 19, Ms. Medina is still left. In No. 21, Ms. Triska is still left. In No. 23, Mr. Cleek is left. In No. 24, Ms. Lewis-Fine is left. In No. 25, Mr. Vinas is left. In No. 26, Miller Lee is left.

When I say "left," I mean still remaining. I think you knew that.

In No. 28, Ms. Dawniel Hermansen is still left. In

No. 30, Dr. Kent is still left.

Does that amount to 16 people?

MS. DUARTE: I believe it does, Your Honor. Let me just count very quickly. I was circling them, but I wasn't counting them. Did you say 14 or 16?

THE COURT: It should be 16. Then we'll be down to 14 after two are left.

MS. DUARTE: Let me count one more time here.

THE COURT: No, it's 14. You are right.

MS. DUARTE: It's 14, Your Honor.

THE COURT: I made a whole miscalculation. I should have questioned 32 people. It may prove to be moot. But I do want two alternate jurors and we're down to 14. I made a total miscalculation.

We are going to have to go through this process with two more jurors unless you agree to use this panel as constituted, and if that's the case, then the jurors would be -- the alternate jurors, who may never have basis to actually vote, would be Dr. kent and Ms. Hermansen, No. 30 and No. 28.

Is that acceptable to you?

MS. DUARTE: If I could have just a moment, Your Honor.

THE COURT: Yes.

MS. DUARTE: I'm sorry, Your Honor. We did have a

strike planned. Your Honor, may I ask a question?

THE COURT: Yes.

MS. DUARTE: If we waive our strike at this time and Mr. Sutcliffe chooses to exercise his which results in our needing to voir dire two more jurors, do we lose our number?

THE COURT: No. You could excuse one of those two additional jurors I would have to voir dire.

MS. DUARTE: Okay. We'll waive our strike, then.

THE COURT: You'll have a chance to object to the two additional ones if I have to go through this whole process with them.

MS. DUARTE: Or strike one remaining from the panel?

THE COURT: Well, I may -- let's hear from Mr. Sutcliffe, and I'll tell you how I think would be a fair and efficient way to proceed.

Are those two people acceptable to you as alternate jurors?

MR. SUTCLIFFE: I would like to first hear the fair and acceptable way of proceeding how we are going to do this because this is a strategic move, and I don't want to commit to --

THE COURT: I would probably, in fairness to the jurors -- I don't want them to cool their heels indefinitely -- I would call in the jurors, tell those who have been excused to report back to the jury room, and tell the first 12, meaning

everybody except Kent and Hermansen, that they will be the jury. And that in order to pick alternates, I have to question either one or two more people. So that's the way I would do it so we know who the jurors are at that point. That's a little different than what you are talking about.

MS. DUARTE: It is, Your Honor.

Either way right now we wouldn't be able to strike from within the first 12, you are saying?

THE COURT: No. I said you could. I said you could look at the jury as a whole. If you didn't -- if both sides said that the jury is acceptable with Kent and Hermansen functioning as alternates, then we would just take the lowest numbers, which would mean the jurors other than Kent and Hermansen, and put them in as regular jurors.

If you want to exercise your peremptory now against any of these remaining 14, then you'll lose it thereafter, your peremptory, as to alternates.

If you don't want to exercise that, I'll let you do it if we have to impanel new jurors.

MS. DUARTE: We will not exercise it at this time.

THE COURT: Mr. Sutcliffe, are these two acceptable to you as alternates, Hermansen and Kent?

MR. SUTCLIFFE: Yes, they are, Your Honor.

THE COURT: Okay. What I'm going to do, then, is bring the jurors back, explain to them who is a juror and who

isn't and who are the two alternates. I'll start out by excusing those who have been excused. We'll swear in the 12 jurors and the two alternates. I'll excuse those people for the day.

Then we'll take a break, in fairness to the court reporter, and I'll excuse you, the representative of the government and the FBI agent, because I want to discuss, outside of your presence, this issue of subpoenas.

I have to make certain findings. And if we have time, I'll do that today. I have another matter at 4:30. I'm not sure what's going to happen. The reporter deserves a break.

We now have a jury. We have the 12 jurors and the two alternates.

Mr. Sutcliffe.

MR. SUTCLIFFE: Yes, Your Honor.

May I ask, just so I can clarify this so I'm understanding this correctly, although I just committed to agreeing that they could be alternatives (sic), does that mean that I'm precluded now from using one of my last strikes that I have for an alternative (sic) juror?

THE COURT: Yes. There won't be any more -- they are called alternates. Those two will be the alternates. If somebody who starts out serving on the jury as a regular juror get sicks, God forbid, or something like that, the first person

to squeeze into that person's role to become a regular juror would be Hermansen. And the next person, if it happened a second time, would be Kent. There won't be any more peremptories.

MR. SUTCLIFFE: So these two strikes that -- where it says alternate jurors 1 and 1 at the bottom of the sheet I'm looking at, one of those strikes that is available to the defense is for any of these --

THE COURT: No.

MR. SUTCLIFFE: Just for those last two?

THE COURT: Yes.

MR. SUTCLIFFE: Okay. Then I will exercise my strike on alternate -- Mr. Kent, juror No. 30.

THE COURT: What I'm going to do is call in the jurors -- this is a little bit different than what I indicated, but this is the best way to do it -- announce those who are the regular jury, question one more juror; and you'll have a right -- no, I have to question two more in order to make sure we have two. I'll have to question two more jurors as possible alternates.

Do you understand that?

MS. DUARTE: I do. So the government would have one additional strike?

THE COURT: Yes, but only one.

MS. DUARTE: Understood.

THE COURT: You'll have used your strike. Is that what you want?

MR. SUTCLIFFE: Just so I understand --

THE COURT: You are objecting to Kent serving as an alternate. That's your right. I'm not complaining about it. But that means that you are not going to have any more objections to anybody.

MR. SUTCLIFFE: Does that mean that the government can strike -- the government cannot strike any of the jurors that are now constituted?

THE COURT: They could strike the other alternate, but not the first 12. They could, after the first --

MR. SUTCLIFFE: I have no problem with that.

THE COURT: Do you understand that?

MS. DUARTE: Yes.

THE COURT: Okay. Let's call back all the jurors right now. Everybody stay where you are at.

(Prospective jurors entered the courtroom.)

THE COURT: We have accomplished a lot during the break, and what I want to do by starting out is read the names of those jurors who, through this process of jury selection, will not be required or permitted to serve as jurors in this case.

Let me explain that. During the break, I talked to the parties and they exercised their right, as the law has

longed recognized, to have a big input in who sits in judgment on this case. Each side has a certain number of opportunities to ask the Court to thank and excuse a juror. And there are certain ground rules about how it has to be done, which were followed, and each side exercised its right to prune the available jurors.

So I'm going to start out by reading the names of those of you, in the order in which you were first called, who will be excused. If your name is read, you can start to get up immediately and proceed directly to the third floor jury department.

First, let me thank you for your patience and let me thank you for your honesty in your responses. Some of you will -- a couple people are still going to have to be questioned. Those of you whose names have not yet been called should not leave. I'll explain why shortly.

We have determined the 12 people who will serve as jurors, and I'll tell you who those are after I excuse the others. And then we just have to pick a couple of alternates, and the process will be completed.

So with one more thanks to those of you who showed up today and participated in this process, I'll now read the names of those of you who have been excused:

Manuel Alviso, you've been excused. Please report to the jury department. Carlos Fandino, Paulina Thompson, Carmen

Zakaryan, Brian Ellis, Richard Brown, Kim Foster, Benjamin Levine, Fayrouz Malki, Frank Farone, Dewitt Ross, Marta Knittel, Carol Zetina, Mary Ann May, Johanna Kingsley, Chiquita Taborn, and Dr. Kent, Samuel D. Kent.

Now let me read the names of those of you who will serve as members of the jury before we complete the process of selecting alternates.

As I read your name, I'm going to ask you to shift where you are currently seated, and I'm going to ask you to sit in the seat where you'll be seated during the trial. There will be very little left for you this afternoon. You'll be able to go in home in just a few minutes.

I want to reconfigure, those of you who will be our jurors, and show you where you'll be seated during the trial so you'll know where to go tomorrow morning. There won't be anything further today besides jury selection.

Patricia Wanner, would you move to your right. You'll be sitting in seat No. 1. Melissa Vargas, would you move next to her in seat No. 2. Helen Gonzalez, will you please sit in seat No. 3. Robert Ramirez, will you sit in seat No. 4 behind you. Kathleen Gilmore, will you sit in seat No. 5, please. Arthur Dayoan, would you sit in seat No. 6.

The next person whose name I'm going to call will be juror No. 7. She will not sit in the back row. She's going to sit in the front row because -- I'll show you where the

alternates sit in just a second.

That's you, Ms. Medina, Carmelita Medina. Will you please sit in the front row in front of juror No. 1. You will be juror No. 7. Next to you should proceed Ms. Triska, juror No. 8. Next to Ms. Triska should sit Mr. Cleek, No. 9. Next to him should sit Ms. Lewis-Fine, No. 10. Next to her should sit Aladino Vinas, No. 11. And next to Mr. Vinas should sit Mr. Miller Lee, juror No. 12.

In a couple of minutes, each of you will be sworn, and you will function beginning thereafter as the regular jury in this case.

Now, Ms. Hermansen, would you please proceed to the back row in the remaining seat. You may serve as an alternate. I'll explain what the functions of an alternate are.

And now I'm going to have to question, as quickly as I can do it, at least one more juror and it could be more than one. But it may be that we proceed with just one.

I think you understand why. Do you understand why?

MS. DUARTE: Yes.

THE COURT: Therefore, I'll do it. I would ask that Kathleen Wigglesworth -- is she here, please?

PROSPECTIVE ALTERNATE JUROR WIGGLESWORTH: Yes.

THE COURT: Would you be good enough, Ms. Wigglesworth, to step forward and sit in the one remaining seat in the jury box.

Do you have the questionnaire before you?

PROSPECTIVE ALTERNATE JUROR WIGGLESWORTH: Yes, I do.

My name is Kathleen Wigglesworth. I live in Claremont. I have a bachelor's degree in art education. I currently work for Pitzer College. I am an executive assistant to our vice president and treasurer. I'm married. And I live with my husband and we have no children.

THE COURT: What kind of work does your husband do?

PROSPECTIVE ALTERNATE JUROR WIGGLESWORTH: He is self-employed. He's a chemical engineer who does filtration consultation.

THE COURT: Okay.

PROSPECTIVE ALTERNATE JUROR WIGGLESWORTH: I have no children. I have never served on a jury, neither civil nor criminal. I have been a plaintiff in a fraud case. And I don't have any -- let's see. My mother, in the 1940s, used to work for the FBI in Washington, D.C., as a secretary. Actually, Mr. Hoover.

THE COURT: You probably weren't even born then.

PROSPECTIVE ALTERNATE JUROR WIGGLESWORTH: I wasn't born then, but she has warm memories of the FBI.

THE COURT: Those memories, are they going to have any impact on your ability to be fair to both sides?

PROSPECTIVE ALTERNATE JUROR WIGGLESWORTH: Not at all.

THE COURT: Keep going.

PROSPECTIVE ALTERNATE JUROR WIGGLESWORTH: As far as the legal system, I had my own attorney and I did have to talk to the police about this fraud case. This was up in the Bay Area. And the police did treat me very well and so did the judicial system. I guess I could be considered a victim of crime as far as being defrauded.

THE COURT: What was the way the fraud was committed?

PROSPECTIVE ALTERNATE JUROR WIGGLESWORTH: Well, I was dating this person who misrepresented himself to me. And I thought we would be married, so I was investing in a business that he was starting up, but there was no such business. So I lost quite a bit of money to him.

THE COURT: Okay. Was there a criminal prosecution that resulted from that?

PROSPECTIVE ALTERNATE JUROR WIGGLESWORTH: No. My attorney had me go to the police department to see whether they would want to try it as a civil case or a criminal case, and they determined it should be a civil case. So he wasn't prosecuted criminally, although I think he should have been.

I believe that I can be fair to both sides. I will follow the law as you instruct me. And I don't think I should have any difficulty in following evidence.

THE COURT: Okay.

PROSPECTIVE ALTERNATE JUROR WIGGLESWORTH: I did work

for Hewlett-Packard at one time for about 18 years. I didn't do any programming or didn't do any Websites or anything like that.

THE COURT: What kind of work did you do for Hewlett-Packard?

PROSPECTIVE ALTERNATE JUROR WIGGLESWORTH: My last job at Hewlett-Packard was as a computer sales associate, and my salespeople that I worked with did sell things to Global Crossing.

THE COURT: What kinds of things did they sell?

PROSPECTIVE ALTERNATE JUROR WIGGLESWORTH: They sell network servers and things like that.

THE COURT: Did you personally deal with any representatives of Global Crossing?

PROSPECTIVE ALTERNATE JUROR WIGGLESWORTH: No, I never did.

THE COURT: Do you have any views about Global Crossing one way or the other that might affect your ability to be fair on this case?

PROSPECTIVE ALTERNATE JUROR WIGGLESWORTH: No, I don't have any judgments about that at all.

THE COURT: Have you ever built a computer?

PROSPECTIVE ALTERNATE JUROR WIGGLESWORTH: No, sir.

THE COURT: Have you ever built a website?

PROSPECTIVE ALTERNATE JUROR WIGGLESWORTH: No. I've

taken some classes on how to do a website, but I've never built one.

THE COURT: Other than what you've told us so far, Ms. Wigglesworth, do you have any advanced training or experience in computers and associated electronic media, such as information technology or the Internet?

PROSPECTIVE ALTERNATE JUROR WIGGLESWORTH: No, I don't have advanced skills.

THE COURT: Do you belong to any organization which takes a position one way or the other on the rights that people have or should have or don't have to post information on the Internet?

PROSPECTIVE ALTERNATE JUROR WIGGLESWORTH: No, I don't belong to such a group.

THE COURT: Do you personally have any strong views one way or the other as to what rights people have or should have or should not have to post information on the Internet?

PROSPECTIVE ALTERNATE JUROR WIGGLESWORTH: I believe in free speech, I guess, as long as it doesn't hurt anybody.

THE COURT: Have you ever expressed opinions in the form of advocacy relating to people's usage of the Internet?

PROSPECTIVE ALTERNATE JUROR WIGGLESWORTH: No.

THE COURT: Have you ever had a dispute with an employee that resulted in a lawsuit or a claim?

PROSPECTIVE ALTERNATE JUROR WIGGLESWORTH: No.

THE COURT: Did anyone ever have a dispute about your work in the employment workplace or make a claim about the workplace or make a claim about how you function in the workplace?

PROSPECTIVE ALTERNATE JUROR WIGGLESWORTH: No.

THE COURT: Have you ever applied for a job with a law enforcement agency or worked for one?

PROSPECTIVE ALTERNATE JUROR WIGGLESWORTH: No.

THE COURT: And you've never owned stock in Global Crossing?

PROSPECTIVE ALTERNATE JUROR WIGGLESWORTH: No.

THE COURT: Do you want to talk to your colleague?

MS. DUARTE: No, Your Honor. We are ready to proceed.

THE COURT: How do you want to proceed?

MS. DUARTE: The government accepts the panel, Your Honor.

THE COURT: Okay. That will be our panel.

What that means, then, is that you will serve as an alternate, Ms. Wigglesworth, and so will you, Ms. Hermansen. Did I pronounce your name right?

PROSPECTIVE JUROR HERMANSEN: Yes, you did.

THE COURT: I was just doing it by memory.

All of you who are sitting in the back who have been so patient, so silent, so attentive, and it turns out to be

unneeded, I want to thank you because you actually were needed. We never know for sure how many people we'll have to question on any given occasion. I greatly appreciate your coming to court. I'm sorry that you didn't have an opportunity to serve on the jury in this case. I hope you get the opportunity in another case because, truly -- and I've talked to hundreds of jurors. I did it as a lawyer, do it as a judge. If it works right -- and we'll try to make it work right in this case as in all cases -- it's a very interesting and worthwhile experience, and I hope you get a chance to participate in it. Meanwhile, thank you for coming and please report to the third floor.

Let's have the jurors sworn, please.

(Jury sworn by clerk at 4:11 p.m.)

THE COURT: Members of the jury, I'm going to ask the courtroom deputy, whom you are going to get to know, to show you the jury room and explain to you the basic information you need to know about parking and access and what to do so that you'll be able to arrive on time tomorrow, by 8:15, and we'll be able to start at 8:30. There will be nothing else that happens today.

I don't know how long it will take for her to get you acquainted with how we handle things from here on in. It shouldn't take long at all. I'm going to cover a couple of little things with the parties in your absence. I don't need you to be here during that time. I want you to be able to help

the jurors out so they can go home.

With that, we'll be seeing a lot of each other in what I don't think will be a very long trial. Thank you for your service as well.

Please -- and you'll hear me tell you more about this tomorrow -- don't talk about this case with anybody. Simply say you got picked on a case. It was a criminal case. You've heard what the charges are. That's it. You don't have a basis for any views or any information. Don't express it. Don't speculate. You don't know anything yet. And we'll all find out what the case consists of in detail tomorrow. You'll hear opening statements, or at least one opening statement, maybe two, and we'll proceed accordingly.

With that, you may retire to the jury room.

THE CLERK: All rise, please.

(Jury excused at 4:12 p.m. and the following proceedings had.)

THE COURT: I'm not going to get into any further matters. I'll deal with the issue of subpoenas tomorrow morning at 8:00.

Mr. Sutcliffe and Mr. Reed need to be here by then.

You need to be ready to go, but I won't need you in the courtroom. You should come in to make sure your appearances, then I'll excuse you. We'll start in with opening statements at 8:30.

MS. DUARTE: Thank you, Your Honor.

THE COURT: See you all tomorrow.

MR. REED: Mr. Cruz should be here, too, Your Honor; correct?

THE COURT: Yes. I do anticipate having Mr. Cruz serve some of these subpoenas if I find that they are warranted.

MR. SUTCLIFFE: Your Honor, I would like to get one thing on the record before we adjourn.

THE COURT: If it's very brief, Mr. Sutcliffe.

MR. SUTCLIFFE: Very brief. I would like the record to reflect that this shirt I'm wearing here has the initials stenciled on the left-hand sleeve, in white letters, about a half-inch high, A period, W period, B period, which does not reflect my name.

THE COURT: Okay. The record will so reflect.

See you tomorrow at 8:00.

(Adjournment at 4:14 p.m., to resume on Thursday, November 13, 2003, at 8:00 a.m.)

C E R T I F I C A T E

I certify that the foregoing is a true and correct transcript from the stenographic record of the jury trial proceedings in the foregoing matter.

Karen R. Pinn, RPR, CSR 5574

September 13, 2004

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE A. HOWARD MATZ, JUDGE PRESIDING

UNITED STATES OF AMERICA, Plaintiff, vs. STEVEN WILLIAM SUTCLIFFE, Defendant.	Case No. CR 02-350(A)-AHM

CERTIFIED COPY

REPORTER'S TRANSCRIPT OF JURY TRIAL PROCEEDINGS

Los Angeles, California

Thursday, November 13, 2003

DAY 2

(Pages 242-444)

KAREN R. PINN, RPR, CSR 5574
Court Reporter

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LOS ANGELES, CALIFORNIA;

THURSDAY, NOVEMBER 13, 2003; 8:09 A.M.

THE COURT: Good morning and welcome.

Counsel and Mr. Sutcliffe, announce your appearances, please.

MS. DUARTE: Good morning, Your Honor.

Elena Duarte for the United States, with Special Agent Jeffrey Cugno.

THE COURT: Good morning.

MR. SUTCLIFFE: Good morning, Your Honor.

Steven William Sutcliffe, defendant, present.

THE COURT: I want to deal with this last-minute issue that developed yesterday morning about subpoenas. I think I know the appropriate way to handle it. I have looked those over.

Mr. Gonzalez is here; is that your name?

MR. CRUZ: Armando Cruz, sir.

THE COURT: Forgive me. Where is Mr. Reed?

MR. CRUZ: He just stepped out.

THE COURT: Could you go get him, please.

I have sorted these into various categories. There are a few that are directed to federal agencies: One to the FBI field office, one to Special Agent James Laverick, one to someone named Sue Hermitage at the Social Security Administration, one to Debra Yang, the U.S. Attorney.

I'm going to exercise my inherent authority to hand them to the prosecutor and deem them to be served. You can respond accordingly. If you choose to move to quash any of these subpoenas, you can do it orally. Look at those during the break. Okay?

MS. DUARTE: Thank you.

THE COURT: The other ones I want to deal with with Mr. Sutcliffe, so I would ask that the representatives of the prosecution or anybody not affiliated with the defense team or Mr. Reed or the investigator leave the room. Those people who are here to install or adapt or repair the equipment necessary for the presentation of evidence, like James is, can remain and can do their work.

MS. DUARTE: Your Honor, do you know how long of a break? Should we wait outside?

THE COURT: Wait outside. I want this jury in the box at 8:30.

MS. DUARTE: All right.

THE COURT: But before the jury is brought out, there is one other thing that I'll be dealing with.

Mr. Sutcliffe, whether you understand it or not, there are a lot of elements that you have to satisfy, and I'm going to give you an opportunity, quickly, to try to do so, orally, to require that these subpoenas be served.

I think I should start by saying that if it was your

understanding that the only appropriate person and only authorized person and the only acceptable person to serve them was the U.S. Marshal, that was a fundamentally erroneous conclusion.

I never said that you were unauthorized to require that the investigator, Mr. Cruz, that Mr. Reed offered to make available to you, would not be appropriate or could not effectively serve these subpoenas. You choose not to allow him to do so.

I authorized you, because it was your right as an indigent defendant, to have the marshal do it, but I didn't limit service to just the marshal. And you were aware that, under the Criminal Justice Act, your rights to have process served could be effectuated through appointed investigators and counsel.

Now, you have to establish relevancy. You have to establish admissibility. You have to establish specificity. You have to demonstrate -- and I don't think you can as to some, such as the one to your lawyer, who has been present on many occasions, Mr. McAfee, I think his name is -- that the materials are not available from any other source or could not be produced voluntarily.

The opportunity and right of a party that may be subpoenaed to establish absence of relevance, privacy rights, confidentiality rights, absence of specificity, failure to

comply with Rule 803(a), has long been recognized in Ninth Circuit and other cases: The Eaton case and Reed case and Maki case. I'm not going to go through all the citations.

What I have done is grouped these subpoenas, all of which -- those that have a date that you wrote in, you wrote the date in as October 20th. You have been in the presence of the marshal since then more than once. And according to the information -- and I want it to be filed under seal -- that was handed to me yesterday -- let me give the document to the clerk for filing.

It's the document that consists of Mr. Reed's October 8th letter to you and an investigation report referring to events on October 14th. I'm not sure that report has a date on it. It was prepared by Mr. Cruz. And a concluding page relating to an event on October 22nd.

Those should be filed, but filed under seal. And I'm handing them to the clerk so that later today she can arrange for that.

Now, there seems to be something like five or six subpoenas directed to law enforcement agencies. One is directed to someone named Victor J. Pietrantoni of the L.A.P.D. It appears to seek documents relating to "killercop.com", all documents related to you that this individual worked on, and the names of persons that he had spoken with about those two categories. No date is affixed to that subpoena.

Who is this man and what is the relevance of this information?

MR. SUTCLIFFE: This man is a member of the L.A.P.D. who, it has been brought to my attention, served a subpoena -- a search warrant, excuse me, swore out a search warrant in the summer of 2001. It was allegedly --

THE COURT: You can come in, Mr. Settle, if you are here to make sure that the repairs to the audio equipment are implemented in time for the jury to resume at 8:30.

Anything you hear that I discuss in the course of this proceeding, you and -- I can't remember your last name, James --

MR. AVERY: Avery.

THE COURT: -- Mr. Avery are required not to disclose to anybody else. Do you understand that?

MR. AVERY: Yes, sir.

MR. CRUZ: Yes, Your Honor.

THE COURT: Go ahead, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

It's my understanding that this gentleman was working with two of the detectives who are to be called as government witnesses, and he swore out an affidavit, under penalty of perjury, for a search warrant of my e-mail address, phone records, and sought to search and seize my computer at my home.

THE COURT: In what way does this witness qualify as

someone who, under the local rules and under the existing case law, is necessary to the adequacy of your defense?

MR. SUTCLIFFE: He goes to credibility of the two witnesses who are coming in to testify for the government, the two detectives from the L.A.P.D. I believe it's Mr. Katz and Mr. Willis. Both Mr. Katz's and Mr. Willis's names are within that same search warrant and document report, which is filed in support of that search warrant. Therefore, it goes to credibility of those officers. And this witness is needed for impeachment purposes. It's necessary.

THE COURT: Okay. Well, I'll reserve a ruling on him. I'm going to say that if the subpoena is authorized to Pietrantoni, categories 2 and 3, which are totally lacking in specificity, totally lacking in relevance, and obvious efforts to engage in a fishing expedition, will be deleted; but you may have a right to have this subpoena served as to category 1, which reads, "All tangible documents, software files, notes, reports, related to 'www.killercop.com'; you worked with, in or on or assisted."

"killercop.com" will have very limited application in this case. But I have issued a motion in limine. And I do anticipate there will be some evidence.

The next subpoena is to Robert Campbell. It has four categories, which the first two refer to file numbers, one refers to a CII number, and another refers to "any and all

documents related to Tracy Fraser."

Why is Campbell essential to your defense? What's the relevance that he has?

MR. SUTCLIFFE: Officer Campbell goes to show the conduct -- excuse me. Let me find my file here, Your Honor.

Officer Campbell is needed to help me impeach one of the government's witnesses under Rule 609, as well as goes to Rule 608, evidence of character and conduct of that witness. Tracy Fraser, she goes under the name of Tracy Hall.

She's accused me of directly threatening her. Her credibility is paramount to impeach my defense. This man had direct contact with this witness. He was the one that arrested this witness. He has written in his reports that this witness has threatened him.

He, above all people, will be able to show that the credibility of this witness is that she's a liar, that she's been convicted of perjury. She's been convicted of document tampering. She's currently been arrested for witness intimidation. She has an alcohol problem. She's known to become agitated very quickly and start threatening even law enforcement officers over the phone.

THE COURT: Okay. I think I have heard your basis as to Mr. Campbell. I'm not going to authorize the service by Mr. Cruz. And it will be Mr. Cruz who will have the duty to serve those subpoenas I authorize, not the marshals.

I'm not going to authorize it for Campbell. I have issued rulings about the scope of examination relating to Tracy Hall or Tracy Hall-Fraser, much of what you said -- almost all of what you said would be absolutely inadmissible and beyond the scope of proper examination and/or it would be totally collateral. And I would never permit it. It's not even close to being admissible. The Campbell subpoena will not be issued.

The next one on a law enforcement agency is Adrian Soler, S-o-l-e-r. He's an officer of the L.A.P.D. And the category of documents that would be subject to the command of the subpoena are all notes, documents, files, software, affidavits, and all other tangible things related to either Sutcliffe or "killercop.com" -- I'm paraphrasing a little bit -- which are known -- there is a typo -- or could reasonably be known to him or anyone in the department.

What's his -- what's the basis for establishing that that information is necessary to the adequacy of your defense?

MR. SUTCLIFFE: Your Honor, before we go that far ahead -- I waited until you finished; I didn't want to interrupt you -- I want the record to reflect that I object to your ruling on the previous officer, and I also want the Court to note that I object to the ruling that I'm not allowed to impeach this witness for dishonesty and false statements.

And the law is clearly stated that -- and I will cite U.S. v. Brashier, B-r-a-s-h-i-e-r. That's at 548 F.2d 1315

(9th Cir.), where the Court stated, under subdivision (a)(2), that the judge has no discretion to exclude even where the similarity of the prior might make admissibility unduly prejudicial.

THE COURT: Now, don't -- you have cited the case. Let me explain something to you, Mr. Sutcliffe, because it will help us all and especially be essential to enable us to all collectively deliver on our promise to the jury about the duration of this case.

Anytime you seek something I deny or anytime that I order something that you have opposed or anytime I overrule an objection, your objection is always in the record. It would be there even if I don't say what I'm about to say now, but I'll say it to you, and it will be true, without exception, for the remainder of this trial. You will be deemed to have objected and not to have waived your objection to rulings I make about you.

You have to object to something unless I establish, as I often do with lawyers, an objection to similar type of evidence.

Let's say I make a ruling on the adequacy of authenticating certificates, and then there are going to be 15 documents like that. You would object the first time it came in. I anticipate you probably will. If I think your objection is valid, I'll sustain it. If I think it's overruled, I'll

THE COURT: Go ahead, please, with Mr. Soler.

MR. SUTCLIFFE: Thank you, Your Honor.

Mr. Soler of the L.A.P.D. was present at a meeting with FBI Agents Harrill and Cugno and Detective Katz of the L.A.P.D. on March 11th where "killercop.com" was first introduced, allegedly, to the FBI agents in the form of a CD-ROM and testimony and documents.

And I need him for impeachment purposes of the other agent and of the two FBI agents who were present as to what was said in that meeting.

THE COURT: What makes you think that there will be inquiry that will be permitted either from the prosecutor or from you as to what was said in that meeting? In other words, why is it relevant?

MR. SUTCLIFFE: It's relevant in that the defense believes at this point that there has been a conspiracy going on between several of the members of the L.A.P.D. and maybe one or more agents of the FBI to permanently censor "killercop.com's" author, which is the defendant here, because there has been a concentrated effort to do that for the last five years; however, no charges have ever been filed.

So it's the position of the defense at this point that there is a conspiracy to lock up and throw away the key on this guy who they could not get legally, so they figured they'll do it illegally. And there has been a conspiracy. And

it's needed for impeachment.

THE COURT: Thank you. I don't think that that proffer establishes the sufficient requirements to authorize issuance of that subpoena.

The next one is to -- it's not to an individual, but to the records department at L.A.P.D. at Parker Center. The first item sought is a certified copy of something called DR0101 and a few other numbers, and also a certified copy of a search warrant relating to "killercop.com" or any host business of that website within the previous six years.

Please tell me what DR -- the file that is referred to there as DR0101.

MR. SUTCLIFFE: Yes, Your Honor.

DR010122071 is a document that the defense needs which goes to evidence -- evidentiary material which has been introduced in the instant case, which is very relevant to the testimony of the FBI agents and members of the L.A.P.D. who are being brought in. I have no other way of procuring this document.

THE COURT: Could you just tell me what's in the document so I --

MR. SUTCLIFFE: I really can't, Your Honor. I don't want to disclose the defense that I intend to use --

THE COURT: But I need to understand how it's relevant to this case. I'm not saying I won't issue it. You

need to establish that you have, under these circumstances, which I won't repeat, a right to have somebody serve the subpoena seeking this document. If the document is about the -- I'm not saying this is the case. But if the document is about the rotation of the planets, then I wouldn't issue the subpoena.

MR. SUTCLIFFE: I understand, Your Honor.

I assure the Court this is not a fishing expedition. It is a document which goes to Mr. Victor Pietrantoni, the gentleman we first discussed, number one. It relates directly to him. It's his affidavit. It's his search warrant. It's his reports that were filed by the witnesses Katz, Willis, who are direct witnesses against the defense, brought in by the government. It's all related to that.

THE COURT: That would be covered by category 1, which I'm inclined -- of Pietrantoni's subpoena anyway. This would be cumulative.

And the second category is clearly beyond the scope of permissible, compulsory process in the context of this case. Material going back six years relating to this peripheral issue of "killercop.com" is not relevant and would not be admissible.

MR. SUTCLIFFE: May I be heard, Your Honor?

THE COURT: No. We can't do that.

MR. SUTCLIFFE: One second, please?

THE COURT: Let's talk about Rhonda Saunders, please.

That's the next one. That one, I'll tell you in advance what my view is and I'll give you the benefit of being able to respond to it.

Rhonda Saunders, in the District attorney's Office. I don't know if she's a deputy DA or who she is, but the subpoena asks for the names of all attorneys involved in any investigations of Mr. Sutcliffe, all documents related to those attorneys, and the names and contact information of any legal person jointly involved with those attorneys or such investigations -- I think that's an accurate way of paraphrasing it -- and any other agency that Rhonda Saunders had contacted concerning the defendant.

These subpoenas, which are designed to make sure that evidence is present that is necessary for your defense at the trial, seem to be, on their face, something in the range of open-ended inquiry that would fall within the category of discovery and be fishing anyway.

Please explain to me why I'm wrong in looking at it that way.

MR. SUTCLIFFE: Thank you, Your Honor. I will.

Rhonda Saunders goes back to the L.A.P.D. record, the DR010122071, which I just requested, which goes back to Victor, which goes back to the government's witnesses, Mr. Katz and Mr. Willis.

This district attorney has met with all the above,

including the FBI. They all had a meeting. This is necessary and relevant to the defense in that it shows that there has been a concentrated effort by the federal, by the state, by the district, by the county, by the city, and every other attorney within -- known to the American justice system to bring Mr. Sutcliffe, the defendant, to jail for "killercop.com".

It is the position of the defense that when they could not do it legally, they've bent the law now, with these very brilliant minds, to come up with a way to arrest him for the very behavior that they were aware of was being done to the defense.

They have all admitted that they have --

THE COURT: The behavior that was done to whom?

MR. SUTCLIFFE: To these alleged victims.

They all will testify -- all right. I believe the defense can show that they all will admit that they've viewed this "killercop.com" website. All these government agencies had meetings or more, one or more meetings.

They've seen the very same crimes that the defense is here accused of, but not one ounce of equal justice, due process, that has been afforded to these alleged victims in this case was ever extended to Mr. Sutcliffe.

In fact, what they did was they conspired. They got real creative to issue search warrants, looking for some way to make a crime to silence Mr. Sutcliffe's speech.

THE COURT: Okay. If all of that happened, Mr. Sutcliffe, it might give you a basis to bring an action under the Civil Rights Act, under 42 U.S.C., Section 1983. It would not be a defense to this case.

This case is really not about "killercop.com" and it's not going to become one, even though I understand you have a sincere belief that that's what it's about, and that because I permitted -- or intend to permit limited evidence that will be carefully tailored and that will have that limiting instruction I have already ordered, you think it's really about what that website is about.

Fundamentally, I think that is a mistake, a miscalculation in terms of what this case is about.

And for those reasons, I think that this information fails to qualify for the issuance of a subpoena, so I'm going to deny that one.

Sandra Bettencourt is an L.A.P.D. detective. She's the next individual specified on one of these subpoenas. And I take it that -- and it seeks all documents regarding Mr. Sutcliffe, the names and contact information of any agency Bettencourt ever had contact with and any software regarding "killercop.com".

I take it that your view about Bettencourt is that she falls in the same basic need that you've pointed to for people such as Soler and the records department and categories

2 and 3 of Pietrantoni and also Rhonda Saunders; am I correct about that?

MR. SUTCLIFFE: You are correct, Your Honor.

THE COURT: For the same reasons, then, I decline to issue or authorize the issuance and service of that subpoena.

I think that's going to have to be my ruling on the one toward the Los Angeles City Attorney, Mr. Delgadillo, but let me look that one over again. That seeks all documents relating to any investigation of you.

You know, if you were being investigated -- and I'm not saying this is the case, Mr. Sutcliffe. If you were being investigated for failing to pay traffic tickets back in 1997, that kind of inquiry would -- that's in this subpoena would require them to comb through their records and let you know about whether there are any documents related to such an investigation.

That is just an illustration of why these subpoenas are totally beyond the scope of Rule 17(c).

And requests for names and contact information of people who assisted or conducted investigations, that information the courts have long recognized is also beyond the scope of discovery, absent any kind of exceptional circumstance or specific showing, which we don't have here. So I'm going to decline that one, too.

I will authorize, because you clearly have a strong

view that you need some information about whatever your theory is about the limited relevance of "killercop.com", I will authorize the subpoena on Pietrantoni, and I'm going to cross out -- maybe I won't.

I'm going to cross out, by putting an "X" on 2 and 3 and my initials next to it, those two categories, which are way beyond the scope of anything that the Rule 17(c) subpoena would permit.

Now, I think that some of the other subpoenas for local witnesses probably should be served, and let's turn to those in just a minute.

MR. SUTCLIFFE: Just for my records, Your Honor, what was 2 and 3 again?

THE COURT: Categories 2 and 3 of the subpoena of Pietrantoni. All tangible documents he's ever worked with, on, or assisted concerning you, the names of all persons he spoke with, for all the reasons I've tried to establish several times this morning, those would not be within the scope of a proper subpoena.

Now, Christensen, Miller is a law firm. I know that. And that seeks e-mails related to "evilgx.com", which is relevant in this case, and certain specified people. I don't know exactly who they are. I am going to authorize that one to be served.

I don't have a basis to know precisely how some of

these things relate to the case. There are four categories, and they are at least specified in stark contrast to the others I've been reviewing, specific e-mails with specific Websites and references to specific subjects. And I think that one should be served and it will be.

Then you have a subpoena to Ben Mascardo.

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: It doesn't call for documents.

Do you intend to introduce Mr. Mascardo as a witness in your case-in-chief?

MR. SUTCLIFFE: Yes, I do, Your Honor.

THE COURT: And about what subject, generally speaking?

MR. SUTCLIFFE: Well, he has direct evidence of -- knowledge of "killercop.com". He's actually seen, viewed, even assisted in the creation of that website, as well as other employees within Global Crossing.

THE COURT: Other employees where?

MR. SUTCLIFFE: Within Global Crossing.

Global Crossing, I believe, is going to try to impeach the defense by saying that they were -- some of the witnesses that are testifying against the defense were frightened out of their lives when they heard "killercop.com". But it's an unfounded fear and he has direct knowledge of that.

Further, Mr. Mascardo was an employee who worked side

by side with Mr. Sutcliffe. He has direct knowledge of the goings on in the IT room downstairs where the government has alleged that Mr. Sutcliffe allegedly stole some information and data. He knows the witnesses that are coming in to testify against Mr. Sutcliffe, such as Mr. Wieseltier, Mr. Saly.

THE COURT: Tell you what. I'm going to authorize the subpoena on him. That's not a finding that any of this would be relevant or admissible.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: And I may require you to make an offer of proof at the time he's here, if he shows up. But if he worked for Global Crossing -- now, you know my rulings and don't even bother trying to elicit from him information about whatever questionable business and employee practices and instances of sexual harassment, and the like, may have gone on at Global Crossing. That's totally beyond the scope of what this case is about.

If that's where Mascardo fits in, it's going to be -- you will look very bad before the jury if you get into it. I'll instruct the jury to disregard anything that gets blurted out and to strike it, and I will chastise you for going into forbidden ground.

I'm not saying you are planning to do that, but you know what my rulings are. So Mascardo is not here and will not be permitted to air otherwise irrelevant dirty laundry about

Global Crossing, but I'll give that one to Mr. Cruz.

Leslie McAfee is the next person. He's your lawyer. I think this is a very peculiar move on your part, Mr. Sutcliffe. That you fill out a subpoena on October 20th, you've seen Mr. McAfee since then, he's come to court on at least two occasions since then, and he's confirmed that he is your lawyer. And you are asking for a box and a receipt that you provided to him for safekeeping and documents relating to the ISP host of "killercop.com", documentation related to any City Attorney of Los Angeles or State Attorney General of California.

This is stuff that's totally beyond the scope of a 17(c) subpoena, so I'm not going to issue that one.

MR. SUTCLIFFE: Is that for the documents or for him? He's a necessary witness for my defense, Your Honor. My case-in-chief relies upon legal counsel of which I relied upon in creating both the Websites in question. It was Mr. McAfee's legal advice that I sought --

THE COURT: Are you representing that he's not going to come if he's not subpoenaed?

MR. SUTCLIFFE: I have spoken with Mr. McAfee on the phone. Mr. McAfee has requested, if the Court would grant it, he would be available to be here within one hour's notice. He's directed, if the Court wishes, I can provide the Court with his cell phone and his home phone and his office phone.

THE COURT: Let's have it served. If the defense is advice of counsel, let's have it served. I think it's a reflection of games-playing, but I'm not going to pursue it further. That one will be served.

The subpoena to KLSX Radio Station for a certified copy of an October 27, 2003, radio show broadcast and interview with members of NFL Inside, what's the possible basis for that subpoena, Mr. Sutcliffe?

MR. SUTCLIFFE: Well, the possible basis of that, Your Honor, is, there was an interview going on. The members of that interview are national celebrities.

The gist of the conversation were the exact same words, identical words, that the defendant is now sitting here, for the last 20 months, in prison, accused of a crime. The exact same words were heard over that radio.

THE COURT: Okay. Well, that would not be a sufficient basis to issue the subpoena. And as I think prior rulings and much court colloquy indicates, without making a finding as to how exact the various words were, even knowing precisely which ones you mean, the context in which words are used and disseminated and broadcast is essential to whether or not they are actionable, either civilly or criminally.

If a first-grade teacher helps a student learn to spell the word "kill" and uses the word "kill" when she writes or he writes the four-letter word on the blackboard, that's

very different. I'm not saying that's what happened on NFL Inside. I'm not going to argue with you, but that one is not going out.

Then you have one to someone named Lodwrick Cook in Sherman Oaks.

MR. SUTCLIFFE: Yes, Your Honor.

Mr. Cook is the cochairman of Global Crossing. Mr. Cook is directly e-mailed in -- he's a recipient of an e-mail of which the -- I'm sure the Court remembers the defendant's first motion to dismiss for selective prosecution, where the defense introduced an e-mail from a Joe Shmoe, who said, "If you keep publishing stuff, I'm going to kick your ass." That was -- that e-mail was traced by the defense back inside of the Global Crossing headquarters.

The Global Crossing headquarters was notified via e-mail and via the website "evilgx.com" by a posting. The posting of Joe Shmoe's "I'm going to kick your ass" statement to the defendant was cc'd directly to the cochairman, Mr. Lodwrick Cook, as well as the chairman of the board, Mr. Gary Winnick.

I would like to inquire of Mr. Cook as to if he knows who sent that e-mail. I think that's very direct and very relevant to the defendant.

THE COURT: This is an e-mail that someone sent to you?

MR. SUTCLIFFE: Yes, Your Honor, that's correct.

THE COURT: Someone who identified himself as Joe Shmoe?

MR. SUTCLIFFE: That's correct, Your Honor.

THE COURT: And how do you think that that's material to your defense, assuming that it was copied to Mr. Cook?

MR. SUTCLIFFE: Yes, Your Honor.

This e-mail that was sent directly to the defendant was sent in December of 2001. The FBI and Global Crossing agents, security personnel, everybody was notified via e-mail and the posting on the website.

There was a concerted effort to ignore this fact that somebody from within the headquarters of Global Crossing had said they were going to kick the ass of the defendant if he continued to post information, which the defendant had every right in the world to post.

THE COURT: Do you have that e-mail that you received that then got copied to other people available to you?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: If it's otherwise relevant, you'll be able to introduce what happened and ask, yourself, questions that may or may not be appropriate. I really have truly no view. It's not -- Cook would be totally cumulative, and I'm not going to issue the subpoena to him.

Winnick is the other guy who was the chairman or the

cochairman?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: The two categories to Winnick are transparently overbroad: Any documents related to the defendant, sent or received, by or to him, from any source, person or agency, and it is a broad category of various kinds of documents and items that would be within that, and then contact information about people who he interacted with.

Those aspects of this subpoena, I would not authorize to be within the scope of the compulsory nature. People who get these subpoenas may or may not move to quash them. I don't know what they are going to do and I don't know these people.

Putting aside these categories of documents, what kind of oral testimony from Winnick is part of your defense that you think he has to be sure to be here for?

MR. SUTCLIFFE: Well, if the Court remembers, back when Mr. Harris was my counsel, the Court issued a standing order that Mr. Winnick be kept under subpoena --

THE COURT: Yes, I do.

MR. SUTCLIFFE: -- and I wouldn't have to go through what I'm now having to go through to compel his process.

THE COURT: I didn't quite issue that. My recollection is different. But I do recall -- and to shortcut this, some people -- some sides thought that Winnick might be a percipient witness.

What would he be percipient to? Percipient means that he experienced, that he did it.

MR. SUTCLIFFE: Allegedly, Mr. Sutcliffe said to him that -- the statement "Keep your dogs at bay. I'm now armed."

THE COURT: Let's issue the subpoena to Winnick.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: But I'm crossing out those categories of documents; otherwise, it's going to delay the trial, because there is a virtual certainty that there would be a motion to quash in fighting about that. But Winnick will be subpoenaed.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: John Comparin, who is he?

MR. SUTCLIFFE: John Comparin, he's the head of the human resources department at Global Crossing. Mr. Comparin allegedly made statements that Mr. Sutcliffe stole the data, that he witnessed Mr. Sutcliffe steal the data, to members of another group of people on the East Coast.

Mr. Sutcliffe was notified via e-mail of this statement. Mr. Comparin's data that's allegedly been stolen is one of the discovery exhibits provided to the defense by the government. He's Mr. Richard Saly's direct supervisor and boss. Mr. Saly is one of the witnesses being called in. He used to be Elizabeth Greenwood's direct boss.

And I believe that his testimony is necessary in that the government has accused Mr. Sutcliffe of stealing this data.

Global Crossing has accused Mr. Sutcliffe of stealing this data.

THE COURT: Are you talking about the social security numbers?

MR. SUTCLIFFE: I'm talking about all the data. There is a ton of it, Your Honor.

THE COURT: So if he told somebody that you stole it, whatever he was referring to, how is that relevant to your defense?

MR. SUTCLIFFE: The defense would like to know where he got this information from. The defense believes that he received this information from Global Crossing's legal department, who is also one of the alleged victims here, Elizabeth Greenwood.

THE COURT: Okay. Well, your curiosity, which is understandable, does not warrant the issuance of a subpoena to him. Those people who are directly involved, like the ones he supervised, will be available for you to examine. I'm not going to issue the subpoena to Comparin.

How about Charles Carroll?

MR. SUTCLIFFE: Charles Carroll is the general counsel for Global Crossing.

THE COURT: He's an inside lawyer, what they call an inside lawyer?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: Did you have any communications with him or dealings with him?

MR. SUTCLIFFE: I did.

THE COURT: Do you think he can give information that will help you in your defense, or are you just looking for things and how he learned about something he said about you?

MR. SUTCLIFFE: The latter.

THE COURT: Okay. Well, that would be immediately quashable, so I'm not even going to bother with the issuance of it under these circumstances and the timing.

We have about eight or so more subpoenas to get through, and these are the ones I organized as to out-of-town subpoenas.

The first is to your former wife -- no. It's to Madeline Sutcliffe and it asks for the audiotape of the answering machine of a recording of your former wife. Maybe she's your current wife. I don't know what your marital status is, but Orly Mann Sutcliffe.

Who is Madeline Sutcliffe? Is that your mother?

MR. SUTCLIFFE: That's my mother, Your Honor.

THE COURT: This is a subpoena that would have to be served in North Andover, Massachusetts?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: What efforts have you made? What is on this audiotape?

MR. SUTCLIFFE: What is on the audiotape tape is a recording of my wife -- she's still my current wife -- calling my mother, telling her that she's sorry that she did what she did, that she was -- that she had lied about certain things related to what she did regarding indirect pressure that she was receiving from the FBI agents to do certain things. It goes to impeachment -- directed to impeachment of the witness, Your Honor.

THE COURT: Why haven't you had your mother send the audiotape to any of your prior lawyers or to you?

MR. SUTCLIFFE: I did, Your Honor.

THE COURT: Do you have the audiotape?

MR. SUTCLIFFE: No. As I brought to the Court's attention the other day, those tapes are still not in my hand. That's one of the tapes.

I remember the tape being provided back to Mr. Harris. He brought it to the MDC, and we sat there and translated it because my wife's accent is very hard to understand. He supposedly typed it up. He was going to introduce it. But that's the last I've seen of it.

THE COURT: Well, if the tape was in your possession or that of your lawyer's or a lawyer -- I really honestly don't understand the chain of events and the chain of custody of that tape. I don't know even what your theory is as to what happened to it. Was it something that you claim the government

destroyed?

MR. SUTCLIFFE: No. I'm claiming that my previous counsel is making good on his threats to make sure I lose this case, and that he --

THE COURT: That previous counsel being Mr. Harris?

MR. SUTCLIFFE: No. That being Mr. Nicolaysen or somebody. I don't know why this tape is not in my hand. I've been asking for it since February. I've yet to see this tape. I have yet to see the BOP tapes that I subpoenaed of my wife where we had extensive conversations about her dealings with the FBI and the coercion that was being put upon her to besmirch and smear my name by the bogus restraining order that was taken out the very day after I was arrested, Your Honor, based on an alleged threat that was made to her.

And you are correct, context really does matter.

The alleged threat, that my wife said that she was so in fear for her and my daughter, was made three weeks prior, but it's kind of funny that it was done the day after I was arrested, at the coaxing of the FBI.

That evidence is on those BOP tapes, which I subpoenaed, as well as the fact that they kept pressuring her not to take the restraining order off when she wanted to.

THE COURT: Just so I know what the practical considerations are here, I'm going to call upon you, Mr. Cruz. When you are assigned the responsibility of seeing to it that

certain subpoenas for out-of-town or out-of-state witnesses are to be served, how do you go about it?

MR. CRUZ: Well, locally, Your Honor, just locating the address and going to the place of residence or business.

THE COURT: Out of town or out of state.

MR. REED: He's never done that before, Your Honor. I can indicate what the procedure is.

THE COURT: Why don't you.

MR. REED: With respect to the service of out-of-district subpoenas, it has to be done by the U.S. Marshals. So you have to get a Court order, and you have to attach that Court order to the subpoena. You have to deliver it to the U.S. Marshal Civil Division here in the building, and then they take care of the service of out-of-district subpoenas.

THE COURT: Okay. I'll reserve a ruling on this audiotape. I don't think the showing is sufficient.

You have a subpoena to a compliance paralegal in Sunnyvale, California. She is at Yahoo!?

MR. SUTCLIFFE: Yes.

THE COURT: And there are two categories. What's the relevance of that?

MR. SUTCLIFFE: I don't have them in front of me. What are the categories, if you would be so kind?

THE COURT: Sent and received e-mails from the

address of "evilgxhrdept@yahoo.com" for a certain period of time, copies of legal process served. That's totally beyond the scope of 17(c).

MR. SUTCLIFFE: That "hr," is that "hrdept"?

THE COURT: Yes, it is.

Where does that fit into your defense?

MR. SUTCLIFFE: Well, Your Honor, the government has issued two search warrants, one for the e-mail address "evilgxhr@yahoo.com", the other one was for "gary_winnick2002@yahoo.com".

The "evilgxhrdept@yahoo.com" address that the defense seeks at this point is necessary and relevant for impeachment purposes in that the government conspicuously didn't search or seize this e-mail address which is prominent within Counts One through Four, and specifically for the last -- the most recent count of the threat. But the government knew of this website address.

The government testified in New Hampshire that the way they track people is by e-mail addresses. And the defense needs to show that the government knew of this address, failed to subpoena or search this address.

And the defense would really like to know why. I know why. Because of what's in there. That's why I need what's in there. There is direct e-mails in there that go to show impeachment of witnesses that are being called by the

government, and it also goes to the credibility of the testifying FBI agent and the lead investigator, Mr. Cugno.

THE COURT: Well, I'll reserve a ruling on that.

Now, there are subpoenas to a magazine in New York called Stuff Magazine for certain certified copies of back issues of that magazine. There is one -- a different one to Dennis Publishing Company at Ave of Americas for certified copies of issues of Maxim Magazine. There is one to a company called FHM for a certified copy of FHM Magazine.

And I'm going to decline to issue those altogether. If you have those magazines and you think they contain relevant information, you won't have to get certified copies. I would take judicial notice if they are otherwise admissible.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: You have one, two, three, four, five different police officers at the Manchester Police Department.

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: That's in Manchester, New Hampshire?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: And I am familiar with all of the contentions you've made about the manner in which you were arrested and treated, the brutality to which you were subjected and by which you were victimized, the representation you got from the public defender there.

These are fishing expeditions that, on their face,

are -- each of them -- and they will be filed, so the Court of Appeals will see this. They'll know exactly what you sought. I don't have the time or the need or the duty to repeat separately each and every one of them.

But they are not appropriate exercises of my authority or discretion to, at this stage or at any stage, really, but especially at this stage in this case, require the marshals to serve those. As to --

MR. SUTCLIFFE: May I be heard on those, Your Honor?

THE COURT: No. I don't really need any argument about that. All of your arguments will be preserved.

MR. SUTCLIFFE: I don't want to argue. I just want to make my record.

THE COURT: Briefly, then. Go ahead.

MR. SUTCLIFFE: Thank you, Your Honor.

I want the record to reflect the main reason I want these officers is for impeachment purposes of the two FBI agents who were present in the station and were smiling and laughing while the police were torturing me.

Thank you, Your Honor.

THE COURT: Okay. You are welcome.

Now, I'm not going to issue the subpoena to Madeline Sutcliffe. I will, if you arrange -- and you can make your decision, but I'm not going to do it for you because that would exceed the scope of my responsibility and also be unfair and

totally inconsistent with my job as a judge and not as somebody's assistant or lawyer. If you arrange for the necessary paperwork to be completed that would be required in order to impose upon the marshals the duty of serving an out-of-district subpoena, I will issue the subpoena to the compliance paralegal at Yahoo! in Sunnyvale, California, as to category 1, the sent and received e-mails from that "evilgxhrdept" address. That's the only out-of-state one I will do.

It will be up to you to decide whether you want to take advantage of the assistance that your standby counsel and/or Mr. Cruz can provide in getting the paperwork to you. That's my ruling on the subpoenas.

So I don't know what the government will do with respect to the ones that they have been served with that go to the federal agencies.

Yes, Mr. Sutcliffe.

MR. SUTCLIFFE: At this point, the defense would like to note that there was more people on this list of subpoenas than the Court has ruled on, such as a Sue Hermitage, special agent of the FBI, I believe.

THE COURT: Those are the ones I gave to the government. All the federal agents, the government has been served.

MR. SUTCLIFFE: Okay.

THE COURT: That's what I handed to the prosecutor. It doesn't mean those people will testify. We'll see what she does.

MR. SUTCLIFFE: Thank you, Your Honor.

Also, at this time the defense would like to enter an exhibit -- an affidavit from Mrs. Sutcliffe, my mother, that was signed and notarized on October 31st.

THE COURT: I'll permit you to have it lodged. That's not evidence. It won't be an exhibit at the trial.

MR. SUTCLIFFE: I understand.

THE COURT: For your record, you can have it filed, but it's not going to be part of the trial. Is not going to go to the jury. You can give it to the clerk. She'll arrange for filing. It's going to be served, just so both sides have everything that gets filed, unless something is filed under seal.

Please call in the prosecutor.

MR. REED: Your Honor, just a couple of procedural matters. I will be very quick. I just want to make sure that we can do the best job we can for Mr. Sutcliffe.

Could I ask Mr. Cruz to step forward to the lectern?

THE COURT: Yes.

MR. REED: Your Honor, I just want to make sure that with respect to the service of these subpoenas, that we give the people adequate dates. For example, they are all --

THE COURT: They all have the wrong date on them.

MR. REED: We are going to need to change that date. I just want your permission to do that.

THE COURT: You have permission.

MR. REED: I was going to set the compliance date for next Wednesday. We believe that that's when Mr. Sutcliffe's case will start, so I'll set the date there.

THE COURT: November 19th.

MR. REED: Right.

Also, Your Honor, I need permission of the Court to place my name down in the bottom right-hand corner as advisory counsel so that the witnesses who get subpoenaed can at least contact somebody to understand what's going on. Otherwise, they are not going to know what's happening when they are served the subpoenas.

MR. SUTCLIFFE: I would object to that, Your Honor. I also object to any inference that Mr. Reed is "my" counsel. I think I made that very clear to the Court in my letters to the Court --

THE COURT: Do you want these subpoenas served, Mr. Sutcliffe?

MR. SUTCLIFFE: -- in U.S. v. Mills.

I wanted them served back on October 21st, Your Honor, when you refused to let your clerk take them. I wanted them again served on November 7th when the clerk and the

marshals both refused to take them. I hope that answers the Court's question.

THE COURT: Well, it doesn't, but I overrule your objection.

You can put your name on the bottom.

MR. REED: Thank you.

And then, additionally, for CJA billing purposes, Mr. Cruz would ask permission of the Court to call upon certain of his associates who are licensed private investigators --

THE COURT: Yes, that's typically done.

MR. REED: -- so that they can help him serve the subpoenas. And then they'll bill him and then he'll ultimately bill on his bill for the time.

THE COURT: The people who I have authorized are Gary Winnick. There are two deletions on that one. Leslie McAfee. You'll have to get these copies of the subpoenas so when they are served, they contain my writings.

MR. REED: Okay. I didn't know that.

THE COURT: Yes. I'm going to hand them to the clerk.

Then I want a complete set placed in the file under seal so those that weren't served on the government, the government won't have access to.

So I think Mr. Cruz got a complete set yesterday. What I'd like, in a moment, is that a complete set be handed to

the clerk. There'll be basically a swap. And I'm handing back to you the ones that I've authorized.

As I said, that's McAfee, Winnick, Ben Mascardo, Christensen, Miller, and Victor Pietrantoni, five people all in Los Angeles County.

MR. REED: Yes, Your Honor.

THE COURT: You can give these to them. Just make a swap.

Anything else, Mr. Reed?

MR. REED: That's it, Your Honor.

THE COURT: Bring in the prosecutor, please.

(Ms. Duarte and Mr. Cugno entered the courtroom.)

THE COURT: Welcome back. I just wanted to state on the record how I expect counsel and Mr. Sutcliffe to handle opening statements. This is primarily meant for the benefit of Mr. Sutcliffe, who is not a lawyer, although he's doing an able job in promoting his own interests.

An opening statement is, I'll be telling the jury that it isn't evidence and it's not to be a manner in which anyone is going to be permitted to testify.

Those who deliver opening statements are entitled to state and describe and elaborate on the theme of their contentions. The prosecution or the defense are allowed to point to what they think, in good faith, the evidence will show.

I've made certain rulings in connection with this development about the subpoenas as to what is not going to be permitted. No one would have a right to suggest that something will come to the attention and be introduced to the jury or will be something that the jury will have a right to consider when, in fact, that would not be the case.

A defendant typically is entitled to emphasize that, as the jury has already been told, in order for a conviction to be valid, they would have to find beyond a reasonable doubt that the government proved its case.

You don't have to disclose whether you intend to testify or not. That's something that you can choose to disclose or not disclose. You don't even have to give an opening statement. Tell me whether you do intend to give an opening statement.

MR. SUTCLIFFE: Yes, I do.

THE COURT: You do. Okay.

What is your estimate for the government's opening?

MS. DUARTE: Fifteen minutes at the most, Your Honor.

THE COURT: Okay. And your estimate?

MR. SUTCLIFFE: Approximately the same.

THE COURT: I'll give you each not more than 20 minutes.

MS. DUARTE: I'm sorry, I just didn't hear what Mr. Sutcliffe said.

THE COURT: He said, "Approximately the same."

So I'll give you each not more than 20 minutes. If you are at 20 minutes and in the middle of a sentence, of course, I would never cut you off, but I will always reserve the right to remind you of the time limitations I imposed.

Are there any questions before we bring the jurors in?

MS. DUARTE: I just have a procedural question, Your Honor. I still have the original exhibits here with me, and they are the exhibits I was going to show.

Is that the way that the Court prefers to proceed as well? Sometimes the judges want the exhibits.

THE COURT: I don't really have a strong preference. But anything that's an original is what has to be part of the court file. And if we're talking about hard-bound documents, those are the ones that get to the jury.

MS. DUARTE: Understood. Everything in here will go to the jury that's submitted.

THE COURT: Do I have a duplicate set of those?

MS. DUARTE: You do.

THE COURT: Does Mr. Sutcliffe?

MS. DUARTE: Yes. As does --

THE COURT: You can use those for purposes of display.

MS. DUARTE: And there is also a set up at the

witness chair as well.

THE COURT: Okay. James, is the audio fixed?

MR. AVERY: We are still affixing the speakers.

THE COURT: Please do that right away.

Do you need to have those speakers affixed before you can proceed?

MS. DUARTE: No, Your Honor. Our first two witnesses we'll use the ELMO for.

THE COURT: All right. Thank you, James.

Okay. Any other procedural questions, Ms. Duarte?

MS. DUARTE: Your Honor, just one thing.

Outside this morning we saw a few jurors in the hallway. It was a little bit awkward because, of course, I can't say hello or anything. I was wondering if the Court routinely --

THE COURT: I do.

MS. DUARTE: Thank you.

THE COURT: I'm going to give them preinstructions. Is that what you are asking --

MS. DUARTE: Yes, Your Honor.

THE COURT: -- about not discussing the case and not -- yes, I intend to give them preinstructions.

MS. DUARTE: About that the attorneys can't --

THE COURT: I will tell them not to take offense and not to think that the attorneys are in any way being rude.

MS. DUARTE: Thank you, Your Honor.

That's all that I can think of.

MR. SUTCLIFFE: Your Honor --

THE COURT: Yes.

MR. SUTCLIFFE: -- the defense would like to make an oral motion at this point to dismiss Counts One through Nine for loss and/or destruction of evidence based on bad faith by the government. May we be heard?

THE COURT: No. I have ruled on this motion before, Mr. Sutcliffe. And I have ruled several times on several motions.

MR. SUTCLIFFE: This is based on newly discovered evidence, Your Honor.

THE COURT: I'm not going to -- what's the newly discovered evidence? What's the basis for the motion, real quickly?

MR. SUTCLIFFE: Well, not only have the government not backed up the CD-ROM's original data that was copied and burned by the defendant in his home of e-mails, correspondence, letters, audio files, and miscellaneous other documents, but the defense has now learned that as well as the CD-ROMs were not backed up, the floppy drives were not backed up. So now we have additional evidence that's not been backed up.

Even when the government ordered the defendant to return all of the CD-ROMs and floppy drives that were in the

defendant's possession during January -- the defendant turned back over all of that discovery to the government -- they still did not make a copy of that data, Your Honor. And now that data -- some of that data has been lost.

This is just unbelievable that the government can just willy-nilly say, "No, we are not going to make a copy of this stuff," and then when stuff gets lost, "Sorry, too bad." How am I supposed to make a defense based on lost evidence, Your Honor?

THE COURT: Okay.

MR. SUTCLIFFE: I acted in good faith. I returned everything. I didn't keep anything. They can't make a copy? This is the United States Government.

Now I get a letter from Mrs. Duarte. She's telling me that "Regarding your request for a duplicate of CD-ROM LA31, as noted in my status filing on September 29, the CD was not duplicated."

That was one of the CDs that the Court ordered me to return back to the government back in January.

THE COURT: This is not newly discovered material.

MR. SUTCLIFFE: Well, the floppies are.

THE COURT: I think I have heard enough. You have made your record adequately. And I deny the motion.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: There has been a great deal of exchanges,

filings, motions, oral argument, written submissions about missing or destroyed evidence, and you haven't specified what you would need to establish anything close to the kind of misconduct that would warrant dismissal. So I respectfully deny your motion.

Okay. I'm going to take a break, give a break to the court reporter. We're going to bring -- would you need a bathroom break?

MR. SUTCLIFFE: No.

THE COURT: Can we proceed in five minutes or ten minutes?

MS. DUARTE: Yes, Your Honor.

THE COURT: I'll come out first and then we'll bring the jurors in.

THE CLERK: This court now stands in recess.)

(Recess taken at 9:16 a.m. to 9:27 a.m.)

THE COURT: Okay. Let's bring in the jurors.

MS. DUARTE: Before you bring in the jurors, I think I neglected to move that the witnesses be excluded in these proceedings.

THE COURT: I'll grant that motion.

Is there any person who is in court who is expected to be or has shown up expecting to be a witness?

No one seems to fall into that category.

MS. DUARTE: Thank you, Your Honor, with the

exception, of course, of Special Agent Cugno.

THE COURT: Right.

Everybody shall rise when the jurors come in and out.

(Jury in.)

THE COURT: Welcome back, members of the jury. Let me start with an apology. I hope I won't have to make apologies very often.

I truly will work very hard with everyone involved in the case to avoid inconveniencing you. In any case, civil or criminal, there are frequently occasions when a judge has to, in order to make the trial actually proceed not only correctly but efficiently, go over things outside the presence of the jury. That's what we were going since 8:00 this morning, and we resolved certain matters which will actually make the flow of the trial much more comprehensible and smooth.

But to the extent that you were inconvenienced -- I hope it wasn't significant -- I hope you understand that we were working and deadlines are deadlines. I don't anticipate this happening again. I don't know of any occasion where such a delay would take place. But I hope you'll continue to be understanding.

I'm going to talk to you a little bit about this trial, what you are going to encounter and how things are supposed to be done correctly. As soon as I finish giving you what are actually instructions about the presentation of

evidence and how you should conduct yourselves during the trial before you begin to deliberate, some of what I say now I'll probably repeat at the end of the case.

After the case is finished, you will actually get a set of written instructions. The law that I spoke about yesterday, which you all agreed to follow and apply, will be written down for you. You'll be able to have your own copy. Each of you, who retires to deliberate, will have your own copy, and you can take it into the jury room.

We don't have to distribute copies now, but I would appreciate your listening to what I'm about to tell you because it just gives you an understanding of what's going to happen and how you are supposed to handle it.

Basically, what your duty is is to decide from the evidence what the facts are. And you, and you alone, not me, not anyone else, will be the judges of the facts.

You will hear the evidence, you will decide what the facts are, and then you'll apply those facts to the law that I'll tell you about at the end of the case. And that's how you go about reaching your verdict.

In doing so, as you already were told, you must follow the law whether you agree with it or not.

The evidence that you will be considering will consist of testimony of witnesses, documents, and other things received into evidence as exhibits.

We have monitors on which will be presented some visual evidence that I think you'll be able to follow and see as you gaze at the monitors, but that evidence, too, will be in hard copy form. And once something is admitted into evidence, it will go back into the jury room with you at the point you begin your deliberations.

Sometimes there are stipulations in cases. There don't have to be. The parties aren't required to stipulate to things. But if they do, then that's deemed to be a fact which has already been proven, and you are required to accept it and apply it as a proven fact.

Sometimes I say and do things during the course of the trial. I make rulings. Occasionally, I ask questions. You should not take anything that I say or I do or any ruling I issue as indicating what I think about the facts or the evidence or the verdict.

I've already told you about the presumption of innocence. I've already told you that as this trial is underway, Mr. Sutcliffe is presumed to be innocent. And it's entirely up to the government to prove beyond a reasonable doubt each of the elements of these crimes. And unless the government does that, you would be required to return a not guilty verdict.

Now, I've been talking to you about evaluating the evidence and applying the instructions to the facts of the

evidence that come in during the course of the trial.

Let me tell you what is evidence, and I'm also going to tell you what is not evidence, because some of what comes to your attention is not evidence, but it's still appropriate to be said.

I've already mentioned that testimony of witnesses and exhibits are evidence and stipulations are evidence, but some things are not evidence.

Although you are entitled to listen and consider what you are being told, you are not entitled to consider it as something proven or not proven.

Statements and arguments of the parties and of the lawyers are not evidence.

The parties will have a right to deliver an opening statement, which is kind of like a preview of what they anticipate the evidence will show and why they think you should return a verdict favorable to them. They'll have an opportunity to deliver a closing argument, after all the evidence is in, about what has been proven or not proven and other aspects of the issues of the case.

Those statements, those arguments, of the parties and of the attorney are not evidence. Questions and objections that either side poses are not evidence. If somebody asks a question and I don't permit an answer to that question or an answer is blurted out and given and I instruct you to disregard

it, you can't take into account what the question was because that's not a fact. It's just a question. And you can't take into account what the answer was if I granted a motion or, on my own, I struck the answer because it's supposed to -- it was improper for it to come to your attention and you are not supposed to take it into account.

If you hear anything or see anything about this case that in any way is affecting what you think is your reaction to the case and it doesn't take place here in the court, while the trial is in session, that's not evidence, even if what you see or hear or overhear involves one of the parties to the case or a witness to the case or an attorney in the case or anything like that.

Only what happens in the trial, here in the courtroom, in all of our presence, is evidence. Everything else would have to be outside that category of evidence.

Sometimes evidence will be admitted for a limited purpose. I know that's going to happen in this case. If certain -- if one side or the other gets into certain evidence that can only be considered for a limited purpose, I'll tell you that, and you are entitled to consider that evidence, but only for the limited purpose or the limited reasons that I authorize it to come to your attention.

Now, you've probably heard about the difference between direct evidence and circumstantial evidence. Direct

evidence is direct proof of a fact. It can come from the testimony of a witness about what that witness personally saw or heard or did or believed. That's all direct evidence.

Circumstantial evidence is actually indirect evidence. It's proof of some facts which can enable you to find other facts or different facts.

And you are to consider both direct and circumstantial evidence, and you are allowed to consider them equally. If you find circumstantial evidence to be believable and probative, you are entitled to give it the same weight that you would give direct evidence.

Let me give you a commonly given illustration of direct and circumstantial evidence. I'll start with the circumstantial evidence. And what I'm about to tell you with this little anecdote illustrates a second point that will also be real important.

Suppose you wake up in the morning, you go outside to get the newspaper, and the grass and the sidewalk are wet. You might say to yourself, Gee, I must have slept heavily last night because I didn't hear the rain come down. Look at all of this wetness out here. It must have rained pretty hard. And from the fact that the ground and the grass are wet, you could, very logically, conclude that it had rained.

What you see as direct evidence is the wetness. What you conclude as the fact, namely, rain, is the conclusion you

drew from the direct evidence. It's circumstantial evidence, the wetness is, of the rain coming down.

But as that thought that "it must have rained last night" goes through your head, you actually could be very wrong because maybe the sprinklers went off unexpectedly, and that's what caused the moisture before you.

So the direct evidence is what's wet. That is something you saw. The circumstantial evidence is that the wetness is proof that it must have rained.

But the anecdote illustrates how important it is to keep an open mind, because until you hear the complete story, you are not sure exactly what a fact is. And keeping an open mind means keeping an open mind throughout the trial.

Please don't jump to conclusions at the beginning or the middle or at any time until you are ready to go back and give your views to your fellow jurors. Keep an open mind because the case isn't over until it's over. Things you learn later on may affect views and evidence and facts you heard previously. Okay.

Now, if I rule on objections -- I'm sure there will be objections that one side or the other side gives to this case. If I say "sustained," that means that the question need not be answered, and the person who asked the question needs to move on to the next question. If I say, "overruled," then the question may be answered.

So you are not to draw any conclusions about my rulings on objections except that if I sustain an objection, you are to ignore the question itself. Sometimes people ask a question that plants an idea in the minds of someone who heard the question, when it wouldn't be proper to have that idea planted.

You are going to have to evaluate the credibility of witnesses, and there are many things you can take into account. You can decide which testimony to believe, which testimony not to believe. You can believe everything a witness says, you can believe part of what a witness says, or you can believe none of it. That's entirely up to you.

In considering who to believe and what to believe and how credible is the testimony of any witness, here's what you can take into account: The opportunity and ability of that witness to see or to hear or to know the things that she or he is about to testify to or is testifying to, the witness's memory, the witness's manner while testifying, what's the body language like, what's the demeanor, how convincing is it, the witness's interest in the outcome of the case, does this witness have some kind of bias or prejudice that makes what she says or he says somewhat suspect, whether there is other evidence that contradicted the witness's testimony, how reasonable is the witness's testimony in light of all the evidence, and any other factors that you think bear on

believability. You are entitled to take all those things into account.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. So you could have ten witnesses testify to something and one witness testify the opposite, and you might wind up agreeing with the one witness and not with the ten.

Now, here are some aspects about your service as jurors that are real important, and what I'm about to tell you I later on will refer to as the "admonition," a big fancy word.

If I say, "Please remember the admonition" when you are leaving the courtroom or when a weekend break is coming, it's what I'm about to tell you about now, because this is real important. It's going to sound a little odd to you. Some of the things I'm about tell you, you have to do or you are forbidden from doing, seem, at first blush, to be impossible and unrealistic. But hear me out because this is real important.

I don't want you and you are instructed not to talk about the case or about anyone who has anything to do with the case until the conclusion of the case when you go into the jury room to decide on your verdict.

And when I say "anyone else," I mean not only each other, but I mean people at home, friends, fellow workers, because you'll have opportunities to go back and forth to work.

You can tell them you are a juror. You can tell them what the case involves. It's a criminal case. It involves charges of putting threatening information on the Internet and posting social security numbers on the Internet, but that's all you can say.

That's the part that's hardest to comprehend. The other things I'm about to tell you may be a little bit related, but why is it important for you to not start talking to other people?

Think about it. If you start expressing views about who you think is telling you the truth and who may not be or what the evidence has shown so far and what it hasn't, just by hearing your own thoughts expressed aloud, you are likely to reinforce those thoughts and reach a conclusion and stick to it even though not all the evidence has come in. That's just the way we are as people.

You are also certain to get a response from somebody else. You'll start talking about the case and somebody will ask you a question or volunteer an observation, and your fellow other jurors, all 13 of the other people, won't be there to hear what's being planted into your mind nor will the parties nor will the lawyer nor will I. You are going to be affected just by talking about the case, even though you are trying your best to keep an open mind and to be fair to both sides.

It's impossible not to be influenced by other

people's responses and by your own words. So we ask you to remain committed to not talking about the case with other people.

Now, I've talked to so many jurors who have told me, at the conclusion of the case, that they never thought they would be able to pull it off and I understand why. But they also tell me that when they understood how important it is to carry out their oath about keeping an open mind and being fair, they stuck to their oath and they pulled it off.

This is not going to be that long a trial, so I don't think it's going to impose a significant burden.

The lawyer in this case -- there may be more than one prosecutor. I doubt it. But the lawyers and the parties, so this would include Mr. Sutcliffe, have been instructed not to talk to you either. You may see them in the hallway. You may see them around the building. You may see them out at lunch. I don't know where you may see them. Don't think that any of them is giving you a cold shoulder or is hostile or is indifferent or arrogant or aloof or anything like that. They are under strict obligations not to do anything more than smile.

Because one thing can lead to another, and they have their responsibilities and duties as officers of the court and as parties and you have yours. So please don't hold it against anybody if you don't even exchange chitchat about the weather

or anything else like that.

I don't think there is going to be any news coverage about this. I don't think you are going to hear anything on the radio about this. If you do, disregard it, turn away from it, and don't tell anybody else about what you may have briefly heard or seen.

You may hear things about evidence in the case that prompt you to wonder whether you can understand it better, so you might want to go to your computer or you might want to go to information about computer usage or you might want to check out a particular location which is the subject of some testimony. You might want to do a little bit of independent research just so you think you can understand better, in your own mind, what the case is all about, but you can't do it.

Don't look up information in dictionaries as to computer terms. Don't go onto websites that you may hear about. I don't care if they are functional or not. Don't go finding out information about any of the companies that may be discussed in this case. Please, don't do any independent research.

Whatever your verdict is going to be, it's going to be based on what everybody else hears about here in the courtroom.

If you need to communicate with me, please tell the clerk. At the end of the case, you'd have to communicate in

writing. But sometimes you need to let me know that some unexpected event occurred. God forbid, there is a medical emergency with somebody's family and you can't arrive on time. We've got to know that. You have a right to just tell the clerk and that information will get to me.

But I'm going to maintain the same kind of relationship with you as I've instructed the lawyers to. I'll probably see you more than they do. My chambers are near your jury room. If I say anything, it will be mere pleasantries. So please don't think that I'm disregarding your reaches either.

Note-taking. There should be pads on your seats. Does each of you have a pad now and a pencil? You are welcome to take notes. You are welcome to use your own, and you are welcome to take notes. You don't have to take notes. If you do take notes, keep them to yourself. Don't talk to anybody else about the notes you are taking.

Please don't let the process of taking notes distract you so that you don't hear the next question and the next answer. Feel free -- and, in fact, I'm instructing you to leave your pads or notes at your respective seats. I assure you, nobody else is going to look at them. Not me and not anybody. They are safe where they are.

We don't want you to take them into the jury room because I use the jury room for other purposes when the juries

aren't here. I have various kinds of conferences with lawyers on other kinds of cases. So your notes will be safe here and not in the jury room.

Whether or not you take notes, please rely on your own memory of what was said in court because the notes are meant to assist your memory, but you can't be and shouldn't be overly influenced by those notes you choose to take.

You really do have to pay attention, because I've already explained to you that everything that's being said, including what I've been telling you now, is being taken down.

But at the end of the case, when you have to go back and start discussing the case with your fellow jurors, you won't have a transcript. I won't either. We don't have a transcript until long afterwards, if at all.

So in order for you to try to get exactly what was said and what was answered or a question, it would be very difficult, very time-consuming, and not always very feasible for the court reporter to go back through her notes and try to find a particular portion of the testimony that you are interested in hearing again. So do your best to pay careful attention and to absorb, as best you can, the evidence as it's coming in.

Okay. I told you that the parties are entitled to make an opening statement which is, as I mentioned, kind of a preview or an outline. No party is required to make an opening

statement. I've been told that each side intends to. I've given them time limitations. They know what they are.

After their completion of opening statements -- because the government has the burden of proof, the government goes first, and it will present evidence, and Mr. Sutcliffe may cross-examine the witnesses that the government presents. And when the government rests, I will then tell you what, if anything, will follow that stage of the case.

Thank you very much for your attention thus far. And with that, if counsel wishes to shift the lectern while she's giving opening statements, she may do so, but then return the lectern to its proper place. And I have already authorized Mr. Sutcliffe to address you from his counsel table, so that's where he'll speak from.

MS. DUARTE: May it please the Court, ladies and gentlemen of the jury, you will hear, during the duration of this case, that thousands of social security numbers, accompanied by names and, in many cases, dates of birth, home addresses, home telephone numbers, spouses' names, and other personal information, identifying information, was published on the website "evilgx.com".

You'll hear that this information was published from about the fall of 2001 to the spring of 2002. You will hear that "evilgx.com" started as a very small website and it grew. It grew rather quickly. And the communications on the website

and the information on the website, you will hear, escalated.

The evidence will show that "GX" stands for Global Crossing. Global Crossing, you will hear, is a telecommunications company that was located -- or at least the office that you'll hear about in this case was located in Beverly Hills.

You will hear that most of the information on that website, "evilgx.com", concerned employees of the company, those who worked for the company and those who worked with the company, in many cases doing work on the company's behalf.

And you will hear that not just social security numbers were posted on the website "evilgx.com", but there was other information as well. Not only personal identifying information, but information that had been previously on Global Crossing computers and the computers of its employees.

The evidence will show that in many cases these references to social security numbers was accompanied by references to identity theft and the danger of leaving your social security number unprotected anywhere public for all to see.

And you will hear that danger was referenced in another form, as well, on the website "evilgx.com". You will hear it was referenced in the form of threats made to others over the website, threats to the woman who was hired to serve process in the civil suit that Global Crossing initiated. They

initiated it against the person that they thought had taken the information from their computers and posted it on the Internet.

They recognized the information, you'll hear, as information coming from the company posted on the Internet for all to see.

You'll hear about threats to the chairman of the board of Global Crossing and to the assistant general counsel that attempted to get the website offline.

And you will also hear that the general tone of the website was threatening. You will see, as well, that the site proclaimed, at various times, "I'm coming to collect from you, personally. I will personally send you back to the hell from where you came. This has now become very personal. Let the games begin again until death. Keep your dogs at bay. I am now armed," and "I know how to stalk, too, and I will kill you," all that and more.

You will hear all of this and more about the website "evilgx.com", and you will also hear a lot about the defendant in this case, Steven William Sutcliffe.

You will hear that in the fall of 2001, Steven Sutcliffe was let go from his job at Global Crossing at the Beverly Hills office. You will hear that before he was let go, he worked in the IT department, Information Technology, where he was entrusted with the computers, with the job of fixing computers of others that were employed at the company. And you

will hear that he had access to the information on these computers during that time.

You'll hear that the computers that he had access to included the computers of Richard Saly, the director of human resources for the company, and Elizabeth Greenwood, the assistant general counsel.

The evidence will show that the defendant also appeared to have had access to the payroll computer where all the names and social security numbers of the employees were stored.

And you will hear that it was this information -- Saly's information, Greenwood's information, the information on the payroll computer -- that ended up on the website "evilgx.com", as well as other information.

You will hear that after the defendant no longer worked for Global Crossing in Beverly Hills, that he was seen walking back and forth in front of the company, picketing, if you will, and his picket sign, you will hear, read, on one side, something about Global Crossing discriminating and on the other side, most importantly, a reference to "evilgx.com", the website. And you will see that there were pictures of the defendant picketing, just like this, on that website.

And you will hear that after defendant called their attention to the website, not just by picketing, but also by e-mails, which you will see, the employees at Global Crossing

began to hear about and see the website and their information on it, and they were understandably disturbed.

You will hear from Global Crossing employees, as well as FBI agents that captured, that downloaded, or saved the website and portions of it on various dates.

You will also hear during the course of this trial from owners and operators of ISPs -- Internet Service Providers -- and Web hosts that hosted, that provided service for, the website "evilgx.com".

You won't hear from them all. Ladies and gentlemen, the evidence will show that there were far more providers, by defendant's own admission, than the five or six that you are going to hear from during the course of the trial. But you will hear from a representative sample, and they'll tell you that they hosted the website.

And from them, ladies and gentlemen, as well as from other evidence, you will learn that defendant moved his site around often. From host to host, from state to state, from server to server. And you will hear that later he spread this site out among various servers, claiming, at least once, to have more than 24 servers all hosting his site, or portions of his site, at the same time. All this, at least in part, to thwart the many attempts by Global Crossing to get that site down offline.

You will hear also that the defendant himself moved.

You will hear that he lived in Los Angeles until about November, early November of 2001, and then he moved to New Hampshire later in November.

You will hear that he had and used a computer at both these residences. The evidence will show that Comcast installed a cable modem for access to the Internet at his house, at his residence, in New Hampshire for access to the Internet.

And you will hear that there was an IP address -- an Internet Protocol address -- which you will have defined for you also a little bit later. But it's basically, you will hear, the rough equivalent of a phone number for a computer rather than a telephone.

You will see and hear that that IP address identified the location of defendant's computer and was also seen accessing multiple times the e-mail accounts at Yahoo! that were used to send e-mail about the website and that also appeared on the website.

So you will see much evidence tying the defendant's computer to the website "evilgx.com", Web hosts, which he signed up for, as well, from this computer that you will hear was located in New Hampshire.

And you will hear that when a search warrant was served on defendant's New Hampshire residence in March of 2002, the agents found evidence inside the apartment, the residence,

linking Steven Sutcliffe to the Los Angeles address, to Global Crossing, and to the website "evilgx.com", among other evidence.

You will hear that the FBI also found computer evidence in defendant's New Hampshire residence that linked the defendant to "evilgx.com" and to its location.

And you will hear and see that they found evidence demonstrating defendant's meaning, his intent, when he posted on his website various messages to individuals, such as, "Tracy, have you ever been stabbed with a knife?" to Tracy Hall, who was hired to serve defendant with process in the civil suit in Los Angeles, and "Keep your dogs at bay. I am now armed" to Gary Winnick, the chairman of Global Crossing.

Also adding meaning to defendant's words from the Internet were the way his intent was communicated through links. You will hear about links, portions of text that go to another Web page.

So that when defendant, you will hear, for example, addressed Tracy Hall and told her that "if she didn't like seeing her license number on the website, it could get much, much worse," and he made the words "much, much worse" into a hyperlink that went out to an article on the dangers of identity theft if someone gets your social security number, you will hear that it was very apparent what defendant meant by that statement to her on the website; or when the defendant, as

you will see, linked a document that had names and social security numbers of various people, again, with the admonition or the threat, "As time passes, this will only get worse," and linked it to a document which contained not only the names, not only the social security numbers, but the dates of birth, spouses' names, personal residences, maps to those residences, and other information, it will be clear what defendant intended to communicate.

And when defendant spelled out to Tracy Hall -- you will see that he would add her to his domain list, and that was a link that went to a site on -- to a page on the website that said, "Let the games begin again until death," and death was a link that went back to the original threat to Ms. Hall.

And the last illustration: You will hear about a combination of links that Elizabeth Greenwood saw on the Internet and that the agents also saw. That included not only "I am coming to collect from you personally," but was followed after that by her name, social security number, date of birth, residence, a link to a map to her house, and a picture of her and her daughter, which she will tell you was located on the hard drive of her computer at work.

You will see this, ladies and gentlemen, and you will see other examples of these links and of the content of "evilgx.com".

In summary, ladies and gentlemen, the government will

prove, during the course of this trial, that the defendant posted on his website the confidential personal information, including social security numbers, of over 2,000 people without their permission, along with links to an article discussing on how social security numbers are used to commit identity theft, as well as other promises, direct and indirect, to disseminate this information, this personal information.

And when people tried to stop him, tried to stop the website, he threatened to injure or kill them.

These are some of the facts you will hear and the evidence you will see and what the government expects the evidence will show at trial.

The time to argue the facts and the evidence and the law will come at the conclusion of this case. And at that time, ladies and gentlemen, and not until that time, I will be back up here and I will again address you directly, and I will do just that: I will argue the facts and I will argue the law and the case.

At that time, at the conclusion of the trial, when you have heard the evidence, when you have heard of Internet interstate activity, including transmission of multiple threats and transfer of thousands of social security numbers on the Internet, with the intent to aid and abet another felony, which is false use of a social security number, when you've heard that evidence that we will present to you, I will ask you to

find the defendant guilty as charged of five counts of transferring social security numbers with the intent to aid and abet their false use, and four counts of threats to injure or kill.

Thank you.

THE COURT: Okay. Thank you, Counsel.

Mr. Sutcliffe, your turn.

MR. SUTCLIFFE: Thank you, Your Honor.

May it please the Court, ladies and gentlemen of the jury, thank you for your time for coming here. I'm going to try to be real brief for you.

You just heard the government tell you some very terrible things about me. It sure sounded terrible. But the defense is going to show you that the evidence will prove exactly the opposite of what the government has just told you.

If I'm a little nervous over here, I would ask your indulgence. Please excuse me. I'm not used to this. I didn't plan on being here and I don't want to be here.

What the government -- instead of me telling you what the government -- explain what the government told you, I would like to briefly just touch upon what the government didn't tell you there.

What the government didn't tell you is more important than what the government told you.

THE COURT: Mr. Sutcliffe, just preview what you

think the evidence will show that the government didn't disclose. That's the proper way to do it. Don't argue it yet.

MR. SUTCLIFFE: Okay, Your Honor. Thank you. Excuse me.

What the defense believes the evidence will show is that it's not a crime to publish personal information on the Internet, in a newspaper, over a radio, over TV.

What the defense believes the evidence will show is that a court order was issued by a superior court judge, which authorized, sanctioned, the defendant to publish any personal information, any information, from that company.

The defense further intends to show, as related to the threats, that the very same language that the defense sits here accused of was used by law enforcement officers, other people, employees of Global Crossing, prior to the defense being charged with anything. And the government knew of this and employees of Global Crossing knew of this, but you won't hear about that.

This case is related to the threats. It's about definitions, how one defines what one means.

For you to find the defense guilty of specifically threatening somebody, the law requires that you are going to have to say that I specifically intended to threaten somebody. That involves purpose.

The evidence will show that that was not the purpose

of the defendant, that was not the intent of the defendant. This was a battle of words with the legal department of this company, this humongous global corporation, that I picked a fight with.

I picketed that company. I did it peacefully. There was no violence ever between the employees and myself.

The evidence will show that the defendant worked at this company as a contractor for almost a year. The company was so happy with the work of the defendant, that they offered him full-time employment there.

When the defendant issued -- gave them a passport to prove that he was an American citizen, born in this country, they said, "That's not good enough. You need to give us your social security number."

And when the defendant said to him, "I don't believe I have to. I don't believe the law defines that I need to do that," I was fired. The defendant was fired. But you won't hear about that either.

They are going to claim the defendant was fired because of insubordination because he refused to -- excuse me. They accused me of lying on my application after they -- they fired me first, brought me back and hired me again after I contacted legal advice; and then they created an excuse to get rid of me, citing that I had lied about an infraction ticket from years ago. They call that a crime. Parking tickets and

infraction tickets to them are a crime.

I was summarily dismissed. I peacefully picketed the company. I was threatened. I took my family -- I was stalked. I took my family -- I have a young daughter. You will see her picture on this website also, as well as one of the alleged victims -- and I moved them back to New Hampshire.

The motto of that state is "Live free or die." That's not a threat, the "die" part.

The evidence will also show that the corporate motto -- the head CEO of this company, his motto was "We live and die together." You'll see that on the website, too. Somebody could construe that to be a threat, too.

If you want to take words and stretch them out and imply different meanings to them out of context, sure, you can pretty much create anything you want.

But I believe that the evidence will show that these words, like "die" and "dead" and "kill," these are all words which have many meanings. And if you want to take it out of context, like the government is doing, sure. It sounds really bad coming from over there, and I agree with her. But I believe the evidence will show otherwise.

I'd like to point out that -- this is that part where I say please excuse me because I'm not used to this. There is just a couple of points I want to point out.

As far as where the defendant was accused of lying

and was fired, the evidence will show that this company -- when the defendant published and authorized data to be put on this website, this company itself was under investigation.

It's a telecommunications company. And you've heard of a few other telecommunications companies, like WorldCom, Enron. They all tanked. They all tanked at the same time, which is the time that this information was being published. They didn't want this information out there.

Yes, I was armed with the information on the company. You will see that in the website also. There was a ton of it. I was actively soliciting any other disgruntled employees who had information on this company related to any type of fraud.

And they were investigated by the FBI for fraud. They went bankrupt. The fourth largest in the history of the United States. You bet they didn't want this website up. They were lying.

The evidence will show that they were lying to these ISPs to censor the information that was put on here. You are right. The words, "This is all far from over" was said on there. The censorship is far from over. The lies are far from over.

The defense will show you the lies that were told to the hosts of the site, the lies that were said to the government by these people. In fact, the defense will show that even the FBI, who is sitting over there, right there,

Mr. Cugno, is a liar. He had to justify his arrest, and that's what he did.

In March -- when he arrested the defendant, he had to create a lie. The defense will prove that. You are going to hear a lot of lies. But please keep an open mind, as the judge instructed, and that's all I can ask from you.

You are going to find out also the evidence will show that not one person was a victim of identity theft or credit card. Nobody is going to come up there and take the stand and say that I, directly or indirectly, caused identity theft from them.

The evidence will also show that this data, this information, that was being published on this website was provided to me directly and indirectly from within and from without that company, from employees directly related to actually some of these alleged victims that you are going to hear from today.

They have said over and over, "He stole this information. He stole this information."

I didn't steal a thing, ladies and gentlemen. I'm not a thief. I'm not -- I don't go around threatening people. I don't go around stealing from people.

I want you to just keep an open mind, and that's all I want to say to you today.

Thank you.

THE COURT: Okay. Thank you, Mr. Sutcliffe.

Would you please call your first witness.

MS. DUARTE: Yes, Your Honor.

The government calls Mr. Bruce Wieseltier to the stand.

THE COURT: All right.

BRUCE WIESELTIER, GOVERNMENT'S WITNESS, SWORN

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Bruce Wieseltier, W-i-e-s-e-l-t-i-e-r.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MS. DUARTE:

Q Good morning, Mr. Wieseltier.

A Good morning.

Q Mr. Wieseltier, were you working in 2001?

A Yes.

Q And where were you working?

A Global Crossing in Beverly Hills.

Q What kind of a company is Global Crossing?

A Telecom.

Q Telecommunications?

A Yes.

Q Are you still at Global Crossing?

A No.

Q What was your position there at Global Crossing?
A Network computing manager.
Q As a network computing manager, what is it that you did there?
A I was responsible for all IT operations on-site, as well as the 24 by 7 call center that serviced all of our sites.
Q Let me just ask, when you say "IT," what is it that you mean?
A Information Technology.
Q Information Technology?
A Yes.
Q Okay. And you were responsible, you said, for Information Technology?
A For the operations and the staff providing services, yes.
Q Did you have a staff that worked for you?
A Yes.
Q Were you the manager or supervisor?
A I was the manager.
Q And what exactly did the staff do that worked for you? What kind of support and assistance did they provide?
A I had two subgroups. The majority of my staff provided the 24 by 7 call center support and local hands-on service.
Q When you say "24 by 7," do you mean 24 hours, 7 days a week?
A 24 hours a day, 7 days a week.

Q Go ahead and finish what you were saying about that.
A The second group, I had three engineers that took care of servers and the server room.
Q Did you know Steven Sutcliffe?
A Yes.
Q How did you first meet Mr. Sutcliffe?
A He was brought onboard as a contractor through one of our vendors.
Q When you say that, what do you mean?
A We were looking to cover the 24 by 7 shifts. And I had three different contractors -- vendors that would supply me with staff, qualified staff, and Steven came to me through one of those vendors.
Q So at that time was he actually an employee of the company directly?
A No. We were bringing people in as contractors.
Q Okay. And approximately when was that, did you say?
A Late 2000.
Q And what did he do when he first started working with you? What was he working at?
A Steve joined our team at 24 by 7 call center services. He was probably on daytime training. I don't recall specifically. He was trained with our type of service, our style and our commitment, and he provided phone support, as well as hands-on support, to local employees in our building.

Q When you say "hands-on support," what is it that you mean?
A That means that he could actually go to the computer and work on the computers if there were problems being reported by staff at our site.
Q Did you witness or did you see his work in that position?
A Yes.
Q Do you have an opinion on the kind of work he did in that position?
A He was very qualified for the position.
Q Did you get a chance, during your observation of him, to assess his abilities with computers?
A Yes.
Q What would be your assessment of those abilities?
A I considered his skills excellent.
Q If you saw him again, would you be able to identify him?
A Yes.
Q Do you see him in court today?
A I do.
Q Will you point him out and identify an article of clothing he's wearing, please.
A Blue shirt.
THE COURT: Let the record reflect that the witness identified Mr. Sutcliffe sitting at counsel table.
MS. DUARTE: Thank you, Your Honor.
Q Mr. Wieseltier, at some point was defendant let go from

Global Crossing?
A Yes.
Q Do you remember approximately when?
A It was the fall -- late summer or fall of 2001.
Q Before that time -- immediately before that time, did defendant say anything to you about any issue he had with Global Crossing?
A Yes.
Q What did he say to you?
A He came to my office with his supervisor, who reported to me, Stacey Huckestein, and Stacey suggested that he wanted to talk to me.
THE COURT: This woman Stacey, spell her last name.
THE WITNESS: H-u-c-k-e-s-t-e-i-n.
THE COURT: Okay. Please continue.
THE WITNESS: Stacey asked me if I had some time to listen to Steve, who wanted to talk to me.
BY MS. DUARTE:
Q Did you have the time?
A Yes.
Q What did Steven say to you -- excuse me. What did Mr. Sutcliffe say to you?
A I don't recall the conversation exactly. There was clearly conflict with processes that were going on to convert him from a contractor to a regular employee.

Q Let me stop you and ask, had you known about this conversion from a contractor to an employee?
A I initiated it.
Q Why did you initiate it?
A We were in a position where I either had to convert contractors to regular employees or release them.
Q Was there anything about Mr. Sutcliffe's work that inclined you to make the recommendation that he be converted?
A I considered him highly skilled and thought he would be an asset to our team.
Q Now, when you talked to Mr. Sutcliffe about this conflict, what, if anything, did it center around? Do you remember?
A There were requirements for forms and information that HR needed from Mr. Sutcliffe.
Q Let me stop you and ask, when say "HR," what is it that you mean?
A Our human resources that was on-site.
Q Go ahead. You were saying information was required?
A Yes. They were requesting information regarding his social security number and some other information.
Q What, if anything, did he say to you about that?
A He was unwilling to provide it and had a belief system that he did not have to.
Q Okay. Were you involved in any resolution of that particular dispute?

A No.
Q Mr. Wieseltier, at some point was Mr. Sutcliffe let go from the company?
A Yes.
Q Now, were you involved in that decision-making?
A No.
Q After he was let go, did you see him again?
A Yes.
Q In what context?
A He was picketing our site on the outer sidewalks around the perimeter.
Q By "our site," do you mean the office at Beverly Hills?
A Yes.
Q When you say "picketing," could you describe what it is that you mean?
A He was carrying what appeared to be a cardboard placard or white paper stacked to a board that he carried above his head.
Q Do you remember what it said on it?
A There was a variety of different comments on it. In particular, there was a comment regarding oppressing religious freedom, something to that effect, as well as a website.
Q Do you remember the name of the website?
A "www.evilgx.com".
Q Are you familiar with the initials "GX"?
A Well, that was the initials for our site for our company,

yes.
Q And you mean Global Crossing?
A Global Crossing.
Q So you recognized that "GX" as referring to Global Crossing?
A Yes. That was our stock ticker.
Q By "stock ticker," what is it that you mean?
A We were listed on the New York Exchange as "GX".
Q Now, this "www.evilgx.com", did you look up the website on that sign?
A Yes.
Q What, if anything, did you see? Do you remember?
A Initially, some commentary that was similar to what was on the placard regarding oppression of religious freedom. It grew and changed over time.
Q Did you keep accessing it over time?
A Yes.
Q Did you ever see anything related to anyone that you knew?
A There was volumes of information on staff at Global Crossing, not only at our site, but throughout the company.
Q By "volumes of information," just what, in general, is it that you mean?
A There were listings of board members and their residencies, contact information. There were listings of stock grants. There was listings of pay scales. There was also

information on human resources activities with complaints, and that sort of thing.

Q Did you see any social security numbers?

A Lots of social security numbers, yes.

Q At some point did you see documents referencing items that were familiar to you in some other manner?

A Yes.

Q What items were these? Is that what you just described to us?

A Yes.

Q How were these items familiar to you? How were these documents familiar to you?

A I was contacted by staff within the HR department, as well as our legal department, and asked to come look at their computers.

Q Did you do that?

A I did.

Q What were you looking for?

A The staff that were calling me believed that items on their computers were showing up on this website.

Q Were you asked to make a comparison?

A I was.

Q Did you do that?

A Yes.

Q What, if anything, did you see?

A With few exceptions, I saw identical documents that were on a few of the computers there that were on the website.
Q Does Global Crossing -- or I should say, did they, at the time, keep records to document which computers were worked on by whom down at -- I'm sorry, you called it your 24/7 center. Is there a name I should use to call it?
A Call center is fine.
Q Did Global Crossing keep records as to who was working at the call center?
A Yes.
Q Are you familiar with these records?
A Yes.
Q Just, in general, what were the records like that you were using in 2001?
A The records we had adopted from a company we purchased were called case reports.
Q Did you also require employees to fill out timecards?
A Contract employees, yes.
Q Not regular employees?
A Correct.
Q Were the timecards kept on file?
A Yes.
Q Were they kept as records?
A Yes.
Q Were you familiar with these case reports and these

timecards that you've just talked about?
A Yes.
Q Are you familiar with the way that they are created and maintained?
A Yes.
Q Were they made at or near the time that the matter that they document occurred?
A Yes.
Q Were they kept in the course of Global Crossing's regularly conducted business activity?
A Normal business, yes.
Q Were they made by that business -- by Global Crossing as a regular practice?
A Yes.
THE COURT: That applies to both the case reports and the timecards?
THE WITNESS: Correct.
BY MS. DUARTE:
Q Mr. Wieseltier, take a look, if you will -- there should be a binder up there behind you, a big one. I'm going to ask you to pull that out and take a look, if you will, at Exhibits 1 through 5. Just leaf through them for me.
Let me know when you are ready to tell me if you have seen those documents before.
A Yes, I have seen these.

Q Where have you seen them before?
A The case records are from our case tracking system that we all used, and the copies of the time sheets are the standard format we were using with TriStaff Corporation.
Q Do you recognize them as business records of Global Crossing?
A Yes.
Q And are Exhibits 1 through 5 at least copies of those records that you've talked about?
A Yes.

MS. DUARTE: Your Honor, move to admit Exhibits 1 through 5.

THE COURT: Item 1 is a case report; is that correct?

MS. DUARTE: Yes, Your Honor.

THE COURT: I'm asking the witness.

MS. DUARTE: Oh.

THE WITNESS: Yes.

THE COURT: And so are 2 and 3; is that correct?

THE WITNESS: Item 2 also is a time sheet.

THE COURT: And is that -- is the time sheet the way records were maintained at the time?

THE WITNESS: Yes.

THE COURT: Is that a separate document -- was that considered a separate document than the case report?

THE WITNESS: Yes, sir.

THE COURT: Okay. So item 2 is both the case report and the time sheet; is that correct?

THE WITNESS: That's correct.

THE COURT: Item 3 is just a case report?

THE WITNESS: No. There is also a time sheet there.

THE COURT: Item 4?

THE WITNESS: Just a case report.

THE COURT: And item 5 is both a case report and a time sheet?

THE WITNESS: That's correct.

THE COURT: They will all be admitted.

MS. DUARTE: Thank you, Your Honor.

Permission --

THE COURT: Items 1 through 5 are received into evidence.

(Government's Exhibits 1-5 received.)

MS. DUARTE: Thank you, Your Honor.

Permission to publish?

THE COURT: Yes.

BY MS. DUARTE:

Q Mr. Wieseltier, I'm going to ask you to take a look at Exhibit 1, if you will.

You said that this was a case report?

A Yes.

Q I'm going to zoom out here a little bit.

The document on the screen -- that I've put on the screen, is that the document you are looking at?

A Yes.

Q It says, "Case Report"?

A Yes, it is.

Q Mr. Wieseltier, it's not showing up very well on the monitor, so I'm just going to ask you, what does this case report indicate? What does it actually document?

THE COURT: Are you asking now about Exhibit 1?

MS. DUARTE: Yes, Your Honor. I'm sorry.

THE COURT: Okay. Please proceed.

THE WITNESS: The case reports, each one has a unique number on them to identify them for searches later. It identifies the location where it was recorded, the customer, who called and reported the problem or needed assistance.

BY MS. DUARTE:

Q By "customer," do you mean -- is that usually an employee of Global Crossing?

A Customer would be someone that -- yes.

Q What type of problem would we be talking about documented in these case reports?

A There could be a variety of problems, from software or hardware glitches or things that didn't work right, to a simple question of how to accomplish something on the computer.

Q So that would be a computer problem specifically?

A Yes.
Q Okay. And under "case history" there at the bottom, what is documented by that?
A The case history are actually entries made by the call center staff who worked on these different problems.
Q I'll put this portion on the monitor here.
Okay. What else is documented on here?
A Along with the actual notes from the work done by the employee of my department, would be the time of entries, as well as their name and code stamp. Each employee that used the system had a unique entry code and password.
Q Drawing your attention to the bottom of page 2 entitled "Activity Summary" --
A Yes.
Q -- does that present an example of this employee code that you've been talking about?
A Yes. There is several listed there in the "Originator" column.
Q And do you recognize this code that I'm pointing to right now?
A Yes.
Q What is that code?
A That's the code used by Mr. Sutcliffe on this system.
THE COURT: You should -- in the interest of having a complete written record, if you ask about an entry like the one

that I think you were just asking about, then say aloud what you are pointing to.

In this case, it would be SWS723?

MS. DUARTE: Yes, Your Honor.

THE COURT: Try to do it that way, please.

BY MS. DUARTE:

Q SWS723, what's that the code for?

A That was the unique user ID on our case tracking system assigned to Mr. Sutcliffe.

Q So by looking at the activity portion of Government's Exhibit 1, would you be able to tell whether or not Mr. Sutcliffe worked on the computer or was involved with the work on the computer in question?

A Yes. And, in addition, may have taken a call.

Q Okay. Whose computer is Government's Exhibit 1 talking about, discussing? Who was the person who had the computer problem?

A The customer is listed as Elizabeth Greenwood.

Q Okay. And what does this record show about who worked on Ms. Greenwood's computer?

A The activity summary is where I would answer that from.

Q Go ahead and answer.

A This essentially shows the creation on June 1st, 9:36 in the morning, Mr. Sutcliffe made that entry. There was a series of entries over the -- for the next hour or so on the 1st,

Mr. Sutcliffe. There was a rule action.

Rule actions, they are defined time spans on our system. If a case is not resolved, automatic e-mails are forwarded to supervisors and managers. So the rule action would be a system notice. So there is a system notice at 10:02.

Q Let me stop you, Mr. Wieseltier. You actually don't have to go through each and every line if there is a way for you to answer the question without going through each and every line as to whether Mr. Sutcliffe worked on this computer.

Can you answer the question?

A I can't. I wonder if you would ask that again, please.

Q Does this record contained in Exhibit 1 show whether Mr. Sutcliffe worked on Elizabeth Greenwood's computer?

A Yes, it does.

Q What does it show? That he worked on the computer?

A He did work on this computer.

Q Is there a date that the work took place?

A June 1st.

Q Of what year?

A 2001.

Q Okay. Take a look at Exhibit 2, if you will. And whose computer is being worked on by the case report in Exhibit 2?

A Same customer. Elizabeth Greenwood.

Q What is the date that the computer was serviced?

A This case opened on the 4th of June 2001.
Q Now, does this case report indicate that Mr. Sutcliffe specifically worked on this computer?
A It does not.
Q On the last page of the exhibit -- this is page 4 of Exhibit 2 -- is there a timecard?
A Yes, there is.
Q And what does that timecard show about whether or not Mr. Sutcliffe was working at the time that this computer was in the call center?
A It reflects that he started at 2:00 p.m. on the 4th of June 2001 and left at 11:00 p.m. on the same date.
Q You said 2001. I am looking at page -- I'm sorry, the 4th of June. My mistake.

Now, directing your attention to the same exhibit, Exhibit 2, if you could look at the bottom of page 2. I'm going to direct your attention down to the bottom.

Permission to publish, Your Honor?

THE COURT: Yes.

Anything that's already been admitted, you can publish at your choosing. Publish is a fancy word meaning display, make physically and visually available to the jurors. If it's been admitted, you can publish it.

MS. DUARTE: Thank you, Your Honor.

Q I'm going to point to this word and read it and ask you to

describe it for me. Here, at the bottom of page 2, "Her old system is Ghosted to," and then continuing to page 3, there appears to be an address here: GCBH Image, back slash, Ghosted, W. Burt.

Can you tell me what that reference to "Ghosted" is?

A Ghosting is a software that we use to capture, if you will, an image of all the data on the hard drive of a computer and pull that data to another source and drop it there.

Q And is the data stored anywhere when it's ghosted?

A Yes. Normally, they are either stored to CD or stored to another computer or server.

Q When you say "CD," what is it that you mean?

A Compact disc.

Q And where would this stored data from the computer being serviced be kept?

A In our operation, we maintained a server for ghosting, specifically for storing images or ghost images.

Q So what would be on that server that you maintain?

A There was ample storage space for my call center staff to ghost machines: Take images from desktop or laptop computers, work on the hardware, and bring that image back, to save all the data for the customer.

Q Who had access to the ghosted copies?

A Everyone on my team.

Q Not just the person that was actually working on the

computer?
A That's correct. They all needed access to that server.
Q Look at Exhibit 3, if you will.
THE COURT: When you say "that server," do you mean the server on which the material was deposited that had been removed from the particular customer's or employee's --
THE WITNESS: Yes.
THE COURT: -- home computers?
THE WITNESS: We use one server routinely for that process.
THE COURT: Ghosting is the process on which information kept on somebody's computer is transferred elsewhere, and the place it was transferred to was the server you were talking about; is that correct?
THE WITNESS: That's correct.
THE COURT: Go ahead.
BY MS. DUARTE:
Q Do you have Exhibit 3, Mr. Wieseltier?
A Okay.
Q And Exhibit 3 is a case report. What does it show? Who is the computer customer on this case report?
A Elizabeth Greenwood.
Q And does it show who worked on Ms. Greenwood's computer?
A There are several entries from Mr. Sutcliffe.
Q What is the date on those entries?

A These are dated June 5, 2001.
Q There is also a timecard attached. I'm referring to page 3. What does that timecard show about whether or not Mr. Sutcliffe was working that day?
A Mr. Sutcliffe's timecard reflects that he began at 2:00 p.m. in the afternoon of June 5, 2001 and left at 11:00 p.m. on the same date.
Q Drawing your attention to Exhibit 4, another case report, who is the customer on this case report, Exhibit 4?
A Richard Saly.
Q Does this case report indicate that Mr. Saly brought his computer in for service?
A More specifically, he called for assistance.
Q Does it indicate that he was given assistance?
A Yes.
Q Does the record indicate who provided the assistance?
A Mr. Sutcliffe.
Q What is the date on this case report?
A June 26, 2001.
Q Lastly, directing your attention to Exhibit 5, what does this case report indicate about the customer?
A The customer is Richard Saly.
Q What is the date on the request?
A May 22nd was the beginning of the case entries for this problem.

Q What does it indicate? Does this record indicate whether or not the computer was in the call center for repairs?

I'm going to direct your attention -- I'll put it on the screen -- to page 2 of this exhibit, in the middle portion. I'm going to zoom on it a little bit here. I'm going to try to zoom in on it a little bit here.

Right there, in the middle of the screen, I'm pointing to and I am reading -- I'm trying to point to. I just underlined the words, "His system works fine down here."

Does that provide you with any indication as to the physical location of the computer being fixed on this report?

A That entry would indicate that we had his laptop in our operation center and working on it locally, yes.

Q By "his laptop," do you mean Mr. Saly's laptop?

A Mr. Saly.

Q Does the activity summary indicate for approximately how many days the laptop was being worked on?

A The case entry lasted until the 30th.

Q You said it started on May 22nd?

A That's correct.

Q Was one of those days May 23rd that the computer -- that there is activity on the computer being worked on?

A Yes. There is at least six or eight entries for the 23rd of May.

Q If you'll take a look at page 3 of this exhibit,

Exhibit 5. What does that timecard show about whether Mr. Sutcliffe was working on May 23rd?

A Mr. Sutcliffe's time sheet indicates that he began at 2:00 p.m. on the 23rd of May 2001, and he left at 11:00 p.m. on the same date.

THE COURT: Counsel, hold off for a minute.

You may proceed.

MS. DUARTE: Actually, Your Honor, I have no further questions at this time for this witness.

THE COURT: Okay. Any cross-examination. Mr. Sutcliffe?

MR. SUTCLIFFE: Very brief, Your Honor. Thank you.

CROSS-EXAMINATION

Q Good morning, Mr. Wieseltier.

A Good morning.

Q How are you doing, sir?

A Good.

Q You just testified that you first met the defendant in late November --

THE COURT: Would you be able to comfortably question if you are standing?

MR. SUTCLIFFE: Sure.

THE COURT: It will be a lot better. People could hear you better and the witness could see you better.

BY MR. SUTCLIFFE:

Q You indicated you first met the defendant in late 2001. He was hired as a contractor; is that correct?
A I believe late 2000.
Q 2000, yes. Excuse me.
Approximately how long did the defendant work within the IT department as a contractor before the offer of full-time employment was given to him, if you know?
A Somewhere around eight or nine months.
Q That would take us to around July?
A I think later. August.
Q August, okay.
And you said that you considered him an asset to the company?
A Yes, I did.
Q His work was very satisfactory?
A Yes.
Q He wasn't stealing stuff from the company?
A We had no negative information regarding his services.
Q But during that time that he was a contractor there, he had touched literally thousands of computers; is that not correct?
A I'm sorry, I can't hear.
THE COURT: The question was, during the time he worked there, he had touched literally thousands of computers; is that correct?

THE WITNESS: I couldn't estimate that.
BY MR. SUTCLIFFE:
Q How many computers were in the Global Crossing headquarters in Beverly Hills?
A At the peak, around 300 to 400.
Q And what was the average call -- calls per day to the IT center for technical support, if you recall?
A During that time, we averaged about 2- to 3,000 calls a month.
Q And each one of those calls usually required an IT person, such as the defendant, to go physically to the person's computer; is that not correct?
A That is not correct.
Q That is not correct?
A Correct.
Q Okay. How many -- what percentage of the calls that came in required somebody from down below to go, actually, physically, to one of those computers within the corporate headquarters?
A Of the, I'll estimate, 300 employees that were on-site, I would say at least half.
Q So just so I understand, 3,000 calls a month from those 300 computers; is that correct?
A No.
Q No. So you were speaking of the entire corporation --

A Correct.
Q -- worldwide?
A Correct.
Q So I understand, how many, average, calls from those 300 computers were taken a month?
A I don't know that.
Q Could you tell me what your position was within Global Crossing?
A Network computing manager.
Q You were the manager of the IT department, were you not?
A That's correct.
Q So was it not part of your job to ascertain and figure out how many problems were happening within the company, within the IT frame?
A Within the company, yes.
Q But you have no best guess how many calls per month of those 300 computer users came into the call center on an average?
A I don't know that.
Q Did you ever fill out a declaration regarding a civil suit involving Global Crossing and the defendant?
A Yes.
Q Did you fill out more than one?
A Not that I recall.
Q Do you recall, the first one that you remember, what month

it was filled out in?
A The declaration I recall was -- was presented to me and the rest of my team, the employees in the IT department, September or October of 2001.
Q Just changing things, going back to when you hired the defendant, was it your idea?
A What was the question?
Q Was it your idea to hire the defendant?
A Yes.
Q Did you have -- do you recall a phone conversation that you had with the defendant and a Stacey Huckestein in a conference call from the defendant's contract employer at the time? And I'll -- his name was -- I believe his name was Jason. The conversation basically consisted of concern over the HR department's requiring a social security number. It was a three-way conversation.
A No, I don't recall.
Q Do you recall any conversation with the defendant over the phone regarding his passport -- the use of his passport as a means of identification?
A Vaguely, yes.
Q Did you have a meeting at any time with the defendant and the HR -- any HR personnel?
A Not that I recall.
Q Do you recall escorting the defendant to Mr. Saly's office

at any point?
A No.
Q Do you recall sitting with the defendant and Mr. Saly and having a conversation about Mr. Sutcliffe's refusal to provide a social security number and Mr. Saly's disagreement, that he needed one?
A No.
Q Do you recall Mr. Sutcliffe being walked out of the building with you and you saying, "I'm sorry" anytime during the month of July or August?
A Yes.
Q And why were you saying, "I'm sorry"?
A Because I thought you would add value to our team, and I was sorry that whatever the issues were with HR could not be worked out.
Q But you don't recall sitting there previously with HR and the defendant?
A No, I don't.
Q Do you ever recall receiving an e-mail from the defendant where he stated, "Bruce, I stopped by the office of Richard Saly to discuss the issue related to Global Crossing's position that a social security number is a requirement of the offer of my employment"?
MS. DUARTE: I'm going to object, Your Honor. He's presenting evidence.

THE COURT: The objection is sustained.

If you wish to present evidence to the witness, you'll have to display it and make an offer of proof and I'll have to make a ruling on whether it's admissible. If I find that it is admissible, you'll be welcome to read from it and question the witness about it.

You have the capacity there to, I think, display information that I can see and I can provide a basis to make sure it doesn't prematurely come to the attention of the jurors, so why don't you do that.

MR. SUTCLIFFE: I'll withdraw the question, Your Honor.

Q Let me take you back to the declaration that's used -- that you had filed in the civil suit.

You were aware that there was a civil suit pending against the defendant and one against the company; correct?

A I need some clarification here.

Q You were aware that Global Crossing was seeking a restraining order to prevent dissemination of information which was being published on "evilgx.com", were you not?

A Yes. The declaration you are referring --

Q You have answered the question "yes." Thank you.

Were you aware that Global Crossing at any time accused the defendant of stealing this information?

A Yes.

Q Did you ever accuse the defendant of stealing this information?
A I reported it, yes.
Q Did you accuse the defendant of stealing it?
A I reported that he was presenting confidential information on the Internet, yes.
Q That you believed he had stolen?
A Yes.
Q Do you have any proof at all that the defendant has stolen any information that you would like this jury to hear?
A No.

MR. SUTCLIFFE: Nothing further, Your Honor.

THE COURT: Okay. Any redirect?

MS. DUARTE: Yes, Your Honor, briefly.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MS. DUARTE:
Q Mr. Wieseltier, would seeing your declarations filed refresh your recollection as to how many there were and the dates they were filed?
A What was the question?
Q Would seeing the declarations that you signed in the civil case refresh your memory as to how many there were and the dates that they were signed by you?
A Yes.

MS. DUARTE: Your Honor, permission to approach?

THE COURT: Yes.

MS. DUARTE: May I show defendant?

THE COURT: Yes.

Mr. Reed, if counsel offers to save time by giving you something to hand to Mr. Sutcliffe, please do it.

MR. REED: Thank you, Your Honor.

BY MS. DUARTE:

Q Mr. Wieseltier, just take your time and take a quick look through those. I'm not going to ask you specific questions about them.

A Yes.

Q You can put them aside.

Does what I have shown you refresh your recollection as to how many declarations you filed in the civil case -- or I should say you signed in the civil case?

A Yes.

Q How many were there?

A There were two.

Q And you can look again if you need to refresh your memory.

What were the dates that you signed and filed those declarations?

A They have filed dates.

Q Is there a signature date by your signature on the back of them?

A October 30, 2001, and October 13, 2001 (sic).
Q Okay. Mr. Wieseltier, at the time that you signed these declarations, was civil litigation pending against the defendant by Global Crossing?
A Yes.
Q And just, in general, without reading me anything from the declarations, what do these declarations speak to regarding the litigation?
A It was an action to stop the presentation of confidential information belonging to Global Crossing onto the "evilgx.com" website.
Q At that time, in the declarations, did you provide for the Court your understanding of the confidential information that was actually on "evilgx.com"?
A Yes.
Q Did you also provide the results of the comparison you and I discussed earlier that you made between the contents of Ms. Greenwood's, Mr. Saly's, and other people's computers to the contents of "evilgx.com"?
A Yes, I did.
Q Did you also discuss Mr. Sutcliffe's access to the computers from whence the documents came?
A Yes.

MS. DUARTE: I have nothing further, Your Honor.

THE COURT: Okay. Any further questioning?

MR. SUTCLIFFE: Sure, Your Honor. Thank you.

RECROSS-EXAMINATION

BY MR. SUTCLIFFE:

Q How many people worked in the IT department at any given time?

A We --

THE COURT: You can't say "at any given time." Specify the time you want the answer to.

BY MR. SUTCLIFFE:

Q How many contractors, full-time employees, worked in the IT department in the summer, specifically July through August of 2001?

A 21.

Q How many of those, of the 21, were contract IT and how many were IT technicians full time?

A I don't know that.

Q Well, how many were contractors?

A There would be less than eight.

Q Would that be five?

A Could be.

Q Six?

A I don't know the exact number.

Q If you had to guess --

THE COURT: The witness isn't required to guess. He's told you it would be fewer than eight.

BY MR. SUTCLIFFE:

Q And full-time IT employees, how many would there be?

A That would be the opposite of -- upwards of eight contractors. Perhaps 13.

Q So, just roughly, we're talking 18 people. Let's say five and thirteen; is that fair?

A The total was 21.

Q I'm talking about IT employees and contractors combined together.

You said five and then you said 13. Five being the contractors and 13 being the employees; is that correct?

A No. I pivoted the 13 number on the 18 contractors, max, so a total of 21.

THE COURT: There is just a little bit of understandable confusion on the numbers.

Let the record reflect that the witness said, at the outset, that there were 21 employees in the IT department. He thought there were fewer than eight who were contractors, and however many there were, the difference between the number of contractors and 21 was the number who were full time.

Is that a correct summary of your statement?

THE WITNESS: Thank you. Yes.

THE COURT: Okay.

BY MR. SUTCLIFFE:

Q Of that 21, how many worked on computers?

A Upwards of 21.

Q Did you or did you not give a declaration where you stated, "Mr. Sutcliffe" -- may I enter this into evidence, Your Honor?

THE COURT: No, you can't enter it now.

MR. SUTCLIFFE: Can I show it?

THE COURT: Hold on. Okay. Display it on the screen -- on the ELMO.

MR. SUTCLIFFE: What do I have to do to get this thing to work?

MS. DUARTE: Your Honor, that's actually on all the monitors.

THE COURT: Now is it off all the monitors?

MR. SUTCLIFFE: Now it is off.

THE COURT: Hold on a minute, please, Mr. Sutcliffe. Remove it. Hand the document to the clerk. Don't show it on the screen.

Do you have the complete document?

MR. SUTCLIFFE: Yes, I believe I do, Your Honor.

Could you tell me the page at the bottom there, Your Honor?

THE COURT: 7.

MR. SUTCLIFFE: Bates 7 or --

THE COURT: It's page 7 of the declaration. It's Bates 240.

I think I see where you are going, Mr. Sutcliffe. I'm going to take the liberty of showing this document to the witness, and you can just ask him whether --

MR. SUTCLIFFE: That's fine.

THE COURT: -- he ever specified how many people had access to the hidden data.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: That's the practical way to proceed. So you can ask him that question. Give the witness a chance to look at the document. Ask your question.

BY MR. SUTCLIFFE:

Q You've examined that document?

A Yes.

Q Did you make that statement that Mr. Sutcliffe was only one of five people who had access to the data on the server of Elizabeth Greenwood?

A During the time the computer was being worked on, yes.

Q But actually, a lot more people could have had access to that data; is that not true?

A If the data remained on the server after the computer was taken care of, yes.

Q And you were in charge of securing this data, were you not?

A I was not.

Q Who was in charge of securing the data?

A The employee that worked on the computer.
Q I'm talking about, you were the manager of all these employees who were handling this data, were you not?
A Yes.
Q So ultimately, the responsibility for the security of the data rested on your shoulders?
A Ultimately, yes.
Q So this data that was being published and this information this was being published on "evilgx" didn't look good for you, did it?
A No.

MR. SUTCLIFFE: I have nothing further, Your Honor.

THE COURT: You don't have anything further, do you?

MS. DUARTE: No, Your Honor.

THE COURT: Okay. Thank you. You may step down. You are excused.

Please call your next witness. We'll go until 11:30 and we'll take a break at 11:30, members of the jury. You will definitely be excused at 1:30.

MS. DUARTE: The government calls Mr. Richard Saly to the stand, Your Honor.

THE COURT: All right.

RICHARD SALY, GOVERNMENT'S WITNESS, SWORN

THE COURT: In order to promote the efficient demonstration of visual evidence, we're going to take a very

brief break for a second. You should stay in the jury box. You can talk to each other as long as it's not about the evidence. You can stand up and stretch, like a seventh-inning stretch.

Mr. Settle, please come forth.

We'll fix the glitch later on so we don't inconvenience the jurors. Let's resume with the evidence.

You may proceed.

DIRECT EXAMINATION

BY MS. DUARTE:

Q Good morning, Mr. Saly.

A Good morning.

Q Mr. Saly, did you ever work for Global Crossing?

A Yes, I did.

Q Where in Global Crossing did you work physically?

A Beverly Hills office.

Q When did you work there?

A I worked there from June of '99 and left the organization in August of '02.

Q What was your position or your title at Global Crossing?

A Director of human resources.

Q Was this true during the time period of fall 2001?

A Yes, it was.

Q And as human resources director, what is it that you did there?

A Well, I handled all of the employee-relation issues for the Western region, which was basically from the Rocky Mountains, west, and interfaced with recruiting and compensation and training, all the various organizations within human resources.

Q Let me ask you, is there an abbreviation for human resources that is fairly commonly used?

A HR.

Q HR. Okay.

Now, at some point did you become aware that Mr. Sutcliffe was hiring on as an employee of Global Crossing?

A Yes.

Q Approximately when was that, if you remember?

A It would have been early August of '01.

Q How did you become aware of this?

A His supervisor, Stacey Huckestein, called me.

Q Did she make you aware of it?

A Yes, she did.

Q And who was handling hiring at the time?

A The recruitment department was out of Rochester, New York, at the time.

Q Did you actually become involved at any point with Mr. Sutcliffe's hiring?

A I did.

Q Approximately when was that?

A I would say that was in early August of '01.
Q Why did you become involved with his hiring?
A There was an issue in regard to his filling out a form, an I-9 form, and his not wishing to put his social security number on the form.
Q Were you made aware of that issue?
A I was. That was part of the issue that -- or was the issue that Stacey had contacted me on.
Q In what capacity was Mr. Sutcliffe being hired at that time?
A As an IT -- I don't remember the exact title, but within the IT department.
Q Would that have been a regular employee?
A Yes, as a regular employee.
Q At what point -- did you ever have personal interaction with Mr. Sutcliffe?
A I did.
Q At what point did you first have personal interaction with him?
A Well, the first point would have been sometime earlier than that because he had come up to my office to work on my computer. I can't remember the exact timing, but it would have been probably several months prior to that.
Q So you actually worked in the same building as Mr. Sutcliffe?

A Yes.
Q And did you ever have personal interaction in connection, not with your computer, but with Mr. Sutcliffe's hiring?
A Yes, I did.
Q And approximately when did that occur?
A Again, early August.
Q What happened?
A I asked Mr. Sutcliffe to come to the office so we could discuss the issues over the I-9, and told him, at that time, that if he did not put down his social security number, that I would have to withdraw the offer of employment.
Q Now, why was this?
A Because we required the social security number as part of the hiring process, not just on the I-9, but on other forms, with the company. Our whole payroll was based on -- or off of social security numbers.
Q Your payroll was based on these numbers?
A Yes. We couldn't issue checks without the social security number.
Q What about your payment of taxes for the employees?
A Well, that would also have to have a social security number.
Q Is it your understanding that you were required to have this number for the Internal Revenue Service?
A Yes.

Q Now, after you told Mr. Sutcliffe that you needed his number, what happened then?
A He said he wasn't going to give it. And I told him -- or informed him that I was withdrawing the offer of employment.
Q What happened after that?
A I received a letter from his attorney several days later, I'd say maybe four or five days later, and in the letter it talked about that he refused to give his social security number because of religious beliefs.
Q Had you -- before you got this letter, had you and Mr. Sutcliffe discussed his religious beliefs in connection with social security numbers?
A No. He just had refused, said that he wasn't going to give his social security number.
Q Okay. And what, if anything, was your reaction to getting that letter from his attorney regarding religious beliefs?
A Well, the reaction was if -- I mean, under those circumstances, if it was based on that, then I needed to and we -- when I say "we," the company -- needed to find a way of hiring him under that basis, and we did.
Q Did you actually work on the issue, then, further as to hiring him?
A Yes.
Q Did you explore various possibilities to get around the social security number requirement?

A Many. I worked with many, both internal and some external legal help on it.
Q Now, about how long did -- this process during which time you were exploring your options in connection with Mr. Sutcliffe, about how long did this process take?
A Well, we immediately -- or not immediately, but probably within a week or week and a half, he was back working for the company, but it probably took us another maybe week or two weeks following that to get a way to resolve the issue and be able to get him onto the payroll to actually pay him.
Q Do you remember what that way was?
A Yeah. We had to wind up dummying up a social security number, putting just a dummy social security number into the system. We discovered that was absolutely the only way, under the way that our payroll system worked, to be able to generate a check.
Q Now, during this period of time that you've described, in August 2001, did any other issue arise regarding Mr. Sutcliffe's application?
A Yes.
Q And without being specific, just, in general, what did that issue go to?
A Well, it went to the integrity of the application itself.
Q By "integrity of the application," do you mean the completeness of it?

A Yes.
Q What was the result of that issue, if any, when it came to your attention?
A Well, initially, I put Mr. Sutcliffe on a paid leave of absence while we investigated that issue further.
Q What happened after that?
A I asked Mr. Sutcliffe to come into my office for an interview, an investigative interview, following the outside investigation that I had conducted.
Q Do you remember approximately when -- let me ask you this. Did Mr. Sutcliffe actually come to your office and have a discussion with you?
A Yes, he did.
Q Do you remember approximately when that was?
A Early September. I believe September 4th.
Q Of what year?
A '01.
Q 2001?
A Yes.
Q And did you actually then end up talking with Mr. Sutcliffe about various issues --
A Yes, I did.
Q -- on September 4th?
And without telling me the issues that you discussed, how did the meeting end?

A Mr. Sutcliffe, towards the -- what turned out to be the end of the meeting, said that he refused to talk to me anymore. And I asked him whether he was intending to be insubordinate, and he leaned across the desk -- he was on one side of the desk and I was on the other. He leaned across the desk within about 6 inches of me and wagged his finger in my face and said, "You don't want to see me when I'm insubordinate."

Q What, if anything, was your response to that?

A I said, "Are you intending that to be a threat?"

And he said --

Q Did he respond?

A Yes, he did.

Q What did he say?

A He said, "You are a smart guy. You figure it out," and he walked out of the office.

Q Was that the last in-person interaction that you had with Mr. Sutcliffe?

A In person, yes.

Q If you saw him again, would you recognize him?

A Yes, I would.

Q Do you see him in the courtroom today?

A I do.

Q Would you please point him out and identify an article of clothing that he's wearing.

A The gentleman behind the table in the blue shirt with the

white collar.

THE COURT: All right. May the record reflect that the witness has identified the defendant.

BY MS. DUARTE:

Q What happened after your meeting with Mr. Sutcliffe?

A I terminated his employment.

Q And did you actually notify him of that termination?

A I did.

Q Do you remember in what -- how you notified him, using what media?

A Several medias. One was by mail and one by e-mail.

Q Did you try to call him as well?

A I did.

Q At some point after the defendant was let go --

THE COURT: Excuse me. Did you actually reach him telephonically or not?

THE WITNESS: No.

THE COURT: All right.

BY MS. DUARTE:

Q At some point after the defendant was let go, did you see him at or near the Beverly Hills office?

A I did.

Q What was he doing?

A He was carrying a picket sign and walking back and forth in front of the Beverly Hills office.

Q Were you able to see the picket sign?
A I did.
Q What did it say?
A I don't remember exactly all of the words on it, but something to the effect of Global Crossing being unfair and see my -- I think it said something like, "See my website 'evil.gx' or 'evilgx.com'," I think it was.
Q Did you actually ever look at the website "evilgx.com"?
A I did.
Q Did you look at it around the same time you saw the picketing?
A At about the same time, yes.
Q Approximately what time was this, about what date?
A I'm going to say that it was probably later in September, maybe early October.
Q Of 2001?
A Of 2001.
Q What, if anything, did you see when you accessed the website, Mr. Saly?
A I saw some data, personal data, on myself that was listed.
Q What do you mean when you say "personal data"?
A Address, social security number, pay.
Q Your salary?
A My salary.
Q Okay. Did it have your date of birth? Do you remember?

A I believe it did.

THE COURT: When you say "address," do you mean your residential address?

THE WITNESS: Correct.

BY MS. DUARTE:

Q You said that you saw some information pertaining to yourself on the website?

A Correct.

Q At some point did you see -- did you continue to access the website?

A I did.

Q At some point did you see information that pertained to individuals other than yourself on the site?

A I did.

Q What, if anything, did you see that you remember?

A Well, when I first went into the website, when I saw my data, there also was data in regard to the board of directors of Global Crossing.

Q Did you recognize --

THE COURT: Excuse me one minute, Ms. Duarte.

The gentleman who just entered the courtroom, are you expecting to be a witness in this case?

MR. SPECTATOR: No, sir.

THE COURT: You are welcome to stay. Go ahead.

BY MS. DUARTE:

Q You were saying that you recognized other data. Would you continue with that.
A Yes. Initially, there was data on the board of directors which included home addresses and home phone numbers.
Q Did you recognize those names that you saw as being the board of directors?
A Several of them and several of them I didn't really know at the time, until I saw that, that they were, in fact, board of directors.
Q Anything else that you saw?
A Yes. As time went on, it was like almost every day there was more data that was put onto the website. And within a couple of days, there was a listing of employees, Global Crossing employees, which included names, social security numbers, pay levels, bonus amounts that they were given, stock options that they had. And those lists continued to grow over time to include, at one point, I believe, there was well over a thousand employees listed with social security numbers.
Q Okay. Did you see any documents, in addition to these when you looked at the website, that you recognized as seeing before on another media?
A Yes, I did.
Q What was that?
A There was a listing of notes from a sexual harassment investigation that I had conducted earlier that year.

Q Whose notes were these?
A These were my notes.
Q Where had that information been prior to your seeing it on "evilgx.com"?
A On my computer.
Q That's something you worked on yourself on your computer?
A That's correct.
Q Go ahead. Were you going to say anything else?
A No, ma'am.
Q Okay. Mr. Saly, did you authorize your social security number to be published on the Internet?
A I did not.
Q Did you authorize any of the other social security numbers of the employees at Global Crossing to be published?
A I did not.
Q As director of human resources at Global Crossing, were you familiar with the manner in which -- or I should say, are you familiar with the manner in which Global Crossing handled the employees' social security numbers?
A I am -- or I was, yes.
Q How were they handled, in general?
A Very confidentially. Only certain people have access to that kind of data. And the list was limited to only those that had an absolute need for that data.
Q Were you one of those people that had access to the data?

A I did.
Q And was the data considered in general release or more limited?
A I'm not sure I understand the question.
Q That's okay. I'll rephrase it.
What was the availability of the data on a need-to-know basis to others? By "data," I mean the social security numbers of the employees.
A Again, only certain people had access to it. And if there was a need beyond those people, there would have to be an approval given as to the reason why they did need that information.
Q Were individual employees permitted to view the social security numbers of others at will?
A Again, it was limited to people within human resources who had need or through what we called our data management group that had a need to know.
Q Were you one of the people that was giving out such permission?
A On occasion, I would, yes. Very, very infrequent.
Q But you were permitted to give out the permission?
A Yes.
Q As far as you were aware, did anyone ever permit the defendant to publish these social security numbers?
A No.

Q Had you taken your computer to the help desk, to the Information Technology center, at any time during the summer of 2001?
A Yes.
Q At the time that you took your computer in for repairs, do you remember whether or not those notes that you talked about on your sexual harassment investigation that you conducted were on your computer at the time?
A Yes, they were.
Q Mr. Saly, did you create any websites in February or March of 2002?
A No, ma'am.
Q Did you ever open an e-mail account with Yahoo!?
A No, ma'am.
Q Did you send e-mail from a Yahoo! account?
A No, ma'am.
Q Did you authorize anyone else to do these things that I have just mentioned, in your name?
A No, ma'am.

MS. DUARTE: I have nothing further, Your Honor.

THE COURT: Okay. Mr. Sutcliffe, any questions? Would you prefer to break now?

MR. SUTCLIFFE: Yeah, why don't we break now.

THE COURT: Let's break now for 20 minutes, not 15. We'll resume at a quarter to 12:00, and we'll continue at that

point all the way until 1:30.

Please remember the admonition during the break.

THE CLERK: All rise, please.

(Jury out.)

THE COURT: After the jurors have been excused, it is going to be my practice in this case to ask all visitors and other people who are not associated with the court security system or with the parties to leave the courtroom, so that would include the two gentlemen who were there.

I'll rely on the CSOs to make sure that happens so I don't have to do it every time. That way the appropriate provisions that the marshals and the CSOs use can be taken care of without anybody else seeing it.

We'll be back at a quarter to 12:00. We are off the record.

(Recess taken at 11:28 a.m. to 11:48 a.m.)

(Jury in.)

THE COURT: Welcome back, members of the jury.

Mr. Sutcliffe, cross-examination. You may proceed.

CROSS-EXAMINATION

BY MR. SUTCLIFFE:

Q Good afternoon, Mr. Sally or Saly?

A Saly.

Q Are you still employed by Global Crossing?

A No.

Q And you testified that your job there was the human resources manager; is that correct?
A Director.
Q Director, excuse me.
Are you an attorney?
A I am licensed in Illinois.
Q That's a "yes"?
A "Yes."
Q Thank you.
So you understand legal terms and definitions of words?
A Many, but not all. I have not practiced.
Q To become an employee of Global Crossing, if you even know, are you required to fill out a harassment-free workplace policy?
A I believe so, yes.
Q And your job is -- part of your job, I'm assuming, correct me if I'm wrong, is overseeing sexual harassment, internal problems of that nature?
A Correct.
Q When is the first time you met the defendant?
A I would think it was sometime in the spring and maybe early summer.
Q In what relation was that?
A I was having an issue with the computer. I don't recall

what it was. But I had asked the help desk to send someone -- if they could send someone up to my office.

THE COURT: This is the spring or early summer of 2001?

THE WITNESS: Correct.

BY MR. SUTCLIFFE:

Q And did they send somebody up?

A They did.

Q Did you see who it was?

A It was you.

Q Okay. And did the issue, whatever your issue was, get resolved?

A It did.

Q Were you satisfied with the service of the person who came to fix your problem?

A Yes.

Q Quick and efficient?

A Yes.

Q When was the next time you happened to see the defendant?

A Well, I don't recall specifically whether there was other times, but certainly in early August when I had some meetings.

Q Did you ever see the defendant roaming through the halls working on other computers?

A Yes.

Q Most of the days or occasionally?

A Occasionally.
Q Occasionally, okay.
You said the next time you happened to have interaction with the defendant was when?
A I believe it was early August --
Q And --
A -- of '01.
Q In what context was that?
A That was in a discussion over supplying his social security number.
Q Was that in person or over the phone or via e-mail or how?
A There was -- the initial discussion was in person.
Q How did you first learn of an issue of the social security number about the defendant?
A Supervisor Stacey Huckestein called me.
Q After Stacey called you, can you tell me what, if anything, you recall of that conversation?
A When you came to my office?
Q No. No. The conversation with Stacey. You said you had a conversation with Stacey.
A She said she was filling out forms, which she is required to do, through the recruitment process, and there was a form that wasn't able to be filled out because you wouldn't supply a social security number, and she didn't know what to do.
Q And then you said you had interaction with the defendant

at that point?
A Correct.
Q Was there anybody else present at that time?
A No.
Q And what, if anything, took place at that interaction?
A Discussion over filling out the form and supplying your social security number, and your still saying that -- well, I think you said, actually, you didn't have one and wouldn't supply it -- and/or wouldn't supply it, if I recall the conversation.
Q Which was it? Didn't have one or wouldn't supply it?
A I think it might have been both.
Q Both, okay.
A I don't really recall for sure.
Q You have answered. Thank you.
Did the defendant offer to give another form of valid identification, such as a United States Passport?
A Not at that point, that I recall.
Q At a later point?
A Yes.
Q But this was not acceptable to you?
A It wasn't offered at the time.
Q You were going off of a form, were you not, for identification of a checklist, some type of a checklist, that would prove identification?

A Yes. On an I-9, yes, there are.
Q An I-9 form, correct.
On that I-9 form, do you recall how many columns are on that form?
A There was an "A," a "B," and, I believe, a "C." I think there are three columns.
Q Of those columns, correct me if I'm wrong, but my recollection is column A says, "If you can identify one of these documents, that satisfies identification. If you cannot identify one on the left side, then you are required to get two from the remaining two columns"; is that correct?
A Correct.
Q On the left-hand side of the I-9, does it or does it not say that a passport is a valid form of identification for an American citizen?
A Yes.
Q Does it further not say that an expired or unexpired passport is a valid form of identification for an American citizen?
A Yes, it does.
Q But that wasn't good enough for Global Crossing or yourself?
A It wasn't.
Q It wasn't a valid form of identification?
A It wasn't offered.

Q Okay. So, basically, at that point the defendant was fired; is that correct?
A That would be correct.
Q Did you escort him out of the building?
A No.
Q Did anybody escort him out of the building?
A No. Not that I'm aware of anyway.
Q So you fired him in your office?
A I don't recall whether I said that I'm going to have to withdraw the offer or that I was withdrawing the offer or maybe whether I sent a letter. To be honest, I do not remember which. That's two years ago.
Q Okay. You just testified that you had a meeting with the defendant --
A Correct.
Q -- in person.
A That's correct.
Q It was over issues of refusal to provide identification numbers that you said you required?
A That's correct.
Q And that he would or would not provide them or could not provide them; is that correct?
A Correct.
Q And you at that point stated that that was unacceptable, that it was required, or else you were going to rescind the

offer -- you were rescinding the offer; is that correct?
A That's correct.
Q Is it your testimony that you just kind of let him go and you thought about maybe you would fire him later, or that you did or did not fire him?
A I do not recall whether I said that I was withdrawing the offer at that point or whether I wound up sending a letter.
Q Okay. At some point, though, he was fired?
A That's correct.
Q Okay. You testified also that you received correspondence from an attorney representing the defendant; is that correct?
A That's correct.
MR. SUTCLIFFE: I'd like to show -- may I, Your Honor, use the ELMO? I'd like to refresh his recollection of --
THE COURT: Has this been an exhibit that's been marked by the government as part of its exhibits?
MR. SUTCLIFFE: No, Your Honor. Would you like me to show it to the government?
THE COURT: No. If it's for the purpose of refreshing his recollection, there is no basis to do so. He hasn't said anything about lacking recollection. You would have to establish a foundation for that purpose.
So I'm not excluding the document, but not on the basis you are proffering it.

BY MR. SUTCLIFFE:

Q Do you recall a letter sent to you from the Law Offices of Leslie McAfee on September 5, 2001?

A Yes.

Q And in there, do you recall that there was some conversation regarding the definition of the words "Employee withholding agent" and other such definitions of words?

A No.

Q You have no recollection of that?

May I refresh his recollection, Your Honor?

THE COURT: Let me see the letter.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: I'm going to hand the letter to the witness and ask the court reporter to read back the last pending question relating to something that the witness said he didn't recall, the question about whether there was a conversation regarding the definition of the words "Employee" -- here's the question that's pending. I'll just paraphrase here.

Mr. Sutcliffe asked you if you got a letter from a lawyer, and he asked you if you recall whether there was a conversation in the letter regarding the definition of the words "Employee withholding agent."

Does that letter that you have now been shown refresh your recollection as to whether there was any reference to an

"Employee withholding agent" and like terms?

THE WITNESS: Yes. I mean, that is in the -- part of the letter.

THE COURT: Okay. Next question.

Now, I instruct you, ladies and gentlemen, that although there is a certain area of relevance that may relate to the employment dispute that apparently arose between the defendant and Global Crossing, we are not here to resolve issues of employment relations.

This is not a case about employee discrimination. It's not a case about wrongful termination.

The merits of either side's position in their employment dispute will not be submitted to you for resolution. This is not a case that involves a civil employment relationship between Global Crossing and the defendant.

The defendant does have a right to explore, within reason, issues that arise out of testimony that was elicited by the government, and that's what he is doing. He has a right to do that.

But I want you to understand that this is a case involving criminal charges, and it doesn't involve another resolution of whatever their employment dispute was.

You may proceed, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Mr. Saly, so you do recall that -- those terms being

discussed, definitions of the word "employee," definitions of the word "withholding agent"?

A As I said, that was part of that letter.

Q You testified that the defendant was again fired; is that correct?

A That's correct.

Q What was the time frame between the first firing and the second firing? Do you recall?

A Approximately one month.

Q Approximately one month.

Do you recall what the second firing was for?

A Yes. It was for integrity and insubordination.

Q Would you define "integrity," please, for the jury.

A My interpretation or my definition would be the honesty of the person.

Q Honesty, okay. That will work.

Would you please define "insubordination" for the jury.

A Insubordination is acting in a behavior that -- towards another person or higher level of authority that indicates -- how would I put this? -- just a refusal to do something or not do something or a threatening manner. It could be a number of various things.

Q It could be a bunch of things; right?

A That's correct.

Q It's a pretty broad definition; would you agree? It could be a bunch of things?
A It could be, but it's -- yeah.
Q That's enough. Okay.
Now, the defendant and other people who want to be employees of this company, they have to fill out an application of some sort; is that correct?
A Correct.
Q On that application, is there a question, if you even know, which asks, "Have you ever been convicted of a crime within the last seven years?"
A Yes, that's on the application.
Q Do you know what the defendant checked next to that box?
A I do.
Q Would you tell the jury what he checked?
A Checked -- I can't remember what the check says, but it indicated that there was not a -- any kind of a criminal conviction.
THE COURT: You have to permit the witness to finish his answer.
MR. SUTCLIFFE: I thought he finished, Your Honor. I apologize.
THE COURT: You said that that was on the form somehow?
THE WITNESS: Yes. That was answered in the

negative, that the -- the question whether there was a conviction in the last seven years, and it was answered in the negative, that there was not.

BY MR. SUTCLIFFE:

Q Did you ever indicate to anybody that that was the integrity issue that you cited earlier as a reason to fire the defendant?

A I'm sorry. Could you repeat that?

Q Yes. Did you ever indicate to anybody, in any declaration or spoken, that the reason that you fired the defendant the second time for, you said, integrity and insubordination, that the integrity was falsity of the answer to the question, "Have you ever been convicted of a crime in the last seven years?"

A No.

Q No?

A No.

Q So is it your testimony that -- did you ever have the defendant investigated?

A I did.

Q What did your investigation turn up, if anything?

THE WITNESS: Am I able to answer this?

THE COURT: Yes. He's asked you for it. You are able to answer it.

THE WITNESS: It indicated that there was a conviction.

BY MR. SUTCLIFFE:
Q Did you ever discuss that conviction with the defendant?
A Yes, I did.
Q Did you ever take down notes about that discussion?
A I did.
Q And could you tell us, basically, what was the context in which that discussion took place?
A That took place on September 4th. That was the investigative interview.
Q Are you saying investigative interview?
A Correct.
Q Can you explain what that means?
A It means an interview to investigate, in this case, what happened to be what was or could have been considered an omission on the application.
Q Dishonesty, that would be your definition of integrity. Honesty -- the opposite of honest is dishonest; right?
A Yes. To --
Q You have answered the question. Thank you.
So this was a concern of yours. You were investigating this alleged maybe dishonesty?
A That's correct.
Q Now, in this meeting that you had on September 4th, was anybody else present besides you and the defendant?
A Yes.

Q Could you tell the jury who was present?
A Patricia Wang.
Q Did you ever write a -- you said that you had written a communication about that meeting that took place, did you not?
A I did.
Q Could you tell the jury, basically, what was the gist of that conversation on September 4th that you wrote out in this communication?
A Yes.
THE COURT: Those are two different things. It would be inappropriate to refer to the communication. That would be hearsay.
Just tell the jury what happened at the meeting or the gist of it, as Mr. Sutcliffe put it.
THE WITNESS: I asked Mr. Sutcliffe whether he had been convicted, and he would not answer the question. He kept answering -- or asking questions in a response to my asking the questions.
And I asked him, after some time of running around the roses, as I might call it, I asked him again if he had ever been convicted of a crime and he kept asking, "What's a crime?"
Anyway -- in any case, I eventually gave him the record of his conviction and asked him whether he had been convicted of a crime.
And he said "no." And that's when he refused to talk

to me anymore.
BY MR. SUTCLIFFE:
Q So you were investigating the answer that he had filled out on his application, which is, "Have you ever been convicted of a crime in the last seven years?"
A Yes.
Q So that was very important to you; right?
A Yes.
Q If the defendant had lied, you would want to know that; right? There would be no integrity there; is that correct?
A That is correct.
Q That would be a reason to fire somebody; correct?
A It probably would be, yes. More than likely.
Q You testified that you had this meeting and you asked him had he ever been convicted. Can you tell the jury, is a parking ticket a crime?
MS. DUARTE: Objection, Your Honor. Inappropriate question.
MR. SUTCLIFFE: He's testified he's a lawyer.
THE COURT: Sustained.
You would have to lay a foundation to see whether anything is relevant along that line.
The objection is sustained.
BY MR. SUTCLIFFE:
Q Mr. Saly, when hiring people at Global Crossing, do you

require all of the employees to list parking tickets, infraction tickets?

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q As part of this meeting that you had, you said that there was another person present at the meeting --

A Correct.

Q -- and her name was Patricia Wang?

A Correct.

Q You also testified, did you not, that you believed that the defendant had threatened you?

A That's correct.

Q Did you ever call the police?

A I -- as part of an overall report, I did report this to the Beverly Hills Police.

Q That day?

A I do not recall.

THE COURT: When you say you reported "this," are you talking about the incident that you talked to -- that you mentioned before about Mr. Sutcliffe supposedly leaning over the desk?

THE WITNESS: Yes.

THE COURT: Is that what you reported?

THE WITNESS: Yes.

THE COURT: You may proceed.

BY MR. SUTCLIFFE:

Q You reported that to the Beverly Hills Police?

A Yes.

Q But you don't recall if it was that day?

A No, I do not. And, in fact, I would probably say it was not.

Q Maybe the next week?

A I don't recall.

Q Maybe the next month?

A I don't recall.

Q Was it done to support a declaration that you filed to restrain the dissemination of information being published on Global Crossing?

A I don't recall.

Q Did you ever fill out a declaration on behalf of Global Crossing to prevent dissemination of information on "evilgx.com"?

A I did.

Q Did you fill that out on October 11th of 2001?

A I don't recall the date.

Q Was it approximately around there?

A Probably around that time, yes.

Q In that declaration, did you make the statement that "Global Crossing maintains confidential salary and other

information relating to the common" --

MS. DUARTE: Objection to reading the declaration, Your Honor.

MR. SUTCLIFFE: I'll be glad to enter this into evidence. I will be glad to let the government look at it.

THE COURT: Do you have a copy of this declaration?

MS. DUARTE: I do, Your Honor.

THE COURT: Do you object to the introduction of the declaration into evidence?

MS. DUARTE: No, Your Honor.

THE COURT: Okay. The declaration will be received, but we need copies for the Court and for the witness.

MR. SUTCLIFFE: It's Bates 248 through 253.

(Defendant's Exhibit 200 received.)

THE COURT: Just give the declaration to the clerk. It will become part of the -- if the declaration has been received, you can display it on the screen. You can ask the witness about it.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: It's Defendant's Exhibit -- is your range of exhibit numbers 1 through 100?

MS. DUARTE: Yes, sir.

THE COURT: So it will be Defendant's Exhibit 200. Your exhibit numbers will start with the number 200.

Defendant's Exhibit 200, identify what it is for the

record. It's a declaration that this witness executed on what date?

MR. SUTCLIFFE: It was filed October 15th. It was signed under penalty of perjury October 11, 2001, in Beverly Hills, California. It is entitled "Declaration of Richard Saly In Support Of Plaintiff Global Crossing Development Company's Application For Temporary Restraining Order and Order To Show Cause Why Preliminary Injunction Should Not Issue."

THE COURT: Okay. That's good. We now know what 200 is. You can question the witness about it.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Mr. Saly, I draw your attention to No. 9 at the bottom of your declaration where you said, "Global Crossing maintains confidential salary and other information relating to the compensation of its employees, the confidential salary information. Global Crossing's confidential salary information was and is still maintained on a computer software system known as the Salary and Planning Application, S&PA, to which only certain Global Crossing employees" -- I will now put the next page there for you -- "are allowed access. Global Crossing has now transitioned its confidential salary information to a different computer software system known as the SAP System, to which only certain Global Crossing employees are allowed access. A Global Crossing employee can only access the S&PA and SAP System upon approval of Global Crossing's

executive vice president of human relations, John Comparin. Moreover, not all of the confidential salary information is made available to the particular employees which have access to the S&PA and the SAP System. For example, although I am approved to have access to the SAP system, I only have access to the information on that system for Global Crossing's North American employees."

Did you, sir, make that declaration?

A Yes.

Q Is that declaration true?

A Yes.

Q Did you have a meeting any time with the FBI agent sitting over there, Mr. Cugno?

A Yes.

Q Have you ever had a phone conversation with him?

A Yes.

Q I'd like to ask you, in May 2002, did you go to the FBI office in Los Angeles?

A I don't believe so.

Q Did you have a phone conversation on that day with any of the members of the FBI agents?

A I don't recall.

MR. SUTCLIFFE: May I refresh his memory, Your Honor?

THE COURT: Yes.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Hand it to -- the clerk will take it from you.

The document I'm handing to the witness is Bates stamped 01344.

THE WITNESS: (Witness reading document.)

THE COURT: The question that's pending, Mr. Saly, is whether that document refreshes your recollection as to whether or not you had a telephone conversation sometime in May of 2002 with the FBI, "yes" or "no." Does it refresh your recollection?

THE WITNESS: No, not really. But --

THE COURT: Okay. Next question.

BY MR. SUTCLIFFE:

Q May I have my document back, please? Thank you.

So it's your testimony that looking at this document brings no recollection of having a meeting or speaking to the FBI agents involved in this case in the month of May; is that correct?

A I don't recall.

Q Did you have a conversation?

A I had several conversations and -- yes.

Q Did you ever note that the document we were just speaking about, the declaration that you filed, specifically paragraph No. 9, was incorrect, that you also had access to information on the SAP System of all of Global Crossing's employees so that

your original declaration was not correct?
A I didn't have information to all employees of Global Crossing.
Q Did you ever make the statement that the declaration that you filed was correct, with the exception of No. 9? And did you also go on to say that you had access to the information on the SAP System for all of the Global Crossing employees, not just the North American employees, as it was recorded in that declaration filed on behalf of Global Crossing?
A It may have been misunderstood. But, no, I did not have access to all of Global Crossing's employees.
THE COURT: The question that Mr. Sutcliffe asked is whether you told the FBI, when you had said that you didn't have access in the declaration, that that was a mistake. Did you tell that to the FBI?
THE WITNESS: No. I would not have.
THE COURT: Okay. Next question, please.
MR. SUTCLIFFE: Okay, Your Honor.
Q You indicated that Mr. Sutcliffe allegedly threatened you in this office. You said that you had written some kind of a declaration about that -- is that correct? -- some kind of communication?
A Yes.
Q You said that Patricia Wang was also in that meeting; is that correct?

A Correct.
Q Did you note also that Patricia Wang had a different interpretation of what took place at that meeting than what you recall?
A I believe we were very close on our notes.
Q But not --
A No, not a hundred percent. No.
Q You testified that Mr. Sutcliffe came across the desk; correct?
A I -- if I recall, what I said was that you had been standing at the time. You sat down and then leaned across. What Patricia said was that you didn't sit back down. You just leaned across.
Q Really? Well, I'd like to refresh your recollection, then.

This is marked as an attorney-client privilege communication. I would direct your attention to Bates 1894, the highlighting which starts off as "Patricia."

THE COURT: Before I show this to the witness, I want to make sure the record is clear and that the witness and Mr. Sutcliffe are on the same page here.

The prosecution asked the witness about a meeting on September 4th, and the prosecution elicited the witness's statement about Mr. Sutcliffe leaning over the desk. Nothing was said in the prosecution's questioning about Patricia Wang

being there.

Was she there?

THE WITNESS: Yes.

THE COURT: Okay. And this document refreshes his recollection about something?

MR. SUTCLIFFE: I believe he wrote that document.

THE COURT: But a witness doesn't --

MR. SUTCLIFFE: Yes. It's just for refreshing --

THE COURT: -- have to look at anything to refresh a recollection that has not been in need of being refreshed.

So what you need to do is ask questions. And if a witness can't remember, then there may be a way to help that witness remember. That may be the case with this document, so go ahead and look at it.

THE WITNESS: Okay. It's the opposite of what I said.

BY MR. SUTCLIFFE:

Q So is it true that Patricia thought that the defendant was still sitting when he allegedly wagged his finger at you?

A Yes.

Q Going back to May 8th and the FBI agents, do you have any recollection of any of the conversations you had with those agents during that day?

A I have had several conversations with the FBI. I don't know what took place on what date.

MR. SUTCLIFFE: Nothing further, Your Honor.

THE COURT: Any redirect?

MS. DUARTE: None, Your Honor.

THE COURT: Okay. Thank you, Mr. Saly. You are excused.

Please call your next witness.

MS. DUARTE: The government calls Ms. Janet Troxell to the stand.

JANET TROXELL, GOVERNMENT'S WITNESS, SWORN

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: It's Janet Troxell. Last name is T-r-o-x-e-l-l.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MS. DUARTE:

Q Ms. Troxell, did you ever work for Global Crossing in Beverly Hills?

A Yes, I did.

Q Approximately when did you work at Global Crossing?

A I worked there from March of 2000 to March of 2002.

Q And what did you do there?

A I was the director of employee services and I --

Q Go ahead.

A -- and I managed the company's global payroll.

Q What does a director of employee services do?
A Handle problems that come up that, you know, deal with relations between different groups within the company.
Q And you said that you also worked on the payroll?
A I worked on the payroll during 2000, before our payroll function was transferred to Rochester, New York.
Q Did your payroll responsibilities involve a specific person or a computer?
A Yes. We had one computer that was a dedicated standalone computer that handled all the payroll records.
Q And were you -- did you deal with that computer?
A Yes, I did.
Q Who was responsible for that computer?
A I was responsible for that computer.
Q Where was that computer kept?
A It was kept on the second floor of Global Crossing's offices on Crescent Avenue in Beverly Hills and it was in a locked room.
Q Who had access to that room, do you know?
A I had access and one other finance person had access and then the building had access to that.
Q By "building" --
A Like the building security or office services.
Q And what information regarding employees was on that computer?

A People's home addresses, social security numbers, rate of pay.
Q Was that computer -- were you still managing that computer in August of 2001?
A Yes, I was.
Q Was that computer still located where you described?
A Yes, it was.
Q In August of 2001, did you ever give anyone permission to take that payroll computer anywhere?
A No, I did not.
Q And did there ever come a time when you discovered that it was not in the office where you expected it to be?
A Yes. I had gone down there during the week of August 13th, 2001. And I walked by the office and it was unlocked. And there was no computer in there.

And so I called our IT department to find out where it went, and I was told that it was taken downstairs the night before, but somebody would be returning it.

I asked them -- I said, "It has to come back up here. It has to go back where it was."

He said the same person who took it would be returning it immediately.

Q In your experience, was it unusual for that computer to be taken downstairs?
A Yes. It was never removed from there. They would come

upstairs to work on it.
Q After you contacted the Information Technology department, what happened then?
A Around -- I waited there and around maybe a half hour later, Steven Sutcliffe returned the computer.
Q Had you seen Steven Sutcliffe before that day you saw him return the computer?
A Yes.
Q Would you recognize him if you saw him again?
A Yes.
Q Do you see him in the courtroom today?
A Yes, I do.
Q Could you go ahead and point him out and identify an article of clothing he has on, please?
A He's over there sitting at that other table, and he has a blue shirt with a white collar.
THE COURT: The record will reflect that the witness has identified the defendant.
BY MS. DUARTE:
Q Ms. Troxell, had you given the defendant permission to take that computer that day?
A No, I had not.
Q Any day before that?
A No.
Q Now, you said you had seen the defendant before that day.

Under what circumstances had you seen him?
A He worked in the IT department, offering, you know, computer support. So I had seen him walking around. I had seen him -- I mean, he had come to my office to -- when I was having computer problems.
Q Under what circumstances did he come to your office?
A I would have -- something like my hard drive kept crashing or it kept on locking up on me. I would have to keep rebooting and he had come up to my office to see if he could fix it.
Q When you had a computer in your office, did you have like a docking station or a desktop?
A I had a laptop, so it was a docking station.
Q Did most of the employees around this time have the same equipment?
A Most of the employees did.
Q So the computer was transferable, transportable?
A Yes.
Q Now, when the defendant came to your office to fix your computer from time to time, did he take it with him downstairs?
A No.
Q Did he offer to?
A Yes.
Q Under what circumstances was that?
A To keep it overnight to see if they could fix the problem.
Q What was your response to that?

A I wouldn't let it out of my sight.
Q That was your computer?
A That was my computer.
Q Now, was it after this that you have just described, when the defendant came to and from your office, that you saw him with the payroll computer?
A I don't remember the exact timing. I just would never let anybody take my computer overnight. Even when IT would work on it, I would go down there and watch them work on it, anybody from IT. I just would never let it out of my sight.
Q After defendant's return of the payroll computer, at some point did you see him outside the Global Crossing office?
A Yes, I did.
Q What was he doing?
A He was protesting, carrying a sign, walking back and forth.
Q Did you see what the sign said?
A Something, "evilgx," and then had some other writing on it that I don't recall at this present time.
Q Did you become aware of the website "evilgx.com"?
A Yes, because that was on the sign.
Q Did you access the website?
A Yes, I did.
Q And when you accessed the website, did you see any information that you recognized?

A Yes. There was payroll information, you know, people's salaries, social security numbers, names.
Q Was there a place that you had seen that information before?
A Yes.
Q And was the information that you saw on the website in the same form that you had seen it before?
A In some cases, yes.
Q Where was that information? Where had you seen it before?
A Some of it was payroll records, and then the other was just identical information that was on the payroll computer.
Q You said that as well as names. What other information did you see?
A There was names, there was addresses, there was their social security numbers.

MS. DUARTE: I have nothing further, Your Honor.

THE COURT: Okay. Mr. Sutcliffe, would you like to cross-examine?

MR. SUTCLIFFE: Just a couple quick questions.

CROSS-EXAMINATION

BY MR. SUTCLIFFE:

Q You said that you worked in payroll?
A I worked in HR.
Q HR, okay.
A My job included payroll support.

Q You worked with Mr. Saly?
A I worked in the same department as Mr. Saly, yes.
Q Have you known Mr. Saly for a long time?
A I've known him since I worked at Global Crossing.
Q How long have you worked at Global Crossing?
A I worked at Global Crossing from March of 2000 to March of 2002.
Q You said that you were responsible for this data.
A I was responsible --
THE COURT: For the what?
THE WITNESS: -- for the computer.
BY MR. SUTCLIFFE:
Q For the computer?
A Yes.
Q And the data which is in that computer?
A Yes.
Q All your responsibility?
A It was my responsibility to maintain that computer.
Q And you testified that this data had -- what appeared to be that data was appearing on "evilgx.com"?
A Yes.
Q Do you still work at Global Crossing?
A No, I don't.
Q When did you stop working at Global Crossing?
A I stopped working March 2002.

Q Did they give you a reason why?
A I took the voluntary termination.
Q Was there a bankruptcy, to your knowledge, going on?
A Yes, there was a bankruptcy.
Q Now, you said other people -- one other person had access?
A She didn't have access. She had access to the room that the computer was in.
Q Who was that person?
A Her name was Debra Maust.
THE COURT: Could you spell her last name, please?
THE WITNESS: M-a-u-s-t.
BY MR. SUTCLIFFE:
Q You testified that you walked by and the door was open and you saw the computer was gone?
A Correct. Debra had been -- I think she had been terminated.
Q She had been terminated?
A A week before that, underneath a severance plan.
Q Do you know who opened that door?
A No, I do not.
Q Do you know if IT people have keys to the doors?
A No, they do not, as far as I know.
Q That's what I know, too.
So somebody mysteriously opened this door --
A Office services, I assume.

Q Office services.

And it was the night before?

A The day before, yes.

Q The day before.

So this door had been open for a whole day?

A Right. But the computer was taken out when they -- office services said they opened the door and the computer was taken out.

Q You know this for a fact or someone told you this?

A I was informed that.

Q So someone told you this, okay.

You said that you called the IT department?

A Yes.

Q And who did you speak to in the IT department?

A Whoever answered the phone. There was a help desk.

Q What did you tell them?

A I told them that the computer that was taken from -- whatever the office number was at that point in time. I don't remember -- should be returned immediately. And they said they'd have the person that took it the night before return it.

Q You testified that you saw the defendant return the computer?

A That's correct.

Q But do you know who took it the night before?

A Well, they told me that it was --

Q I didn't ask you that. I asked you.
A I did not see who took it.
THE COURT: Wait, both of you. Don't interrupt the other, please. We need to have one person and only one person speak at a time.
Don't prevent a witness from completing her answer, and don't prevent the lawyer from completing his question.
Start again, please.
MR. SUTCLIFFE: Thank you, Your Honor.
Q Do you know who took the computer the night before?
A I did not see who took the computer the night before.
Q So an IT person, whoever that was -- you don't know who it was -- told you that the person who took the computer will bring it back?
A That's what they told me.
Q You don't know for a fact, though, isn't it true, that the defendant himself took that computer?
A I don't know that he did.
Q And you don't know if the defendant was even working that night that the computer was taken, do you?
A I would not know that.
Q And you don't know that that guy who took the call might have said, "Hey, who took her computer?" and one of the guys said, "Hey, hurry up. Bring that up"?
A The IT department kept logs, so I'm just assuming what

they told me is correct.

Q So there should be a log somewhere of who took your computer; right?

A There should be.

MR. SUTCLIFFE: I have no further questions, Your Honor.

MS. DUARTE: No additional questions, Your Honor.

THE COURT: Okay. Thank you for coming. You are excused.

Please call your next witness.

MS. DUARTE: Your Honor, the government calls Special Agent Frank Harrill to the stand.

THE COURT: All right.

FRANK HARRILL, GOVERNMENT'S WITNESS, SWORN

THE CLERK: Would you please state your full name and spell your last name for the record.

THE WITNESS: It's Frank M. Harrill, last name H-a-r-r-i-l-l.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MS. DUARTE:

Q Good afternoon, Agent Harrill.

A Good afternoon.

Q Where do you work?

A For the Federal Bureau of Investigation.

Q How long have you been with the FBI?
A Since 1995.
Q What do you do with the FBI?
A I'm a supervisory special agent. I supervise a squad of cybercrime agents that enforce computer crime.
Q And how long have you been doing computer crime investigations?
A Since 2000.
Q Are there other job responsibilities that you've had while at the FBI?
A There have been.
Q What were those?
A As an agent, enforcing narcotics or drug matters.
Q How long did you do that at the FBI?
A From -- for five years, from '95 to 2000.
Q What training have you had regarding computers and computer-related technology?
A I have a Bachelor of Science degree in Information Systems. After that, I was in the United States Navy for 10 years as a pilot. As a collateral duty, as part --
THE COURT: Slow down, please, Mr. Harrill. Take your time. Just relax.
THE WITNESS: I will.
As a part of my duties as a flight instructor, I managed an integration system for all Navy strike or jet flight

training. Go ahead.
BY MS. DUARTE:
Q When you say "integration system," what is it that you mean?
A It was a database that managed all Navy jet flight training.
Q Is that on a computer?
A It is.
Q After the Navy, what kind of training did you have?
A I received from the FBI and Department of Justice and private contractors a variety of computer training concerning Internet basics, Internet networking -- I'll slow down.

I received a variety of training from the FBI, Department of Justice, and private contractors concerning computer crime, investigations, the Internet, computer networking, and various computer-related matters.
Q And you said that was with the FBI as well as the Department of Justice?
A That is correct. And private contractors hired by both the FBI and the Department of Justice.
Q Approximately how many weeks would you say you spent in training? Do you have any estimate?
A Between six and eight weeks in training.
Q And this was computer-related training?
A That is correct. I also deliver instruction to members of

the squad that I supervise, and I'm a frequent speaker at Internet security seminars and instructional meetings.

Q Does this training that you give require you to be familiar with the terminology associated with the Internet and Internet use?

A It does. Both to investigate and supervise agents involved in Internet crime investigation, computer crime investigation, you have to stay abreast of the rapidly evolving technology that we see evolving on a daily basis, really, now.

Q Do you spend time -- besides your formal training, do you spend time on your own learning about Internet and Internet systems?

A I do.

Q And what about websites? Is that included in your Internet training?

A It's integral to the Internet training.

Q Intergral to it?

A Yes.

Q What kind of on-the-job experience have you had regarding computers and computer-related technology?

A I've investigated a number of cases involving computer crime, computer intrusion, all manner of computer crime. I've also supervised dozens of investigations of those same matters.

Q Before you were a supervisor, did you do these investigations yourself as well?

A I did.
Q Do you still continue to do them although you are a supervisor?
A I do.
Q Do you also assist in a number of other investigations?
A I do.
Q And what percentage, would you say, of the investigations that you currently participate in involve computers and computer technology?
A 100 percent.
Q And approximately how long has that been the case?
A For the supervision?
Q I'm sorry. For the hundred percent computer crime.
A Since 2000, with the exception of a few narcotics cases that I still have to go to trial on or prepare for trial on, it's a hundred percent computer crime.
Q Have you also interviewed criminal suspects and other people that are accused or you're contemplating being accused of computer crimes?
A I have and I do.
Q Have you learned anything from them?
A Quite a bit, actually, yes.
Q What types of information do you learn in interviews?
A You learn the mind-set of the individual that has committed the computer crime or the federal crime, their

motivations, the techniques they use, the information sources they rely upon, and their background.

Q I'm going to ask you to explain a few terms for me, Special Agent Harrill. I want to keep it basic --

A Okay.

Q -- and slow.

What is the Internet?

A The Internet is a system of computers or a network of computers that exist across the world now that basically share information.

Q And what are websites?

A Websites are an assemblage or an array of Web pages that are put together in a linked form called a website.

Q Are these websites found on the Internet?

A They are.

Q And you said Web pages are linked together to form a website. What is a website?

A What is a Web page?

Q I'm sorry. What is a Web page?

A A Web page is a specially formated document that presents not only text, but also -- or can present video, sound. Basically, any type of media can be integrated into a Web page which, in the array, are referred to as websites.

Q Where do websites and these Web pages that make them up, where do those reside?

A On computer servers.
Q What is a -- can you give us a fairly simple definition of a computer server?
A A server is a computer that's connected to the Internet, in this context, and it serves up Web pages that the users request when they wish to view a particular Web page. So it serves up that information, hence the name "servers."
Q Where are these servers that you are describing located?
A All over the world now, really. Certainly, all across the U.S. Virtually everywhere now that has an Internet connection has servers present.
Q Does the server that you are describing have to be anywhere near the user of the computer that's accessing the website?
A It does not.
Q How far can it be away?
A All the way around the world. It can be next-door, next state, around the world.
Q Would that distance necessarily be noticeable to the user that was accessing the site?
A It would not.
Q Can a website appear on more than one server?
A It can.
Q How does that happen?
A Many times the Web pages can exist on different servers

and they are linked together. So you might access, say, the homepage on one server, which contains a link to another page, and that page could be contained on a server next-door to that server or around the world. And it would be, not invisible to, but really not -- it would be transparent to the user, normally. You wouldn't know. You would just click on the next link and it takes you to that page and you see it and that's where it stands.

Q And that could be anywhere in the country or anywhere in the world?

A It certainly could.

Q Is there a term for that when you put different Web pages on different servers?

A I've heard it referred to as "spider webbing."

Q And you mentioned the term "link" when you were talking about the connections.

Are you familiar with the term "link" as it's used on a website?

A I am. It's a -- "hyperlink" or "hot link" are the frequently used terms. What you see there, and are probably all familiar with, is specially underlined or colored text that, when the user viewing a particular Web page clicks on that, it actually takes you to a different Web page, usually in the context of that link.

For instance, "cnn.com." If you clicked on "Breaking

News," it would take you to a website that would list "Breaking News." "Breaking News" might be in a different color or underlined to indicate that if you click it, it has additional information.

Q What is a Web host?

A A Web host is a service that provides server space for a website. If you have content that you want to display, you will usually contract with a Web host to place that content on their server. It can be used that way.

Q And you reference this content in connection with the website itself --

A That's correct.

Q -- is that right?

A The website resides on the Web host, their equipment.

Q When you said "content" earlier, you were talking about the content of the website?

A That's correct.

Q And what about an ISP -- Internet Service Provider -- can you tell us what that is?

A An ISP provides connectivity or access to the Internet. Something that we might be familiar with might be America Online or EarthLink. It basically provides the user access to the Internet.

Q What is a domain name?

A A domain name is really the name of the website. For

instance, we talked about CNN before. That's a domain name. "www.cnn.com", for instance, is a domain name.

Q Are domain names registered?

A They are. You can -- what you, in essence, do is contract with a registrar -- a big one is NetworkSolutions, VeriSign -- and you purchase, for a period of time, the right to use that website, essentially. It becomes yours for, you know, several months, a year, an annual contract perhaps, and you register it so it becomes your property for a period of time.

Q Okay. And once these websites are constructed -- or during their construction, how do they get onto the Internet?

A The -- once someone has constructed the website content, it's usually uploaded to the Web host. It's done by, normally, FTP -- or "File Transfer Protocol" -- and that is an Internet service that allows you to transmit large quantities of data in a fairly expeditious way across the Internet to the Web host.

Q Now, when you say a transfer of data, is this actually a physical transfer of data that we're talking about?

A It is.

Q When you say "across the Internet," does that include multiple servers?

A As it makes its way across the Internet, it does.

Q It could include only one; right?

A It could include the user's computer across various routers to the destination server. Normally, that's how it's

going to happen.

Q When you say "routers," where are these routers located?

A Everywhere. That's the backbone of the Internet.

Q That's just a different type of computer; correct? A different function?

A It's a hardware device, yes.

Q Once a website is on the Internet, can it be changed?

A It can.

Q How is that?

A Anyone with access to the website can upload -- we've talked about FTP -- updated content, and they could change one Web page or they could change the entire website at virtually anytime.

Q Does a computer have an address associated with it?

A Every connection to the Internet has an Internet Protocol address -- an IP address. I think probably the best way to describe that would be similar to a phone number or even a street address on a house, because there is two-way communication.

Every connection has a discrete address so that the sending computer knows the address of the computer from which it is requesting data, and in turn, that computer knows the address of the person that's requesting, say, the Web page to serve it up to. So every connection in the Internet has a defined, discrete IP address.

Q Do these IP addresses ever change from computer to computer or connection to connection?

A They do. The type of connection really determines how often they change. For instance, a Web server is typically going to have a static IP address, or one that remains the same, almost indefinitely.

A cable modem user or a person that has a cable modem or a DSL line might have an IP address that changes rarely. Only if they power down their cable modem, take the power away for 24 hours or more, will it change.

That is in contrast to, say, a user of a dial-up service, a dial-up ISP, like maybe America Online or EarthLink, those connections change every time -- I'm sorry, the IP addresses change every time they connect to the Internet. So it depends on the type of connections as to how often the IP address would change.

Q Special Agent Harrill, did you do any work with the -- excuse me, did your work with the FBI involve investigating this case?

A It did.

Q What was your role in the investigation?

A Initially, I was the case agent.

Q The agent in charge? What is the case agent?

A The case agent is the agent responsible for the investigation.

Q At some point did you not be the case agent --
A That is correct.
Q -- anymore?
A That became Special Agent Cugno's responsibility.
Q And did your role in the case involve accessing the Internet?
A It did.
Q What site did you access?
A "www.evilgx.com".
Q How did you access it?
A Through an Internet browser, I typed in the URL. It's another name for the Uniform Resource Locater, which is the website address, and I viewed the website.
Q Approximately -- let me ask you this: Over what period of time did you view the website?
A From -- periodically, from fall of 2001 to mid-2002.
Q Did you ever capture or make copies of the website, or portions of the website, as you viewed it?
A I did.
Q On November 7, 2001, specifically, drawing your attention to that date, did you access "evilgx.com" on that date?
A I did.
Q And did you make a copy or a download of the website on that date?
A I did.

Q I'm going to have you go ahead and take a look now -- Special Agent Harrill, behind you there is a big binder -- have you pull that and take a look at Exhibit 9, if you will.

Tell me when you have found it.

A I found it.

Q Without telling me what Exhibit 9 is yet, do you recognize it?

A I do recognize it.

Q Just, in general, what is Exhibit 9?

A Exhibit 9 is an accurate reflection of what I saw on November 7th.

Q Is that a portion of what you saw?

A A portion of what I saw.

Q Did you see it on Defendant's -- excuse me. Did you see it on the website "evilgx.com"?

A Yes, I did.

Q Now, specifically, did you see each of these pages, 1 through 20, when you accessed the website on November 7th?

A Let me look. No, I did not. I saw pages 1 through 17.

Q On November 7th?

A Correct.

Q Now, at some point did you also view pages --

THE COURT: Hold on. You saw pages 1 through 17 of Exhibit 9; is that what you just said?

THE WITNESS: Yes, Your Honor.

THE COURT: But you didn't see pages 18, 19, or 20?

THE WITNESS: No, Your Honor. I can explain that.

THE COURT: Well, only if somebody asks you to. But I just want to make sure. So far you've only authenticated pages 1 through 17.

You can keep questioning.

BY MS. DUARTE:

Q Now, pages 18 through 20, Special Agent Harrill, at some point did you also see these on the website?

A Yes. I saw them linked to on the website.

Q Why don't you go ahead and describe -- let me ask you this: On November 7th, when you accessed the website and you made a copy of it, was there a link that you did not actually capture in your download?

A Well, I captured the link, but I didn't capture the content the link pointed to. As we talked about "hyperlinks" or "hot links," they can be in your face, really; they can be glaring in terms of being colored text or underlined text or, in this case, they can be an image that is not quite so clear.

And what I discovered on 12-12, I believe -- December the 12th -- was that the social security -- if I can be more clear in my explanation.

Q Just don't describe the exhibit.

A -- that the image appearing on this exhibit was actually in itself a hyperlink. When you clicked on an image, it took

you to a different website and an article.

I saw the presence of that link, which I did capture. What I didn't capture was the content that link referred to. And I went back and captured the link to make it complete, if that makes sense.

Q Yes. Did you actually verify, then, during the course of your investigation, that on November 7th, the link that is now printed in pages 18 through 20 did exist on the website?

A Yes, I did. I've seen it in other independently captured versions of this website as well.

Q Independently captured on or near the same date?

A In the same -- yes, within a 30-day window the same link appeared and it pointed to the same content.

Q And so when you discovered there was a link that you had not captured, did you go back out and capture that link?

A I did.

Q Is that link represented at printed pages 18 through 20?

A It is.

MS. DUARTE: Your Honor, I move to admit Exhibit 10.

THE COURT: Exhibit 9.

MS. DUARTE: I'm sorry. Exhibit 9.

THE COURT: No objection?

Okay. Exhibit 9 will be received.

(Government's Exhibit 9 received.)

MR. SUTCLIFFE: There is an objection. Excuse me,

Your Honor. I was looking at this. The defense would like -- I believe he testified that in the context of a link --

THE COURT: Just state what your objection is. You are not allowed -- nobody is allowed to give a narrative, speaking, argumentative objection.

MR. SUTCLIFFE: Excuse me. Yes.

My objection is that this is out of context. It does not include all of the data -- all of the information. Therefore, it's very subjective.

THE COURT: The objection is overruled. You can explore what you think about the completeness on cross-examination.

Exhibit 9 is received.

BY MS. DUARTE:

Q Special Agent Harrill, have you seen Exhibit 10 before? I'm going to hold it up here, the actual exhibit, because I believe you only have a copy in your binder.

Your Honor, would you like me to approach or is this sufficient?

THE COURT: Well, if his eyes are as crummy as mine, you better approach.

THE WITNESS: I'm going to have to see the disk.

BY MS. DUARTE:

Q Pardon?

A I can only see a disk with a yellow label at this point.

Sorry.

I do recognize that disk.

Q And does this disk represent an electronic copy of what you just saw in Government's Exhibit 9?

A It does.

MS. DUARTE: Your Honor, permission to publish -- I'm sorry, move to admit Exhibit 10.

THE COURT: It will be received.

(Government's Exhibit 10 received.)

MS. DUARTE: This time, Your Honor, I'll be publishing Exhibit 10 on port 5. If I could ask the madam deputy to switch the port for me. Is that the full screen that we're going to get?

Q On the screen in front of you and also to the side, Special Agent Harrill, is this at least a portion of what you saw on the website when you accessed it?

A It is a portion.

Q Okay. And up there at the top, was this card on the website?

A Yes, it was.

Q And if we could scroll all the way down to the bottom, I believe it's page 3 -- the bottom of page 4 and the link.

Is this what you referred to? I'm pointing to "This will only get worse." Is that an example of what you described as a link?

A That is a hyperlink as is that social security card we looked at at the top of the page.
Q We are going to go back to that in a minute.
A This is a clear example of a hyperlink.
Q This is one you said that would be evident when you first saw it?
A That's correct.
Q Why don't we go ahead and click on that link.
That takes us to another Web page?
A It does.
Q And just, in general, what do you see on this Web page?
A I see what appear to be names and e-mail addresses, spouses' names, dates of birth, what I believe to be home records and social security numbers of officers of Global Crossing Corporation.
Q We can scroll down a little bit, show a little bit of that.
That goes on for several pages, does it not?
A Yes. That appears to be an electronic address book, actually.
Q I'm sorry. You said it appears to be from an electronic address book?
A An electronic listing of personal data of individuals.
Q Now, if we could go back to the original page, and up at the top there, that social security card, did you also discover

that a link was on that card?
A Yes, I did.
Q Why don't we go ahead and click on that link. If we could scroll down just a little bit.
Special Agent Harrill, is that the article that you are referring to that you saw on the website?
A That is the article.
Q Did you read that article?
A Yes, I did.
Q And just, in general, what does that article concern?
A It talks about the rise in identity theft crimes and the role that the social security number plays in committing that crime, that that is the pivotal element in committing identity theft, and the need to protect social security numbers.
Q All right. Now, if we could go to Exhibit 64 at this point. We'll take this one out while we are doing it. That's a document exhibit that should be in your binder.
A Okay.
THE COURT: Excuse me. Are you representing that what appears to the viewer on the hard copy printout, Exhibit 9, is exactly what appeared on the electronic version disk that's Exhibit 10?
MS. DUARTE: Yes, Your Honor.
THE COURT: Including the language that appears below the John Doe social security number, "Older card. Said not for

identification"?

MS. DUARTE: Yes, Your Honor. Did we not see that on the electronic --

THE COURT: I don't know. I didn't get to see it.

MS. DUARTE: We can go back and look at it.

THE COURT: I want to confirm that. Please access Exhibit 10.

Okay. You may proceed.

BY MS. DUARTE:

Q We'll go ahead and look at Exhibit 64.

A I'm at Exhibit 64.

Q What is Exhibit 64?

A That is an additional portion of my preservation of what I saw on the Internet at "evilgx.com" on November 7, 2001.

Q This is just one page; correct?

A That is correct.

Q And does this document fairly and accurately represent a page that you saw on "evilgx.com" when you accessed the Internet?

A Yes, ma'am, it does.

MS. DUARTE: Your Honor, I move to admit Exhibit 64.

THE COURT: Any objection?

MR. SUTCLIFFE: None, Your Honor.

THE COURT: Exhibit 64 will be received.

Let's do it this way: When one side offers an

exhibit, I'll pause before ruling on it for a second or two. If I hear no objection, I will assume that there is no objection. I won't ask each side whether there is an objection. And if I don't hear an objection, I will admit it unless I think there is an independent reason to exclude it.

MS. DUARTE: Understood.

THE COURT: Go ahead.

(Government's Exhibit 64 received.)

MS. DUARTE: Your Honor, may I ask that the courtroom deputy enable port 1?

THE COURT: Port 1?

MS. DUARTE: Yes, sir.

Q Special Agent Harrill, we're looking at -- is that the page in front of you that I have on the monitors?

A Yes, ma'am, it is.

THE COURT: Excuse me one second.

Go ahead. What is being displayed, is it the same thing as Exhibit 64?

MS. DUARTE: Exhibit 64.

THE COURT: Okay.

BY MS. DUARTE:

Q I'm going to try to zoom in a little bit on some language. If you could go ahead, Special Agent Harrill, and read that last sentence in white. Not all of it is going to be on the monitor -- it's on the copy in front of you -- and then the

link below it, starting with "tonight."

A "Tonight, I have instructed my counsel also that as of this point, there will be no talk on the settlement of the issues related to the religious discrimination or getting my job back. This has now become very personal."

Q You saw this on the Internet on November 7th --

A Yes, ma'am, I did.

Q -- 2001?

A That's correct.

Q Did you also access the Internet -- well, you said you accessed the Internet a number of times after that; is that right?

A That is correct.

Q Did some of these times include March 28th of 2002?

A Yes, it did.

Q Did you do anything to preserve what you saw when you accessed the site on that date?

A Yes, I did.

MS. DUARTE: Permission to approach, Your Honor?

THE COURT: For what purpose?

MS. DUARTE: With Exhibit 23.

THE COURT: All right.

BY MS. DUARTE:

Q I ask you to look at Exhibit 3 (sic), if you will. Do you recognize it?

THE COURT: 3 or 23?

MS. DUARTE: 23, I'm sorry.

THE WITNESS: I do recognize it.

BY MS. DUARTE:

Q What is it?

A This is the preservation of the website that I preserved -- or a copy of the website that I preserved on March 28, 2002.

THE COURT: March 28th; right?

THE WITNESS: Yes, Your Honor.

BY MS. DUARTE:

Q That information on the compact disc you have that is Exhibit 23, is that the same information that you yourself saw on the "evilgx" website?

A Yes, it is.

Q Have you seen portions of that download in another location -- on another electronic disk?

A Yes, I have.

MS. DUARTE: Your Honor, permission to approach with Exhibit 20?

THE COURT: All right.

THE WITNESS: I recognize this.

BY MS. DUARTE:

Q Special Agent Harrill, what is Exhibit 20?

A Exhibit 20 is a portion of the broader preservation.

Q A portion of the preservation that you saved in Exhibit 23?
A That is correct.
Q And have you reviewed Exhibit 20?
A Yes, I have.
Q Does Exhibit 20 represent a fair and accurate depiction of what you saw when you accessed the Internet on March 28th?
A Yes, ma'am, it does.
Q Have you looked at, if you will, in your binder, Government's Exhibit 19?
A Yes, I have.
Q Does Government's Exhibit 19 represent that same material that's on Exhibit 20?
A Yes, ma'am, it does.
Q In what form is Exhibit 19?
A Exhibit 19 is in printed form.

MS. DUARTE: Okay. Your Honor, move to admit Exhibits 19 and 20 and permission to publish Exhibit 20.

THE COURT: Okay. They'll be received. 19 and 20 are in evidence.

(Government's Exhibits 19 and 20 received.)

THE COURT: You haven't moved for the admission of 23, have you?

MS. DUARTE: That's correct, Your Honor, I have not.

THE COURT: 19 and 20 are received. They are in

evidence.

MS. DUARTE: And if I could ask madam deputy to enable port 4.

THE COURT: Okay.

(Playing audio.)

BY MS. DUARTE:

Q Let's cut the music for a minute.

Special Agent Harrill, did you hear this voice and music when you accessed this page of the website?

A Yes, ma'am, I did.

Q Did you hear what the voice says?

A It first says, "Welcome to my domain." Then it says -- or the voice says, "This is all far, far from over." And the background of that is, I believe, the theme from the horror movie "Halloween."

Q "Halloween"?

A "Halloween."

Q Now, if we hadn't cut the music, does that music keep playing?

A The music does.

Q But not the voiceover necessarily?

A I don't believe so.

Q We are going to look at the very top of the -- is this the very top of the electronic copy? Okay.

On the top of page 1 here, there is a reference --

and I'm going to try to switch the colors so I can -- do you see that reference I'm circling?

A I do. It says, "The Web Group."

Q Do you know what that reference is to?

A That's a reference to what we referred to earlier as a hosting company or a Web host.

Q So you know that that's actually a Web host?

A I do.

Q What does that sentence say that The Web Group is included in?

A It says, "This site would not even be available if it were not for the great guys @" -- the symbol @ -- "The Web Group. We recommend their service."

Q Then if we look right here -- and I'm underlining -- trying to underline the term, "My name is Steven." Was that also on the website when you saw it?

A Yes, it was.

Q And if we could scroll down on the left side a little bit, until we get to a picture.

Were you able to tell, when you looked at the picture, since you've seen it, who that picture is of?

A Yes, ma'am. At the time I compared it to a driver's license photo, and I believed then and I believe now that it's the gentleman sitting in the courtroom here wearing the blue and white shirt.

MS. DUARTE: Your Honor, could the record reflect that Special Agent Harrill has noted the defendant?

THE COURT: Yes. It will so reflect.

BY MS. DUARTE:

Q Now, if you look a little bit further down on pages 1 and 2 -- and we are going to go ahead and scroll down. Let's stop there.

See on this portion of the screen that I'm going to point out here, "While these free servers"?

A Yes.

Q Why don't you go ahead and read that, first, to yourself, actually. Read that paragraph, "While these free servers." When you get to where it says, "I now have uploaded," which I just underlined, I want you to go ahead and read that portion out loud.

A Read the entire paragraph starting with "while"?

Q No. "I now have uploaded."

A "I now have uploaded to over 24 other sites like this one here. When they censor one, I simply change links to another. Can't say I didn't warn them. They have taken on a new tactic, another illegal one, of course. Some people just never learn from their mistakes."

Q Then, if we go down a little bit further, there is a reference to "lizzy."

A Yes, ma'am.

Q We are going to go back to that link in a minute. I want to go ahead and scroll to page 2.

I'm sorry, Your Honor. It's just difficult for me to follow. I'm going to try on the printed copy. If I could have just a minute, Your Honor.

THE COURT: All right.

BY MS. DUARTE:

Q If we could go back up to the last Friday, 3-15-2002.

Okay. Special Agent Harrill, I am now looking at a portion of the screen I want you to look at here, and starting here with "Elizabeth," do you see where I have marked?

A Yes, ma'am, I do.

Q Why don't you go ahead and read me what it says there starting with "Elizabeth."

A "Elizabeth, you now owe me $15,000 for the violations of the contract, and I am coming to collect from you personally."

Q Why don't you stop right there.

Do you know -- or did you see any reference on the website as to what contract might be referenced here?

A Yes. When you viewed the website, the first page you would come to was a series of legal language that asked you to agree to a particular contract or not agree.

And if you didn't agree, it took you to a Disney Corporation site, if I recall. If you did agree, then it took you into what we see here.

The contract essentially said that you held the owner of the website harmless for anything that you might do based upon the information there, that the owner didn't condone any illegal activity based upon the information. And that if you made any, in essence, fictitious claim, that, I believe, you owed him $5,000 for each fictitious claim, based upon your actions, in reference to the website.

Q So that was a contract or a term that came on when you first accessed the website; right?

A That's correct.

Q That's not a page that's right here you are looking at?

A It is not.

Q Now, after you clicked "I agree" on that first page, what's the very next thing you came to on the site?

A The very next thing was what we just saw.

Q So this was the second page in?

A That's correct.

Q Was it difficult to locate at all?

A No, it was not. It was -- actually, the cursor became a cross hair. You either checked "I agree" or, I think, "I do not agree."

If you clicked "I agree," this popped up, along with the sounds, etc.

Q That's where you saw the reference to a monetary sanction of some sort for violations?

A Yes, ma'am.
Q Okay. Now, if we could go -- before we do the "lizzy" link, if we could just go down to page 5, which is the bottom of the first set of pages. If we can scroll up just a little bit more -- I'm sorry, scroll down. Let's stop there.
Special Agent Harrill, at the very bottom of the screen, this area right here --
A I see it.
Q -- what does that say?
A It says, "Copyright 2001-2002: Steven-William:Sutcliffe."
Q Now, if we could go back up to the "lizzy" link on page 2.
THE COURT: These page references refer to --
MS. DUARTE: I'm sorry, Your Honor.
THE COURT: -- the numbers that were assigned on the hard copy?
MS. DUARTE: That's accurate. I will figure out a smoother way to do this before tomorrow, Your Honor.
Q Why don't we go ahead and click on the "lizzy" link right here.
(Playing audio.)
BY MS. DUARTE:
Q Is that what you heard when you accessed the Internet --
A Yes, ma'am, it was.
Q -- when you accessed that Web page?
A That's correct. When you clicked that hyperlink, it took

you to this Web page and it played that sound clip.
Q That said what?
A Pardon me. It says, "The price is wrong, Bitch."
Q And then when you look at this page, what do you see on this page?
A I see some text, what appears to be a signature facsimile or the signature of Elizabeth A. Greenwood, a hyperlink to her home address -- or a hyperlink that contains her home address, her home telephone number, or what I believe to be her home telephone number, her social security number, and her date of birth.
Q Okay. And up on the left of the screen, up here where I've touched, it says "Freeservers"?
A Yes, ma'am.
Q What do you take that to mean? Do you know what that means?
A That's the logo of another Web host, "Freeservers," which provides, as the name would imply, at least a portion of their services, a free Web hosting service.
Q So does this mean that this page that we are viewing was on a different Web host than the first page?
A I know this to be on a different Web host than the first page.
Q Is this an example of the spider webbing that you talked about?

A I believe it is.
Q And when we go to the bottom, still on the same link, and we take a look at, but don't click, this link down here, are we able to see on our screen what that goes to? You may not be.
THE COURT: What you are now asking Special Agent Harrill to do is click on the red indicated links "Liz, still think an infraction ticket is a crime?"
MS. DUARTE: I was, Your Honor, but I don't think we can see the link it goes to, so I may not be able to do that.
THE WITNESS: What you can see, though, on the bottom of the task bar --
THE COURT: You are not allowed to volunteer information; no witness is. You are allowed to respond to questions if you are asked.
THE WITNESS: Yes, Your Honor.
THE COURT: Go ahead.
BY MS. DUARTE:
Q Special Agent Harrill, when that cursor is on that link "Liz, still think an infraction ticket is a crime?" do you see anything, without actually accessing the link, on the screen that enables you to determine what that link goes to?
A Yes, ma'am. Hyperlinks can also open up, in this case, an e-mail client. What I see there, I see the contents of the hyperlink. And what that would do, if you clicked it and it ran, it would open up a mail client and it would allow you to

send mail to "evilgxhrdept@yahoo.com." It would automatically insert, in the subject line of the e-mail, the text "No, I don't. Please forgive my stabbing your family in the back."

Q That area that you read, is that where I drew the arrow right there? Well, roughly.

A The blue thing, yes, ma'am.

Q You said that this "Liz," etc., would be a link to that e-mail address; correct?

A It would open up the default mail client and insert that address in the "to" line and insert the other text in the subject line.

Q Okay. And if we could now click on the link a little bit further up, "Bad hair day."

(Playing audio.)

BY MS. DUARTE:

Q If we could go actually back up to the beginning, I'm going to look at the logo here on the left-hand corner. Is this the same logo we discussed --

A Yes, ma'am, it is.

Q -- for "Freeservers"?

Okay. If we could go down to the picture.

MR. SUTCLIFFE: Your Honor, I'd like to make an objection at this time. I'd like to lay a foundation as to this picture and who created this --

THE COURT: You can explore that later. It's all

been -- there is no pending question. There is no basis to object. This is part of the exhibit that's in evidence. You can cross-examine when it's your turn.

Objection overruled.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: You may proceed.

We are going to be breaking in five minutes.

MS. DUARTE: I should be done in five minutes, Your Honor.

THE COURT: Okay.

BY MS. DUARTE:

Q What I'm looking for is the "e-mail me here" reference. Can we scroll to that.

It will speed things up a little bit, Your Honor.

THE COURT: I'm not rushing you. I'm just giving you advice. You are not dillydallying, so don't worry.

BY MS. DUARTE:

Q Special Agent Harrill, what happens when we look at the link "e-mail me here"?

A You can look at the hypertext link at the bottom of the screen, and what you see there is another hyperlink that would open up a mail client to the same -- or to the "evilgxhrdept@yahoo.com", except this time the subject would be "Here's my statement: By Elizabeth Greenwood."

Q Okay. And when we first came on this page that we're on

now with the picture -- and by "page," I mean Web page, not page in the printout -- you heard the voiceover; correct?

A I did.

Q Did you hear that when you first went on the site as well?

A Yes. Back on March 28th of 2002.

Q Do you recognize that voiceover?

A I do. It's a line from "Cape Fear," which was a film with Robert DeNiro, which deals with an ex-convict who felt wronged by an attorney who then pursues the attorney's family for retribution.

MS. DUARTE: I have nothing further at this time, Your Honor.

THE COURT: Okay. It's probably an appropriate time to break, then, for the day. Thank you for your attentiveness.

Tomorrow we will resume at 8:30. You need to be here by not later than 8:15. Usually there will be someone who can let you in. If your schedules or transit arrangements result in your getting to the court before 8:15, that's fine. We'll usually have someone here to let you into the jury room by around ten to 8:00, if not sooner. But I'm pretty sure by ten to 8:00 you'd be able to get in.

Please be prompt as you were today. See you tomorrow morning and remember the admonition in the meantime.

(Jury out.)

THE COURT: We are adjourned until tomorrow morning.

Please have the witness on the stand at 8:30 for further examination.

Mr. Reed, there is something I wanted to suggest. And this should go on the record. We need to have copies of the exhibits that the defendant offers that I allowed to be admitted that I don't have myself and the prosecution doesn't have.

There has been one such exhibit so far. It's Exhibit 200. I want the defendant or the clerk, whoever has the custody of any exhibit that's been admitted, to give it to Mr. Reed, with my request that Mr. Reed make Xerox copies and bring them back the following day so that the Court, the files, and the prosecutor have copies, as well as Mr. Sutcliffe.

Will you do that?

MR. REED: Yes, Your Honor.

I remember that there were several documents that he used to try to refresh people's recollections which weren't, technically, identified.

THE COURT: And they weren't admitted, so I'm not concerned about those.

But were some things admitted? Then it's got to be duplicated and made part of the court records and given to the prosecutor.

MR. REED: Very well, Your Honor.

(Adjournment at 1:30 p.m., to resume on

Friday, November 14, 2003, at 8:00 a.m.)

C E R T I F I C A T I O N

I certify that the foregoing is a true and correct transcript from the stenographic record of the jury trial proceedings in the foregoing matter.

Karen R. Pinn, RPR, CSR 5574

September 13, 2004

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE A. HOWARD MATZ, JUDGE PRESIDING

UNITED STATES OF AMERICA, Plaintiff, vs. STEVEN WILLIAM SUTCLIFFE, Defendant.	Case No. CR 02-350(A)-AHM

CERTIFIED COPY

REPORTER'S TRANSCRIPT OF JURY TRIAL PROCEEDINGS

Los Angeles, California

Friday, November 14, 2003

DAY 3

(Pages 445-642)

KAREN R. PINN, RPR, CSR 5574
Court Reporter

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I N D E X

GOVERNMENT WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
HARRILL, Frank				
By Ms. Duarte			541	
By Mr. Sutcliffe		468		
ISLEY, Linda				
By Ms. Duarte	543		569	
By Mr. Sutcliffe		555		571
MANN, Orly				
By Ms. Duarte	579			
By Mr. Sutcliffe		590		
LEITER, Mary				
By Ms. Duarte	594			
RAMSEY, Andrew				
By Ms. Duarte	603			
By Mr. Sutcliffe		609		
GREENWOOD, Elizabeth				
By Ms. Duarte	623			

GOVERNMENT'S EXHIBITS	FOR IDENTIFICATION	RECEIVED
23		492
33		546
34		552
35		555
25		585
26		586
27		587
28		588
7		634
8		638

DEFENDANT'S EXHIBITS	FOR IDENTIFICATION	RECEIVED
201		565

LOS ANGELES, CALIFORNIA;

FRIDAY, NOVEMBER 14, 2003; 8:11 A.M.

THE COURT: Good morning. Welcome. Call the case, please.

THE CLERK: In the matter of the United States of America v. Steven William Sutcliffe, Criminal 02-350(A)-AHM.

Counsel, please state your appearances.

MS. DUARTE: Good morning, Your Honor.

Elena Duarte for the government, with Case Agent Jeffrey Cugno.

MR. SUTCLIFFE: Steve William Sutcliffe, accused, present.

THE COURT: Good morning.

MR. REED: David Reed, advisory counsel.

THE COURT: Good morning.

I understand the government has a motion.

MS. DUARTE: Yes, Your Honor.

I reviewed the four subpoenas that the Court provided yesterday, and at this time I'd like to make an oral motion to quash these subpoenas. I'd like to go through them briefly one by one. In the event that the Court requires further authority, I did not get a chance to do it, but I would be able to do it over the weekend.

I would ask the Court, if the Court is inclined, not to quash any of the subpoenas, to give me the chance to brief

it over the weekend.

THE COURT: Let's hear from you first, please.

MS. DUARTE: As to the first, Your Honor, a subpoena for Debra Yang. I don't think that the subpoena has a good faith basis.

Ms. Yang, as far as I know, as far as anyone working on the case is aware, has no knowledge of the case, would contribute nothing for either side by testifying. The only vague relationship that Mr. Sutcliffe himself has hinted that Ms. Yang may have had with the case is apparently he feels that at some point she was a judge that heard a matter in the "killercop" litigation back in the '90s, and that would have had nothing to do with the instant matter and would not be relevant.

THE COURT: Let's do these one by one.

What's your response, Mr. Sutcliffe?

MR. SUTCLIFFE: Thank you, Your Honor.

My response is that the government is confused. There was no "killercop.com" litigation.

THE COURT: What is the basis for attempting to effectuate summons and subpoena on Ms. Yang?

MR. SUTCLIFFE: The basis of that, Your Honor, is it goes to show motive to prosecute the accused on the -- the bogus charges have no basis at all in reality, based on the fact that the U.S. Attorney, who is now prosecuting me, was

directly attacked, verbally, for five years, on the Internet upon a website which received over 2 million hits a month and was internationally known. She was disparaged. She was accused of covering up for the prosecutor. She was accused of assisting the prosecutor in the theft of a tape that contained evidence of two officers of the LAPD who were trying to cover up for each other for their crimes. She was disparaged for letting the prosecutor off for stealing the tape, which the prosecutor admitted he had no authority to take the tape.

THE COURT: This is a different website than any website involved in this case?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: And the officers are not involved in this case either; correct?

MR. SUTCLIFFE: They are involved in the case. Yes, they are.

THE COURT: Which officers?

MR. SUTCLIFFE: Officer Willis and Officer Katz. They've been directly involved in the investigation of "killercop.com" since its inception. They have --

THE COURT: I think I have heard enough.

I grant the government's motion to quash the subpoena on Ms. Yang. Her personal motive, even if it falls into the classification of motives that you ascribe to her, Mr. Sutcliffe, is irrelevant to the propriety and adequacy of

the filing of these charges.

I mean, I have no doubt, based upon the evidence I have heard so far, that the prosecution is being conducted in good faith, with a sufficient factual basis that the grand jury already found to return the superseding indictment; and it would be a huge sea change in the administration of justice to have the personal backgrounds of whoever happens to be U.S. Attorney at a given time become a basis to issue subpoenas.

Selective prosecution, which you hinted at, has already been ruled upon. So I don't need further argument on Ms. Yang.

What's the next one?

MR. SUTCLIFFE: Thank you, Your Honor.

MS. DUARTE: Your Honor, the next one is a subpoena issued by Mr. Sutcliffe to Special Agent James Laveride, L-a-v-e-r-i-d-e, of the FBI.

THE COURT: Okay. I happen to be looking at that one.

MS. DUARTE: I have made inquiry. There is actually no such special agent. However, I did take the liberty of doing a little bit of investigation into it, and there is a James Laverick, L-a-v-e-r-i-c-k, who Mr. Cugno -- Special Agent Cugno remembers was with him in a portion at least of Mr. Sutcliffe's transport during his arrest in New Hampshire.

We called the New Hampshire field office, and the FBI

determined that Mr. James Laverick is now retired. He's no longer with the office.

Additionally, I inquired of Special Agent Cugno as to former Special Agent Laverick's participation in the case, and was told, as Special Agent Cugno's 302 does reflect, that Special Agent Laverick did not participate at all in the investigation, but merely assisted in the transport.

Mr. Sutcliffe is not --

THE COURT: The transport of Mr. Sutcliffe from --

MS. DUARTE: Of Mr. Sutcliffe after his arrest.

THE COURT: -- from New Hampshire to California?

MS. DUARTE: No, Your Honor.

From his residence in New Hampshire, where he was arrested, to the -- if I could have just a moment, Your Honor.

Your Honor, my mistake. Assisted in the transportation from the police department in New Hampshire to the jail in New Hampshire, on that limited basis.

Mr. Sutcliffe is not alleged to have made any statements, certainly not any that we would bring into evidence, during that transport. We are not bringing any evidence of anything that occurred during that transport into evidence, and I see no good faith basis for asking retired Special Agent James Laverick even to be present.

THE COURT: First, let's confirm that that's the individual you had in mind.

MR. SUTCLIFFE: Thank you, Your Honor.

Yes. I got the name from the police report. The handwriting was terrible.

THE COURT: Those things happen. Don't worry about that.

MR. SUTCLIFFE: May I be heard, Your Honor?

THE COURT: Yes.

MR. SUTCLIFFE: Thank you, Your Honor.

I believe that Mr. Laverick's testimony is very relevant in that the FBI agent, Mr. Cugno, wrote down -- after the arrest, he had written a report in which he made statements that he had heard the defendant make statements which came to be used against the defendant, and the defendant wishes to contest those statements being used against him as being an illegal seizure, a violation of his Miranda rights, and further, it goes to impeachment of Case Agent Cugno in this case as to his actions and what he wrote in that report.

And only Mr. Laverick can provide that knowledge of what really took place and what was really said to impeach the agent in this case.

THE COURT: Okay. Up until now, I haven't been aware of any effort on the part of the defendant, personally, or any lawyer representing him previously, to challenge evidence based upon Miranda or to challenge the lawfulness of the search.

The proffer that Mr. Sutcliffe made doesn't satisfy

the requirements, under United States v. Reed, 726 F.2d 570, and I grant the government's motion to quash the subpoena to Mr. -- intended to be to Mr. Laverick.

What's your next motion?

MS. DUARTE: Motion to quash the subpoena issued to the FBI field office at 11000 Wilshire Boulevard. This subpoena, it's my understanding, encompasses approximately -- if I could have a moment?

THE COURT: First of all, I want to construe the subpoena to mean to the custodian of records at the FBI field office, and you should argue your position accordingly.

MS. DUARTE: Okay. The custodian of records at the FBI field office. These documents, the documents sought, are for "killercop.com". And I don't think the defendant has a good faith basis for thinking that there are any documents that are discoverable, certainly, related to "killercop.com" in the possession of the FBI.

Anything relevant has been turned over to him. And further, I have confirmed with the FBI that they never opened an investigation on "killercop.com".

THE COURT: From whom did you confirm that?

MS. DUARTE: Supervisory Special Agent Ken McGuire, who did --

THE COURT: When did you confirm that?

MS. DUARTE: Yesterday.

THE COURT: What did he tell you?

MS. DUARTE: He told me that the -- could I confirm the database?

Your Honor, apparently, he did a word search in the internal FBI database, and that enabled him to pull up anything relevant to "killercop" or anything mentioning "killercop".

THE COURT: Did he find anything?

MS. DUARTE: He verified that there was no open investigation.

THE COURT: Did he find any material?

MS. DUARTE: He found one hit. That hit was contained in the file of a separate investigation, and that hit was only to a document which contained Web code. Not Web pages, but Web code from a portion of the "killercop.com" website in the late '90s.

THE COURT: When did the investigation of Mr. Sutcliffe that led to the filing of the indictment and the superseding indictment in this case begin?

MS. DUARTE: The indictment in this case, it began in the fall 2001, Your Honor.

THE COURT: Well, I think that you should produce, without the need for there to be any further authentication, that one document that McGuire found.

Now, I want you to make a representation and offer to the Court about just to who McGuire is and what his capacity is

to make these representations on behalf of the FBI.

MS. DUARTE: Your Honor, he's a supervisory special agent in one of the cybercrime squads. However, I didn't discuss with him in enough detail, I don't think, to actually tell the Court precisely what he did.

If the Court wishes, I can supply a declaration.

THE COURT: Just have him execute a declaration and attach it to this one document that he was able to find in the FBI records which apparently is source code.

Do I understand you correctly?

MS. DUARTE: If I could have a moment?

We think it's source code, Your Honor. But I'll verify that and I'll put that in a declaration.

THE COURT: Categories 2, 3, and 4, on their face, are totally beyond the scope of a proper subpoena. So the item that I have ordered be produced within the accompanying declaration is responsive at least to the very sweeping language of paragraph 1.

To that extent, and to that extent only, to that limited extent, I order that the document be produced and made available to Mr. Sutcliffe.

Do you want to be heard further?

MR. SUTCLIFFE: I have a couple of motions I would like to make.

THE COURT: Wait. Wait.

MR. SUTCLIFFE: Not on this, no, Your Honor.

THE COURT: Next.

MS. DUARTE: As to the fourth subpoena, Special Agent Sue Hermitage of the Social Security Administration.

THE COURT: Yes, I see that one.

MS. DUARTE: Special Agent Hermitage arranged for the certified copies of the social security number certifications, which are self-authenticating, to be procured.

However, she does not have independent knowledge of the database and the way that these numbers are kept, which she should not need because these documents are going to be self-authenticating. Therefore, I don't have any idea what she could add to the proceedings.

THE COURT: Let's hear from Mr. Sutcliffe. What's the basis consistent with the somewhat rigorous requirements that you think you have for her to be served with the subpoena?

MR. SUTCLIFFE: Thank you, Your Honor.

The reason I need this special agent is because this special agent, within discovery, was the one who compared the records of all these, supposedly, I believe it's like 8,000 social security numbers or 12,000, or how many thousands of social security numbers there were.

It's my understanding that the agent can testify that there were many, many numbers contained within there that were represented to be social security numbers which were not social

security numbers.

The defense has taken a position that this information that was being provided to the defense from inside and outside the company of Global Crossing was never represented to be true.

THE COURT: Wait a minute. You are saying that you think that she could testify that certain of the numbers that Global Crossing sued you about were not real authentic social security numbers?

MR. SUTCLIFFE: That's correct.

THE COURT: Are any of those numbers alleged in the indictment in this case?

MR. SUTCLIFFE: Yes.

THE COURT: Which ones?

MR. SUTCLIFFE: Well, there are 1900 of them, Your Honor.

THE COURT: No. The specific counts, Count One through Five, I think it is.

MR. SUTCLIFFE: I believe it's Five through Nine.

THE COURT: Five through Nine. You are right.

MR. SUTCLIFFE: I believe under Count Seven.

THE COURT: What makes you believe that?

MR. SUTCLIFFE: I believe I read something which she provided to the government, which the government provided to me, which said that many of these numbers were not correct.

THE COURT: Well, I don't think -- we should have a record here. Count Seven, it says, "Approximately 1900 social security numbers were transferred to other -- "numbers assigned to other individuals were transferred," and the date assigned to that allegation is December 3, 2001.

So your proffer is that if there were -- I'm just arbitrarily assigning a number -- if there were 100 of these that were not actual social security numbers assigned to real people --

MR. SUTCLIFFE: Yes.

THE COURT: -- then to allege there were approximately 1900 would be incorrect?

And so what? What is the basis on which that would promote your defense, Mr. Sutcliffe?

MR. SUTCLIFFE: The basis, Your Honor, is that from the beginning of the website "evilgx.com", there was a very prominent -- one or more disclaimers which stated that this website does not represent anything you are going to see in here or read in here is known to be real unless the provider of that information certifies that it is real. Therefore, it goes to show that we never intended to represent that these numbers were real in the first place.

The government has proffered that I had the intent to aid and abet identity theft. If the defendant was going to aid and abet identify theft, you would think that he would put up

real numbers.

This goes to show these were not real numbers, and it also goes to show that some of these numbers that were missing happened to be people who were fired. There was other people who had a motive to do these things. It was not the defendant. The defendant never represented that any of this was true data unless the provider of that data certified it.

THE COURT: That gets to a different issue. I understand the relation that you see.

MR. SUTCLIFFE: Thank you.

THE COURT: There is a factual relation, but that gets to a different issue.

What is your understanding of who this person is? All she did was gather the records that led to the certification?

MS. DUARTE: That's correct. She procured the records and she also provided --

THE COURT: What is the exhibit or exhibits that you were planning to use to address the allegation in Count Seven? What's the exhibit number?

MS. DUARTE: The social security certifications are in Exhibit 47.

But I should also note, Your Honor, if I may, that in addition to the positive certs, which you will see when you access Exhibit 47, we provided defendant with a number of

self-authenticating negative certifications, which, of course, he's entitled to introduce or to move to introduce into evidence as he pleases, which would show that a number of these social security numbers were not, in fact, positive hits, in other words, were not, in fact, real numbers.

THE COURT: So you turned over that evidence?

MS. DUARTE: Yes, Your Honor. That's probably what he's talking about.

THE COURT: Without making a ruling on the relevance or the genuineness of the proffered defense -- and I'm by no means suggesting I will prevent defendant from pursuing it -- if he has the evidence that was submitted in the course of production, then that should be sufficient, provided that the government represents that you are not going to raise issues about the authenticity of the evidence that Mr. Sutcliffe may choose to proffer.

MS. DUARTE: Absolutely not, Your Honor.

I would even be willing to stipulate as to the fact that some of those numbers --

THE COURT: Okay. Then we don't need that witness.

The motion is granted to quash the subpoena.

MS. DUARTE: That's all I have, Your Honor.

THE COURT: Okay. Mr. Sutcliffe, I understand you have some matters you want to raise.

MR. SUTCLIFFE: Yes, Your Honor. Thank you very

much.

If it please the Court, I would like to renew my motion to reconstruct the evidence to its original form. I'd like to bring to the attention of the Court, yesterday Special Agent Laveride's (sic) testimony --

THE COURT: Not Laveride's.

MR. SUTCLIFFE: Excuse me. I'm back on --

THE COURT: Harrill.

MR. SUTCLIFFE: Mr. Harrill, I believe, excuse me.

-- Mr. Harrill's testimony yesterday where he specifically -- excuse me one second while I get my records here. He used the words "in the context of that link" when referring to a link that he was clicking to the outside, as he represented, to an article which referenced "How to Protect your Social Security Number," which was written by the Honorable Clayton Shaw.

The defense contends that we should have the same right. We should have the right to show the jury the context of other links which go outside.

The government has admitted that they have not made a good faith effort to protect all of the data in this case. And the fact that the government is now relying upon outside links, which are not internal to this website, as part of their case-in-chief, the defense wants the same right, Your Honor. And it respectfully requests the government to reconstruct this

evidence in its original form, including all outside links.

Now, I know the government has proffered, in government's response to defendant's motion regarding reconstruction of and access to the website "evilgx.com" filed September 9, 2003, on page 2, "That various individuals captured downloads, as completely as they were able to."

And then further, on page 3, in footnote 3, it says, "It should be noted that some of the downloads were not complete; however, when pointed to, the links do display the names of the Web pages to which they were originally connected. It's impossible to see where the link was originally connected and to view the Web page separately to the extent that the correct version of the linked Web page can be determined."

Impossible. You cannot get a meaning of the context by looking at a Web address.

THE COURT: Okay. This is a renewed motion that has been the subject of considerable effort on both sides -- briefing, argument, and rulings -- and I deny the renewed motion.

The material that is being displayed and pointed to by any witness here is readily available to you, all of it. Just as it's part of the government's evidence, it's part of your evidence.

You can argue context to the extent that there are or were, at one earlier previous time, materials on a website that

are no longer accessible or retrievable or are not part of what the government wound up capturing and maintaining and turning over in discovery.

You can argue, if you wish, or try to elicit from Harrill, or any other witness that you wish, evidence that you think is relevant about what was on or could have been on those websites.

But your opportunity to address the charges directly and to represent and present a defense for your ownself is in no way circumscribed.

Reconstruction of "evilgx.com" is not necessary. It isn't even feasible. I've made that ruling. And I don't intend ever again to revisit that question. So your motion is respectfully denied.

Now, I think you have another motion.

MR. SUTCLIFFE: Yes, Your Honor. Thank you.

The defense would like to object at this time to insufficient time to review the evidence due to the Court's refusal to allow the defendant material, which I'm standing next to.

I'd like the record to reflect there are one, two, three, four, five, six fairly large boxes filled to their capacity of the defense's discovery. And I would note for the record that the U.S. Attorney and the FBI agent and standby counsel, they all have -- they are not required to leave their

stuff here. They are allowed to take their stuff home to review the testimony that's been given the previous day.

There was extensive testimony given by Mr. Harrill yesterday. I've had zero time, since I got here this morning, to prepare to cross-examine Mr. Harrill.

THE COURT: Those boxes were available to you and accessible to you for a long time before they were brought over at your request.

Mr. Sutcliffe, you have a right to a fair trial. You don't have a right to every little -- or every big request that you want. Extraordinary efforts have been made -- I know you don't see it that way -- to assure that you get a fair trial. Your motion is denied.

Anything else?

MR. SUTCLIFFE: Your Honor, I would just like to note that, for the record, the FBI agent testified to certain particular facts yesterday.

Immediately after his testimony, this Court adjourned. I was immediately cuffed up and taken away. I've had no time to look through my notes, to review my notes.

I was brought in here right away. We've had this approximately 35 minutes. We've been here since 8:00. I haven't had five minutes to review anything as to what the agent testified to yesterday.

I am not prepared. I'm just asking for the Court's

indulgence to have some kind of semblance of order here so I can get all my notes together and just review and refresh my recollection as to what I want to cross-examine the witness about.

This is a crucial witness. The next one coming down is just as crucial. And I would just ask the Court's indulgence in this.

THE COURT: Tell you what, Mr. Sutcliffe. I don't think it's a good faith offer, but we are not going to delay this trial, and I'm not going to impose upon hard-working agencies and individuals of the government extremely excessive burdens of lugging back and forth what you would want.

We are going to end the trial today at 1:30. You can have access to these records after that. If you think that there is something that you didn't have a chance to question Mr. Harrill about, I'll order that he be made available to you for further examination in the form of cross-examination, and he'll just be brought back. That's all that I'm going to do.

Let's bring the jury in.

MS. DUARTE: Your Honor, just one more matter. I have 902.11 declarations previously provided to the defendant. This may come up today, so I thought I would provide copies to the Court.

THE COURT: What are these declaration?

MS. DUARTE: These are just the 902.11 declarations

with the attached exhibits.

THE COURT: And they are not in the exhibit books?

MS. DUARTE: No. No. The declarations themselves are not. That's correct. I thought --

THE COURT: Did you give them to Mr. Sutcliffe?

MS. DUARTE: Yes, he's had them.

THE COURT: All right. Hand them to the clerk, please.

Anything else? Can we bring in the jury?

MS. DUARTE: Yes, Your Honor.

Nothing else.

MR. SUTCLIFFE: Yes, Your Honor.

Do you have the subpoena, Your Honor, we talked about yesterday to Yahoo!'s declaration?

THE COURT: I'll have to look it over. I see that there is a handwritten declaration. I'll cause it to be filed. I'll have to look it over. I'll make a ruling later today.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: What now?

MR. SUTCLIFFE: The defense would like limited cross-examination of FBI Agent Harrill outside the presence of the jury since I haven't had a chance to be prepared, and I'd like to call him back, then, later on in my case-in-chief.

THE COURT: You can call him back in your case-in-chief. There is going to be no cross-examination of

anybody outside the presence of the jury.

MS. DUARTE: May we get Special Agent Harrill on the stand?

THE COURT: Yes, bring him in. And you can bring the jurors in.

(Jury in.)

THE COURT: We are ready to resume. I think the witness who was on the stand is entering the courtroom, and the questioning may resume.

Everyone may be seated.

FRANK HARRILL, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

THE COURT: Agent Harrill, I remind you that you were previously sworn, that you remain under oath, and that you have the obligation to testify truthfully.

Do you understand that?

THE WITNESS: Yes, Your Honor, I do.

THE COURT: Do you affirm that you will?

THE WITNESS: Yes, Your Honor, I do.

THE COURT: Are you finished with your questioning?

MS. DUARTE: Yes, Your Honor.

THE COURT: Okay. Cross-examination, please.

CROSS-EXAMINATION

BY MR. SUTCLIFFE:

Q Good morning, Special Agent Harrill.

A Good morning, Mr. Sutcliffe.

Q How are you doing today?
A Fine. Thank you.
Q Today is the first time you and I have ever met; is that correct?
A First time we've ever spoken.
Q Correct.
Did you participate in the arrest of the defendant in March of 2002?
A No, Mr. Sutcliffe.
Q Can you tell the jury, who first contacted you to instigate the investigation of the defendant or the website?
A Mr. Sutcliffe, I'm not sure I completely recall. It may have been the Beverly Hills Police Department. It also may have been a representative from Global Crossing.
Q Do you know who that representative was?
A I don't recall, Mr. Sutcliffe.
Q Do you have any records or notes of how this investigation began?
A Not with me, Mr. Sutcliffe.
Q Do you recall the first time that you dealt with anybody from within Global Crossing or you spoke with anybody from within Global Crossing?
A The specific date, no. I recall speaking, I believe, to some attorneys for Global Crossing, I believe a Mr. Mark Labaton.

Q Did you ever speak to Elizabeth Greenwood?
A I have spoken with her.
Q Can you tell the jury who Elizabeth Greenwood is, please?
A Elizabeth Greenwood is -- or was counsel or a lawyer for Global Crossing.
Q She was, in fact, the senior counsel for Global Crossing, was she not?
A I'm not aware of her specific title, but I know she was highly placed in their legal department.
Q She's one of the alleged victims that you were speaking about yesterday when you were showing the jury some of the evidence that the prosecution --
A That's correct.
Q -- was displaying; that's correct?
A That's correct.
Q Do you recall how many conversations you had with Mrs. Greenwood?
A Not many. Maybe one to three.
Q Did she contact you by e-mail at all?
A I don't recall having received e-mails from her. I think I have viewed e-mails between her and other folks, but I'm not sure if she contacted me specifically by e-mail. I'm not -- I don't have a recollection.
Q You were the case agent in charge of this investigation?
A Well, a case agent is in charge of a specific

investigation, and for a period of time, I was the case agent on this investigation.

Q In charge?

A In charge, yes.

Q You said that was sometime around November or December?

A I believe October of 2001, the fall.

Q And you don't recall the exact date in October, though?

A I don't.

Q You testified that you downloaded the website November 17th; is that correct?

A I think it was 11-7, was it not?

Q 11-7, excuse me, my mistake.

A I can review the exhibit.

MR. SUTCLIFFE: Could we review the exhibit?

MS. DUARTE: Your Honor, Mr. Sutcliffe is addressing me directly. I'm not sure how you want me to --

MR. SUTCLIFFE: I wasn't addressing her directly.

THE COURT: Okay. He wasn't. Apparently, I missed it, but that's all right.

What's the exhibit number?

THE WITNESS: It's Exhibit 9, Your Honor. It was 11-7-2001.

BY MR. SUTCLIFFE:

Q 11-7. What did you say?

A That's Exhibit No. 9. I think we referred to that

yesterday.
Q Would you read for the jury, the top of page 1 of Exhibit 9, what it says?
A The page title?
Q Yes, sir.
A "Steve, look @" -- the "at" sign -- "these numbers."
Q And below that we see what looks like to be a social security facsimile of a card?
A The image of the card.
THE COURT: Excuse me. Mr. Sutcliffe, do you want to have this displayed on the screens?
MR. SUTCLIFFE: If it's possible, yes, I do.
THE COURT: If you do, you can. If you don't, it's up to you.
MR. SUTCLIFFE: Sure.
THE COURT: Just put it on your ELMO projector.
BY MR. SUTCLIFFE:
Q At the top, what we're looking at is the name "Steve, look @ these numbers"?
A That's correct. The page --
THE COURT: Just move it over. And you are welcome to check on your screen to see whether something that you wish to display is visible to others, like the jury. You have done it now.
MR. SUTCLIFFE: Thank you.

Q Now, the page allegedly that you downloaded goes on for approximately four pages?
A This exhibit, I think, goes on for several pages, yes.
Q Did you have a chance to view that website that you downloaded on 11-7?
A Yes, I did.
Q Were you aware of any crime that had been committed on that date?
A I was investigating whether or not this was a crime, but I don't make the determination as to whether or not it's a crime.
Q So my question, then, would be, do you believe that this document that you are looking at, which has the title "Steve, look @ these numbers," is a crime, in your opinion?
A In my opinion, what I think that page represents is a listing of personal data. When viewed in context with that link to a page that clearly outlines the important nature of the social security number, in committing crimes of identity theft, I think it warrants further review and a referral to a prosecutor to determine whether or not a crime has been committed.
Q Let's talk a little bit about that other document.
I take it that you are referring to this document here --
A That's correct.
Q -- that represents to be from another Web page?

A That's correct. Linked to by that card.
Q We can see these hyperlinks on the side --
A Right.
Q -- and all this on the side.
This is not called "How to steal someone's identity," is it?
A No, Mr. Sutcliffe, it's not.
Q It's called -- it's information telling you how to protect your number; is that correct?
A I think what it talks about is --
Q I'm asking you the title, sir.
A It says, "Protecting Social Security Numbers from Identity Theft." That's correct.
Q Basically, you would agree that this is information?
A It's clearly information.
Q Clearly information.
It's not a crime to show people information in America, is it?
A It is not.
Q I just wanted to check.
Now, you testified to another exhibit, did you not?
A To several, I think.
Q Do you remember the next exhibit you testified to?
THE COURT: Well, that's really not the appropriate way to proceed, but if you have one you want him to turn to --

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: It was No. 10.

Do you want him to look at Exhibit 10? That was just the electronic version --

MR. SUTCLIFFE: Yes.

THE COURT: -- of what has been printed out. It's Exhibit 9.

MR. SUTCLIFFE: That was exhibit -- I'm talking about the exhibit -- the next one. Not that one. I believe it's --

THE COURT: The next one was 64.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Do you want him to look at 64?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: Please turn to Exhibit 64.

THE WITNESS: Yes, Your Honor.

I'm looking at Exhibit 64.

BY MR. SUTCLIFFE:

Q The government has testified that the defendant made the words, "I know how to stalk. This has now become very personal."

This document that we're looking at, I see it contains words of that nature. Did you have a chance to look at this exhibit on 11-7?

A Yes, I did.

Q You'll notice that there is some lines that are underlined

there. There is quite a few of them; correct?
A Right. Hyperlinks, exactly.
Q Right.
And did you look at all of those hyperlinks?
A I did.
Q Did you follow every page? Did you read every page in the domain, in the website?
A I did.
Q Could you tell the jury, how many pages were in that domain on 11-7?
THE COURT: When you say "that domain" --
MR. SUTCLIFFE: "evilgx.com". Excuse me, Your Honor.
THE WITNESS: I don't know the exact number, but there were several hundred. I think there were maybe 400 pages, I believe. I would have to refresh my memory with the exhibit, but I believe so. There was a lot of material in that website at that time.
BY MR. SUTCLIFFE:
Q Let me just zoom out here for a second.
I see approximately seven what are known as hyperlinks, one at the top, one here in the middle, another one, another one, and then one at the very bottom.
You said there was approximately 400 pages, roughly, in that domain; right?
A Exactly. And, you know, somewhere in that neighborhood.

A lot. Many.
Q And you spent the time to go through every page and look at every hyperlink?
A I looked at every page.
Q So you didn't look at every hyperlink?
A I think looking at the hyperlink implies you are traveling through the document. So every link I clicked on and looked at, that's correct.
Q So you went -- the document we were just referring to before, called "Protecting social security numbers" --
A Right. I didn't explore every link on that page, no.
Q That document was -- when you clicked on a link inside of "evilgx.com", it removed you from "evilgx.com"?
A That is correct.
Q You were no longer viewing "evilgx.com"?
A That's a fair statement.
Q So my question to you is, out of the 400 pages, did you follow every outside link?
I'll let you answer the question. Excuse me.
A I followed every link contained within "evilgx.com". Once we went outside "evilgx.com", I didn't follow every link because if you do that, as you probably know, you'd end up -- I'd still be reviewing because you would end up on the entire Internet.
Q Did you download any other documents from outside -- that

were linked inside "evilgx" to documents outside?
A I believe, yes. The Disney -- no, that was a different download. I'm not sure in this download -- I have to refresh my recollection -- but I believe there was a link to an external site called "Get anything on anyone," or some similar domain that you ran. That also was captured --
MR. SUTCLIFFE: Objection, Your Honor. Calling for facts which are not introduced into evidence.
THE COURT: No. He's being responsive to your question.
Objection overruled.
MR. SUTCLIFFE: He just testified --
THE COURT: Don't argue. Just ask your next question or move to strike something if you think it was improper.
MR. SUTCLIFFE: Move to strike that last statement as testifying to facts not entered into evidence.
THE COURT: Okay. That motion is overruled.
BY MR. SUTCLIFFE:
Q There were, in fact, hundreds of links outside and inside this website; is that correct?
A There were hundreds of links, that's correct, outside and inside. That's correct.
Q It's your recollection you only captured two or three that you've testified to so far; is that correct?
You mentioned --

A I viewed every link within "evilgx.com" and where it went.

In terms of the preservation, the software in use here, Adobe Acrobat, will capture certain external links and other ones you have to go back and capture. It doesn't pick it up.

So, where pertinent, I captured the external links that pointed to content that I felt was relevant to the investigation.

Q When you say "pertinent," that's in your opinion; right?

A Yes. I'm not familiar with which outside links you are referring to that I didn't capture.

Q "Yes" or "no".

A That is correct.

THE COURT: Excuse me, one second.

When you used the word "captured" in response to that word being used in the question, what do you mean by "captured"?

THE WITNESS: Having the -- or clicking on the link within the software to go capture an external page from a website outside the domain "evilgx.com".

THE COURT: When you say you "captured those external links that you thought were pertinent," does that mean you printed them out and preserved them?

THE WITNESS: The capture of the website itself, I believe, contains a fair and accurate representation of what

was capturable on that day.

THE COURT: Mr. Harrill, I'm just trying to understand whether you downloaded anything on an external link that you thought was pertinent --

THE WITNESS: Yes, Your Honor.

THE COURT: -- and preserved it in written -- I don't mean written -- in printed form?

THE WITNESS: In digital form.

THE COURT: Please continue, Mr. Sutcliffe.

THE WITNESS: I captured as much of the website as I could.

BY MR. SUTCLIFFE:

Q That you thought was pertinent?

A I'm really not aware, except for following external links past the "evilgx" site, of things that I didn't capture.

Q Let me rephrase it.

If you saw a link which talked about corporate fraud taking place within Global Crossing or suspicions of corporate fraud being done within Global Crossing, you didn't capture that for the jury to see today, did you?

A No. Well, the jury may not be seeing it --

Q My question was, you didn't capture --

A It's captured. It's captured.

Q You captured it, personally?

A I captured it, personally.

What I would have done is --

Q On 11-7?

THE COURT: Mr. Sutcliffe, just let him finish his answer, and he's not preventing you from asking questions. But once you have asked a question, it's your obligation to allow the witness to finish answering the question.

If the answer is clearly not responsive, you can move to strike it. If I can tell it's nonresponsive, I'll prevent him from continuing. But you must not interrupt him.

Now, ask the question that you last asked again so we'll all have a clear record, and then let him answer it if you want that question to be answered.

BY MR. SUTCLIFFE:

Q On 11-7, did you download any other articles outside -- contained within a link inside of "evilgx" talking about --

A To the best of my recollection --

THE COURT: And you let him finish the question.

THE WITNESS: I'm sorry, I thought he was finished, Your Honor.

BY MR. SUTCLIFFE:

Q I'll pass. Let's move back to this document. Thank you.

In the middle, you'll see the words, "I am being stalked by another of Global Crossing's monkeys."

A I see that.

Q Can you tell the jury what that means, that statement?

THE COURT: Are you asking him to speculate?

MR. SUTCLIFFE: I'm asking for his opinion or his knowledge of what that -- he testified that he has viewed every link in the context --

THE COURT: Did you want him to tell you what he thinks it means?

MR. SUTCLIFFE: Based on his investigation, yes.

THE COURT: All right. Go ahead. Tell him.

THE WITNESS: What I believe this means, Mr. Sutcliffe, is you feel that you are being pursued --

MR. SUTCLIFFE: I didn't ask what I feel.

THE COURT: Mr. Sutcliffe, you asked him what he thinks it means. He's in the process of telling you. You must allow him to finish. Don't argue with him and don't interrupt him.

MR. SUTCLIFFE: I apologize.

THE WITNESS: I think the person that wrote this meant that they were being pursued by civil process servers from Global Crossing that were attempting to serve him with legal orders to order him to stop publishing personal data and other things that were perceived as threats against employees of Global Crossing.

BY MR. SUTCLIFFE:

Q And that's what the term "monkeys" means?

A That's what I -- again, I am speculating at this point,

but that's -- I think it refers to human beings, not monkeys.

Q Down at the bottom, where it says, "This has now become very personal," can you tell what the author was talking about when he said "this"? What is "this"?

A Again, my impression of what "this" meant at the time was the matter involving a dispute with Global Crossing, and the legal process being served to cause the person publishing this material to stop publishing it.

Q If this legal process that was being done to prevent the dissemination of information within "evilgx.com" was based upon lies of stolen data, could that be what this meant also?

MS. DUARTE: Objection, Your Honor. Vague and calls for speculation.

THE COURT: Sustained.

MR. SUTCLIFFE: I'll move on, Your Honor. Thank you.

Q The next exhibit you testified to -- somebody refresh my memory as to the -- he testified to another one.

THE COURT: After Exhibit 64, the next exhibit was 23. And write this down. After 23 was 20 and after 20 was 19.

MR. SUTCLIFFE: Okay, Your Honor. Thank you.

Your Honor, I don't have a copy of Exhibit 23.

THE COURT: It's the hard drive -- or disk, I should say, for the March 28th preservation.

Do you want to display that?

MR. SUTCLIFFE: If possible, Your Honor, please.

THE COURT: Go ahead.

MS. DUARTE: Your Honor, I'll have to retrieve the exhibit.

MR. SUTCLIFFE: Thank you.

Just in an abundance of time -- to save time, I'll also be requiring Exhibit 20, which is also, I believe, in CD-ROM format.

THE COURT: Please hand it to Mr. Reed.

MR. SUTCLIFFE: Your Honor, if it please the Court, may I sit down?

THE COURT: Yes, you may.

MR. SUTCLIFFE: Excuse me, ladies and gentlemen. I have a slow computer here.

Your Honor, my computer has frozen.

THE COURT: Do you need to activate any of the signals, madam clerk?

THE CLERK: I don't believe so, Your Honor.

THE COURT: Pardon me?

THE CLERK: I don't believe so.

MR. SUTCLIFFE: It's locked.

THE COURT: I'll ask the clerk to call up the appropriate people. If you can proceed to some other inquiry, we'll get back to that later.

MR. SUTCLIFFE: Okay. I guess I can try.

Q Did you ever interview a gentleman by the name of

Mr. Richard Saly?

A Yes, I believe myself and Agent Cugno interviewed Mr. Saly.

Q Could you tell the jury approximately how many times you interviewed Mr. Saly?

A I only have a vague recollection of the interview. I believe only one time.

Q Would that have been in May of 2002?

A That sounds about the right time, but I don't have an independent recollection of the date or even of the interview except that it happened.

MR. SUTCLIFFE: Permission to refresh the recollection?

THE COURT: Just a moment.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Get the document from Mr. Sutcliffe, please.

Ladies and gentlemen, why don't we take a break and try to fix this problem with the computers now, and I'll call you back in when we can do it. Thank you.

(Recess taken at 9:02 a.m. to 9:41 a.m.)

THE COURT: I'm informed that the problem has been fixed and we are ready to proceed.

Is that correct, everyone? Hello?

MS. DUARTE: I'm sorry, Your Honor.

THE COURT: Are we ready to proceed?

MS. DUARTE: Yes, Your Honor.

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: Let's bring the jury in, please.

(Jury in.)

THE COURT: You may resume your questioning, Mr. Sutcliffe.

BY MR. SUTCLIFFE:

Q Before we left off, we were discussing -- first, I showed you a document to refresh your recollection regarding Mr. Richard Saly, who was the human resources director at Global Crossing headquarters in Beverly Hills.

Do you remember that discussion?

THE COURT: Did you see the document?

THE WITNESS: No, Your Honor, I didn't get a chance to see the document.

THE COURT: I'm showing the document to the witness. It's a 302 from Saly.

THE WITNESS: I have reviewed the document.

BY MR. SUTCLIFFE:

Q Does that refresh your recollection of a meeting or a phone call or a conversation that you had with Mr. Saly?

A I remember the meeting. I will rely upon the 302. I don't recall the specifics of the interview, but I do recall the interview took place.

Q And that interview was at the FBI headquarters?
A It was.
Q And you wrote this 302 form while your memory was fresh?
A Actually, Agent Cugno wrote this, but I initialed it; and therefore, I concurred with its contents.
Q Would you read the second paragraph, starting with "Saly is the director of human resources," to the jury, please.
MS. DUARTE: Objection to reading the document, Your Honor. It's not in evidence.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Okay. Is it your testimony that when you wrote this document, that Mr. Saly had come into your office, that you had questioned him, and that he had noted that, in a document called "Global Crossing's Application for a Temporary Restraining Order/Preliminary Injunction," he had not given the correct information in there, as to No. 9, within that declaration that he signed?
MS. DUARTE: Objection to the form of the question, Your Honor.
THE COURT: He misstated that the witness had written the document.
But you understand that he's asking you whether that's what was stated by Mr. Saly? You don't have to look at the document. Is that your recollection?

THE WITNESS: That is my recollection, and I'm relying on the report because I don't recall the specifics of the interview.

THE COURT: Please move on, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

Q This interview took place approximately two months after the arrest of the defendant; is that correct?

A It would have taken place on May 7, 2002.

Q And this declaration he was speaking about was the one that they had filed October 15th, 2001?

A Again, I don't have a recollection of when that -- the referenced document was filed.

Q Mr. Saly was in here yesterday, and he was questioned extensively about this declaration that he filed under penalty of perjury to prevent the dissemination of information within the website "evilgx". Global Crossing relied upon that testimony to base an injunction as to whether the information could be disseminated.

Did you interview any other people who had filed these declarations, such as Bruce Wieseltier?

A I don't think I've ever met Mr. Wieseltier.

Q You never questioned him at all?

A No.

THE COURT: I remind those who are asking questions that they are not to give speeches and not to make assumptions

about what other people were thinking. They are simply to ask questions.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Now, you testified that on 11-7-2001, you downloaded "evilgx.com".

A Viewed and downloaded.

Q Did you ever update that file?

A Yes.

Q Could you explain to the jury what it means by "update"?

A We spoke of the need to capture external documents, and how sometimes those links are visible and sometimes they are not. The software doesn't always capture external links.

Upon review of the download, I discovered, really, in reference to our previous conversation, that the document wasn't complete, that there was a hidden link or a link that I didn't see at least, and that was the social security card.

So to make the exhibit -- or to make the download complete, I followed that link, but I didn't do it on 11-7. I did it, I believe, on 12-12, making the external document that that card referred to a part of my preservation, because I did not see that link on the initial -- on the day of the initial download.

Q That would have been the document which was called "Protecting" -- "How to protect your social security number"?

A That's correct.

Q I'd like to show you a report -- it says it's by you. It has your initials. It's Bates 1094 -- to refresh your recollection and ask you --

THE COURT: He hasn't exhausted his recollection. Ask him a question. See if you get an answer. If he doesn't remember something, then you can show him a document.

BY MR. SUTCLIFFE:

Q On the same day that you interviewed Mr. Saly, 5-14, I believe it was --

A 5-7.

Q 5-7, okay.

Seven days after that, you wrote -- did you write a report that says, "The website 'evilgx.com' was preserved using Adobe Acrobat on the following dates," and then it lists approximately five dates?

A I did.

Q Is one of those dates February 28, 2001?

A I'll have to look at the report for that.

THE COURT: The witness is looking at the document.

THE WITNESS: It says 02-28. That's correct.

BY MR. SUTCLIFFE:

Q 2001?

A 2001.

Q February 2001?

A That's correct.

Q Is it your impression or your opinion that "evilgx.com" was downloaded by you in February of 2001? Just "yes" or "no".
A This might be a typographical error.
Q Just "yes" or "no".
A According to this report, that's what it says. It may be 12-28, actually, but I would have to review my exhibits.
Q Just "yes" or "no".
THE COURT: He can't answer "yes" or "no". He's just given you a responsive answer.
Ask another question.
BY MR. SUTCLIFFE:
Q Okay. Let's move on to the website that you testified that you downloaded on 3- -- I believe 3-28. We're talking about Exhibit No. 23 for the Court.
I'll bring your attention to the screen. And this would have been, I believe, the first file that would be viewed when you go to the website, which is labeled "index.htm"; is that correct?
A That is correct. That's the first file you see, or you would have seen, on 3-28.
Q Normally, when you go to a website, there is a file called "index"?
A That's the first thing you see.
Q That's the first thing you are going to see?
A Yes.

Q When someone designs a website, within that index that they start -- that's the first page -- they will place a link, or more, to start the direction of the website; is that correct? Is that a fair statement?
A Correct.
Q There could be one or there could be 500 links on that index page; correct?
A That's correct.
Q Now, did you look at -- did you examine this document on that day?
A I did.
Q Would you tell the jury what this document purports to be, in your opinion?
MS. DUARTE: Your Honor, I'm sorry to interrupt. I don't believe this exhibit is in evidence. I'll stipulate to its admission, but -- it's Exhibit 23.
THE COURT: It will now be received in evidence.
MS. DUARTE: Thank you.
(Government's Exhibit 23 received.)
THE WITNESS: This is the document that I referred to yesterday, actually. It's a series of conditions that the author of the website puts forth, and you either -- you have the -- actually, the way you normally see this is, you read through it and at the bottom, you would agree or disagree.
What you have is -- at the top, you have, "I read

them and I agree" or "I disagree with the following terms and conditions." And it lists a long -- you know, some text that defines those conditions and definitions that the website author is -- wants to impose.

BY MR. SUTCLIFFE:

Q When you say "impose," could you define the word "impose" for the jury, please?

A What this disclaimer, "Terms and Conditions and Licensing Agreement," is attempting to do is to have the user of the website acquiesce to a set of terms and conditions or agree to a set of terms and conditions.

Q So "impose" would mean to freely make a choice; that's an imposition?

A Okay. Make a choice, agree or disagree.

Q So agree or disagree means to impose?

THE COURT: Don't argue with the witness.

THE WITNESS: I'll say agree or disagree. Impose was a poor choice of wording.

BY MR. SUTCLIFFE:

Q We'll move on.

You read this document in its entirety, I assume?

A I did.

Q Just for the jury's attention, I'd like the jury to note that this is a document which sets out the terms and the definitions for anybody from Global Crossing or anybody in

America or anybody in the world who wants to come and read this website. It does not --

THE COURT: Mr. Sutcliffe, you are testifying.

MR. SUTCLIFFE: You are right, Your Honor. I'm sorry.

THE COURT: That's not what you are allowed to do.

MR. SUTCLIFFE: I'm sorry, Your Honor.

Q Mr. Harrill, I'd like to bring your attention down to the bottom, three-quarters of the page down, and would you start with the -- could you identify -- do you remember reading this sentence right here?

A I do. I do remember that.

Q Can you tell me what -- do you remember reading these six bullets right here?

A I recall those.

THE COURT: I think, in fairness to you, Mr. Sutcliffe, you should -- as long as you don't go through the whole thing, you should read aloud what you are highlighting and asking the witness about so it's going to be in the court records of this trial.

BY MR. SUTCLIFFE:

Q Could you read bullet No. 5, which says -- it's a subcategory of -- "The pages contained on this site may be unsuitable for some rather narrow-minded folks and should you happen to fall into any of the following categories," and then

it lists six bullets. And bullet No. 5 is "A firm belief that the government alone shall decide what words mean."

Did you read that?

A Bullet No. 5?

Q Yes.

A Sure. "A firm belief that the government alone shall decide what words," and it's in quotes, "mean."

Q And you read the bottom disclaimer?

A Yes.

Q Did you find that imposing anything upon anybody?

A I found the last portion flippant, really, just sort of nonsensical.

Q Kind of comical?

A Probably, yes.

Q You testified that you had heard some -- you had heard some sound bites --

A I did.

Q -- when you visited some of these Web pages.

A That's correct.

Q And those sound bites, in your impression, implied certain facts?

A Clearly.

Q Clearly. Okay. Let's move on to that.

Your Honor, could I ask -- would you ask the government, what was the first page that they had brought up

within their Exhibit 23?

MS. DUARTE: The witness will know, Your Honor.

THE COURT: What page is it?

THE WITNESS: You can follow through on your -- if you click, "I read and agree," Mr. Sutcliffe, it will take you to the first page that was displayed, and that is "index.2."

MR. SUTCLIFFE: All right.

THE WITNESS: And that was the sound track from -- I'm sorry.

MR. SUTCLIFFE: Your Honor, could we have the sound provided, just the sound, please?

MS. DUARTE: A suggestion was made that if defendant's headphones are plugged in, it would mute the sound. There is a switch that --

THE COURT: Just get it accomplished. I don't think I need to have a primmer in electronics. I need one, I'm so ignorant, but we don't have time to educate me. Just get it done.

Eddie, would you please tell Mr. Settle that I would like to avoid this in the future, so we may need to expand the equipment.

We'll call him, Eddie. You better stay here in case there are...

Would it be easier to display the sound from the table of the prosecution or are you finished?

MR. CUGNO: No, sir. I'm looking for a power outlet for this. All the plugs seem to be occupied.

THE COURT: I'm not going to allow this to happen and waste the time of the jurors. You go back, put your equipment on your desk, and we'll display it later through the prosecution.

All you want to do is have the sound broadcast; is that correct, Mr. Sutcliffe?

MR. SUTCLIFFE: Yes. I would like to re-create, just like the government re-created --

THE COURT: All right. Do it from the prosecution table. Let's get this moving along, please.

Give back to the prosecution the CD, please, Mr. Sutcliffe. Give it to Mr. Reed.

MS. DUARTE: May we enable port 4, Your Honor?

THE COURT: Please enable port 4.

(Playing audio.)

MR. SUTCLIFFE: Okay. Stop the sound.

THE COURT: Let the record reflect that the audio portion of the CD that has been displayed, which has been received as Exhibit 23, was now repeated for the jury.

You may proceed, Mr. Sutcliffe.

BY MR. SUTCLIFFE:

Q FBI Agent Harrill, when you first went to the index page that we were previously looking at, did you hear a sound

bite on that also?
A Yes, there was a sound bite, and I believe that it said, "What we had here is a failure to communicate."
Q "Failure to communicate," a misunderstanding of sorts?
A That's not what I heard. I heard, "What we have here is a failure to communicate."
Q Would you tell the members of the jury what that means to you?
A That was also a quote from a movie, and that meant, to me, that this conflict was based on a failure to communicate.
Q Do you recall the movie?
A It was a comedy, but I don't recall.
Q We just heard, basically, a musical intro there, and we heard the words, "This is all far from over."

What does that mean to you?

A That this dispute is going to go much further. That it's not, in any sense, over.
Q Could it mean this failure to communicate is far from over?
A It could mean anything. But that's --
Q It could mean anything. That's right.

You viewed this page, I understand; is that correct?

A That is correct.
Q Can I point you to the beginning, where it says, "This website."

Did you read that first line, "This website is under a censorship attack by the agents of Global Crossing. They won and it's over. This is all far from over"?

A Right.

Q So it could be the censorship attack is far from over?

A Right. I think the issue surrounding the "censorship attack," quote, unquote, "is far from over" is the way I took that -- took your phrase.

Q Since we've heard that sound bite, could I have the CD-ROM back so I can scroll down through here and plunk out certain pertinent parts?

THE COURT: Are you going to need any other sound bites from this CD? Because I don't want to keep switching it back and forth.

MR. SUTCLIFFE: The only other sound bite is, I think -- Your Honor, this is kind of awkward. I need to highlight certain things. And, yes, there will be other sounds, but they are in a separate folder that I would like to point out to him as he viewed.

THE COURT: Just ask the prosecution to reach that separate folder, please. Then we can play the sound bite. That way we can return the CD to you and you won't have to keep switching it back and forth.

MR. SUTCLIFFE: Thank you, Your Honor.

Would the government please just minimize this

screen, keep it where it's at, and locate the sound folder, a folder called "sounds."

Highlighting a file and touching the "s" will bring you to the approximate area.

THE COURT: Those files are moving almost as quickly as you were speaking when you first began.

THE WITNESS: If I might offer a suggestion.

THE COURT: But you have done a lot better today, so I'm just teasing you.

THE WITNESS: If we click on "evilgx" on the left panel, Agent Cugno, I don't see a sound folder.

MR. CUGNO: Nor did I.

This was the only folder --

THE WITNESS: We could go by the file name, if we know what that is.

BY MR. SUTCLIFFE:

Q So is it your testimony that this download that you captured on -- I believe it's March 28th; is that correct?

A That's correct.

Q -- is not an accurate replication of the --

A That's not correct. That's not what I would say. I would say that your sound file you are looking for --

MR. SUTCLIFFE: Your Honor, I didn't finish my question.

THE WITNESS: I'm sorry.

THE COURT: He thought you had finished. He said it's not correct.

Now, do you have another question?

BY MR. SUTCLIFFE:

Q Were there individual folders that had names within that website?

A What this application has done is captured every file. Now, the directory structure, I can't testify to. But I think if you try to find the sound file on that website, if you know the name of the sound file, it will be contained in the broad directory.

So the hyperlinks will point to it. If you know what page triggers the particular sound, I think you'll get it here.

Q You are talking about the source code; is that correct?

A HTML is a script. If you go to the Web page that plays -- that triggers a certain sound file to be played, that sound file is contained in this directory listing.

Q Correct. But that image that we just viewed -- if the government would bring it back up -- that Web page, the "index.2", this is what is known as, would you agree, a frame?

A Correct.

Q And there is actually three pages within this page that we're looking at; correct?

A That's correct.

Q The top part, which says, "This site would not be

available," that's a frame; that's correct?
A That's correct.
Q And the middle part, which starts right below it, "This website," that's a frame?
A That's correct.
Q And the one on the left that has a scroll bar on the left side --
A Is another frame.
Q -- is another frame?

Each one of those frames can have an embedded sound bite; is that correct?
A I can't testify to that. I don't know.

MR. SUTCLIFFE: Would the government please refresh the page.

(Playing audio.)

BY MR. SUTCLIFFE:
Q Would you agree that you just heard three things: "Welcome to my domain. This is all far from over," and music in the background?
A I agree.
Q Is it possible that there are three different sound files within this page that we're looking at?
A It is.
Q Could you tell me how I'm supposed to find out the name of a file that's embedded in this page, or any of those three --

A You asked me my recollection of how it was constructed. I don't know how you would discretely identify one.
Q Well, we'd have to be able to look at the source code of each individual frame.
A You could just click on the link of the page that triggers the sound file and it would trigger the sound file.
Q So that's part of the context of the Web page; would you agree?
A The sound, certainly.
Q Being able to view what those sounds are to locate them, to isolate them, to analyze them, if they are being pulled from another website, for instance, would be part of the context you would have to examine if --
A I don't think discretely analyzing a sound file is part of the -- the context is the broader portion -- is how it's viewed within the website, which is what this is.
Q If you were investigating somebody and they had spiderwebbed data all across the Internet, for instance, and there was a hyperlink that went to another website somewhere, like you investigated the hyperlink that went to protecting your data -- or your information, excuse me; right? -- you'd follow that link?
A Correct.
Q Because that was interesting to you and you wanted -- you were following a trail?

A Correct.
Q So my question is, if you heard a sound which you testified could be interpreted as retribution or a threat or anything like that, but it wasn't embedded in this page that we're looking at, but it was being pulled from another website, wouldn't you want to go and look at that website to see the context of that website?
THE COURT: In his capacity as an investigator, would he want to do that?
MR. SUTCLIFFE: Yes, Your Honor.
THE COURT: You may answer.
THE WITNESS: I would want to see everything that this site linked to. That's correct.
BY MR. SUTCLIFFE:
Q Did you look at the source code of this page?
A Yes, I did.
Q Could you tell us the name of those three files that are playing?
A I cannot, no. I don't recall. Actually, one is "Halloween.wav," I believe. I would have to -- I'm not sure what the other two are.
Q The other page that I'd like to bring your attention to that has a sound file that we listened to was -- may I speak to the government, Your Honor?
THE COURT: Are you asking them to activate

something?

MR. SUTCLIFFE: No. I'm asking if the second sound bite that we listened to yesterday, "I'm having a really bad hair day," I believe it's "lizzy.htm," is that on this disk that we looked at, or is that on Exhibit 20?

THE COURT: This is highly irregular, but I'm trying to be practical for all of us, members of the jury. It would ordinarily not be appropriate for counsel to communicate with each other or for parties to communicate with each other.

I may make occasional exceptions in the interest of not incurring unnecessary wasted time for any of us.

Would you consult with the agent and give a short answer or -- do you want that displayed; is that what you want?

MR. SUTCLIFFE: I'm looking --

THE COURT: Do you want it broadcast?

MR. SUTCLIFFE: Yes.

THE COURT: Could you broadcast the one that Mr. Sutcliffe just mentioned?

MS. DUARTE: Yes, we can do that from here, Your Honor.

THE COURT: Please do it.

(Playing audio.)

BY MR. SUTCLIFFE:

Q Mr. Harrill, you testified yesterday to hearing that sound when you viewed this Web page called "dizzylizzy.htm" --

A I did.
Q -- which was hyperlinked off one of those frame pages we were just looking at.
A That's correct.
THE COURT: Okay. Wait. Let the record reflect that the words that were just audibly broadcast, as I understood them, were "The price is wrong, Bitch"?
MR. SUTCLIFFE: Correct.
THE COURT: Okay. Now you may proceed with your next question.
BY MR. SUTCLIFFE:
Q What was your interpretation of that sound bite?
A I found it to be mildly objectionable and a reference to Elizabeth Greenwood. And I'm not really certain you would offer to sell the -- or the person that published the Web page had offered to sell this mass array of social security numbers for several, I think, millions of dollars.
And I think at some point -- again, I would have to refresh my recollection of when you started to do that, but it was contained within this Web page. It may have been a reference to that. I don't know. It could have been a reference to the loss of your position at Global Crossing.
Q So your answer is you don't know?
A No, there is no way I could know.
Q Is it possible that it was because the terms of the

conditions to enter the website had been violated?

THE COURT: Do not interrupt Mr. Sutcliffe.

THE WITNESS: I'm sorry.

THE COURT: Please.

THE WITNESS: Yes, Your Honor. I'm sorry.

BY MR. SUTCLIFFE:

Q Is it possible that the price that you are referring to that had some meaning, some hidden meaning, could be referring to the terms and the conditions upon the first page that we looked at, called "index.htm", had been violated and that the owner felt that the money owed was for violating the terms of those conditions to enter the website freely?

THE COURT: Okay. I'm going to prevent the witness from answering the question, because this is my standard practice. Ladies and gentlemen, we all know that anything is possible.

The question that calls for speculation, that lacks a foundation, is an impermissible question.

Do I have to reframe your question? Or you'll have to explore that in another stage of the lawsuit, Mr. Sutcliffe. Anything is possible.

MR. SUTCLIFFE: Okay.

THE COURT: So questions about whether something is possible are not ordinarily appropriate. In fact, they are ordinarily not appropriate.

Now please proceed.

BY MR. SUTCLIFFE:

Q Okay. This sound bite we just heard, do you know where that sound bite is from?

A I don't have any idea.

Q Could it be from "Happy Gilmore" by Adam Sandler?

THE COURT: Same objection that the Court notes.

BY MR. SUTCLIFFE:

Q Let's move on to the bottom of this page, if you would be so kind, and would you hold over the hyperlink at the bottom.

At the bottom, I'd like you to note where it says -- when you held the little hand over the hyperlink, a little text blurb appeared in the bottom left-hand corner above the start button, which says "mail to." What does that mean?

A Like we explained yesterday, that means that if you click to that link, that e-mail client, the default client, would open up. In this case, I think Netscape Communicator opened up. It would put in the "to" line the e-mail address "evilgxhrdept@yahoo.com".

It would automatically insert in the subject line the words, "No, I don't. Please forgive my stabbing your family in the back."

Q That word "stabbing," does that mean, like, with a knife?

A I suppose it could mean with some other instrument. I don't --

Q Could it be a figure of speech?
A It could.
Q It could. Okay.
Let's move on to the next page of the sound bite that we heard.
(Playing audio.)
BY MR. SUTCLIFFE:
Q Now, just so we understand, would you tell the jury what that first line meant of that -- there were several lines in that sound bite; correct?
A It was a line from a movie.
Q There were several sentences: "I'm going to..." and then "I'm going to..." and then "I'm going to..."; is that correct?
A That is correct.
Q Let's go by those one by one.
Would you refresh that, please.
(Playing audio.)
BY MR. SUTCLIFFE:
Q Let's start with the first one, "I'm going to outlearn you." Is that threatening?
A I think, clearly, viewed in the context of a female attorney and what I believe to be her young child, that sound bite is incredibly threatening, given the context of the movie from which it was drawn.
Q Now, you are referring to the picture in the center th

is that correct?
A That's correct.
Q And that would be -- do you know who that is in that picture?
A I believe it to be Elizabeth Greenwood.
Q She is who to you?
A As we earlier discussed, I believe you referenced her as senior legal counsel or one-time senior legal counsel for Global Crossing.
Q Did we see this picture yesterday?
THE COURT: That's an inappropriate question. The jury will use its own recollection to know whether it saw the picture yesterday.
BY MR. SUTCLIFFE:
Q Did the picture shrink? is my question.
THE COURT: Do you understand the question?
THE WITNESS: Was the exhibit and this picture a different size?
My recollection is that the exhibit created yesterday -- the picture is larger in the one that was shown yesterday than today.
BY MR. SUTCLIFFE:
Q Are we looking at a different page than we looked at yesterday?
A I don't think so.

Q Then my question is, how did that picture shrink?
A Why did that computer lock up? I don't know. I don't know.
Q The question wasn't, "Why did that computer lock up?"
The question is, how did that picture shrink?
A I don't know.
Q We are looking at a CD-ROM, are we not?
A What we looked at yesterday was not that CD-ROM. We looked at an exhibit culled from that CD-ROM to provide evidence relevant to the charges at hand. So we're not looking at the same thing. We are looking at excerpts from this CD-ROM.
Q When you say "culled," who culled it?
THE COURT: It's irrelevant.
BY MR. SUTCLIFFE:
Q Did you cull it?
A No.
Q Did you author it?
A No.
Q Did you help design it?
A No.
Q Would you agree that it's not an accurate representation of the original page?
A I would disagree. I think that the content is the same. The photo is the same. The -- is there --

MR. SUTCLIFFE: Your Honor --

THE COURT: He's answering your question.

THE WITNESS: Is there a size difference in the photo? Yes. Is the verbiage the same?

THE COURT: You don't have to go ask other questions. Don't volunteer information. You are entitled to finish your answer, and then you are required to wait for the next question.

BY MR. SUTCLIFFE:

Q Okay. We're talking about context now.

Would you agree that a whisper is different from a shout?

A Yes, I would.

Q Would you not agree, then, that a large picture is different in context than if I take that picture and shrank it down to the size of a postage stamp?

A There is a difference.

Q That would change the context; correct?

A Yes, if they were postage stamp size photos as opposed to a very large one.

Q Can we scroll page down, please. Keep going. I'll tell you when to stop. Stop.

Could you tell the jury who that is?

A It's you.

Q Could you tell the jury who I'm holding?

A I would assume that to be your young daughter.
Q So would you agree that what's posted on this page is a picture of me and my daughter, as well as the attorney and her daughter?
A I don't see a map to your house, but yes.
Q Do you know that Global Crossing knew where I lived?
A I know they had a hard time tracking you down. I don't know if they knew where you lived at the time this was posted.
Q When you say "they had a hard time tracking you down," is that why they called the FBI?
MS. DUARTE: Objection, Your Honor.
THE COURT: Sustained.
It calls for speculation as to what was in the collective corporate mind of another party, and that is inherently speculative.
BY MR. SUTCLIFFE:
Q Did you read the line -- Your Honor, could I have the CD-ROM back?
THE COURT: If you are finished with the audio --
MR. SUTCLIFFE: Yes, Your Honor.
THE COURT: -- please return the CD-ROM to Mr. Sutcliffe through Mr. Reed.
MR. SUTCLIFFE: Thank you, Your Honor.
Could I have it so the jury can see it?
THE COURT: Yes. Activate the appropriate port,

please.
BY MR. SUTCLIFFE:
Q Now, you read the text on this page; is that correct?
A Yes, I have.
Q And there was quite a few hyperlinks on this page as well; is that not correct?
A That is correct.
Q Did you happen to read this paragraph that starts out, "Now, just say you are sorry and admit an infraction ticket is not a crime"?
A I did read that.
Q And this is where you were referring to, "I will sell you my domain lock, stock, and barrel if the price is right"?
A That's one of the references. There are other references as well to the sale of social security numbers like that. That's one of them.
Q And in there is also an offer to "Please contact my counsel at (818) 566-1986"?
A That is correct.
Q And I'll bring your attention now to -- did you read this line -- one second, Your Honor.
Did you follow this hyperlink right here? It's called, "They didn't act like lawyers should act. It doesn't sound like they did an adequate investigation and said, legal ethics, Susan Koniak of Boston University, 'It seems like all

they were able to do is give some executives some cover based on apparently nothing.'"

Could you tell us, did you follow that hyperlink?

A I don't recall.

Q You don't recall.

But you examined this page in detail?

A That's correct.

Q Okay. So would you agree that if this page only contained the picture that we're looking at right now, which is myself -- and I will stipulate that is my daughter -- if that picture was big, up top here, this picture that we saw that was huge yesterday was shrunk down to the size of a postage stamp, would that change your opinion that this was threatening -- that picture was threatening?

A No.

Q Do you know where this picture came from?

THE COURT: Which one?

BY MR. SUTCLIFFE:

Q Of Mrs. Greenwood.

A Personally, no, I don't.

Q Did you investigate that at all?

A I didn't, but it was investigated.

Q Was any fact found as to how this picture was given or put on this website?

A I don't know that firsthand. I could respond, but I don't

think -- I'll let others describe that.
Q Okay. Did you see where it said, up here, "She was the first one to accuse me of accessing a file on her laptop, and she has now stretched this to say I have taken the whole hard drive"?
A I did see that.
Q Did you ever investigate theft of data from her computer?
A I did not, no.
Q Do you know if anybody did?
A I believe we looked at the origin of that picture and the origin of all the data on the website. That's correct.
Q But you don't know how it got to this domain?
A I don't, no.
Q Did -- in your investigation, did you find any facts that somebody had, or more than one, sent files to the owner or owners of this domain?
A I don't have any knowledge of that.
Q Did you see within this domain any solicitation for files?
A Yes, I did.
Q In what context was that?
A If I recall, it's to send you -- or send the owner of the domain any information pertaining to Global Crossing and that you would then publish it.
Q Global Crossing, to your knowledge, went bankrupt; correct?

A I think it's still in existence, but it reorganized under bankruptcy law. That's correct.

Q Did the FBI ever investigate Global Crossing?

MS. DUARTE: Objection. Relevance.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Let's go back to the sound files here. I'm going to now change the view that we're looking at called "details." I'm going to click on the button called "type," and that should sort what we're looking at, correct me if I'm wrong, Agent Harrill --

A That's correct.

Q -- by the type of file that is inside here.

And we're looking at right now where -- now, at the bottom we see "Winamp" media files, which are, to the left, under the name, it will have names of files with a "dot-wav".

A That's correct.

Q Would you tell the jury what a "dot-wav" file is?

A A "wav" file is a file that contains sound, and "Winamp" is simply the application selected to play it. A "wav" file is a sound file.

Q My finger is now on the mouse over the button -- excuse me, over the file called "Capefear.wav," which I believe is what you were referring to that we were listening to earlier; is that correct?

A That is correct.
Q Going back to that file, could you tell the jury what "I'm going to outlearn you" means in that context of that sound?
MS. DUARTE: Objection, Your Honor. Speculation.
THE COURT: Are you asking him for his understanding of what it means?
MR. SUTCLIFFE: Yes, Your Honor.
THE COURT: Is that what you are asking?
MR. SUTCLIFFE: Yes, Your Honor.
THE COURT: Because that's all he could possibly give you. Not what it meant to you or to someone else.
MR. SUTCLIFFE: That's fine. Yes.
THE COURT: I'll permit an answer.
THE WITNESS: I'll have to answer -- I think what it means, within the context of what I saw, is a clear and defined threat to Elizabeth Greenwood.
Given what the movie is, out of thousands of movies selected to be played, a viewing of the attorney, her child, her personal data, her home phone number, I don't think any reasonable person could come to any other conclusion, and that is, a clear and defined threat against Elizabeth Greenwood.
BY MR. SUTCLIFFE:
Q When you say "reasonable," that's a subjective definition of a person, isn't it?
A It is.

Q That's your own impression as an FBI agent?
A That's correct.
Q You are trained to look for crimes where they don't exist sometimes?
A I would differ with that.
Q Isn't it possible that the person who designed this Web page just wanted those lines for what they meant, that "I'll outlearn you; I'll outlast you; I'll outthink you; I'll outphilosophize you," and "I'm going to outlast you"?
A I can only really answer as to what a person viewing that, especially the person to whom it was directed --
Q I'm not asking about the person viewing it.

I'm asking, the person who designed the Web page, isn't it possible that he chose that file in the context of he wanted just what those words said?

THE COURT: Wait. There is a lawyer who is rising to voice an objection.

MS. DUARTE: Objection. Calling for speculation, Your Honor.

THE COURT: Sustained.

There is no evidence that this is the person who created the domain, the website, or anything on it. So it would be speculative.

Please move on, Mr. Sutcliffe.

MR. SUTCLIFFE: At this time, Your Honor, I'd like to

give the CD-ROM back to the government, and I would like them to take us right back to where we are looking at right now, which is "buttocks.wav."

I have clicked on that file so they can see that. I'm going to take the CD-ROM out and return it to the government.

Your Honor, I believe the display is on the defendant's and it should go back to the government's.

THE COURT: Please activate the appropriate port.

MR. SUTCLIFFE: Thank you, Your Honor.

(Playing audio.)

BY MR. SUTCLIFFE:

Q Do you recognize that sound file?

A I recall having heard it.

Q In what context?

A On the website at some point.

MR. SUTCLIFFE: Agent Cugno -- excuse me, Your Honor. Could you direct the government to bring the view up, just like we were looking at before, which is sorted by type, alphabetized?

THE COURT: I so direct the government.

MR. SUTCLIFFE: Thank you, Your Honor.

Q I think it would be under "view details." Then you click on the "type" and that would sort it. It should be at the very bottom. If you just scroll up just a little bit, we will be

on -- a little more. Right there.

I now would like to direct your attention, Agent Harrill, to -- if the government would drop down to "Cool Hand 1." Did you hear this sound file?

(Playing audio.)

THE WITNESS: That's correct.

BY MR. SUTCLIFFE:

Q That was on the -- that's what you are referring to. That's the first sound you hear when you come to the site and see the index page?

A The "I agree" or "disagree" page. Exactly.

Q Thank you very much.

Would the Court direct the government to click on "counsel," the sound file called "counsel."

(Playing audio.)

BY MR. SUTCLIFFE:

Q Did you hear that sound file?

A That one I don't recall, but I'm sure --

Q Did you understand what it just said?

A No, I didn't.

MR. SUTCLIFFE: Would the government play it again, please.

(Playing audio.)

THE WITNESS: I do remember that.

BY MR. SUTCLIFFE:

Q What does that sound like to you?
A "Counsel, approach the bench."
Q I see a file called "Far over." Would you click on that, please. Thank you.
(Playing audio.)
BY MR. SUTCLIFFE:
Q This is the sound bite we heard earlier?
A That's correct.
Q And there is a file called "FBI." Would the government please click on "FBI."
(Playing audio.)
BY MR. SUTCLIFFE:
Q Did you ever hear that sound file?
A I recall hearing that.
Q Do you recall what page it was on?
A I do not.
Q What does that mean to you, what you just heard?
MS. DUARTE: Objection to relevance, Your Honor.
THE COURT: Sustained.
MR. SUTCLIFFE: Would you click the next one, please, "Foghorn."
(Playing audio.)
BY MR. SUTCLIFFE:
Q Is that threatening?
MS. DUARTE: Same Objection, Your Honor. None of

this is alleged.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q "Friends to know" --

(Playing audio.)

BY MR. SUTCLIFFE:

Q -- do you recognize that sound?

A I remember hearing it.

Q Do you know where that -- do you recall, is that from a movie or --

A I would assume so, but I couldn't identify the movie.

Q Maybe a TV show?

A Maybe a TV show.

Q There is an "FSY." Click on that, please.

(Playing audio.)

BY MR. SUTCLIFFE:

Q Could you tell the jury what you just heard?

A A sound clip with an exclamation, but I couldn't identify the voice -- or I couldn't tell you what the words were.

Q Could you please play that again.

MS. DUARTE: Objection, Your Honor, to the relevance of this line. This is not even in context.

THE COURT: I'll permit this and very few others, and I'll explain why.

MR. SUTCLIFFE: Thank you, Your Honor.

(Playing audio.)

THE WITNESS: Something "-- Swine, I will kill you" maybe.

BY MR. SUTCLIFFE:

Q "Filthy, Swine. I will kill you" in a comic voice?

A Yes.

Q Have you ever seen the "Ren & Stimpy" show -- cartoon?

A I've seen it listed, but I've never watched it.

Q Is that like an adult cartoon?

A I don't know.

THE COURT: Now, will the government stipulate that there are a number of audio files, including those that are identified on the page that's currently on the monitor, and maybe several pages, that contain information that the government did not find to be sufficiently threatening, or threatening at all, to incorporate in its allegations?

MS. DUARTE: So stipulated, Your Honor.

THE COURT: Okay. The point has been established now, so please move on.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Could you tell the jury what application you downloaded the website on March 28th with?

A Teleport Pro.

Q Is that a commercial application?

A It is.

Q You can buy that anywhere in America?
A You can -- yes. You can download it from the Internet and purchase it that way.
Q It costs money to buy this program?
A It does.
Q Do you know where you bought that program from?
A From the company.
Q Could you tell me the name of "the company," please?
A I believe it's Teleport.com.
Q That would be T-e-l-e-p-o-r-t?
A That's correct. There may be a company's name associated with that. I'm not sure.
Q Teleport.com?
A Or you could use a search engine and click "Teleport" and find the manufacturer.
Q You say you bought it from Teleport.com?
A It's from the manufacturer of Teleport. I don't know if that's the UL or not.
Q Did you buy this program or not?
A Yes.
Q You did.

Did you buy it from Teleport.com?

MS. DUARTE: Objection. Asked and answered.

THE COURT: He just answered that question. It's asked and answered.

BY MR. SUTCLIFFE:

Q Have you used this program before?

A Yes.

Q Many times?

A Yes.

Q When did you buy this Teleport.com program?

A I don't recall.

Q Your best guess.

MS. DUARTE: Objection, Your Honor.

BY MR. SUTCLIFFE:

Q Your best estimate.

THE COURT: I'll permit an answer.

BY MR. SUTCLIFFE:

Q Was it in 2002?

A No.

Q Was it in 2001?

A It was either in -- probably late 2001.

Q Late 2001.

Now, you testified that you downloaded the website several times; is that correct?

A That's correct.

Q Did you ever use Teleport.com or Teleport Pro prior to March 28th?

THE COURT: Of what year?

BY MR. SUTCLIFFE:

Q Of 2000. Excuse me.
A No. I was using Adobe Acrobat prior to that date.
Q Could you tell the jury why you didn't use Teleport Pro?
A I wasn't sure of the -- I wasn't comfortable with the program at that point, and I don't recall exactly when it was purchased. It was purchased in order to accurately capture everything about the website, including the sound.
Q Including outside hyperlinks, too; is that correct?
A That's correct. To get a full, accurate, apart from the text, picture of the website.
Q But you had that early -- or excuse me, late 2001?
A To the best of my recollection, it was purchased in very late 2001.
Q Can you define "very late"? Is that November 2001?
A I was out of the country during --
Q Was it October 2001?
A No. I really don't have a good recollection of when it was purchased.

THE COURT: I think that's all he can respond to, so please move on.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Now, you said that you preserved the website on 10-6-2001 on that file -- excuse me, on that paper, the document I showed you earlier, that had the date of February 28, 2001?
A That's correct.

Q Above that date of February 28, 2001, there was a date of 10-6-2001 as well; correct?
A Correct.
Q Now, is that when you began your investigation? Would that be a fair statement?
A Around that time, that's correct.
Q So that would be October 6, 2001?
A Correct.
Q Okay. Thank you.

Does that refresh your recollection of how this investigation began?
A With reference to time, again, it's still around October 2001. But, no, in terms of who I spoke to initially to begin the investigation.
Q Could you tell the jury what's the first thing you remember doing when you -- after you --
A Looking at the website.
Q You looked at it and what did you do then?
A At the early days -- or during the initial phase of the investigation, the website didn't contain all of the material we see today.

During the very -- October 2001, what I recall doing was noting it for further review. During the October 2001 period, I did not feel that this warranted a referral to a federal prosecutor during those months.

Q Is it a fair statement that somebody from within Global Crossing or the legal department contacted you, you went to this website, you downloaded it, you reviewed it; but you didn't feel there was any crime going on or anything like that, just a bunch of pages and sounds? Is that a fair statement?
A I wasn't sure if a crime was being committed, but it didn't, at that time, trigger me to devote additional resources to it.
Q What caused you to devote additional resources?
A The continued appearance of personal data, coupled with threats to individuals.
Q Which came first, the personal data or the threats?
A I believe the personal data came first.
Q Is it your testimony that on 10-6, when you downloaded the website, there was no personal data?
A No. I'd have to look and confirm, but there may well have been personal data, but I don't recall.
Q If you had seen personal data on 10-6, you would have allocated additional resources; correct?
A Not necessarily.
Q Tell me, what constitutes "necessarily"?
A Volume, intent, whether or not it's accurate and it takes time to confirm. Just because you see a series of personal data, or what appear to be personal data, doesn't mean it's the actual correct data.

Q So you could actually be looking at volumes of data and it could be incorrect, too?
A Sure.
Q That's all.
Now, did you -- once you became concerned, did you take additional steps?
A We gave it more attention.
Q Did you try to find out who owned this thing?
A Yes.
Q You did.
What did you find out?
A That you owned it.
Q That I owned it?
A That you had the website, the domain registered to you.
Q It was in my name?
A That's correct.
Q On 10-6?
A Again, I would have to -- I don't have a specific recollection, but I believe it was on 10-6.
Q Really? Okay.
How would you have figured that out?
A A "WHOIS" query.
Q Could you tell the jury what "WHOIS" does?
A We spoke yesterday of registrars that registered domain names. When you contract for a domain name for a period of

time, it comes back to a particular name.

Actually, Mr. Sutcliffe, now you do trigger a memory. This may have been registered in a different individual's name on 10-6. I don't want to say his name. But it may -- I don't recall on 10-6 who it was registered to.

Q Okay. You say you downloaded it the next time on 12-7 -- or 11-7; is that correct?

A That's correct.

Q Is that when you became concerned?

A I was increasingly concerned.

Q Could you tell the jury why the increasing concern?

A The presence of volumes of social security numbers, coupled with what I think reasonably can be concluded to be threats, the presence of the offer to sell the domain with personal identifying information, I believe was contained on 11-7. Those are all factors that I think increased the level of interest.

Q Okay. And did you then attempt to ascertain who owned this website based on this increased concern?

A Yes.

Q You went back to "WHOIS"?

A I don't have a chronology of what the "WHOIS" records were at any particular given time available to me.

Q Did you not testify you were the lead agent in this investigation?

A I did.
Q In the beginning?
A Correct.
Q And you got this increased concern seeing hundreds, allegedly, of personal social security numbers and personal information of people, but you don't recall what you did to go and find out who owned this website?
A Mr. Sutcliffe, I think the website is written in the first person and contains your photo. And I think there was a point in time -- and I can't tell you the exact date -- when it was registered to you and is registered to you, or certainly was during much of the charged conduct here. The "WHOIS" is simply who registered it. It doesn't mean who is uploading the content to it.

So I can't give you a specific chronology here from memory of when I learned who -- to whom it was registered to in 2001. That was an -- those few months were an extremely busy time for all us at Global Crossing.
Q I agree. With all due respect, it was a very busy time for me, too.

You say it was only written in the first person; is that correct?

THE COURT: Mr. Sutcliffe, you are not permitted to volunteer personal observations of the nature you just did, and you are instructed to disregard those.

Mr. Sutcliffe is functioning as an examiner now, comparable to what a lawyer would do. If he wishes to give information, he'll have the opportunity to do that in a different context. It won't be his obligation to testify, but if he chooses to, he'll be allowed to.

MR. SUTCLIFFE: I apologize to the jury. I'm not used to this.

Q You said that the domain was written in the first person; is that correct?

A Some of the content on the website was clearly, I think, written as if it came from you in the first person.

Q And some of it wasn't?

A Again, there were over 400 pages. I won't testify that it all was. I'm sure some of it was not.

Q The some of it that was not, did that make you think, as an FBI agent, that there was one or more people involved in this website?

A At no time did I think, reasonably, that there was more than one person involved in the website to any degree.

Q You testified it was -- belonged to somebody else earlier on.

A That someone else was used to register -- or someone else's name. Again, I don't have a specific recollection, so -- but I seem to recall that in the early days of this, it may have been registered to someone else.

Q Not the defendant?
A Right.
Q They were listed as the owner?
A Correct. Again, that's not a complete recollection.
Q And the owner has access to the domain; isn't that a fair statement?
A Well, that's potentially the case. Really, whoever has the user ID and password to the FTP upload section is going -- who could upload content.

It really is immaterial, in some sense, you know, to whom the website is registered. Who has access is who has the material up there.

MR. SUTCLIFFE: Right.

Your Honor, I don't know if the jury wants a break --

THE COURT: We'll take a break at about 11:00, but not now.

BY MR. SUTCLIFFE:
Q You mentioned "user name" and "password."

Would you explain to the jury what a user name and password does when you want to access a website?
A Yes. Like most computer systems, there is a level of security. So you have to have the credentials to access or even to upload. So normally, you have a user ID and then a password that accompanies that to allow access to an account.
Q You also mentioned the word "FTP".

Would you explain to the jury, in layman's terms, what FTP does or means?

A We talked about that yesterday. That's "File Transfer Protocol." That's a way to take content, usually larger content, and transfer it across the Internet in an efficient fashion.

Q But you could also transfer the smallest little tiny bit of content, too; isn't that correct?

A That's correct.

Q So whoever owns this domain or was the registered owner, could give anybody a user name and a password and they could come into this website or they could FTP and put data within this domain; is that a fair statement?

A That's a fair statement.

Q Good enough.

Usually, when you go to "WHOIS" and it will say who the owner is, there'll be a point of contact; is that correct?

A That's correct, yes.

Q And usually it will say an address, a mailing address?

A It will.

Q A phone number?

A Correct.

Q An e-mail address?

A And a fax number.

Q Sometimes nothing, though; isn't that true also?

A Occasionally.
Q If people are trying to hide something, they won't put nothing there?
A Or they'll put fictitious information.
Q That's right.
Did you follow-up on the information that was on "WHOIS" as to who the registered domain name is and the phone number and e-mail and address?
A Yes. I believe it was the address and phone number of an attorney, if I'm not mistaken.
Q We are talking about back on 10-6 now?
A Again, I can't give you a chronology.
Q Is that -- are we talking about 11-7?
A Again, I cannot give you a chronology.
Q Do you remember what the e-mail address was?
A No.
Q Did you send an e-mail to them?
A I did not.
Q Isn't that something that you would want to investigate?
A Would we necessarily alert someone that we're looking at potential violations of criminal law? No, not necessarily.
Q I didn't mean alert them. I mean, just like, you know, you guys are -- this is the FBI. You guys are, like, undercover, you know, you can infiltrate things and --
A I didn't send him an e-mail.

Q You didn't think it would be smart to drop an e-mail and say, "Hey, can I get a user name? Can I get a password? I'm from Global," or anything like that? Any ruse, you know, FBI ruse?

THE COURT: You have to ask one question at a time.

THE WITNESS: We did not pursue that line of investigation, no.

BY MR. SUTCLIFFE:

Q And you didn't pick up the phone and call the number that was on there?

A I didn't. Well, again, I think it came back to -- or went back to or was subscribed to by an attorney.

THE COURT: Do you remember the attorney's name?

THE WITNESS: I believe it was Leslie McAfee.

BY MR. SUTCLIFFE:

Q And this is back on 10-6?

A I can't provide you a chronology. I don't know.

Q You can remember the name Leslie McAfee in detail, but you can't remember anything else about that "WHOIS" query or any date; is that your testimony?

A That's my testimony.

Q Wow. Okay.

If I said the name "rampartscandal@europe.com," does that ring a bell?

A That does ring a bell now.

Q Okay. What does that ring to you?
A I recall having seen that. And it wouldn't surprise me, although I don't have a specific recollection, I believe that was likely the e-mail contact provided in that "WHOIS" information.
Q Back on 10-6?
A I'll come back to my answer. I don't have a specific chronology.
Q Let me ask you a question. This "WHOIS" query that you do to find out who owned this website that is supposedly breaking the law, would you not agree that those e-mail addresses can change?
A Yes.
Q Those written addresses can change?
A Correct.
Q The phone numbers can change?
A Correct.
Q The owners can change?
A Correct.
Q But you didn't follow-up on that e-mail at all?
THE COURT: That's been asked and answered, I think, three or four times now. Don't ask it again and move on to your next question, please.
MR. SUTCLIFFE: Thank you, Your Honor.
Q Do you recall speaking to anybody else within Global

Crossing's legal department?

THE COURT: At any time?

BY MR. SUTCLIFFE:

Q At any time.

A I recall speaking to Mark Labaton.

No, I don't.

Q The only recollection you have of anybody in the legal department is Elizabeth Greenwood and Mr. Labaton?

A That's my recollection.

Q Now, did you see any other -- we were talking earlier about the index page that we saw on there that had the terms of service.

Do most websites have terms of service?

A Like that, no.

Q Like what?

A Like visiting an opening page and having terms that you agree or disagree to, I don't recall seeing that on a normal basis.

Websites will commonly have terms at the very bottom, potentially, but not something you agree or disagree to to enter.

Q Are you a lawyer?

A No.

Q You are familiar with contracts, though?

A I've signed them.

Q Would you agree that that's basically a contract, when they first came there, like a legal-type contract?

MS. DUARTE: Objection to relevance.

THE COURT: Overruled.

THE WITNESS: Is it a legal contract? I don't know. Was it an attempt to have the user agree to a contract? Yes.

BY MR. SUTCLIFFE:

Q When you say "have them agree," is that forcefully making them agree?

A No.

Q Did anybody hold a gun, to your knowledge, to anybody's head and say, "Go to this website"?

A No. It was publicly available and you could choose to access it or not.

Q Like a TV?

A Correct.

Q Like a radio?

A Correct.

Q Like a newspaper?

A Correct.

MR. SUTCLIFFE: I have nothing further, Your Honor.

THE COURT: Okay. How much redirect, if any, do you have in terms of time?

MS. DUARTE: I can do it by 11:00, Your Honor.

THE COURT: Okay. We can go a little bit past that,

if necessary. Why don't you finish up with this witness.

MR. SUTCLIFFE: I'd like to reserve the right to recall the witness in my case-in-chief.

THE COURT: Okay. That will be available to you.

REDIRECT EXAMINATION

BY MS. DUARTE:

Q Special Agent Harrill, you testified about a "WHOIS" query that you ran --

A That I saw.

Q -- excuse me, that you saw regarding this website?

A That's correct.

MS. DUARTE: Am I too loud here?

THE COURT: That's fine.

BY MS. DUARTE:

Q Would looking at a similar query refresh your memory as to its contents?

A It would.

Q If you will turn to the exhibit binder and look at Exhibit 42, and please look at it only for the purpose of refreshing your recollection, if it does so.

If you'll go ahead and take your time and look at all four pages.

A Yes, this is what I recall.

Q Does this refresh your recollection as to the registration --

A It does.
Q -- of "evilgx.com"?
A That's correct.
Q Now, if you could put that aside, in what name was "evilgx.com" registered the first time that it came to your attention?
A Richard Lee Weatherman.
Q Were you familiar with Mr. Weatherman?
A No idea who he was.
Q On that registration information, on the information that you saw, was there also -- was there any indication that Mr. Steven Sutcliffe was associated with the site, on that information? You can look again.
A I'm sorry.
Q It's Exhibit 42. You can keep it open, if you'd like. Just don't look at it while you testify.

THE COURT: If you are asking him to tell you whether 42 says something, then we have to have 42 placed into evidence.

MS. DUARTE: No, Your Honor. Only if it refreshes his recollection as to whether Mr. Sutcliffe was drawn to his attention at that point by the record that he saw.

THE COURT: At what point?

MS. DUARTE: At the early point when Mr. Weatherman was the registrant.

THE WITNESS: I don't recall seeing this exact document.

BY MS. DUARTE:

Q If it doesn't refresh your memory, put it away. All right. Thank you.

Could I have just a moment, Your Honor?

THE COURT: Sure.

MS. DUARTE: Your Honor, I have no further questions. Thank you.

THE COURT: All right. You may step down.

We'll take a 20-minute break. Please be in the box in 20 minutes, and we'll continue until 1:30 after that.

(Recess taken at 10:59 a.m. to 11:25 a.m.)

(Jury in.)

THE COURT: Please call your next witness.

MS. DUARTE: Your Honor, the government calls Ms. Linda Isley to the stand.

LINDA ISLEY, GOVERNMENT'S WITNESS, SWORN

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Linda Isley, I-s-l-e-y.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MS. DUARTE:

Q Good morning, Ms. Isley.

A Good morning.
Q Where do you work?
A At Yahoo! Inc.
Q What do you do with Yahoo!?
A I am a compliance paralegal.
Q What does a compliance paralegal do?
A I respond to subpoenas, court orders, and search warrants for information about Yahoo! users.
Q How long have you been a compliance paralegal?
A About two and a half years.
Q Does your position with Yahoo! as a compliance paralegal cause you to be familiar with the business records kept by Yahoo!?
A Yes.
Q Do those include subscriber information records?
A Yes.
Q Do those include account management reports and records?
A Yes.
Q And do those include log-in type of records?
A Yes.
Q Take a look, if you will, in the binder behind you, at Government's Exhibit 33. Tell me when you've had a chance to look at it.
A Okay.
Q Do you recognize Government's Exhibit 33?

A Yes.
Q Take a look, if you will, first, at page 1.
Without actually telling me what the document is, do you recognize this type of document?
A Yes, I do.
Q What type of document is it?
A It's the Yahoo! account management tool, which reflects basic subscriber information about the user with the log-in name "gary_winnick2002."
Q And this Yahoo! account management tool, is this a type of record that you are familiar with?
A Yes.
Q Is it kept in the ordinary course of business by Yahoo!?
A Yes.
Q And is it provided by a person with knowledge?
A Yes.
Q Is it made in the --
THE COURT: Is it prepared, you mean, by a person --
BY MS. DUARTE:
Q Prepared by a person with knowledge?
A Yes.
Q Is it made or kept in the course of regularly conducted activity?
A Yes.
Q And what about the remaining pages of the exhibit, pages 2

through 4? Do you recognize what Exhibits 2 through 4 represent?

A Yes.

Q What are those?

A It's the dates, times, and IP addresses of log-ins or attempted log-ins by the user.

Q Are these also, pages 2 through 4, records kept by Yahoo!?

A Yes.

Q And how are these records created? How does the data come in? Does it come in -- how is it inputted, I should say?

A The log-ins are kept on an ongoing basis and only kept for a period of 21 days.

Q Is that in the regular course of Yahoo!'s business?

A Yes.

Q And are records such as pages 2 through 4 maintained as part of Yahoo!'s business?

A Yes.

MS. DUARTE: Your Honor, at this time move to admit Exhibit 33.

THE COURT: Exhibit 33 will be received and admitted into evidence.

(Government's Exhibit 33 received.)

MS. DUARTE: I ask that port 1 be enabled, Your Honor.

THE COURT: Okay. Please enable it.

BY MS. DUARTE:

Q Ms. Isley, I'm going to ask you to take a look at the first page here. Is this Government's Exhibit 33, the top of it, what you've been looking at?

A Yes.

Q And what log-in name does this show on this record?

A "gary_winnick2002."

Q What is a log-in name?

A It's the ID that a user chooses to identify their account.

Q So who actually chooses again that name?

A The user registering the account.

Q It's not chosen by Yahoo!?

A Correct.

Q What about the Yahoo! mail name down here?

A It's the user ID with "@yahoo.com".

Q And would that be the equivalent of the e-mail address?

A Yes.

Q In this case, what is the Yahoo! mail name?

A "gary_winnick2002@yahoo.com".

Q Directing your attention to the registration IP address, what does that indicate?

A That's the IP address captured at the time the user registered the account.

Q In this case, what is that IP address?

A 24.61.143.206.

THE COURT: Could you please explain what you mean by "captured."

THE WITNESS: It's -- our servers at Yahoo! are designed to automatically capture IP addresses that touch certain parts of Yahoo!'s Web pages.

THE COURT: Well, was this series of digits which constitute this IP address something that Yahoo! determined, or did Yahoo! simply accept it from some other source?

THE WITNESS: Yahoo!'s system for capturing the IP address is designed to capture the accurate IP address, but --

THE COURT: So that was a preexisting IP address?

THE WITNESS: Correct.

THE COURT: You may proceed.

MS. DUARTE: Thank you, Your Honor.

Q And here -- this information here, full name and downward, who provides this information? And I'm reading "Mr. Gary Winnick, Beverly Hills, California."

A That information was provided by the user.

Q And by "the user," who do you mean when you say "user"?

A The person who registered the ID, "gary_winnick2002".

Q Is that information verified by Yahoo!?

A It is not.

Q Now looking down at the bottom of the document, still page 1 of Exhibit 33, the "account created," what does that indicate?

A That's the date and time that the account was created.
Q In this particular account, the "Gary Winnick" account, what is that date and time?
A It's Tuesday, February 5th, at 7:31:53, in the year 2002.
Q What does the line underneath it indicate, "My Yahoo! configured"?
A That's the date and time that the user configured their "My Yahoo! page."
Q Is that a service provided to users?
A Yes, it is.
Q Now, directing your attention to the next page -- I'll just show you the top of it. This is page 2 -- there are a number of lines.

And what did you say that these lines indicate again?
A It's the dates, times, and IP addresses when the user logged into the account or attempted to log into the account.
Q And right here where I'm pointing at the first column, Monday is where I indicated, this would be the day?
A Yes.
Q And then February 25th, that would be the date?
A Right.
Q Okay. And following it along here, you can tell the year. Is that 2002?
A Yes.
Q Then that's followed by the e-mail address of the account?

A Right.
Q Then following that 24.61.143.26, that would be the IP address that was -- that logged in the account at that date and time?
A Actually, it was 206 at the end.
Q Thank you for correcting me.
A Yes.
Q The answer is "yes" to that?
A "Yes."
Q And how long did you say that Yahoo! maintains logs such as these as part of business records?
A For 21 days.
Q And they are purged after that?
A Correct.
Q So the fact that this record -- starting at the top of page 2, the date starts at February 18, 2002.

Does that necessarily indicate that prior to February 18, 2002, there were no such connections as we see in this log?
A I'm sorry. Could you rephrase that -- I mean, ask that again?
Q Does the fact that -- what does the fact that the record begins on February 18, 2002, indicate to you?
A That was the earliest date that we were able to capture the log-in at the time that I conducted the search -- or the

search was conducted.
Q That was the earliest date that it was saved -- is that right? -- the date it was saved, preserved?
A Yes.
Q Not discarded?
A Right.
MS. DUARTE: If I could have just a moment, Your Honor?
THE COURT: Okay.
BY MS. DUARTE:
Q Directing your attention this time at Exhibit 34, which should directly follow Exhibit 33 in that binder, have you seen Exhibit 34 before?
A Yes.
Q Do you recognize it?
A Yes.
Q How do you recognize it?
A It's the Yahoo! account management tool.
Q For what account is this tool?
A "evilgxhrdept".
Q Is this Yahoo! account management tool a record of the type that you have already described in Exhibit 33?
A Yes.
Q Is it also maintained by Yahoo! as part of their regular business practice?

A Yes.
Q Drawing your attention now to pages 3 through 5 of this record, what are pages 3 through 5?
A These are the dates, times, and IP addresses for when this user logged in or attempted to log into the account.
Q I should clarify that. Do pages 2 through -- excuse me, 3 through 5 actually speak to the same account as pages 1 and 2?
A No. This would be for the account "evilgxhrdept".
Q My fault. I said it wrong.
That's the same account that's up here on page 1 of this exhibit; right?
A Right.
Q So the entire exhibit speaks to the same account?
A Oh, correct. Yes.
Q Is it also true with Exhibit 33?
A Yes.
Q All right. You said that these were the similar type of logs as we have just discussed in Exhibit 33?
A Yes.
Q And do they also show the information that we just went over in Exhibit 33 -- I'm sorry, similar information?
A Yes.
MS. DUARTE: Your Honor, move to admit Exhibit 34.
THE COURT: It will be received. 34 is admitted.
(Government's Exhibit 34 received.)

BY MS. DUARTE:

Q Again, if you could just point out the e-mail name on here.

A It's "evilgxhrdept@yahoo.com".

Q This is the account for which these records go?

A Yes.

Q I should say this is the e-mail address for which these records go?

A Right.

Q Now, the registration IP address in this case, what is that?

A It's 24.61.143.138.

Q Going down to the name of the registrant, would you read that, please.

A Ms. "evilgxhrdept".

Q Is it Yahoo!'s general practice to verify the registration information as to the name and address entered?

A We do not verify the information.

Q Down here at the bottom of the record, the account creation date, would you read that, please.

A It's Monday, December 31st, at 16:14:07, in the year 2001.

Q Directing your attention to page 3 of the same record, again, these are logs that show a variety of things; correct?

A Yes.

Q Let's pick Monday, March 4th, here. Would you go ahead

and read that line and just tell me what it means.
A That the log-in occurred on Monday, March 4th -- did you point to a specific line? -- at 6:15:27 Pacific Standard Time, 2002, by the Yahoo! ID "evilgxhrdept", and the IP address of that log-in was 24.61.143.206.
Q If you'll look at the records, pages 3 through 5 of Exhibit 34, are those IP addresses -- do they all look alike to you?
A It's all the same IP address.
Q Did you say that that log that we've been looking at, that part of the business record, would capture any connecting IP address?
A Correct.
Q Last, if I could have you take a look at Exhibit 35.
Do you recognize Exhibit 35, which is a one-page exhibit?
A Yes.
Q And what is it?
A It's the Yahoo! account management tool for the Yahoo! ID "richardsaly".
Q And could you go all the way to the bottom and show the creation date for this account?
A It was created Friday, October 26th, at 23:28:52, in the year 2001.
Q And there are no -- is this account management tool a

record such as the ones you have spoken to in the previous two exhibits?

A Yes.

MS. DUARTE: Your Honor, I move to admit Exhibit 35.

THE COURT: 35 will be received. It's admitted.

(Government's Exhibit 35 received.)

BY MS. DUARTE:

Q And there are no logs accompanying this exhibit; is that correct?

A Correct.

Q Not at least that we have presented?

A Pardon?

Q Not at least that you are looking at right now?

A Right.

MS. DUARTE: If I could have just a moment, Your Honor.

I have no further questions. Thank you, Your Honor.

THE COURT: Okay. Cross-examination.

MR. SUTCLIFFE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SUTCLIFFE:

Q Your name is Mrs. Isley?

A Yes.

Q Am I pronouncing that right?

A Yes.

Q Mrs. Isley, you are an attorney at Yahoo!?
A I'm a paralegal.
Q Did you testify that you had conducted these searches?
A Either I or members of my group conducted the searches that resulted in these documents.
Q Your recollection is you don't have any -- do you have a recollection as to you personally conducting any of these searches?
A I know that I did at least one of these, but I can't remember which one.
Q Did you have any opportunity to contact or be contacted by any members of the FBI in relation to these subpoenas that were issued?
THE COURT: Wait. There has been no reference to subpoenas. Reframe your question.
BY MR. SUTCLIFFE:
Q Did you ever have any contact with any FBI agents in relation to these e-mail addresses?
A Do you mean at the time when a subpoena was issued? Is that --
Q Let me rephrase the question.
A Okay.
Q Did anybody call your phone and say, "This is the FBI"?
A It happens every day.
Q Did anybody from the FBI say anything to you about these

three e-mails?
A I don't recall anyone calling me and asking specifically about these IDs, but -- I don't know whether anyone called to follow-up on a subpoena we may have received about these IDs. I don't know.
Q Does the FBI usually call to follow-up on a subpoena?
A Occasionally.
Q When they are hot on the chase?
A For various reasons.
Q That could be one of them?
A Could be.
Q Thank you.
Now, you testified that there was three e-mail addresses: One, "gary_winnick2002@yahoo", an "evilgxhrdept@yahoo.com", and a "richardsaly@yahoo.com"; is that correct?
A Yes.
Q Have you ever heard of the name "evilgxhr@yahoo.com", dropping the "dept"?
A No.
Q That name doesn't ring a bell at all?
A No.
Q You testified that the IPs that were captured start off with 24 dot and so on; is that correct?
A Yes.

Q Let's start on the first one, "gary_winnick2002@yahoo.com".

THE COURT: That's Exhibit 33.

MR. SUTCLIFFE: Thank you, Your Honor.

Q I'm going to place this on the ELMO.

I'm going to direct your attention, first, to the very bottom of this document, and I'm going to direct you to the words "Terms of service."

A Yes.

Q Could you tell the jury what that means "Terms of service"?

A It's the terms that we lay out for our users when they register an account so that they can agree to our terms of service.

Q Do you foist those terms upon anybody, or do they come there voluntarily and agree to those terms?

A They voluntarily agree to the terms.

Q You don't put a gun to their head and say, "You got to do this or else you can't come in"; right?

A No.

Q If somebody came and signed up an e-mail account and then violated one of those terms of service, you have -- I notice it says, "All rights reserved." That means you have the right to kick them off; isn't that correct?

A We have the right to terminate the account.

Q Terminate them, a good word.

I also notice that it says, in big bold letters, "Notice: We collect personal information on this site"; is that correct?

A Yes.

Q It's not against the law to do that; right?

A I don't think so.

Q I didn't think so, either.

THE COURT: Mr. Sutcliffe --

MR. SUTCLIFFE: I'm sorry, Your Honor.

THE COURT: -- I have already admonished you once, maybe more than once. You are not to testify, you are not to respond, and you are not to comment on answers. You are to ask questions.

MR. SUTCLIFFE: You are absolutely correct.

THE COURT: Please disregard the answer.

MR. SUTCLIFFE: Please forgive me, Your Honor.

Q Going back up to the top here, where it says "full name," do you see the line --

A Yes.

MR. SUTCLIFFE: Can I have one of those cool pens, like the government has, to highlight things? I don't have one of those.

THE COURT: Just use your fingers.

BY MR. SUTCLIFFE:

Q Okay. I'll direct you to where it says "full name." Do you see that?
A Yes.
Q And the name says "Mr. Gary Winnick"?
A Yes.
Q Does Yahoo! restrict what name you can pick?
A Generally not.
Q In other words, if I went there, I could choose George W. Bush, if I wanted to, if no one had taken it already?
A Correct.
Q I could be The Honorable A. Howard Matz if I wanted to; isn't that correct?
A Yes.
Q It's not against the law, is it?
MS. DUARTE: Objection. Legal conclusion.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Is it against the terms of your service for me to become The Honorable A. Howard Matz at Yahoo dot-com?
A The terms of our service do ask that users provide correct, truthful information.
Q But it's not -- you don't force -- they don't have to? It's not against the law --
A We don't verify the information.
THE COURT: Wait. Wait. Those are two different

questions. You can't ask multiple questions until you get an answer to one question at a time.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Now, the question that was not answered -- well, it wasn't even recorded. Let's move on.

BY MR. SUTCLIFFE:

Q On Exhibit 33, that starts off with a date of February 18th, it has an IP address to the far right-hand side; is that correct?

A Yes.

Q That IP address is 24.61.143.206; is that correct?

A Yes.

Q Could you tell me the -- your understanding of IP addresses?

A I have a basic understanding of IP addresses, in that an IP address is assigned by an Internet Service Provider for each computer connection to the Internet.

Q Kind of like a phone number?

A I wouldn't characterize it like a phone number --

Q How would you --

A -- but it's a series of numbers.

Q How would you characterize it?

A A series of numbers assigned by the Internet Service Provider for each computer connection to the Internet.

Q Kind of like when you go and get a phone service, get a

phone number?

THE COURT: Now you are arguing with the witness. Move on.

BY MR. SUTCLIFFE:

Q Moving on to the next e-mail address that was subpoenaed, "evilgxhrdept".

THE COURT: You are now displaying Exhibit 34.

MR. SUTCLIFFE: Yes, Your Honor.

Q Do you note that the registration IP address is different?

A Different from what?

Q From Exhibit 33, which was 24.61.143.206.

A Yes. The last three digits are different.

Q Could you tell me, when did you receive the subpoena for this e-mail account?

A No, I don't know when.

Q Do you have a rough recollection?

A No, I don't.

Q Could it have been this year?

A I don't know. Probably not because I think we first received a subpoena for trial back in 2002.

Q Did you ever fill out an affidavit under penalty of perjury in relation to any of these subpoenas?

A In an attempt to obtain a stipulation for the documents, yes.

Q And was that document a legal document?

THE COURT: What document are you asking about, Mr. Sutcliffe?

MR. SUTCLIFFE: That she said she filled out.

THE COURT: Are you asking whether the affidavit was a legal document?

MR. SUTCLIFFE: Yes.

THE COURT: You can answer that, if you know the answer.

THE WITNESS: I believe it's a legal document.

BY MR. SUTCLIFFE:

Q You are a paralegal; is that correct?

A Yes.

Q So you are familiar that when you sign something under penalty of perjury, it's got to be true?

A Yes.

Q Were you aware that this document that you signed contained blanks that somebody else could fill in after you had signed it?

A Well, with the exhibit numbers that haven't been determined yet is what I understood.

Q So is it my understanding that you filled out a document under penalty of perjury and signed your name to it that had blanks for something to be filled in after you had signed your name attesting to certain facts contained within this document?

MS. DUARTE: Objection, Your Honor. The document is

not in evidence.

MR. SUTCLIFFE: I'll enter it.

THE COURT: Show the document to the witness if you want to ask about it --

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: -- and authenticate it.

MR. SUTCLIFFE: Thank you.

THE COURT: Lay a foundation for it and then move for its admission.

Please look at this. Read it silently -- to yourself and wait for the next question from Mr. Sutcliffe.

BY MR. SUTCLIFFE:

Q Did you, in fact, sign that document?

A Yes.

Q When did you receive that document?

A Sometime prior to September 20, 2002.

Q Where were you located when you received that document?

A In Sunnyvale.

Q That's California?

A Yes.

Q How did you receive the document?

A I don't remember whether it was by fax or some other way. Probably by fax.

Q But it wasn't in person?

A No.

Q And you signed the document, and then what did you do with the document after you signed it?
A I believe I faxed it back.
Q Do you see the blank spots that I'm referring to?
A Yes.
Q Is it normal business practice to sign a document containing blanks that could be filled in by somebody else?
A Well, I was comfortable with the knowledge that those were just exhibit numbers that would be assigned in the blanks and no -- that there were no blanks for other more substantive information.

MR. SUTCLIFFE: Okay. May I have the document back, Your Honor?

THE COURT: Yes. Are you finished questioning the witness about it?

MR. SUTCLIFFE: No, I have some more questions about it. I just wanted to point to a certain point and ask her a question about it.

THE COURT: Then you can display it. We'll move the document into evidence. It will be Exhibit 201. The clerk, later on, will put an exhibit number on it.

(Defendant's Exhibit 201 received.)

THE COURT: Now, display it on the screen and question her in that capacity.

You'll see it displayed on your screen.

THE WITNESS: Okay.

BY MR. SUTCLIFFE:

Q This document that we're looking at, under Section 2, it contains three blanks; is that correct?

A In paragraph 2, yes.

Q And paragraph 3 contains a blank?

A I don't see paragraph 3.

Q Excuse me, "A". I'm sorry. My eyes are going. 2A.

A Yes, there is a blank there.

Q 2A reads, "Exhibit" -- blank -- "is five pages."

Now, I'm going to bring your attention back down to the bottom of page 2 of this document that you signed. Is Exhibit -- blank -- five pages?

Exhibit 2A, in the affidavit, lists "Exhibit" -- blank -- "is five pages," which shows that "on February 5, 2002, a Yahoo! e-mail account titled..." and then it goes on.

My question to you is, is Exhibit -- blank -- five pages, "yes" or "no"?

A When you say "Exhibit -- blank," I'm confused. Have you assigned -- is there an exhibit number for this document?

Q I don't know. You signed this document. You signed under penalty of perjury that this is true.

THE COURT: Now you are arguing. Just ask a question. If she doesn't understand your question, then try to reframe it. That's the correct way to proceed.

MR. SUTCLIFFE: Thank you, Your Honor.

Q My question is, you signed this to be a true document, did you not?

A Yes.

Q My question is, you said that, under Section 2A, "Exhibit" -- blank -- "is five pages."

My question to you is, is Exhibit -- blank -- five pages? When you signed this document, was Exhibit -- blank -- five pages?

A The exhibit that it referred to was five pages, yes.

Q You say "that it referred to." "It" being?

A That paragraph.

Q Do you have any proof about the time that that was signed that you are referring to that you can show this jury or myself?

THE COURT: You are welcome to look at the exhibits that the prosecution showed you to see whether any of those exhibits correspond to the language in your affidavit if that will help you answer Mr. Sutcliffe's question.

THE WITNESS: Could I look at the affidavit again?

MR. SUTCLIFFE: I'll withdraw the question.

Q Moving on to the next e-mail account -- that would be Exhibit 35 -- I notice that the registration IP is 24.167.143.139; is that correct?

A Yes.

Q Could you tell me, what is your understanding about 24 dot, whatever, IP addresses?
A I have no understanding specific to that.
Q Do you know when the subpoena was served?
A No, I don't.
Q Excuse me. Do you know when this request for this information was brought to your attention?
A No, I don't.
Q And the name Mr. Richard Saly, that name was available; is that correct?
A That's the name that was entered when the user registered the account.
Q Right. And the name up top here, the log-in name Richard Saly, and the e-mail address "richardsaly@yahoo.com", that was available?
A Yes.
Q And, again, at the bottom, that's under the same terms of service?
A Yes.

MR. SUTCLIFFE: I have nothing further, Your Honor.

I would like to reserve this witness until the end of court. I need to have her in order to produce that subpoena.

THE COURT: You bring that up in a minute.

MR. SUTCLIFFE: Yes, Your Honor. Thank you.

THE COURT: You don't reserve witnesses.

Do you have any redirect?

MS. DUARTE: Briefly, Your Honor.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MS. DUARTE:

Q If you could look at your affidavit and also look at Government's 33 through 35 one more time for me. They are in front of you. You can start with Exhibit 33.

A I don't have the affidavit, though.

THE COURT: Show the affidavit on the screen, on the ELMO.

MS. DUARTE: May port 1 be enabled?

THE COURT: Yes.

BY MS. DUARTE:

Q Exhibit 2A that's up on your screen, are you able to see that from where you are?

A Yes.

THE COURT: Just a moment, please. It's Exhibit 201. It's paragraph 2A.

BY MS. DUARTE:

Q Exhibit 201, paragraph 2A, can you see that from where you are, Ms. Isley?

A Yes.

Q What was your understanding about exhibit numbers at the time that you signed this affidavit?

A That you would be assigning the exhibit numbers when you had all of your exhibits compiled.
Q And although you did not know the number, at the time you did this affidavit and you were working on it, did you indeed have the exhibit that you were looking at?
A Yes, I did.
Q And if you look at Exhibit 33, paragraph 2A, on your screen, can you tell me whether or not you understand that that exhibit number pertains to that paragraph?
A It does.
Q If you look at paragraph 2B -- and I can turn the page for you in a minute, if you'd like -- paragraph 2B, at Exhibit 201, and also at Government's 34, Exhibit 34. Would you like me to turn the page?
A Sure.
Q Is it your understanding that Exhibit 34 corresponds to paragraph 2B of the affidavit?
A Yes.
Q Was that your understanding, at least as to the exhibit itself, if not the number, when you wrote the affidavit?
A Yes.
Q Lastly, Government's Exhibit 35, and still on the screen is paragraph 2C of Defendant's Exhibit 201.
A Yes.
Q Looking at Exhibit 35, what is your understanding of

whether it corresponds to your affidavit, paragraph 2C?

A Exhibit 35 corresponded to paragraph 2C.

Q Was it Exhibit 35 that you had in mind, if not the number, the exhibit itself, at the time you did your affidavit?

A Yes.

MS. DUARTE: I have nothing further, Your Honor. Thank you.

THE COURT: Anything further?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: You can only question now about the scope of redirect.

MR. SUTCLIFFE: Yes.

Leave that right where it was, and I'll just finish off on that one right there.

RECROSS-EXAMINATION

BY MR. SUTCLIFFE:

Q C3. Do you see C3?

A Yes.

Q "From the records which constitute Government's Exhibits" -- blank, blank, and blank -- "it appears that none of the submitted information was verified per Yahoos!'s general practice." Could you explain what that means?

A We don't verify the information that's provided by a user when they register the account.

Q It's not part of your terms of service?

A I don't think so.

MR. SUTCLIFFE: That's all. Thank you.

THE COURT: Okay. Now, ladies and gentlemen, I'm going to excuse you for five minutes. There is something that I'm going to turn to that may save us all a lot of time down the road, and it will only take five minutes. So please go into the jury room, and we'll knock on the door and bring you back out in approximately five minutes.

(Jury out.)

THE COURT: There is a party in this case, Mr. Sutcliffe, who has requested that a subpoena be served upon you, and it would command you to appear next week and bring two categories of documents, the second of which is totally inappropriate, and I would not authorize and have deleted.

The first is on behalf of Yahoo! -- or the first would require you to bring with you to court next week, if this subpoena were issued, the following: "Sent and received e-mails from the address of 'evilgxhrdept@yahoo.com' from December 2001 to March 26, 2002."

MR. SUTCLIFFE: Your Honor --

THE COURT: Don't interrupt me. Please sit down.

Now, would you please look at Exhibit 34, and please tell me whether the entries, beginning at page 3 and continuing on to page 5, contain any information that reflects any sent e-mails from the address of "evilgxhrdept" between

December 2001 and March 26, 2002?

THE WITNESS: Pages 3 through 5 reflect the dates, times, and IP addresses of the log-ins only and don't reflect anything relating to any activity or use of the e-mail accounts specifically.

THE COURT: Does Yahoo! have available to it, if it is required to produce it, information that would enable it to produce "Sent and received e-mails from the address of 'evilgxhrdept@yahoo.com' from December 2001 to March 26, 2002"?

THE WITNESS: There is a possibility that we may still have information, but an e-mail account is under the control of a user. And if a user had received e-mail in their account and deleted that e-mail, it is completely deleted from Yahoo!'s servers.

Also, a user has to choose the option to save their sent mail in order for any sent mail to be saved to the account.

THE COURT: Ms. Isley, have you, in response to any subpoena that any agency of the government issued to Yahoo!, looked for sent and received e-mails from that account thus far, to your knowledge, you or anyone working with you or under you?

THE WITNESS: I don't remember whether we only received subpoenas in this instance or whether we received a 2703d order or search warrant. We would have looked for e-mail

if requested in a search warrant or a 2703d order.

THE COURT: Okay. But you don't know whether any subpoena directed Yahoo! to do that, do you?

THE WITNESS: I don't recall that.

THE COURT: I'd like the representation from the government as to whether it has received any of that information and has it in its possession.

MS. DUARTE: Your Honor, I do not have e-mails from that account.

THE COURT: Ms. Isley, I'm going to hand you this subpoena to bypass the requirement that it be served up in Sunnyvale by the marshal. I'm going to direct you to speak -- please sit down.

MR. SUTCLIFFE: I need to interrupt, Your Honor.

There is a mistake being made by the Court, and I want to save us all some time. "evilgxhrdept" is right here. That's been subpoenaed by the government. I'm seeking "evilgxhr@yahoo.com", not "dept".

THE COURT: That's not what the subpoena says.

MR. SUTCLIFFE: I understand that, but I clarified that in my affidavit. There was a misunderstanding.

THE COURT: There is no misunderstanding. You wrote the subpoena. Now you want it to be revised?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: Don't blame other people for things that

you did, Mr. Sutcliffe.

MR. SUTCLIFFE: I'm not, Your Honor.

I was under a time constraint to fill out the subpoenas quickly because --

THE COURT: So you want it to read "evilgxhr" without the "dept"?

MR. SUTCLIFFE: Yes, Your Honor. Thank you.

MS. DUARTE: Your Honor, could I have just a moment?

MR. SUTCLIFFE: I apologize to the Court for the confusion in my subpoena.

MS. DUARTE: Your Honor, I was consulting with Special Agent Cugno to see if he remembered that specific address. I believe that we did serve a subpoena, but we didn't get back records.

However, if it please the Court -- and I'm sorry to interrupt -- but Yahoo! is actually represented by counsel today, and it is -- there are certain sets of laws that Yahoo! does have to follow, Your Honor. I'm familiar with those, too, under ECFA, the Electronic Communication --

THE COURT: Look, let's be very practical here.

The man is attempting to represent himself and has requested issuance of a subpoena on this person, with a slight revision. I'll give it to her. She is capable of getting legal advice and representation from Yahoo!. But I'm going to direct you and whoever -- is somebody here in the courtroom

from Yahoo!?

MS. DUARTE: Yes, Your Honor.

THE COURT: Okay. I don't need to know your name. If you are the lawyer for Yahoo!, fine. You speak to that gentleman sitting at the end of counsel table, Mr. David Reed. And he will give you contact information on behalf of Mr. Sutcliffe. Okay?

You notify him whether there is material that's responsive to this subpoena. And if you have any grounds that you wish to assert that would entitle Yahoo! or Ms. Isley to seek to quash the subpoena, you are welcome to do so.

It's just a way of getting the subpoena served and saving time and not inconveniencing the marshals, who have been yeoman-like in providing -- carrying out their responsibilities. So I am crossing out "dept".

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: I am initialling next to that. I have crossed out paragraph 2. I am not authorizing the issuance of the subpoena seeking what is sought in paragraph 2 because it would not be an appropriate item to request in a subpoena in this case.

I have revised it. The subpoena will be served upon Ms. Isley. It will require her to produce, on November 19th, unless directed to comply with a different date by Mr. Reed, "Sent and received e-mails from the address of

"evilgxhr@yahoo.com' from December 2001 to March 26, 2002."

If none of that information is available and there is nothing that you can produce in response to that, prepare a declaration or an affidavit with your counsel, fax it to Mr. Reed, and we will proceed accordingly and you will not have to come.

THE WITNESS: Okay.

THE COURT: I'm going to ask the courtroom deputy to Xerox this so that we have copies of what has been issued, now that it has been revised again. She will give it to you in just two minutes. Just wait.

You and/or Yahoo!'s lawyer -- you might as well state your name for the record, please.

MS. LAI: Fernanda Lai of Folger, Levin & Kahn.

THE COURT: How do you spell your last name?

MS. LAI: L-a-i.

THE COURT: Let's just get that Xeroxed, please, right now.

MS. DUARTE: Before the jury returns, I just want a chance to be heard, briefly.

THE COURT: About the subpoena issue?

MS. DUARTE: No, Your Honor, a different issue.

THE COURT: Why don't you take that opportunity right now, please.

MS. DUARTE: There is a possibility, although we are

still discussing it, Your Honor, that Mr. Sutcliffe's wife will be called to testify during the proceedings today.

I didn't know if the Court -- the Court has mentioned several times about that it was his wife testifying, and I didn't know if the Court wanted to be informed of that in advance in the event that the Court wanted to make any inquiry.

THE COURT: What's the current status in terms of the marital relationship?

MS. DUARTE: Pending divorce. They are still married.

THE COURT: Well, I don't intend to take further steps unless it is required of me to do so.

Let the record reflect I'm handing the witness, Ms. Isley, a copy of the subpoena. I'm giving her a second copy for her lawyer. I am giving a copy to the clerk. And we'll have extras for filing as well.

That's my ruling. Thank you for coming. You are excused.

Call your next witness, please.

MS. DUARTE: Your Honor, the government calls Orly Mann to the stand.

THE COURT: Okay.

(Jury in.)

THE COURT: Welcome back. Thank you for your continued patience.

The government has called to the stand a witness named Orly Mann.

Would you please step forward. Stop there, please, ma'am.

ORLY MANN, GOVERNMENT'S WITNESS, SWORN

THE CLERK: Please state your full name and spell your last name for the record.

THE COURT: It would help us if you speak directly into the microphone, please.

THE WITNESS: Orly Mann.

THE COURT: It's loud, so you don't have to lean forward. Thank you.

Go ahead. You may proceed.

MS. DUARTE: I'm sorry, Your Honor. I didn't know if she needed the spelling.

THE COURT: Yes. Please spell your name.

THE WITNESS: O-r-l-y M-a-n-n.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MS. DUARTE:

Q Good afternoon, Ms. Mann.

A Good afternoon.

Q Do you know Steven Sutcliffe?

A Yes, I do.

Q How do you know him?

A I met him in L.A. in '96, married him in 1998.
Q What is his relationship with you now?
A He's still my husband. I'm in the process of divorce.
MR. REED: I'm sorry, I'm having a problem hearing.
THE COURT: Would you read back the answer.
THE WITNESS: I'm still married. I'm in the process of divorce.
BY MS. DUARTE:
Q Ms. Mann, is Mr. Sutcliffe in court today?
A Yes.
Q Could you point him out and identify an article of clothing he is wearing?
A Over there (indicating).
THE COURT: I don't think you need to have identification each time, but the witness has identified the defendant. Let the record reflect that. And you may proceed.
BY MS. DUARTE:
Q Ms. Mann, did you ever live in Los Angeles?
A Yes.
Q Where did you live in Los Angeles?
A On Bedford Street.
Q Approximately when was this?
A In 1998.
Q Did there come a time when you moved from Bedford Street?
A Yes.

Q Do you remember approximately when that was?
A 2001 November.
Q November 2001?
A Uh-huh.
Q During the time that you lived at Bedford Street in Los Angeles, who lived with you?
A My husband and me and my daughter.
Q Any other adults live with you?
A No.
Q Did you have a computer -- was the place on Bedford a house or an apartment?
A Apartment.
Q Did you have a computer at the apartment?
A Yes, we did.
Q Did you ever see Mr. Sutcliffe use the computer?
A Yes.
Q Approximately how often did he use the computer?
A Almost every day.
Q Did you ever use the computer at the Bedford apartment?
A Yes.
Q What did you use the computer for?
A For download a program for my daughter to play with her, for myself searching job, and stuff like that.
Q Did you ever access the website "evilgx.com"?
A No.

Q You said that you left Los Angeles in approximately November 2001?
A Yes.
Q And where did you go when you left Los Angeles?
A We left to New Hampshire.
Q You say "we." Who was with you?
A Me, my daughter, and my husband, Steven.
Q How did you get to New Hampshire?
A With his car.
Q In a car?
A In a car.
Q About how long did it take you to get to New Hampshire?
A I think four to five days with a stop. Four days.
Q Did you bring the computer with you?
A Yes. It was in the car.
Q When you got to New Hampshire, where did you stay?
A In his brother's house.
Q Whose brother's house?
A Steven's brother's house.
Q Did his brother have a computer there at the house?
A Yes.
Q Did you ever see Mr. Sutcliffe use the computer?
A Yes.
THE COURT: You mean the computer in that house?
BY MS. DUARTE:

Q The computer at the brother's house?
A Yes. One was his wife's and one was his.
Q One was his brother's wife's and one was his brother's?
A Yes.
Q So there were two computers?
A Uh-huh.
Q Did you see Mr. Sutcliffe use either one of those computers at the house?
A Sometimes.
Q Did there come a time when you moved into your own residence there in New Hampshire?
A Yes.
Q Where was that residence located?
A High Street, New Hampshire.
Q Approximately when did you move in there, do you remember?
A Three weeks after we left Michael. Three to four weeks.
Q After you left Los Angeles?
A After we left Michael's house.
Q After you left Michael's house.
Who is Michael?
A His brother.
Q Mr. Sutcliffe's brother?
A Yes.
Q When you moved to your place in New Hampshire, did you still have your computer from Los Angeles?

A Yes.
Q What did you do with the computer from Los Angeles when you got to your place in New Hampshire? What happened with it?
A He hooked it in the house.
Q Hooked it up?
A Yes.
Q Did you see Mr. Sutcliffe use the computer at the house in New Hampshire?
A Yes.
Q Did you use that computer at the house in New Hampshire?
A Sometimes.
Q What did you use the computer for there?
A For my daughter.
Q Did you ever access the website "evilgx.com"?
A No.
Q About how often did you see Mr. Sutcliffe use the computer when you were there in New Hampshire?
A Almost every day.
Q For what period of time during the day, do you remember?
A Morning and mostly at night.
Q I want you to reach behind you to the thick binder behind you. There is a binder. There is a thick binder. The other one.

If you could take a look in that binder, and go ahead and turn to Government's Exhibit 25. You should see a copy in

there. Have you seen Government's Exhibit 25 before?
A Yes.
Q Do you recognize it?
A It's my house on East High Street in New Hampshire.
Q Is that picture a fair and accurate representation of how your house looked in New Hampshire?
A Yes.
MS. DUARTE: Your Honor, move to admit Exhibit 25.
THE COURT: Okay. 25 will be received. It's admitted.
(Government's Exhibit 25 received.)
BY MS. DUARTE:
Q If you will turn to Exhibit 26 right there in front of you, do you recognize what you see in Exhibit 26?
A Yes.
Q What is it?
A It's a computer and a tower and a chair in my bedroom.
Q Whose computer is this?
A Steven's.
Q Mr. Sutcliffe?
A Yes.
Q Is this picture a fair and accurate representation of the way that computer looked in your bedroom?
A Yes.
MS. DUARTE: Move to admit Exhibit 26, Your Honor.

THE COURT: Okay. 26 will be received and admitted.

(Government's Exhibit 26 received.)

MS. DUARTE: Your Honor, I would ask that port 1 be enabled. It is. Thank you.

Q Is that the picture on the screen that you are looking at, Ms. Mann?

A Yes.

Q And that's the computer that you referred to?

A Yes.

Q What's this down here?

A The tower.

Q Is this where Mr. Sutcliffe would work on the computer?

A Yes.

Q Look at Exhibit 27, if you will, also in front of you in the binder. Do you recognize Exhibit 27?

A Yes.

Q What is it?

A My bedroom.

Q Is that a fair and accurate representation of your bedroom?

A Yes.

Q Approximately when did your bedroom look like that in New Hampshire?

A Around November.

Q November?

A The end of November.
Q Did it change much from the end of November until the time that you were there in 2002?
A Not much.
MS. DUARTE: Your Honor, move to admit Exhibit 27.
THE COURT: 27 will be received. It's admitted.
(Government's Exhibit 27 received.)
BY MS. DUARTE:
Q Lastly, Ms. Mann, if you will look at Exhibit 28, and please do not tell me what that's a picture of yet.
There is an object in the picture. Without telling me what that object is, do you recognize that object?
A Yes.
Q Again, without telling me where it is, where had you seen that object before?
A In my bedroom.
Q And in this picture, beneath the object, there is a spread or background. Do you recognize that spread or background?
A Yes. It's still my bedroom.
Q What is that spread or background specifically?
A My cabinet, my chair to sit at the computer, my TV.
Q I mean the actual background that the item is laying on, the item in the middle of the photograph. It looks like a blanket. Do you recognize that blanket?
A It's the sheets of my bed.

Q So that item is laying on your bed?
A Yes.
Q Where was that item usually kept?
A Behind the bedroom door in a box.
Q Do you recognize this item as a fair and accurate representation of the item that was kept behind the door in the box?
A Yes.

MS. DUARTE: Your Honor, move to admit Exhibit 28.

THE COURT: Okay. 28 will be received. It's admitted.

(Government's Exhibit 28 received.)

BY MS. DUARTE:
Q Ms. Mann, what is that item that Government's Exhibit 28 depicts lying in the middle of the bed?
A Steven's rifle.
Q I'm sorry?
A Steven's rifle.

THE COURT: Before you proceed any further, please listen carefully, members of the jury. The witness has identified the picture as depicting Steven's rifle.

Mr. Sutcliffe is not accused of committing any crime arising out of his possession of any weapon or ammunition. You may consider evidence of his possession of weapons and ammunition only for the limited purpose of deciding whether the

government has met its burden of proving that if Mr. Sutcliffe made, or caused to be made, the communications that have been alleged in this case, in making those communications, he acted with a specific intent to threaten the persons who were the subject of these communications.

You'll be required to apply that limiting instruction. It's the kind of limiting instruction -- I'll tell you, you are allowed to take into account this evidence of the rifle and of any evidence that there may be about ammunition or other firearms, but only for the limited purpose I just told you.

You may proceed.

BY MS. DUARTE:

Q Ms. Mann, do you know if you had seen that rifle also at your home in Los Angeles when you were living in Los Angeles?

A Yes, I did.

Q Yes, you did. Okay.

When you say "Steven's rifle," do you mean that this rifle was maintained by Mr. Sutcliffe?

A I know it belonged to him.

Q I'm sorry?

A I know it's his.

MS. DUARTE: I have nothing further, Your Honor.

THE COURT: All right. Thank you.

Any cross-examination?

MR. SUTCLIFFE: Yes, Your Honor. Thank you.

CROSS-EXAMINATION

BY MR. SUTCLIFFE:

Q Good afternoon, Ms. Mann. How are you today?

A Good.

Q When you say "my daughter," do you mean the defendant's and your daughter, or your daughter?

A My daughter.

Q Did the defendant father the child with you?

A He is right here in front of me.

Q Is he the father of the child?

A No. You are the father of the child.

Q Thank you. I just wanted to clarify. You said "my daughter."

Did you file divorce papers on the defendant yet?

A I'm in the process.

Q That computer that the government was talking about that was in our home, you said that the defendant used it during the day and during the night; is that correct?

A Yes.

Q Can you tell the jury what the defendant's job was during -- when he worked in L.A.?

A I think you did help desk.

Q On computers?

A Yes.

Q So it was like a tool --
A Yes.
Q -- a teaching tool?
And also to look for work? It's also used to look for work, too; is that correct?
A Yes.
Q And just, how is Leael doing?
MS. DUARTE: Objection.
THE COURT: That's an inappropriate question.
MR. SUTCLIFFE: Tell her I love her.
Q The rifle now --
THE COURT: You can disregard any comments and testimony on irrelevant evidence or statements that are made by anybody in this case, including the last one, and you should disregard it.
Please proceed, Mr. Sutcliffe.
BY MR. SUTCLIFFE:
Q The rifle that was in the home, was it just laying around on the bed? It wasn't just laying around on the bed, was it?
A No.
Q It was secured in a box; is that correct?
A Yes.
Q And the ammunition was in another sealed box --
A Yes.
Q -- separate from the gun?

A It was inside the box, Steven.
Q The rifle wasn't loaded?
A I didn't check.
Q That's good.
A Thank you.
Q Do you know where the defendant got the rifle from?
A No.
Q Do you know how long he's owned it?
A A long time.
Q Five years?
A I don't know the time.
Q Ten years?
A When I met you, you have it.

MR. SUTCLIFFE: A long time. Okay.

I have nothing further, Your Honor.

THE COURT: Anything further?

MS. DUARTE: No, Your Honor, nothing further.

THE COURT: Thank you. You are excused, Ms. Mann. You may go about your business.

Please call your next witness.

MS. DUARTE: The government calls Ms. Mary Leiter to the stand.

The witness is here. She may have stepped away. I can call another one.

THE COURT: If you can, please do so.

MS. DUARTE: We are just checking on the availability. It will take about five seconds.

THE COURT: All right.

MS. DUARTE: Ms. Leiter is here.

MARY LEITER, GOVERNMENT'S WITNESS, SWORN

THE CLERK: For the record, please state your full name and spell your last name.

THE WITNESS: Mary Leiter, L-e-i-t, as in Tom, e-r.

DIRECT EXAMINATION

BY MS. DUARTE:

Q Good afternoon, Ms. Leiter.

A Good afternoon.

Q Ms. Leiter, did you ever manage an apartment complex here in Los Angeles?

A Yes, I did.

Q Where was it?

A Bedford Terrace Apartments, 1054 South Bedford Street, in Los Angeles.

Q What part of the city is that in?

A Beverly Hills adjacent.

Q How many units did you manage?

A There were 24.

Q For what time period were you the manager of the apartments?

A I beg your pardon?

Q For what time period were you the manager?
A I came in as manager in October of '98 through last September 1st of 2003.
Q As a manager, were you familiar with the residents?
A Yes, sir -- yes, ma'am. Yes.
THE COURT: It's always nervous for people who are not accustomed to testifying, but we know that you can tell the lawyer's gender, so it's okay.
MS. DUARTE: I hope.
Q Ms. Leiter, did you live at that address while you were managing it?
A I did.
Q Did you know Steven Sutcliffe?
A Yes.
Q How did you know him?
A As a resident there.
Q And if you saw Mr. Sutcliffe again, would you recognize him?
A I would.
Q Do you see him in the courtroom today?
A I do.
Q Why don't you point him out and identify an article of clothing he's wearing.
A He's wearing a blue shirt.
THE COURT: Let the record reflect the witness has

identified the defendant.
BY MS. DUARTE:
Q Was Mr. Sutcliffe living at Bedford Terrace when you became the manager?
A Yes, he was.
Q Do you remember what apartment number he was in?
A He was in 308.
Q Do you know if he was married?
A He was.
Q And did you know his wife?
A I did.
Q Mr. Sutcliffe and his wife, were they living there at the apartments when you became the manager?
A Yes, they were.
Q Did you ever go into the apartment while they were living there?
A I did.
Q Approximately when, do you remember?
A I don't remember the exact date and time, but it was right after -- within the first year that I was manager there.
Q Did you see a computer in the apartment?
A Yes, there was.
Q Do you remember where it was?
A It was in the living room area.
Q Was it on a desk or anything?

A Yes. It was on like a desk tabletop.
Q Did you see -- did you go in the apartment more than once?
A Yes, I did.
Q Did you see the computer more than once?
A I did.
Q Was Mr. Sutcliffe there when you were in the apartment?
A On occasion, yes.
Q Did you ever hear the defendant, Mr. Sutcliffe, talk about computers?
A Yes. As a matter of fact, he did.
Q Approximately when was that?
A Again, that was within my first year of coming in there.
Q What, if anything, did he tell you about computers?
A Well, I had the occasion of which the management company which I was working for, without inquiring as to my knowledge of computers, suddenly they said, "We're bringing in a computer tomorrow for you."

In talking to Mr. Sutcliffe, I mentioned my concerns, that I had no knowledge of the program of which they wanted me to implement.

My background is in bookkeeping primarily. There were other things of which they wanted me to do.

And he mentioned to me, "Well, don't worry. I'm very knowledgeable on computers. I'm a computer whiz. And I can help you with whatever you might need."

Q Did he ever talk about whether or not he was doing computer consulting work?
A Yes, he did. He mentioned he was a computer consultant.
Q Did there come a time, Ms. Leiter, when you learned that Mr. and Mrs -- I should say Mr. Sutcliffe and his wife were moving?
A Yes.
Q How did it first come to your attention that they were moving?
A Mrs. Sutcliffe, Orly, started -- she had like little sales out on the lawn, garage sales, out in front of the building -- that was my first indication -- on two separate Saturdays.

Then I began to see stuff which I knew -- I was aware that belonged to the baby Leael that was downstairs by the trash can, the dumpster.

And then for about a week and a half, two weeks before -- the trash chute to the building -- I was on the first floor -- was right next to my bedroom. So I could hear stuff going down it all the time. And late at night I could hear big sounds of bump, bump, bump coming down there.

And I said, "Uh-oh, something is going on here." Because it was very unusual that stuff goes down the trash chute late at night.

Q And that, in your mind, was connected with the move?
A I did keep this -- was aware that it was obviously stuff

that was, you know, not the normal trash, shall we say, going down, like garbage or whatever.

Q Okay. Go ahead.

Did you experience anything else?

A Well, one particular evening it was coming down, just all kinds of stuff was coming down. And I said to myself, "Uh-oh, I think that they are moving."

Q Let me stop you and ask, had you received any notice that they were moving? I should say, had anyone told you that they were moving?

A Yes. A resident did mention to me that they were going to be moving.

Q Was that Mr. Sutcliffe or Ms. Mann?

A No.

Q So somebody else?

A It was another resident. Yes.

Q Had either Mr. Sutcliffe or Ms. Mann indicated to you that they were moving?

A No.

Q So you were saying that -- after you heard the trash come down the chute late in the evening, what happened?

A I just kept on going. And then finally, one night, early in the morning, I could hear -- way early in the wee hours, I could hear stuff. I said, "You know what? Something is going on here."

And Mrs. Mann had a -- it was like a planter that hung over the balcony, which was like her pride and joy. So I awakened about 6:30 in the morning, early, and I went out and I says, "You know, if that planter is gone, I know that they are gone." And sure enough it was gone.

So what I did is, I went up, I key-checked the apartment. I opened up the door --

THE COURT: Wait a minute. You are beginning to tell a narrative story, and that's not what witnesses are supposed to do. Please wait for the next question.

BY MS. DUARTE:

Q Let me stop you and ask you -- now, you said that you hadn't received any notice from the Sutcliffes.

Did you actually give the Sutcliffes any type of notice?

A To move, no.

Q Did you serve them with notice to pay rent?

A Yes.

Q And what was the connection with that? Approximately when was that? Let me change the question.

Approximately when was that?

A That I don't recall offhand.

Q Would it refresh your recollection to go ahead and take a look at the notice? Turn around and look at the binder behind you. There is a thick binder.

A This one?
Q Yes. If you will turn to the blue tab marked 29, and let me know if you recognize the documents inside Exhibit 29.
A Right here.
Q So you recognize that document?
A Yes, I do.
Q Does that document help refresh your recollection as to when the notice to pay rent or quit was served?
A It was served on November 2nd of 2001. Yes, this is my signature.
Q Why was this notice served?
A Because rent was due.
Q And had it been paid?
A No.
Q Now, how soon after you served this notice did the Sutcliffes move?
A They moved on November the 5th.
Q Again, did they move with your knowledge?
A No.
Q And did you go into the apartment after it became apparent that they had left?
A Yes.
Q And what, if anything, remained in the apartment? Do you remember?
A It was trashed.

Q No. Without saying that it was trashed, were there actually items in the apartment --

A Yes, there were.

Q -- that remained?

And did you ever receive any type of communication from the Sutcliffes that indicated to you that they had left?

A Yes.

Q What did you receive?

A On the windshield of my car was written, in blue crayon: "Regarding notice to pay: We quit."

Q Was that the only notice to pay rent or quit that you had received?

A Yes.

MS. DUARTE: Your Honor, may I have just a minute?

Your Honor, I have nothing further at this time. Thank you.

THE COURT: Okay. Any questions, Mr. Sutcliffe?

MR. SUTCLIFFE: I have no questions for the witness.

THE COURT: Thank you, Ms. Leiter. You are excused.

Please call your next witness.

MS. DUARTE: Your Honor, the government calls Andrew Ramsey to the stand.

ANDREW RAMSEY, GOVERNMENT'S WITNESS, SWORN

THE CLERK: Sir, for the record, please state your full name and spell your last name.

THE WITNESS: Andrew Ramsey, R-a-m-s-e-y.

DIRECT EXAMINATION

BY MS. DUARTE:

Q Good afternoon, Mr. Ramsey.

Mr. Ramsey, where do you work?

A Global Crossing.

Q What do you do with Global Crossing?

A I'm the manager of policy enforcement.

Q What does the manager of policy enforcement do?

A Basically, I enforce our contract terms upon our customers.

Q Does that include -- does your work as an enforcement manager include work on the Internet?

A Yes.

Q And what types of work and why?

A I do basic Internet security work, tracking denial-of-service attacks, tracking spam e-mails.

Q Is your job actually connected with Internet security?

A Yes.

Q In what way? In other words, is there a title or a company or a department or a division that handles Internet security?

A It would be the Internet security department, and I report in to that department.

Q So there is an Internet security department?

A Yes.
Q Does your position report to that department?
A Yes.
Q And where -- you say you work at Global Crossing. At what physical location is your office?
A Phoenix, Arizona.
Q How long have you been there?
A For eight years now.
Q Have you been with Global Crossing that same amount of time?
A Yes -- I'm sorry. I worked for companies that were eventually bought by Global Crossing, so...
Q So you worked for companies that were acquired by Global Crossing?
A Correct.
Q But was the main character of your work the same?
A Yes.
Q Were you working at Global Crossing in the fall of 2001?
A Yes, ma'am.
Q What was your position there at that time?
A Same title.
Q During late 2001 and early 2002, did you have occasion to access the website "evilgx.com"?
A Yes, ma'am.
Q And why did you access it?

A I accessed it because I had heard, just in the office, that the site was up and that it was being used to disseminate company information.
Q Approximately when did this start, your attention to the website?
A Fall of 2001.
Q What, if anything, did you do based on the claims that the website was up and it had information on it?
A I started archiving copies of the site to track additions and deletions to the site.
Q How did you go about archiving these copies?
A Using UNIX tools and some handmade scripts, computer scripts.
Q Let's break that down.

Are UNIX tools like programming tools?

A Not -- I wouldn't say they are programming tools. They are more along the lines of utilities. So they are tools that already exist that you can use to pull Web pages down from a Web server to manipulate the text in -- not in changing the text, but in searching through the text.
Q You used these tools to look for, you said, new data on the website?
A Correct.
Q You said you used a script. What is a script?
A A script is a file that lists a series of commands using

UNIX tools. So if I wanted to perform a task that could not be completed by one tool, I would compile a script that would be composed of lines of several tools to complete one task.

Q Is that similar to a computer program?

A Yes.

Q I'm not oversimplifying it when I call it that?

A No.

Q So you actually wrote this computer program to perform the function?

A No, I did not write it.

Q But you utilized it --

A Yes.

Q -- along with the tools?

A Yes.

Q And you said it was to capture -- download the website "evilgx.com"?

A Correct.

Q And was the program set to make these downloads at any queue? In other words, was there an event that would trigger a download being made?

A Yes. I configured our server to run the script at set times. And you'll have to pardon me. I don't remember exactly the intervals that I programmed the server to do so. But that's what was done.

Q Would it backup, necessarily -- would it make a new copy

each time, or would it look for changes to the website?
A It would make a copy each time and e-mail me a notification of changes from the last -- from the last known copy.
Q So it's like electronic notification?
A Yes.
Q All right. Now, did you also have occasion to look at the website?
A Yes.
Q Did you look at it during the time period you specified, fall 2001 to 2002?
A Yes.
Q Did you look at it actually in connection with your downloads or separately?
A Separately.
Q Why were you looking at the website?
A I wanted to see what was being posted there. And as I received e-mail notifications from my script that there were changes to certain files or the additions of files, I wanted to see what the contents of those files were.
Q Now, when you set the program to download the copies of "evilgx.com", did you also name the downloaded files or title them?
A The files were all put into a directory that was named to signify the date and time that that archive was made.

Q So the downloads were classified by date and time?
A Correct.
Q And that would be the date and time that they were actually downloaded off the website?
A Correct.
Q Where were those copies of the website stored at least initially?
A They were stored on our department's main server.
Q After they were saved and stored, were they modified?
A No.
Q Were they ever saved to another medium?
A Yes.
Q What medium was that?
A A CD-ROM.
Q Why was that?
A I was requested by the FBI to provide a copy of the archives that I compiled.
Q Do you remember approximately when you got this request?
A No, I'm sorry, I do not.
Q Did you actually provide a copy?
A Yes, I did.
Q Was that copy on CD?
A Yes.

MS. DUARTE: Permission to approach and show Exhibit 24, Your Honor?

THE COURT: All right.

BY MS. DUARTE:

Q Mr. Ramsey, I just showed you Exhibit 24. Have you seen Exhibit 24 before?

A Yes.

Q What is it?

A That's the CD that I mailed to the FBI.

Q Does this CD contain the copies of downloads that you had been able to make?

A Yes, ma'am.

MS. DUARTE: I have nothing further, Your Honor.

THE COURT: Okay. Thank you.

Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SUTCLIFFE:

Q Good afternoon, Mr. Ramsey. How are you doing today?

A Good afternoon.

Q Birds of a feather, we are both computer gurus, for lack of a better word?

A Okay.

Q Just a few questions for you.

A Sure.

Q You said you worked for a company that was acquired by this company Global Crossing; is that correct?

A That's correct.
Q And you worked there approximately eight years?
A That is correct.
Q And you said in the fall of 2001, you heard this site was up?
A Yes.
Q "This site" being "evilgx.com"?
A Yes.
Q Can you tell us who you heard that from?
A Specifically, no, I cannot.
Q Heard it through the grapevine?
A Yes.
Q Word of mouth, okay.

Do you recall approximately what month that was in the fall of 2001?

A August, perhaps September. Other than that, I couldn't tell you.
Q After you heard that this site was up, you took it upon yourself to start archiving copies; is that correct?
A Yes.
Q On your own initiative?
A Yes.
Q Is this something you do with other websites?
A No.
Q But this one in particular caught your attention so that

you wanted to start copying it?
A Yes.
Q Is it your testimony that you began copying this -- when you copied this website, you said you stored it into a directory?
A Yes.
Q A file?
A Well, the contents of the file were placed into a directory -- I mean, the files themselves were all copied into a directory.
Q Just so the jury is clear on this, a directory is like this (indicating) -- correct? -- and inside would be individual, more subdirectories, and then within there could be files, like papers?
A Yes.
Q Okay, just to clarify that.

You said you started archiving these -- is it your testimony you started around August or September, after you first heard about this website?
A I don't recall exactly.
Q What did you see within the website that caused you to begin your first copying?
A It appeared to me that Global Crossing information was being posted at that site, and I just wanted to keep an eye on the site, keep track of what was being added and deleted from

the site.
Q Can you tell me what you saw the first time you decided to copy something that made you go make a script or get a script to download this website?
A No.
Q Nothing at all?
A Well, can you ask me more specifically what you are --
Q Yeah. You testified that you saw Global Crossing personal information.
Can you tell us what you first saw that you consider Global Crossing's personal information that caused you to start writing scripts or getting scripts to download this website?
A I don't recall exactly what I first saw to cause me to want to archive the site.
Q Was it Global Crossing's address in Beverly Hills?
A You are asking me -- are you asking me specifically what item on the website caused me to want to archive the site?
Q Did you not testify that you saw personal information in this website?
A Yes.
Q And it caused you to want to download and preserve this website --
A Yes.
Q -- using a script that you took the time out of your busy schedule -- I imagine you are a busy man -- to configure --

A Yes.
Q -- so it would capture, for lack of a better word, this site every day?
A Yes.
Q Or every hour?
A Yes.
Q And notify you by e-mail?
A Yes.
Q That's a lot of work, wouldn't you agree? It wasn't easy.
A No, it wasn't easy.
Q You have no recollection of what this information was that set that pattern into motion; is that your testimony?
A Again, if you are asking me exactly what I saw at that time to cause me to want to archive the site, no, I don't have a recollection of that.
Q You have no recollection of anybody specifically calling you or telling you, "Hey, computer guy, make a script"?
A No.
Q Okay. Have you ever met Elizabeth Greenwood?
A I've spoken to her on the phone prior to today. I don't know that I've met her in person prior to today.
Q How many times have you spoken to her over the phone, roughly?
A Upwards of dozens of times.
Q By e-mail as well?

A Yes.
Q During the fall to early 2002, did you also correspond by e-mail with her?
A Yes.
Q Weekly?
A I don't know.
Q Now, these archiving tools that you spoke about, can you explain what that means by "tools"? It's not like a real tool, I assume; is that correct?
A Right. It would be more along the lines of a software tool.
Q And you said "handmade scripts."
A Yes.
Q Just for the jury's clarification, that's like a piece of paper and you write a bunch of commands on it and tell it to do certain things?
A Correct.
Q And it goes out supposedly on the Internet or in the computer system and does those things?
A That's correct.
Q Can you tell us what your background is in computers?
A Specifically, as to what?
Q Certifications, education, degrees, awards.
A Everything I know is self-taught.
Q Same here, okay.

You said you didn't make these handmade scripts; is that correct?

A I guess I should clarify. The primary script -- the initial script that was used to archive the site was written by my boss. Subsequent revisions to that script were made by me.

Q And could you tell us your boss's name, please?

A Sure. Jim Lippard.

Q Can you spell that last name for me?

A L-i-p-p-a-r-d.

Q Do you know, to your own knowledge, what degrees or education Mr. Lippard has in computers?

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Now, you mentioned the words "manipulate the text."

Could you expand upon that a little bit? I didn't catch what you were referring to when you were talking about "manipulate the text."

A As I clarified my statement, I used the word "manipulate" along the lines of searching through the text.

Q These files you downloaded off the website --

A Yes.

Q -- could they be manipulated?

A Are you asking, were they manipulated or --

Q I'm asking, could they be manipulated?

A I suppose they could be.
Q So if I select this folder, if it wasn't secure, someone could come in there and delete some files, add some files; is that a fair statement?
A That's a fair statement.
Q You testified that you are in Internet security; is that correct?
A Correct.
Q Now, can you tell the jury what program you stored these archives in?
A I'm not sure I understand your question.
Q You said you archived copies of the domain -- is that correct? -- "evilgx.com"?
A I archived the contents of the site.
Q And you archived them into a file; is that correct?
A No. Each individual file was pulled down and put into a directory.
Q And then it was -- let me shortcut this.

Was it at some point placed within a -- all the files from a certain download placed within a file?
A Yes.
Q Could you tell the jury what kind of file that was?
A A "zip" file.
Q Would you please explain to the jury what a "zip" file is.
A A "zip" file is a -- it's a compressed archive of files,

so if you have 20 files, instead of trying to transfer 20 files, you compress all of those files into one file.

Q Okay. So that would be -- just so the jury understands, if I had a lot of files in here and they were really heavy -- not heavy. That's a bad analogy -- if they were really big and you wanted to transport them or send them across the Internet or through a computer system, the bigger the file is, the slower it travels, roughly, so you could put all the files in one file and then send that file; is that correct?

A That would be fair, yes.

THE COURT: Let the record reflect that Mr. Sutcliffe is referring to and pointing to a Redweld folder containing certain items.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Now, in this file that you placed the contents of, the "zip" files --

A Yes.

Q -- you then gave those to the FBI; is that correct?

A Yes.

Q And before you had given them to the FBI, you said that they resided on a server --

A Correct.

Q -- within your company?

Now, you are aware that -- I assume that you are aware that Global Crossing was -- had gone bankrupt at this

point; right?

THE COURT: At what point?

MR. SUTCLIFFE: At this point.

THE COURT: You mean as of today?

MR. SUTCLIFFE: They are in bankruptcy.

Q Are you aware that they are in bankruptcy?

A I'm aware that the company is operating under bankruptcy protection, but I'm not sure I understand the question.

Q Bad question. My mistake.

You visited the website "evilgx.com"; correct?

A Correct.

Q Did you see any solicitation for files from people within the company Global Crossing?

A Yes.

Q You are aware, then, that the company was potentially hemorrhaging files, for lack of a better word?

MS. DUARTE: Objection, Your Honor. Argumentative.

THE COURT: Overruled.

MR. SUTCLIFFE: I'll withdraw the question.

Q You are aware that the domain "evilgx.com" was actively soliciting information and data from any company within or associated with "globalcrossing.com" for a variety of reasons; is that not correct?

A I guess that's a fair statement, yes.

Q The website "evilgx.com", when you downloaded it, you said

you put these files into a "zip" file with a corresponding date and time --

A Correct.

Q -- as the file name?

A Correct.

Q For instance, the file name would be -- if it was December 2nd, it would be 1202?

A If -- for example, if it was December 2nd, 2001, at 4:00 p.m., it would be 2001, 1202, 1600, indicating 2001, December 2nd, 1600 hours.

Q And file names can be changed, can they not?

A Yes.

Q So somebody could actually take that file and just touch it and change the 2001 and 2002, couldn't they?

A I suppose they could.

Q Those files within that "zip", we've already agreed that somebody could go in there and delete those, too; right?

A Well, they could have been deleted prior to having been put on a CD-ROM.

Q I'm just saying, somebody could go into that server, open that "zip", delete any file they wanted to, and exit --

A Yes.

Q -- without any trace of that?

A I don't know if you could say it could be done without a trace, but it would be possible to manipulate the "zip" file.

Q Okay. Great.

Have you used -- did you use WinZip to create this file?

A No.

Q Could you tell the jury what "zip" program you used?

A Just a standard UNIX "zip" tool.

Q I don't understand "standard UNIX 'zip' tool."

THE COURT: That's his answer, and you are not to debate the technology that he's referring to.

THE WITNESS: It's functionally the same as WinZip.

BY MR. SUTCLIFFE:

Q It's functionally the same. Thank you.

Now, after you downloaded this website containing this personal information that had caused you a lot of concern, can you tell the jury what you did to protect that data once it came into your possession?

A I don't believe I took any extraordinary steps to protect the data.

Q Did you encrypt -- let me back up.

Would you tell the jury what encryption is?

A Encryption is, for lack of a better word, the scrambling of a file to protect it from being viewed by a third party.

Q So it's basically like if I took this file and I encased it within acrylic or solid steel, it would take a lot of work to get to this file; is that a fair statement of what

encryption does?
A I don't believe that's a complete statement of what encryption does.
Q Let me rephrase the question.
Somebody who is not extraordinarily computer-proficient is not going to be able to open up an encrypted file without some substantial work; is that a fair statement?
A I don't believe that's a fair statement, either.
Q Could your average person coming across a file open that file if it was encrypted?
A Probably not.
Q Probably not or definitely not?
A Probably not.
Q Probably not.
Are there different levels of encryption?
A Yes.
Q Could you tell the jury what levels of encryption there are?
MS. DUARTE: Objection to relevance.
THE COURT: Sustained.
He's established -- you've established, I should say, Mr. Sutcliffe, that this witness did not encrypt the material that he downloaded and wound up consolidating on the "zip" drive. So there was no encryption; and therefore, the rest of

this is irrelevant.

MR. SUTCLIFFE: Thank you, Your Honor.

Q You testified that -- excuse me. Earlier, we had some talk about user names and passwords.

Are you familiar with user names and passwords?

A Yes.

Q Standard networking things that companies employ for security?

A Yes.

Q Did you put a password on these files after you downloaded them?

A No.

MR. SUTCLIFFE: I have nothing further, Your Honor.

THE COURT: Okay. Thank you.

Anything further from the government?

MS. DUARTE: Nothing further, Your Honor.

THE COURT: Okay. Thank you for coming. You are excused. You may step down.

MR. SUTCLIFFE: I would like to reserve this witness for my case-in-chief.

THE COURT: No, I'm not going to permit that. You'll have to take other steps to do that.

MR. SUTCLIFFE: All right, Your Honor. Thank you.

THE COURT: You are calling your next witness?

MS. DUARTE: If Your Honor is ready.

THE COURT: Yes.

MS. DUARTE: Elizabeth Greenwood.

THE COURT: Okay.

ELIZABETH GREENWOOD, GOVERNMENT'S WITNESS, SWORN

THE CLERK: For the record, would you please state your full name and spell your last name.

THE WITNESS: Elizabeth Greenwood, G-r-e-e-n-w-o-o-d.

DIRECT EXAMINATION

BY MS. DUARTE:

Q Good afternoon, Ms. Greenwood.

A Hi.

Q Did you ever work for Global Crossing?

A Yes.

Q Where was your office physically located?

A In Beverly Hills, California.

Q What did you do with Global Crossing?

A My title was assistant general counsel and assistant corporate secretary.

Q How long were you assistant general counsel and assistant corporate secretary for the company?

A From August 1999 through December 2001.

Q Before that time, did you have any other position with the company?

A Yes.

Q What were you before that time?

A I was vice president of human resources.
Q How long were you with Global Crossing?
A From March of 1998 through December of 2001.
Q Okay. At some point during the course of your work at Global Crossing, did you meet Steven Sutcliffe?
A Yes.
Q Approximately when did you first meet him?
A June of 2001.
Q Did you see him after that?
A Yes.
Q If you saw him again, would you recognize him?
A Yes.
Q Could you point him out, please, and identify an article of clothing he's wearing?
A He's over there in the blue shirt.
THE COURT: Let the record reflect that the witness has identified Mr. Sutcliffe, the defendant.
BY MS. DUARTE:
Q Ms. Greenwood, you said you first met the defendant in approximately June 2001?
A Yes.
Q What happened that caused you to meet him?
A I needed help on my computer. It was jamming. And so I called the help desk and Steven came to my office.
Q And when Mr. Sutcliffe got to your office, what happened

then?
A He worked on my computer.
Q Were you aware of him before you met him then?
A I may have seen him around, but I didn't really know who he was.
Q So you didn't have any specific contact with him?
A Correct.
Q At that time in June 2001, did he take your computer to be worked on?
A No.
Q Did he work on it in your office?
A Yes.
Q What type of computer did you have?
A I had a laptop.
Q Was it also used as your main computer?
A Yes.
Q Did it have a docking station?
A Yes.
Q Did that enable you to carry it around with you?
A Yes.
Q Were you in the legal department at that time?
A Yes.
Q Was your computer fixed after Mr. Sutcliffe came to your office?
A Not really. It still kept freezing up, so I would have to

shut it down and start it up again, so it wasn't quite fixed, no.

Q What, if anything, did you do based on that?

A I called the help desk again, and they told me that I should bring it downstairs and leave it overnight with them.

Q Did you do that?

A Yes.

Q At this time in June 2001 that you had the trouble with your computer, were there pictures in your office on display?

A Yes.

Q And to the best of your memory, what pictures in your office were on display?

A I had a picture of me and my daughter and some other drawings that she had done.

Q Did you have any other specific photographs that you remember?

A I think there was a small picture of my husband and my daughter.

Q This picture of you and your daughter that was in your office, did you also have that picture somewhere else?

A Yes.

Q Where was that?

A It was electronically on my computer.

Q Is this the same computer that you used at work?

A Yes.

Q At some point after June 2001, did you have another interaction with the defendant?
A Yes.
Q Approximately when was this?
A About August 2001.
Q What was the nature of your interaction with the defendant at that time?
A He came into my office to talk to me. He had gone to speak with the general counsel of Global Crossing, and the general counsel had sent him down to talk with me.
Q Was that because you were assistant general counsel?
A Yeah, that was basically right.
Q What did you talk with him about?
A Well, he was having an issue with the human resources department, and he explained to me what the problem was.
Q What was the issue as he explained it to you?
A He didn't want to provide the human resources department with a social security number, and he didn't want to have tax withheld from his salary.
Q Did he say why that was?
A He gave a long explanation. He was probably in there for about 45 minutes. But the main point was that he didn't recognize the Federal Government of the United States, and that he had a religious belief against paying taxes.
Q And that's what he told you?

A Yes.
Q Did you resolve that issue that he spoke with you about that day?
A No.
Q After that meeting, did you have any other direct substantive communication with the defendant?
A No.
Q Any other meetings with him, formal meetings?
A No.
Q Did you ever see the defendant in a less formal setting?
A Yes.
Q And when was that?
A I think the next time I saw him, he was picketing outside the Global Crossing building.
Q Do you remember approximately when that took place?
A September of 2001.
Q When you say "picketing," would you describe what you actually saw?
A He was carrying a sign and walking around the building and then walking back and forth in front of the front gates of the building.
Q Were you able to see this sign?
A Yes.
Q What did the sign say?
A On one side it said something like, "Global Crossing

discriminates against people's religious beliefs," and on the other side it said, "Go to 'evilgx.com'."

Q Did you actually go to "evilgx.com"?

A Yes.

Q Did you access the website?

A Yes.

Q Approximately, if you remember, how soon after you saw that direction on the sign did you access the website?

A I think I actually accessed the website first because other employees told me about him picketing and about the site, so I think I went to the site before I actually saw him picketing.

Q Were these events fairly close in time?

A Yeah. It was probably a day -- maybe a day or two apart.

Q So you had been aware of the site from other employees?

A Correct.

Q And when you saw the site -- when you looked at the site, what is it that you saw, just in general?

A Initially, the site was like one page, and it said that it was dedicated to the "evil" HR director at Global Crossing.

Q Was there any particular spelling to "dedicated" at that time?

A I don't remember whether it was d-e-a-d or d-e-d, whether "dedicated" or "deadicated." It had Richard Saly's home information and -- I'm not sure if it had his social security

number initially or whether that came later, but it did eventually have that and his salary.

Q Initially, when you saw the site, it was, is it fair to say, devoted to Mr. Saly?

A That's certainly what it said. It was dedicated to him. That was the focus.

Q Did you continue to access the site, periodically?

A Yes.

Q And when you continued to access the site in the fall of 2001, what did you see?

A More and more information kept coming up. There was a list of some of the senior executives with their social security numbers and home addresses scrambled, so they weren't, you know, actually in order yet, but there was sort of the threat thing that he could unscramble and he had more information, and gradually more and more information was added to the site.

Q Did you also see an assortment of additional names on the site?

A Yes.

Q Were there pictures on the site as well?

A Yes.

Q Early on, did you see any pictures of Mr. Sutcliffe on the site?

A Yes.

Q Do you remember what that picture had him --
A There was a picture of him picketing, actually.
Q On the site?
A Yes.
Q Did you continue to monitor the website?
A Yes.
Q Approximately how often did you monitor the site?
A Well, I had my assistant look at it every day, and if she saw anything new or particularly troublesome, she would tell me and I would then look at it.
Q And, if you remember, approximately how often did that mean that you were actually looking at the site?
A Probably daily or every other day.
Q What was your impression at that time, in the fall of 2001, about whether or not the site was changing often?
A The site was changing a lot, very frequently.
Q Was it your perception that information was being added to the site?
A Yes.
Q At some point did Global Crossing begin to capture copies of the site?
A Yes.
Q Who was capturing Global Crossing's copies of the site?
A Andrew Ramsey.
Q Did you and Andrew Ramsey communicate about his capturing

of the site?
A Yes.
Q And why -- what was your understanding of why you and Mr. Ramsey were capturing the site -- or I should say Mr. Ramsey was capturing the site?
A It became clear that a lot of the information that was on the site had come from Global Crossing, and it was personal information about the employees, things like their social security numbers, their birth dates, home addresses.

There were sexual harassment investigation information, letters, personal-type letters that were written to the human resources department and the HR director and the vice president of human resources.

So there was a concern that there was Global Crossing information on the site, and that the company wanted to get that information down.

Employees were extremely upset about the fact that their personal information was being posted.
Q Did you actually hear from a number of employees about the site?
A Yes.
Q Was it apparent to you that employees were accessing the site?
A Yes.
Q Was this just the employees in Beverly Hills or was this

more widespread?
A It was more widespread.
Q How widespread, do you remember?
A It was national. We also had employees in Europe, but I don't believe that they were aware of it at that time. But employees in New York, New Jersey, all across the United States, they were in an uproar.
The human resources department actually assigned to HR --
THE COURT: Excuse me one minute, Ms. Greenwood. There is no question pending. Wait for a question and then you can explain what happened.
THE WITNESS: Okay.
BY MS. DUARTE:
Q All right. When you accessed the website -- and we are talking about the documents -- did you see any documents that you recognized in the fall of 2001?
A Yes.
Q I'm going to ask you to look behind you at that thick binder. Go ahead and grab it, and take a look at the blue tab which should be Government's Exhibit 7.
Have you seen Exhibit 7 before? I realize you are looking at a copy, but do you recognize the copy of what you are looking at?
A Yes.

Q How do you recognize these pages?
A I saw them on the website.
Q Is that pages 1 through 8?
A Yes.
Q Before you saw these pages on the website -- and I should ask, approximately when did you see these on the website, if you remember?
A Either late September or early October 2001.
Q And before you saw these pages on the website, had you seen this information before?
A Yes.
Q Where had you seen it?
A I had this information on my computer.
MS. DUARTE: Your Honor, move to admit Exhibit 7.
THE COURT: Exhibit 7 will be admitted. It's received.
(Government's Exhibit 7 received.)
BY MS. DUARTE:
Q Ms. Greenwood, I'm going to put the first page of this up here. I have, on the screen, page 1 of Government's Exhibit 7, "Information for" -- I direct your attention to the second line down there, or you can look at your copy -- "Norman Brownstein." Do you see where I am?
A Yes.
Q I'm going to put an "X" right by here on the monitor.

Are you familiar with Mr. Brownstein?
A Yes.
Q Who is he -- or who was he? How did you know him?
A He was the director of Global Crossing.
Q Down here -- continuing down this information, what is this information on Mr. Brownstein, just in general, if you know?
A Sure. Well, it's got his office address and then it's his office phone number and fax number and his cell phone number.
Q Below that?
A His e-mail address, his assistant's name is Connie Butler.
Q I'm putting an arrow right there to Connie Butler. That was Mr. Brownstein's assistant?
A Yes.
Q Is there a phone number below that for her?
A Yes. That's Connie's phone number.
Q And continuing down.
A Connie's e-mail address, Norman Brownstein's home address, his home phone number and home fax number and his birth date.
Q Down here, the 5-23-43?
A Yes.
Q Now, is that information -- that information that you have read and the information that you haven't read that does appear on page 1, is that information that you had on your computer?
A Yes.

Q And was it in -- what form was it in? In other words, was the form similar to this or different?
A It was slightly different than this. I believe it was on the right side and the left side, so it was -- it was more across the page, not all the way down the page like this.
Q So it was different formatting?
A Different formatting, but the same information.
Q The same data?
A Yes.
Q Are you aware -- and if you are not, that's fine -- are you aware of anyone else who had this data described as such in their records?
A My assistant would have had this on her computer also.
Q So you and your assistant had this information?
A Yes.
Q And this information was on all these people that are listed in pages 1 through 8 of this exhibit?
A Yes.
Q Just in general, who are these people that are listed in pages 1 through 8?
A They are directors and senior executives and their assistants, sometimes their spouses are listed. It's a list of directors and senior executives.
Q Did you notice -- at the time, when you were looking at this on the website, did you notice what you perceived to be

any social security numbers on this?
A Yes.
Q And for each individual -- putting back page 1 -- for each of the people that you recognized as an individual who was an officer and director in Global Crossing, did you also see an accompanying number that appeared to be a social security number?
A Yes.
Q And was that part of what you refer to as private information?
A Yes.
Q Now, Ms. Greenwood, have you also seen an electronic copy of Government's Exhibit 7?
A Yes.
Q Have you reviewed it in the past?
A Yes.
MS. DUARTE: Your Honor, permission to approach with Exhibit 8?
THE COURT: Okay. Go ahead.
BY MS. DUARTE:
Q Ms. Greenwood, do you recognize Exhibit 8?
A Yes.
Q Have you seen its contents before?
A Yes.
Q Do you recognize it to be an electronic copy of the

printout of Exhibit 7?

A Yes.

MS. DUARTE: Your Honor, move to admit and publish Exhibit 8.

THE COURT: Okay. Exhibit 8 will be admitted.

(Government's Exhibit 8 received.)

THE COURT: But I don't think there is any point in publishing it at this time because we will be breaking in around four minutes, so I'll excuse the witness for today.

We are going to be resuming the trial on Monday morning, and you'll need to be here and ready to proceed at 8:30.

I'll excuse the jurors, as well, for the weekend. I hope you have a good weekend. I will see you here. Be here at the appointed time, ready to go, at 8:30. Please remember the admonition in the meantime.

Thank you for your continued service.

(Jury excused at 1:27 p.m. and the following proceedings had.)

THE COURT: Everyone may be seated.

Ms. Duarte, let's go through your witness list, and please give me your best estimate as to the point in this schedule that I've announced that you think you'll be resting.

MS. DUARTE: All right. May I just have a minute to find my copy?

THE COURT: Yes. You are making -- both sides are

being efficient and making timely progress. I'm not suggesting that I'm dissatisfied.

MS. DUARTE: Okay. Does Your Honor want me to kind of talk through it or just figure it out in my head?

THE COURT: The latter.

In the meantime, while the government is looking over its records, I'm directing the clerk to return to Mr. Sutcliffe the 302 for Agent Harrill, date of transcription was May 14th, that was shown to him, and the 302 for Saly, dated May 8, 2002. That was the transcription date.

I don't think those have been admitted into evidence. Those were from Mr. Sutcliffe. They were handed to the clerk at some earlier stage, and they are being returned to him.

MR. REED: There was Exhibit 201, too, Your Honor. That's the declaration from the witness from Yahoo!. I have to make five copies of that.

THE COURT: I don't think I actually had a copy of that. The clerk is indicating that it probably was returned to Mr. Sutcliffe.

Before we adjourn and go off the record, confirm that, please.

MS. DUARTE: Your Honor, I think I'm ready when you are.

THE COURT: One moment.

Mr. Reed will be good enough, and I appreciate him

doing so, to Xerox copies of what has now been received as 201 and return them to the Court on Monday and to counsel for the government.

Okay. Let's hear from the government about her resting, please.

MS. DUARTE: Your Honor, I'm factoring in a cross-examination schedule, which is similar to the one we've had. To the best of my ability, we'd rest Wednesday. I don't think that we can rest before Wednesday if we have the cross.

THE COURT: Do you know who will be testifying on Tuesday?

MS. DUARTE: Well, not yet, not until I know how Monday goes.

THE COURT: Are the witnesses who were identified on the trial witness time estimate form in the sequence you then expected them to testify?

MS. DUARTE: They were, Your Honor. I can just show you, very briefly, how we deviated today.

THE COURT: I can see.

MS. DUARTE: We expect to go back to normal. The witnesses we called out of order were from out of town. Ms. Greenwood is local. She will be back Monday morning. Mr. Cugno, obviously, is here. Ms. Hall is local.

And then, on the second page, Your Honor, at Nos. 2, Bishop, through 6, Orosz, are Web host providers. I

expect them to go fairly quickly on Monday, and possibly a couple on Tuesday.

Ms. Fuller is the FBI agent from New Hampshire who seized certain items. She'll be out Monday. Mr. Willis is our witness from L.A.P.D. on "killercop".

And then the three witnesses following -- Mr. Durie, Medeiros, and Schmidt -- are FBI special agents that copied the electronic evidence. They didn't do any analysis. I expect them to go quickly.

And Mr. Siebert is the final witness, No. 2 on page 3. He is the government's expert who will testify to the contents of Mr. Sutcliffe's computer. And I inadvertently had excluded Mr. Chavarri, No. 4. He is just another custodian. He's expected to come out and testify fairly briefly on Monday.

THE COURT: Okay. Thank you very much.

Everyone should have a good weekend.

Mr. Sutcliffe, if you -- I detected zero difficulty in your ability to cross-examine the witnesses. That's a reflection of your hard work. But if you really think that you want to look over the material in the boxes that were brought here at your request, that is, the material that was with you at the prison, I'll give you that opportunity this afternoon.

You know who the witnesses are. You know, more or less, who is going to be testifying in what sequence.

I need to give to the marshals whatever discretion

and authority they need to bring Mr. Sutcliffe to the lockup, to switch shifts, to eat, whatever. You just let our clerk know. If he wants to, he can come back here and he can access the courtroom in your presence. No one else will be here. You don't have to be here, Mr. Reed. He can take what he wants, and then you can return him to the MDC. Okay?

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: We are adjourned.

(Adjournment at 1:34 p.m., to resume on Monday, November 17, 2003, at 8:00 a.m.)

C E R T I F I C A T E

I certify that the foregoing is a true and correct transcript from the stenographic record of the jury trial proceedings in the foregoing matter.

Karen R. Pinn, RPR, CSR 5574

Sept 13, 2004
September 13, 2004

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE A. HOWARD MATZ, JUDGE PRESIDING

UNITED STATES OF AMERICA, Plaintiff, vs. STEVEN WILLIAM SUTCLIFFE, Defendant.	Case No. CR 02-350(A)-AHM

CERTIFIED COPY

REPORTER'S TRANSCRIPT OF JURY TRIAL PROCEEDINGS

Los Angeles, California

Monday, November 17, 2003

DAY 4

(Pages 643-811)

KAREN R. PINN, RPR, CSR 5574
Court Reporter

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JEFFREY R. CUGNO, Special Agent, FBI

I N D E X

GOVERNMENT'S WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
GREENWOOD, Elizabeth				
By Ms. Duarte	656 (resumed)			
By Mr. Sutcliffe		709		

GOVERNMENT'S EXHIBITS	FOR IDENTIFICATION	RECEIVED
11		665
12		668
13		676
14		677
15(1-5)		683
17		688
18		689
21		693
22		697

DEFENDANT'S EXHIBITS	FOR IDENTIFICATION	RECEIVED
202	718	718

LOS ANGELES, CALIFORNIA;

MONDAY, NOVEMBER 17, 2003; 8:15 A.M.

THE COURT: Good morning. Welcome.

THE CLERK: In the matter of calendar item No. 1, United States of America v. Steven William Sutcliffe, Criminal 02-350-AHM.

Counsel, please state your appearances.

MS. DUARTE: Good morning, Your Honor.

Elena Duarte for the United States and Case Agent Jeffrey Cugno.

THE COURT: Good morning.

MR. SUTCLIFFE: Good morning, Your Honor.

Steven William Sutcliffe, accused, present in court.

THE COURT: Good morning to you.

MR. REED: Advisory counsel, David Reed.

THE COURT: Good morning to you, Mr. Reed.

I understand the government needs to be heard about something.

MS. DUARTE: I do, Your Honor.

I just have a couple of procedural issues. First of all, I expect that Special Agent Cugno will take the stand today, later, and my intent was to ask Special Agent Harrill, with leave of the Court, to come up and do the computer manipulation for Special Agent Cugno.

THE COURT: That's fine. You can do that.

MS. DUARTE: And second, Special Agent Cugno, as I know we've discussed previously, is expected to leave town after Wednesday's court date, assuming he's finished with his testimony, both on -- obviously, on cross as well. And I wanted to ask leave of the Court to substitute in Special Agent Harrill as case agent at that time.

THE COURT: That's fine.

MS. DUARTE: Okay. And last, Your Honor, I wanted to let the Court know, as well as the defendant, that at least as of this morning, upon review of the case, I have made a decision, which I expect will continue through the close of the government's evidence, which is, not to elicit testimony regarding "killercop.com" during the case-in-chief.

Now, this may come up on defense's case. Obviously, if he brings it up, I would ask to reserve the right to get into it then, as well as rebuttal. But as of right now, I don't anticipate calling the witness from the L.A.P.D regarding that particular evidence.

I wanted to let the Court and defendant know, in the event that for some reason defendant was counting on that witness to testify, he would be aware that the witness is probably not going to.

THE COURT: Who is that witness?

MS. DUARTE: That would be Detective Terry Willis.

THE COURT: All right.

MS. DUARTE: That's a recent development. And I believe that was all, Your Honor.

THE COURT: Okay. Thank you very much.

Now, I will give Mr. Sutcliffe, within reasonable limits, the opportunity to cross-examine Detective Cugno beyond the scope of direct if he's not going to be available.

When you cross-examine him, you are not going to be necessarily confined to exploring whatever it is that the government explored with him.

MR. SUTCLIFFE: Thank you, Your Honor.

May I respond?

THE COURT: Yes.

MR. SUTCLIFFE: I believe there was another witness listed, a Mr. Katz.

THE COURT: Are you asking whether they are going to produce Katz?

MR. SUTCLIFFE: Yes.

MS. DUARTE: We are not planning to, Your Honor.

MR. SUTCLIFFE: Your Honor, at this time the defense would like to move, under Rule 615 of the Federal Rules of Evidence, to exclude Witness Cugno from sitting in this courtroom during any testimony from Mrs. Greenwood, for the purposes of preserving the defendant's rights of effective procedure for discouraging and exposing perjury, which the defendant is relatively positive he can prove, and there

might even be collusion, and for that matter, the defense would respectfully ask that he be excluded from the courtroom, under Rule 615.

THE COURT: You think that you have a right to have Agent Cugno excluded because he's going to listen to perjury that you expect Greenwood is going to commit?

MR. SUTCLIFFE: I believe that the two witnesses are on a first-name basis and have colluded in some manner to cover up possible perjury committed by one or both of the parties.

THE COURT: Okay. Well, I deny that request. You are welcome to explore on cross-examination any basis that you think you have for establishing bias of either witness.

MR. SUTCLIFFE: Okay. Your Honor, at this time, also, the defense would respectfully ask for an ex parte hearing regarding an out-of-state witness that the defense wishes to subpoena.

THE COURT: All right.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Would you leave the courtroom, please.

And for the time being, Mr. Avery, would you leave the courtroom also.

That's your investigator; right?

MR. REED: Yes, Your Honor.

(Ms. Duarte, Mr. Cugno, and Mr. Avery left the courtroom.)

MR. REED: We also wanted to make a report to the

Court ex parte with respect to the progress of the subpoenas and get some guidance perhaps from the Court.

THE COURT: Okay. Mr. Sutcliffe, when you speak at any point during the trial, please try to speak a little bit more loudly. The reporter is having difficulty hearing you.

MR. SUTCLIFFE: I will do that, Your Honor. Thank you.

THE COURT: Now, what was it that you wanted? The courtroom has been cleared. What do you want to bring to my attention?

MR. SUTCLIFFE: Yes, Your Honor.

I have a subpoena here. I appreciate the Court's comments Friday to me about my being prepared. Unfortunately, I was not as prepared as I could have been and should have been, and I respectfully ask that that last witness, Mr. Ramsey -- I have a subpoena here for him. I would like him to be brought back into this district. I have a declaration, which I have signed, to support this, if the Court would like to look at it.

THE COURT: What do you think you need to explore with him that you haven't explored?

MR. SUTCLIFFE: As I've laid out in my declaration, I believe that this witness will give -- he has direct testimony which he can give which will impeach either Mrs. Greenwood, who is going to take the stand today, or Agent Cugno, who is going

to take the stand later, regarding one or more e-mails or conversations that all three of us had as to the location of the defendant as far back as December of 2001.

The government's position was, they were not able to find me at this time and I was hiding.

And furthermore --

THE COURT: And how will Ramsey fit into that supposed issue of your defense, Mr. Sutcliffe?

MR. SUTCLIFFE: Mr. Ramsey initiated some type of an investigation through AT&T to determine the location of the accused.

I believe that he can provide direct testimony to show that Agent Cugno has perjured himself in statements that he has previously given to the Court in New Hampshire when the defendant was originally arrested. And I need him to impeach him -- Agent Cugno.

THE COURT: I think you should give copies of the proposed subpoena and your certification to the courtroom deputy. I'll have copies made. And I'll rule upon that motion later.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Anything else, Mr. Sutcliffe?

MR. SUTCLIFFE: No, sir.

THE COURT: Mr. Reed?

MR. REED: Your Honor, we wanted to give the Court a

report with respect to the progress of the subpoenas. We are making some progress. But with respect to several witnesses, we are not.

And we just wanted to get some guidance from the Court and perhaps also, obviously, from Mr. Sutcliffe, with respect to these witnesses, because I have a feeling that, with respect to one, Mr. Gary Winnick, that witness previously had been anticipated to be called in the first trial. And the government, at that point, I believe, had some kind of agreement with the law firm that represented him that if the subpoena was just dropped off at that law firm -- Christensen, Miller -- that Christensen, Miller would accept service of that subpoena on Mr. Winnick and the investigators didn't have to track him down. They would be cooperative. And the government would see to it, also, that he got here.

Well, that's not what happened in the service of the subpoena recently to Christensen, Miller concerning Gary Winnick.

And we perhaps need the government's assistance. Perhaps there is still this agreement that they have that if he's attempted to be subpoenaed, they can help us get Gary Winnick.

I didn't want to bring it to anybody's attention because the government doesn't know at this point that we want to call him, and I'm not sure what Mr. Sutcliffe wants to do in

that regard.

THE COURT: First of all, I am a hundred percent certain that the government, on the record, at some earlier proceeding -- I don't remember which one, Mr. Reed -- specifically said that they weren't going to be calling Mr. Winnick, and that any arrangements to involve the government or procure the government's assistance in serving Mr. Winnick would no longer be applicable.

I don't really remember when that was said. We can explore it with them, if you want. I don't know what you are asking me to do exactly.

MR. REED: Well, can we make an update with respect to some other witnesses, too, and get to Mr. Winnick later?

Can Mr. Cruz step forward, then, and indicate to the Court what's been going on?

THE COURT: Yes.

MR. CRUZ: Your Honor, Detective Victor Pietrantoni, P-i-e-t-r-a-n-t-o-n-i, has been served. The Law Offices of Christensen, Miller has been served. And Leslie McAfee also has been served. The two that haven't been served are Gary Winnick and Ben Mascardo, M-a-s-c-a-r-d-o.

THE COURT: Okay. Thank you for that report.

I anticipate you'll be hearing from those witnesses: Pietrantoni, McAfee and -- who was the third one that was served?

MR. REED: Christensen, Miller, the law firm. And I have heard from their firm.

But, Your Honor, the issue with respect to Mr. Winnick is this: I don't know if Mr. Sutcliffe wants to let the government know at this point that he's going to call Mr. Winnick in his case.

However, the government could be helpful in getting Mr. Winnick if we were to tell them now that we need him, because I think that they have some kind of relationship with that Christensen, Miller firm, in which they can call upon them to get Mr. Winnick. That's my point.

I'm just advisory counsel. Whatever Mr. Sutcliffe wants to do.

THE COURT: Let's hear from Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

I have no problem letting them know that I want him.

THE COURT: I didn't think you would.

Mr. Reed did the right thing by letting you make the decision.

MR. SUTCLIFFE: Thank you.

THE COURT: Here's what I'm inclined to do. I don't know that there is anything further I can do, having issued -- having authorized the issuance of the subpoena.

You are welcome to speak with counsel for the government, Mr. Reed, on behalf of Mr. Sutcliffe, to see

whether they have an arrangement, or if they don't, whether they are willing to explore or attempt to create an arrangement by which, in some fashion, directly or indirectly, Winnick can be served.

I don't think it's their obligation to. But I encourage you to question them as to the accuracy of my memory, that they specifically said, at some earlier time, that they weren't going to call him. They weren't going to insist on having him served.

My memory is subject to repeated error, at this advanced stage of my decline, so I could be wrong.

Anything further, Mr. Sutcliffe?

MR. SUTCLIFFE: No, Your Honor.

THE COURT: I'm going to take a brief recess, and I'll ask the clerk to bring the jury into the box.

You can bring the prosecutor back into the courtroom.

(Recess taken at 8:27 a.m. to 8:32 a.m.)

(Ms. Duarte, Mr. Cugno and Mr. Avery entered the courtroom.)

(Jury in.)

THE COURT: The case has already been called this morning.

Welcome back, members of the jury. I hope you had a good weekend. We are ready to resume on time. Thank you for being punctual.

We had a witness on the stand. Ms. Greenwood, I

remind you that you are under oath, and you have the obligation to -- a continuing obligation to testify truthfully.

Do you understand that?

THE WITNESS: Yes.

THE COURT: All right. You may proceed.

ELIZABETH GREENWOOD, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION (Resumed)

BY MS. DUARTE:

Q Good morning, Ms. Greenwood.

A Good morning.

Q Ms. Greenwood, when we adjourned on Friday, you had just looked at Exhibits 7 and 8. Do you remember that?

A Yes.

Q Why don't you go ahead and pull the binder so you can look at Exhibit 7 just in case you need it.

I'm going to ask now that we publish Exhibit 8 and that port 5 be enabled, please.

THE COURT: That port what?

MS. DUARTE: That port 5 be enabled.

BY MS. DUARTE:

Q If we could go ahead and open up Government's Exhibit 8, the electronic form, and take a look at it.

Ms. Greenwood, Government's Exhibit 8, which is there on the monitor before you -- go ahead and scroll down a little bit -- this is one of the documents that you saw on

"evilgx.com"?
A Yes.
Q And did you see this document before you saw it on the Internet?
A Yes.
Q And where was that?
A On my computer.
Q Which computer was that?
A My laptop.
Q The one that you used at work?
A Yes.
Q And was that document, do you remember, in -- that was on your laptop computer in a similar form as the form on the Internet that we're seeing in Exhibit 8?
A The format on my computer was slightly different.
Q What about the information?
A The information was the same.
Q And was it there as of June 2001, if you remember?
A Yes.
Q Why don't we -- right there, on the monitor, you'll see the information for what appears to be Joseph Clayton?
A Yes.
Q And is that an individual that you had information on?
A Yes.
Q Below Mr. Clayton's name, is that his title there,

President and CEO of Global Crossing?
A He was President and CEO of Global Crossing North America, which was a subsidiary of Global Crossing Limited.
Q That is actually what's indicated on the exhibit, is it not?
A Correct.
Q And that address below it, 180 South Clinton Avenue, Rochester, New York, is that the office address?
A Yes.
Q And then down here where we see the name Marion Heaton, who is that, do you know?
A That was his assistant. I should maybe also mention he was also a director. That's not listed here. But he is a director -- or was a director also.
Q Okay. In addition to that title there?
A Right.
Q All right. And what about further down where we see Janet or Jan?
A That's his wife's name.
Q If we could scroll down just a little bit. Stop. Right up there at the top of your screen, 11 -- excuse me, 10-11-49?
A That would be his birth date.
Q And you had all that information on your computer as well?
A Yes.
Q All right. Ms. Greenwood, did you see more social

security numbers -- excuse me. Did you see more personal information, other than what we're looking at in Exhibit 8, on the Internet as well?

A Yes.

Q Did you see additional information in the fall of 2001?

A Yes.

MS. DUARTE: Your Honor, permission to publish Exhibit 10 previously admitted?

THE COURT: Granted.

BY MS. DUARTE:

Q Ms. Greenwood, in just a minute, I'm going to have you take a look at the monitors and also Exhibit 9 there in the book in front of you, and ask you about a document.

Ms. Greenwood, Exhibit 10 is now on the monitors and Exhibit 9 is in the folder in front of you. Have you seen this screen that we see on the monitors before?

A Yes.

Q And why don't we scroll down just for a minute.

Can you also see the printout in its entirety, which is Exhibit 9 before you?

A Yes.

Q Have you seen this information, that is in Government's Exhibit 10, on the monitor before?

A Yes.

Q You are looking at Exhibit 9 in the exhibit book. Have

you seen that information as well?
A Yes.
THE COURT: Exhibit 9 is simply the printed version of what is displayed electronically as Exhibit 10; is that correct?
MS. DUARTE: Correct, Your Honor.
Q These names that are up on your monitor in Exhibit 10, starting with David Walsh, going down from there, do you recognize any of these names, Ms. Greenwood?
A Yes.
Q Who are these names? Why are these names familiar to you?
A They are all pretty senior people with Global Crossing.
Q Were they with Global Crossing at the time that you saw this information on the Internet?
A Yes.
Q Now, if we could scroll all the way down to the bottom.
And, Ms. Greenwood, is it true that these people are familiar to you from Global Crossing for the remainder of this document, Exhibit 10, as well?
A I don't know every single person on the list, but I know the majority, more than -- you know, I know more than half the people on the list.
Q Okay. Did you know every single employee of Global Crossing?
A No.

Q All right. And if we look -- down at the bottom, "As time passes, this will only get worse," if we could look at that link.

Do you remember seeing that link before on the Internet?

A Yes.

Q Where does that link take us, if you look at the monitor there?

A It takes you back to the document that was called "Boardlabels."

Q That was a document that we saw before in Exhibit 8 --

A Yes.

Q -- or I should say a similar document; right?

A Similar, yes. It's spaced a little differently.

Q It's not exactly the same, is it?

But this document -- does this document that we're looking at now, which is the link from "This will only get worse," does this have additional information from names and social security numbers?

A It looks basically the same as Exhibit 7. I'm not sure if it's identical to Exhibit 7 or it's got different people.

Q Right. My only question was, but it also has dates of birth; correct?

A Correct. Yes.

Q And spouses' names, addresses, things like that?

A Yes.
Q If we could go back to the homepage, or the page we were on, and scroll back up to the top, or you can page back up.
If we could look at the link on the social security card for a minute.
THE COURT: What exhibit are you looking at?
MS. DUARTE: This is Exhibit 10, Your Honor.
THE COURT: And you get to that link where?
MS. DUARTE: Clicking on the social security card.
Q If we could go back to the main page, we will do it again.
Have you seen this article before, Ms. Greenwood, as well?
A Yes.
Q Do you remember seeing it on "evilgx.com"?
A Yes.
Q Did you see it more than once?
A Yes.
Q Did you see it in other locations as well as when you clicked on a social security card?
A Yeah.
Q What, if anything, did the placement of this article linked to the pages of names and personal information signify to you?
A It signified that there was an understanding by the person who was posting these things that the posting of social

security numbers and birth dates could lead to identity theft.

Q Did you recognize the numbers that we've been looking at in Exhibit 10 as social security numbers?

A Yes, they were.

Q Did you actually verify some of those numbers with Global Crossing?

A Yes.

Q Now, in addition to what we've seen already in Exhibits 8 and 10, did you see additional social security numbers and identifying information on "evilgx.com"?

A Yes.

Q And did you notice whether or not the information you were seeing in the form of social security numbers, whether the volume was growing?

A Yes, it was growing. Over time, more and more was being posted.

Q Look, if you will, at Exhibit 11, which is in front of you in your binder. Exhibit 11 is pages 1 through 57.

Have you seen those pages before?

You can take a quick look through them, if you'd like.

Have you seen these pages before, Ms. Greenwood?

A Yes.

Q And where did you see them before?

A On the "evilgx" website.

Q Are those printouts of Web pages that you are looking at there in front of you?
A Yes.
Q Do you remember approximately when you saw these printouts of pages?
A It was in late 2001.
Q Now, the names in pages 1 through 49, do you recognize any of those names?
A Yes.
Q The names that you recognize, who are they?
A They are employees -- or they were. They were employees, but not senior executive-type employees like the prior list. These are lower-level employees.
Q Was that of Global Crossing?
A Yes, of Global Crossing.
Q And then pages 50 through 57, did you also see those pages on the Internet?
A Yes.
Q Was that around the same time as the previous pages?
A Yes.
Q So are the printouts contained in Exhibit 11 a fair and accurate representation of portions of the website "evilgx.com" that you remember seeing on the Internet?
A Yes.
MS. DUARTE: Move to admit Exhibit 11, Your Honor.

THE COURT: One moment. Pages 50 to 57, you just told me and the prosecutor you saw those on the Internet.

Where on the Internet, what website?

THE WITNESS: On the "evilgx.com" website.

THE COURT: The exhibit will be admitted in its entirety.

(Government's Exhibit 11 received.)

MS. DUARTE: Your Honor, I ask that port 1 be enabled, please.

THE COURT: All right.

BY MS. DUARTE:

Q Ms. Greenwood, I have put page 1 of Exhibit 11 up there on the monitor in front of you. Is this the list that you recognized?

A Yes.

Q I'm going to point to a couple of -- first of all, I'm looking at "name." Is that the name of -- some of which you recognize?

A Yes.

Q And then there is a column to the right of it called "SSN." Do you see that column?

A Yes.

Q Did you understand these columns to contain social security numbers?

A Yes. We had them checked with the Global Crossing human

resources records. They are social security numbers. In some cases, they are foreign tax ID numbers.

Q That's what I was actually going to ask you about next.

Go ahead down here to Ann Adam. Do you see that number associated there, that series of letters and numbers, YX990381B, associated with Ann Adam?

A Yes.

Q Do you have an understanding as to what that series of letters and numbers is?

A Yes. That's a tax ID number for an employee who is based in Europe.

Q Did Global Crossing have a number of employees that were based outside of the United States?

A Yes.

Q And did you see a number of -- combinations of letters and numbers on this list that identified such employees?

A Yes.

Q How many pages, such as page 1 that's up on the monitor, how many pages of names and numbers are contained in Exhibit 11 again?

A Let's see. About 48 and a quarter pages.

Q And all look similar to what we see on the monitor in terms of their organization?

A Yes. It's an alphabetical listing. So the last page has employees with the name -- the last name starting with "Z."

Q Had you seen a list, an alphabetical listing, such as the one we are looking at, in similar form, before you saw it on the Internet?
A I don't recall if I saw this. I don't know -- I don't know that this was on my computer.
Q Okay. All right. Look, if you will, at page 56, which should be in your Exhibit 11.

I've put a portion of page 56 up on the monitor. Did you also see this picture on the Internet when you accessed the site?
A Yes.
Q Do you recognize the person in this picture?
A Yes.
Q Who is that person?
A Steven Sutcliffe, the defendant.
Q And the sign he is holding, did you see that sign before?
A Yes.
Q When did you see that sign?
A That was the sign he was picketing with in front of the Global Crossing building.
Q Ms. Greenwood, did you see the documents that you looked at in Exhibit 11 -- actually, all the documents in the exhibit -- did you see them previously in electronic form?
A Yes.
Q Did you view them in electronic form?

A Yes.
Q In preparation for your testimony?
A Yes.
MS. DUARTE: Your Honor, permission to approach and show Exhibit 12?
THE COURT: All right.
BY MS. DUARTE:
Q Ms. Greenwood, do you recognize Government's Exhibit 12, which is a floppy disk I just showed you the outside of?
A Yes.
Q Have you seen the contents of Exhibit 12 before?
A Yes.
Q And did you previously recognize the contents of Exhibit 12 as the same as Exhibit 11, only in electronic form?
A Yes.
MS. DUARTE: Move to admit Exhibit 12, Your Honor.
THE COURT: 12 will be admitted.
(Government's Exhibit 12 received.)
MS. DUARTE: And if we could publish Exhibit 12.
THE COURT: All right.
MS. DUARTE: If we could enable port 4, please. I'm sorry, Your Honor. Port 5. My mistake.
Q Ms. Greenwood, up on the monitors in front of you, is this Exhibit 12?
A Yes.

Q This is the list of names and SSNs that we've already seen?
A Yes.
Q Do you remember this link that I'm pointing to here, "Seeya. Wouldn't want to beya"?
A Yes.
Q Why don't we go ahead and click on that link.
We have here a letter. Do you remember seeing this letter on the Internet?
A Yes.
Q If we could scroll down.
Now, does this letter -- what is this letter, just in general?
A It's a notice of termination letter advising about severance, I believe.
Q Is it similar to letters you've seen sent out by Global Crossing?
A Yes.
Q But not identical; right?
A It looks like the form.
Q Okay. In particular, drawing your attention to this part down here, which I'm underlining on the monitor --
A Oh, yeah.
Q -- it says, "Bugger." Was that actually part of the letter, as far as you know?

A No, the form wouldn't have had that. And same with, it wouldn't have had, on the previous paragraph, "Bummer for you, huh?" It wouldn't have said that.

Q So there are some portions --

A Yeah. It looks like at the end of each paragraph there is a little something extra added.

Q All right. And down here, this link, "Global HR Department," if we could click on that link.

This appears to be another letter?

A Yes.

Q Do you remember seeing this on the Internet?

A Yes.

Q If we could click on "Employees."

Ms. Greenwood, if you could read out loud that first part of the monitor starting with "recently."

A "Recently, we have heard through the grapevine that some of the people in the U.S. might feel uncomfortable 'seeing a number or a combination of numbers on this domain.'"

Q You can stop there.

When you click on "uncomfortable," you are familiar with this article; correct?

A Correct.

Q You'll see --

A It's the same article we saw before.

Q Okay. Now, I want to go back, if we could, to the

homepage. Actually, I'm not going to ask any more questions about Exhibit 12.

Did Global Crossing initiate civil litigation against the defendant?

A Yes.

Q Approximately when was that, if you remember?

A October of 2001.

Q What was the point -- well, were you involved in any way in the litigation?

A Not really, initially. The human resources department started. They retained Christensen, Miller, an outside law firm, to handle the litigation.

Q Christensen, Miller are the first two names of the law firm?

A Right.

Q And there are more partners' names?

A Yeah. I can't remember exactly.

Q But were you aware of the litigation?

A Yes.

Q And as you understood it, what was the point of the litigation?

A The goal, as I know it, was to get the personal information off the website -- or off the Internet.

Q By "personal information," what is it that you mean?

A They were trying to get the social security numbers, birth

dates, home addresses, and some other information that had to do with individual employees off the website. Salary information.

Q Why was that?

A Employees were very, very upset about it. And they also felt that, for the senior executives, it was a risk to have their personal information published like that. But it was, you know, a risk for everyone, I guess. The employees were very, very upset.

Q Were you contacted personally by employees?

A The human resources department set up two HR employees to take phone calls and answer questions. They sent out a letter to all employees to notify them.

When the human resources employees couldn't handle it, they called me.

Q Let me stop you only because I want to make sure there is a question pending when you are answering me.

A Sorry.

Q You said that there were two -- let me break it down here.

You said that there were two employees at the human resources that were set up to take queries and concerns from employees?

A Yes.

Q Was it your understanding that this was solely based on -- that these queries and concerns were solely about the contents

of the website "evilgx.com"?
A Yes.
Q This was a result of the information on the website?
A Right.
Q You said that you were contacted by human resources about it when?
A Well, sometimes the employees weren't satisfied with the answers and responses they would get from human resources, and so the two human resources employees who were based in New Jersey and Rochester would refer people to me if they had ongoing concerns.
Q Was that as a part of your position in the legal department?
A I guess so, yeah. It was -- I -- I think, primarily, I was referred employees who were threatening to sue Global Crossing over the fact that this information was being published on the website.
Q Now, you mentioned outside lawyers from the firm of Christensen, Miller. Do you remember the names of the attorneys involved in the litigation?
A Initially, Mark Block was handling the civil litigation, and then subsequently Mark Labaton was handling the civil litigation.
Q Do you remember seeing -- or did you ever see the names of these two attorneys on the website "evilgx.com"?

A Yes.
Q Did you see any other information regarding these two men?
A Yes.
Q What did you see?
A Well, for Mark Block, it had his wife's name and his children's name, and then I think it had three properties that he owned, and his social security number. It may have had his birth date. I can't recall.
Q What about Mark --
A It had also a Yahoo! map, like you click through to Yahoo! Maps so that you could see how to get to these properties.
Q What about Mark Labaton?
A Mark Labaton had a page that said it was "deadicated" to him, and that was spelled d-e-a-d-i-c-a-t-e-d, so like "dead," "deadicated" to him. Then, I believe, it had his social security number and home address.
Q And you remember seeing that on "evilgx.com"?
A Yes.
Q Now, besides Global Crossing employees and the outside attorneys, did you see any names -- other names that you recognized on the website "evilgx.com"?
A Besides the employees and the attorneys?
Q Yes.
A Yes.

Q Okay. For now let's concentrate on the month of October 2001.

Do you remember seeing another name that you recognized on the site during that time?

A Yes.

Q Whose name was that?

A It was the name of the process server Tracy Hall.

Q And what stage, if any, if you remember, of the litigation that you've described were you in at around the time you saw her name on the Internet?

A Mark Labaton had been successful in court in getting a preliminary injunction against the posting of this information that had come from Global Crossing, so the personal identification information. And Tracy Hall was retained by Christensen, Miller to serve the preliminary injunction on Steven Sutcliffe.

Q So she was retained kind of like a process server?

A She was a process server. That was my understanding.

Q And you were aware at the time of her involvement at that stage in the litigation?

A I wasn't aware of her until her name appeared on the website. And then I spoke with Mark Labaton, and he told me that she was the process server.

Q If you remember, describe what you first remember seeing on the website regarding Tracy Hall.

A It was a threat, something about how he was going to "send her back to the hell from which she came."

Q Look, if you will, in the binder at Exhibit 13.

Have you seen Exhibit 13 before -- and that is 13 pages -- that is in front of you?

A Yes.

Q And where have you seen Exhibit 13?

A On the "evilgx.com" website.

Q Are these printouts of pages that are from the website?

A Yes.

MS. DUARTE: Your Honor, move to admit Exhibit 13.

THE COURT: 13 will be received. It's admitted.

(Government's Exhibit 13 received.)

BY MS. DUARTE:

Q Ms. Greenwood, did you ever see printouts -- these printouts that you are looking at in Exhibit 13, did you ever see them in electronic form?

A Yes.

MS. DUARTE: Permission to approach with Exhibit 14?

THE COURT: Granted.

BY MS. DUARTE:

Q Ms. Greenwood, I have just shown you Exhibit 14, which is a floppy disk. Do you recognize it?

A Yes.

Q How do you recognize it?

A You showed it to me previously when we were preparing for trial.
Q Have you seen its contents?
A Yes.
Q Does that disk, Exhibit 14, contain an electronic copy of the printed pages contained in Exhibit 13?
A Yes.
MS. DUARTE: Your Honor, move to admit Exhibit 14.
THE COURT: 14 is admitted and you may publish it.
MS. DUARTE: Thank you.
(Government's Exhibit 14 received.)
BY MS. DUARTE:
Q If we could go ahead and take a look at the contents here.
Ms. Greenwood, I'm going to draw your attention here to the first part, on the monitor, of this. If you could go ahead and read it out loud.
A "Tracy, Tracy, Tracy. You like to make threats against women and young children. Do you really think I am just some computer geek? You are not even close."
Q Okay. Let me draw your attention here to the last paragraph. If you could read that.
A "Too close, Tracy Hall. If you call this house again and threaten me or my family or even appear near me or my family, I will personally send you back to the hell from which you came."
Q Is that what you remember seeing on the Internet?

A Yes.
Q And if we could take a look at the links. Let's go to, "You stink (sic) seeing that number is bad."
Where did this link take us, Ms. Greenwood?
A That took us to the information on Mark Block, the attorney in the civil trial -- the first attorney in the civil trial.
Q Is this information that you remember seeing on the Internet?
A Yes.
Q And this information on Mark Block, it appears to have his name here and what else?
A Well, I think Marjorie Block is his wife's name, and then his birth date, his social security number, it tells you that he's probably from Mississippi.
Q Go ahead.
A Then it's got these other names again, aliases -- I'm not sure what that is -- home address, and that was his home address; phone number --
Q Now, let me stop you and ask you, you had talked earlier about addresses that had links to maps.
Is this the kind of thing you are talking about that shows on the screen for the address of 1618 6th Street?
A Yes. That probably links to Yahoo! Maps showing where that is.

Q Why don't we go ahead and take a look at that link, and it's a Yahoo! map. Is that what you remember seeing?
A Yes.
Q Does that appear to be a map to the address?
A Yes.
Q That's the address that the link was made out to; correct?
A Correct.
Q If we could go back to the Mark Leonard Block document and scroll down. And then we have other addresses. If we could go ahead and check the "Clark Lane" link right here. Scroll down.

Is this another map such as the maps you were discussing?
A Yes.
Q There is one more. If we could go back.

We see a third map for the third address linked. And this is what you understand to be another address associated with Mark Block?
A Yes.
Q If we could go back to the "Mark Block" and scroll down, Ms. Greenwood, I'm going to highlight a part on the screen here. Why don't you go ahead and read starting where it says "vehicles."
A "Vehicles: Omitted for the time being. Bank accounts: Omitted for the time being. Credit card numbers: Omitted for the time being. Miscellaneous assets: Omitted for the time

being."
Q Okay. Now, all the way down -- we are already there -- at the bottom of the page, here's a link "Tell the rest of the associates we will give them a one-time special deal." Go ahead and click on that link.
And who is this, Ms. Greenwood, Mark Labaton?
A He was the attorney who took over the civil litigation.
Q Did you understand him to be an associate of Mark Block?
A Yes. They both worked at Christensen, Miller.
Q It has here some information from -- do you recognize where that information would come from, Ms. Greenwood?
A That might come from the State Bar website. That's public information.
Q And then down here at the bottom, what does that say?
A "Mark, welcome to the team. We will be publishing your personal information as well shortly. Please be patient as there are several others in front of you at the moment. I am sure you understand."
Q Okay. Now, did you understand that Mark -- when did Mark Labaton come onboard the litigation? Was that after Mark Block?
A Yes.
Q Is that your understanding of the "welcome to the team" reference?
A I think so, yeah.

Q Why don't we go back to page 1, the original, and I'm going to circle a link here. "It can get much, much worse." Why don't we go ahead and see where that link goes.

Again, we have the social security article; is that right, Ms. Greenwood?

A Yes.

Q All right. We are done with Exhibit 14.

Ms. Greenwood, did there come a time when you saw Ms. Hall addressed in a different context than the one that we have just looked at?

A Yes.

Q Approximately when was that, do you remember?

A I think she came up again in January of 2002.

Q At this time were you still looking at the website regularly?

A Yes.

Q By "website," I mean "evilgx.com".

A Correct.

Q Were you looking in particular for new things that came up?

A Yes. Global Crossing was monitoring the website at that point, and so when new things would come up, I would be told and I would look at it.

Q Are you referring at this point to Andrew Ramsey's downloads?

A Yes.
Q So you were in communication with him about what was coming up on the site?
A Yes. Because we had the preliminary injunction, but it wasn't being followed. We had a preliminary injunction saying that the information from Global Crossing was supposed to be taken down, but it wasn't being taken down. And, in fact, new information was going up.
Q So you were, in part, responsible for seeing what the status of that was?
A Yeah.
Q You said that in approximately January 2002 you saw new information on Ms. Hall.

What is it, in general, that you saw, do you remember?
A A threat to kill her.
Q Okay. And was this on the Internet site "evilgx.com"?
A Yes.
Q Look at Exhibit 15, if you will, in the binder in front of you. Go ahead and look through it for just a minute. I'm going to find my copy here.

Ms. Greenwood, Exhibit 15 is nine pages. I'm going to actually direct your attention to pages 1 through 5 only and have you take a look at those pages.
A Okay.

Q Have you seen pages 1 through 5 of Exhibit 15 before?
A Yes.
Q Where did you see -- excuse me, where did you see pages 1 through 5 of this exhibit?
A On the "evilgx" website.
Q "evilgx.com"?
A Yes.
Q Are pages 1 through 5 a fair and accurate representation of what you saw on the "evilgx.com" website in January?
A Yes.

MS. DUARTE: Your Honor, move to admit pages 1 through 5 of Exhibit 15.

THE COURT: Will you be seeking to admit the remaining pages later?

MS. DUARTE: Yes, Your Honor.

THE COURT: Okay. Pages 1 through 5 and only pages 1 through 5 are admitted.

(Government's Exhibit 15(1-5) received.)

MS. DUARTE: If I could ask that port 1 be enabled.

THE COURT: Yes, that can be done.

MS. DUARTE: Thank you, Your Honor.

THE COURT: Don't you have to authenticate Exhibit 16?

MS. DUARTE: Your Honor, I was going to do that with another witness.

THE COURT: All right.

BY MS. DUARTE:

Q Let me see if I can zoom this out, Ms. Greenwood. Then we'll take a look at it.

THE COURT: I see. You are using the ELMO. Okay.

MS. DUARTE: Yes, Your Honor. I'm sorry.

Q Ms. Greenwood, I've put page 1 of Exhibit 15 up there. It's difficult to tell, but you can look at your printed copy there. See, up in the upper left, right here, where I've circled, what does that say?

A "Tracy, let's talk."

Q Okay. And then this Web page goes on to address Tracy?

A Yes.

Q Okay. And bringing you down to the bottom here, I've circled a phrase that says, "I will kill you."

Is that the phrase that you were discussing that you said you saw on the Internet?

A Yes.

Q Now, page 2, that you've already identified here, is another version -- appears to be another version of something that we've seen previously; right?

A Right.

THE COURT: What does that mean?

THE WITNESS: It's similar to one of the earlier exhibits.

THE COURT: You need to be more precise, please, in your question.

MS. DUARTE: Okay. I'll withdraw that question, Your Honor, and just continue.

Q Drawing your attention here to what I have underlined, which is, "Straight back to the hell from where you came," have you seen that reference before -- had you seen that reference before on the website?

A Yes.

Q And that was also addressing Ms. Hall?

A Yes.

Q And page 3, which I'm putting up here, why don't you go ahead and read, if you will, where it starts with "In America today."

A "In America today, all you need is a name and a last known location to obtain anyone's SSN. If you have their date of birth (sic), your job is even easier."

Q All right. Lastly, going to page 4 up here on the ELMO, do you remember seeing this list that is page 4 of Exhibit 15?

A Yes.

Q And why don't you read right here, please, where it says, "Let the games begin."

A "Let the games begin once again until death."

Q Who is on that list below it?

A Mark L. Block and Mark I. Labaton.

Q If we could scroll down. Right here, near the bottom, where it says, "Space below reserved," this string of names here -- Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro -- do you recognize that reference?
A Yes. That's the law firm where Mark Block and Mark Labaton worked.
Q Ms. Greenwood, did you ever see the Chairman of the Board of Global Crossing addressed by Mr. Sutcliffe?
A Yes.
Q Do you remember approximately when that was -- well, let me ask you this: Was it more than once?
A Yes.
Q What's the name of the Chairman of the Board -- what was it at that time?
A Gary Winnick.
Q Did you see references to Mr. Winnick on the website?
A Yes.
Q Now, were you in personal contact with Mr. Winnick during this time, in the late fall and early spring of 2001?
A I was in contact with one of his security guards.
Q I should say late fall 2001 and early spring 2002. I'm sorry.
You were in contact with one of his security guards?
A Correct.
Q And did you inform the guard, or Mr. Winnick through the

guard, at any point when you saw anything about him on the website that you found alarming?
A Yes.
Q Did there come a time when you saw what you would consider to be an alarming reference to Mr. Winnick on the website?
A Yes.
Q What was the reference, in general?
A It talked about going to his house and being familiar with his security system and his dogs.
Q And do you remember approximately when that reference came up?
A I think it was January or February 2002.
Q And did you see this reference on the Internet?
A Yes.
Q Where on the Internet?
A On the "evilgx.com" website.
Q If you could look at Exhibit 17, which is back behind you, and it consists of 10 pages. If you could take a look through them. I'm going to ask you if you have seen these pages before.
A Yes, I have seen them.
Q Where did you see these pages before?
A On the "evilgx.com" website.
Q Does page 1 in particular reference the description that you just gave us of what you found alarming?

A Yes.
Q Do these printed pages that are in front of you as Exhibit 17 contain a fair and accurate representation of what you saw on the "evilgx.com" website?
A Yes.
MS. DUARTE: Your Honor, move to admit Exhibit 17.
THE COURT: 17 will be admitted. It's received.
(Government's Exhibit 17 received.)
BY MS. DUARTE:
Q Ms. Greenwood -- let's go ahead and put up page 1 of Exhibit 17 on port 1.
Page 1 is up there. Now, Gary Winnick, Chairman, is at the top. Is this the gentleman we've been discussing?
A Yes.
Q And his home address -- did you know his home address?
A Yes.
Q Was that it?
A Yes.
Q What about this information from home address down? Is this Mr. Winnick's information?
A Yes.
Q All right. And then below that, Mr. Winnick is addressed?
A Yes.
Q Ms. Greenwood, have you seen the pages contained in Government's Exhibit 17 in electronic form?

A Yes.

MS. DUARTE: Your Honor, permission to approach with Exhibit 18?

THE COURT: Granted.

BY MS. DUARTE:

Q Ms. Greenwood, I just showed you Government's Exhibit 18. Do you recognize it?

A Yes.

Q How do you recognize it?

A You showed it to me in preparation for trial.

Q Have you seen the contents of Exhibit 18, which is a floppy disk?

A Yes.

Q And are the contents the electronic version of Exhibit 17, which we've just reviewed?

A Yes.

MS. DUARTE: Your Honor, move to admit Exhibit 18.

THE COURT: 18 will be admitted. It's received.

(Government's Exhibit 18 received.)

BY MS. DUARTE:

Q If we could look at Exhibit 18 on port 5, please.

THE COURT: All right. Enable port 5, please.

MS. DUARTE: Thank you.

Q Ms. Greenwood, we see now on the monitors, in electronic form, what we just saw on Exhibit 17. If we could go ahead and

scroll down. Okay. Down here at the bottom, I'm circling where it says "PS." Why don't you go ahead and read the "PS," if you will.

A "PS, keep your dogs @ bay. I am now armed. That goes double for the psycho chick and the $450 an hour attorneys. I know everything about your Class 1 security regions and Class 2 security regions."

Q If we could scroll up just a little bit. I'm sorry, my fault. Scroll down.

This sentence here that ends with "mean" and starts with "until then," could you read that, please?

A "Until then, I will save the best for last, if you know what I mean."

Q Let's go back up, if we could, to the address, 355 North Saltair, Los Angeles.

Ms. Greenwood, do you know this to be an address of Mr. Winnick?

A Yes.

Q Which address is that?

A That was his home address.

Q If we could go ahead and click on that link.

What is the map that we are now seeing?

A It's a map to his home.

Q If we could go back to page 1, where we were at, and we are going to go to the -- scroll up -- before we do that, let's

scroll down just a little bit. Stop there.

Starting here, this paragraph that I have highlighted with "Can you think," would you read that, please?

A "Can you think of a straight dollar figure that will settle this matter between us men? How about we start with the money some of the employees from GX stole from my child's mouth unlawfully?"

Q If we could now look at this link, "Employees." Go ahead and click on that, and scroll down just a little bit. Stop there.

Up at the top of your screen, "We will be publishing," would you go ahead and read there, Ms. Greenwood?

A "We will be publishing everyone's SSN whose names appear on the pages below shortly. Stay tuned. If you are a previous employee, you may be entitled to an exemption. Write us for details."

Q Where it says "details" here, there is an asterisk.

Could you go ahead and read what the asterisk says right there where I have indicated?

A "You must be able to prove you no longer work for the company or send us a file. That always works. Meanwhile, take our poll."

Q If we could scroll down on the names and birth dates, do you recognize any of these names?

A Yes.

Q Who are these people, if you know?
A They were employees of Global Crossing.
Q And their date of birth follows?
A Yes.
Q Now, if we could scroll just to the bottom of the page, that is a page of names and birth dates; right?
A Correct.
Q Now, if we could go back up to the link that's "Employees" and click on that.

Ms. Greenwood, if you could read this portion starting with "Who" that I have highlighted on the monitor.
A "Who is responsible for corporate conduct? The Story of the Rudderless Ship by Steven: Sutcliffe."
Q If we could scroll down, stop there. Thank you.

And what does this appear to be that starts "Once upon a time," Ms. Greenwood, without actually reading the entire text? Have you read over this --
A Yes. It's sort of an autobiography.
Q Were you able to tell of whom that autobiography is?
A Well, it was of Steven, colon, Sutcliffe.
Q Steven Sutcliffe?
A Yeah.
Q All right. We are done with Exhibit 18.

Ms. Greenwood, did you become aware of any e-mails that referenced "evilgx.com"?

A Yes.
Q In front of you in the binder there, if you will look at Exhibit 21, first.
Without telling me what it is yet, do you recognize Exhibit 21?
A Yes.
Q That's a two-page exhibit. Do you recognize both pages?
A Yes.
Q Without telling me the contents yet, what do you recognize these pages that make up Government's Exhibit 21 to be?
A They were e-mails from me.
Q And who were they to?
A They were to Jeff Cugno of the FBI.
Q Now, did they contain -- what did they contain?
A They were informing Jeff that there were some e-mails out there that appeared to be from Gary Winnick, but it was my understanding they were not.
Q These e-mails to the FBI that you are discussing, do those actually contain copies of the received e-mails from the Gary Winnick account?
A Yes. I forwarded them.
MS. DUARTE: Your Honor, move to admit Exhibit 21.
THE COURT: 21 will be admitted. It's received.
(Government's Exhibit 21 received.)
MS. DUARTE: If I could ask that port 1 be enabled.

THE COURT: Okay. Please enable it.

BY MS. DUARTE:

Q Ms. Greenwood, I have up on the monitor a portion of the first page of Exhibit 21, starting with "Original message from."

Is this that you recognize on the monitor the e-mail that you forwarded?

A Yes.

Q Where did you receive this e-mail here that's on the screen?

A I received it on my e-mail. I can't recall who sent it to me. I may have received it directly or it may have been forwarded. I can't recall.

Q Was it your understanding that either by you or someone else this e-mail was received by Global Crossing?

A Yes.

Q Would you go ahead and read from the "from" line here and down?

A Sure. "From Gary Winnick," and then in the brackets it's showing the actual e-mail address that it came from.

Q What is that e-mail address?

A "gary_winnick2002@yahoo.com".

Q And when does it show it was sent?

A Sent Tuesday, February 5th, 2002, at 10:34 a.m. "To all my new friends at 'anywhere.com,' Subject: Stop by and say hi

sometime."
Q What is contained within the e-mail?
A It's a link to the "evilgx.com" website. So if you click on it, you go to the website.
Q Looking at page 2 of the same exhibit, Exhibit 21, what we're looking at now, is this also an e-mail that was received by Global Crossing?
A Yes.
Q And the e-mail address that it is from, is that the same as the one you have just described?
A Yes.
Q What is the "sent" date on this e-mail?
A Tuesday, February 26, 2002, at 2:00 a.m.
Q What is the subject -- I should ask you, what does the "to" line indicate right here?
A It says, "To: 'prnightmare@gx.com'."
Q What is the subject?
A "Global public relations nightmare."
Q What is in the body of the e-mail right here that I have circled?
A It's a link to the "evilgx.com" website now being hosted on the FreeServers website, is what -- it has that extra name in there as a new host.
Q Look at Exhibit 22, also right there in your binder. Without telling me the contents, could you tell me if you

recognize Exhibit 22?
A Yes.
Q Both pages of it?
A Yes.
Q What is Exhibit 22, just in general?
A It's an e-mail purporting to be from Richard Saly to me.
Q Is that also true for the second page of Exhibit 22?
A Yes, as well as a forward from me to Jeff Cugno at the FBI.

THE COURT: This is the second time you said it was to Jeff Cugno.

MS. DUARTE: I was just about to ask her that, Your Honor.

THE COURT: Look at that carefully. Are you sure of that?

THE WITNESS: Yes. That was his e-mail address, as I understood it, the "swana".

MS. DUARTE: I can clarify, Your Honor.

THE COURT: It's her testimony. Move on to your next question.

MS. DUARTE: Okay.

Q Do you recognize both pages 1 and 2 as containing e-mails that were sent to you regarding "evilgx.com"?
A Yes.

MS. DUARTE: Your Honor, move to admit Exhibit 22.

THE COURT: 22 will be admitted.

(Government's Exhibit 22 received.)

BY MS. DUARTE:

Q Ms. Greenwood, I've put on the ELMO page 1 of Exhibit 22. Is this the message that you received?

A Yes.

Q This is an e-mail; correct?

A Yes.

Q And the "to" line reads, "Greenwood, Elizabeth." So did you receive this e-mail directly?

A Yes.

Q And from whom is this e-mail?

A It says it's from Richard Saly, but I spoke with Richard and he said it wasn't from him.

Q Without telling me what you talked with Mr. Saly about, what is the actual address that the e-mail is from?

A "richardsaly@yahoo.com".

Q When was it sent?

A Saturday, October 27, 2001, at 12:14 a.m.

Q What is the "subject" line?

A "For every site you manage to take down, two more will go up."

Q And the contents?

A "Don't you just love freedom of speech."

Q Actually, "Freedom of the speech"; correct?

A "Freedom of the speech."
Q Directing your attention to page 2 of that same exhibit, Exhibit 22, is this also an e-mail that you received?
A Yes.
Q Where was this e-mail from?
A Again, it said it was from "richardsaly@yahoo.com".
Q When was it sent?
A Monday, February 25, 2002, at 11:28 p.m.
Q What does the "subject" line read?
A "You like to censor... then let's play a game I call fetch."
Q If you could go ahead and read the body of the e-mail that I have circled.
A "You like to censor, Liz. Let's play a game I call fetch. Ready, fetch." And then it's got the "evilgx.com" link on FreeServers.
Q Is it your understanding that if you actually -- when you would receive the actual electronic form of the e-mail, if you clicked on this link, do you know what would happen?
A It would take you to the "evilgx" website.
Q Ms. Greenwood, did you ever see your own name on the site --
A Yes.
Q -- that we've been discussing?
A Yes.

Q And just, in general, when did you first start seeing references to yourself?
A First was probably back in October or November of 2001.
Q What did you see?
A There was a link that you could click on my name and it had my home address and social security number and a letter that was allegedly from me, but it wasn't. Something about having a "bad hair day."
Q And at some point did you see more information than that that you recognized about yourself on the website?
A Yes.
Q Approximately when was this?
A About March of 2002.
Q Tell me what you saw that you remember.
A There was a picture of me and my daughter, and there was -- at first, there was some scary music, like from "Halloween," some words; and later, it had a voiceover from another scary movie.
Q Had that been -- what you just described, had that been on the site before?
A No.
Q And you first saw it in, you said, March of 2002?
A That's my recollection, yeah.
MS. DUARTE: Your Honor, permission to publish Exhibit 20 previously admitted?

THE COURT: Granted.

MS. DUARTE: May I ask, Your Honor, that port 4 be enabled?

THE COURT: All right.

MS. DUARTE: Why don't we go ahead and turn up the sound a little, if we could.

(Playing audio.)

BY MS. DUARTE:

Q Ms. Greenwood, is that what you remember -- we have just heard, "Welcome to my domain. This is all far from over" and some accompanying music. Is that what you remember hearing on the site when you saw the references to yourself?

A Yes.

Q And you said that that was scary music?

A Yes.

Q How did you feel when you heard it?

A Scared.

Q I'm going to draw your attention down -- let's scroll down a little bit to where it says, "I am coming to collect from your personally."

Ms. Greenwood, I have on the screen -- and this is the first index page of this exhibit -- Exhibit 20, and I'm circling a reference that starts with "Elizabeth." "Elizabeth, you now owe me." Could you go ahead and read that?

A "Elizabeth, you now owe me $15,000 for the violations of

the contract, and I am coming to collect from you personally."

Q You can stop there.

Do you know what that reference to owing you money -- excuse me, to you owing money is about?

A Well, I think at the beginning of his website, he has something like a contract that you are supposed to accept, and I think maybe, under that, somehow he thought that money was owed.

Q Is there another -- are there multiple references to you on this page that we're looking at now that begins with "Elizabeth (Lizzy) Greenwood"?

A Yes.

Q Do you go by Lizzy?

A No.

Q Let me go ahead and click on "Lizzy."

(Playing audio.)

BY MS. DUARTE:

Q Ms. Greenwood, we just heard, "The price is wrong, Bitch."

Is that what you heard, when you were on the site, as well?

A Yes.

Q Do you know what that reference is to?

A No.

Q What does it say, starting with "sorry"?

A "Sorry we shafted all you shareholders -- not. Now, get

lost. I'm having a really bad hair day."
Q Below here that I have just circled, what is that?
A That's my electronic signature.
Q Does that actually appear to be your signature?
A Yes.
Q And then below here where it says, "200 South Bentley, Los Angeles," do you recognize that address?
A Yes.
Q What is or what was that address at the time you viewed this?
A That was my home address.
Q What about the phone number below it?
A That was my home phone number.
Q What about right below that where it says "SSN"?
A That's my social security number.
Q Is that actually your social security number?
A Yes.
Q What about below it, the "DOB"?
A That's my date of birth.
Q September 1, 1963?
A Yes.
Q And scrolling down just a bit, if we could, down here where it starts, "Dan Cohrs," C-o-h-r-s, without reading that out loud, have you seen this paragraph that follows anywhere before?

A Yes.
Q What is that paragraph that follows, do you know?
A It was part of a memo that I wrote.
Q In what context did you write the memo? In other words, was it personal or work-related?
A It was work-related.
Q Where was that memo kept in electronic form, as far as you know?
A It was on my computer.
Q And that was your work computer?
A Yes.
Q If we could first look at the address again, the South Bentley address. Go ahead and click on that link.
Ms. Greenwood, did you see this Yahoo! map on the Internet?
A Yes.
Q What's that a map to?
A It's a map to my house.
Q How did you feel when you first saw this map to your house on this site?
A Not pleased.
Q Why not?
A Well, it's in the whole context of the website. I didn't like the map being there. I was concerned that Steven Sutcliffe would come to my house.

Q Was that your house at the time?
A Yes.
Q So that was a map to your -- where you were living at the time?
A Yes.
Q Now we are going to go back and look at the link up at the top, which is "Bad hair day."
Go ahead and click on that link.
(Playing audio.)
BY MS. DUARTE:
Q Ms. Greenwood, do you remember hearing that sound when you accessed this page?
A Yes.
Q How did that make you feel when you heard that?
A Very uncomfortable.
Q We're going to scroll down a little bit. And looking at that picture, do you recognize that picture?
Do you need some water?
A (Witness crying.)
Q Take your time, Ms. Greenwood.
THE COURT: Would you like to take a break?
Let's take a 15-minute break at this time, ladies and gentlemen. We'll resume in 15 minutes.
THE CLERK: All rise.
(Recess taken at 9:44 a.m. to 10:04 a.m.)

(Jury in.)

THE COURT: Welcome back, everyone.

You may proceed.

MS. DUARTE: Thank you, Your Honor.

Q Ms. Greenwood, we concluded with Exhibit 20, and I've actually put up here on the ELMO page 11 of Exhibit 19. Could you go ahead and take a look in your binder at Exhibit 19, and we're going to look at the printout.

Let me just go back for a minute before we look at what's on the screen and ask you, you had, before the break, identified your social security number?

A Yes.

Q Did you give -- did you authorize anyone to publish that social security number on that website?

A No.

Q Did you give anyone permission to authorize on your behalf?

A No.

Q When we first accessed the screen that we were looking at with the picture, when we concluded on Exhibit 20, the voiceover that appeared -- that sounded during that time, did you recognize that voiceover?

A Yes.

Q Just to be clear, which one are we talking about now?

A When you clicked on the picture, there was some music and

a voice.
Q What did it say, just in general? You don't have to know exactly.
A "I can outrun you. I can outthink you. I can outphilosophize you, and I'm going to outlast you."
Q That voiceover, do you recognize where that's from?
A Yes.
Q And did you at the time that you first viewed or heard that on the site?
A Yes.
Q Where did you recognize it to be from?
A That's from the movie "Cape Fear."
Q And did you make any particular association with that movie when you heard that clip?
A Yes.
Q What was that?
A Well, the movie "Cape Fear" is a movie about an ex-convict who stalks and attempts to kill the daughter of the attorney that he blames for his wrongful conviction.
Q The picture that we were looking at before the break, the picture that you had identified of you, was that also your daughter with you?
A Yes.
Q And where had that picture -- where had you seen that picture prior to seeing it on the Internet?

A It was on my computer, on my laptop.
Q Was this your work computer?
A Yes.
Q Had you ever posted that picture of you and your daughter, yourself, on the Internet?
A No.
Q Had that picture been on your hard drive in approximately June of 2001?
A Yes.
Q How did you feel when you saw the picture of you and your daughter and heard that voiceover on the Internet?
A I felt scared.
Q Directing your attention on the ELMO to Exhibit 19 at page 11, which is a continuation, and just down from the picture we were viewing before.

Right here, "Now just say you are sorry," can you go ahead and read that portion for me?

A "Now just say you are sorry. Admit that an infraction ticket is not a crime and tell your attorney friends to contact my counsel at 818-566-1986. That's the only way Global Crossing will ever win against me in a game of censorship."
Q Go ahead, one more sentence, please.
A "If you want my site shut down so bad, we can make a new contract and I will sell you my domain lock, stock, and barrel if the price is right."

Q And then all the way here at the bottom of the screen, if you can read where the arrow is.
A "Keep it up and watch what happens next."
Q All right. And then on the printed version that you are looking at -- it's actually the next page, page 12 -- and I direct your attention to a portion of that page.
First of all, up at the top, do you recognize that picture?
A Yes.
Q Who is that picture of here at page 12?
A Well, it's Steven Sutcliffe and I believe that's his daughter.
Q Okay. And then coming all the way down here to the bottom of the page -- and I'm going to show you a reference I want you to read here. Starting with "there," could you go ahead and read from there?
A "There are now 24 more sites just like this one. By the time you get them shut down, there will be twice that created. Fetch, ha, ha, ha, ha, ha."
Q Ms. Greenwood, did there come a time when you learned that -- or when you heard that the defendant might no longer be in Los Angeles?
A Yes.
Q And when you heard that information, did it relieve you? Did it cause you to be less frightened?

A No.
Q Why is that?
A Because with air travel, it doesn't take very long to get from one place to another.
Q Had you heard that the defendant might have left Los Angeles prior to the time you saw the contents of Exhibit 19 that you've just looked at on the Internet? Do you remember?
A I can't recall when I had heard that.
MS. DUARTE: If I could have just a moment, Your Honor.
THE COURT: All right.
MS. DUARTE: I have nothing further at this time, Your Honor.
THE COURT: All right. Thank you. Cross-examination.
MR. SUTCLIFFE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SUTCLIFFE:
Q Good morning, Mrs. Greenwood. How are you?
A I'm okay. Thank you.
Q I'd like to start off by asking you to tell the jury, when did you first meet the defendant?
A I believe I met Steven Sutcliffe first in June of 2001.
Q Had you seen him prior to meeting him?

A I think I had seen him around the office --
Q Would you tell the jury -- I'm sorry.
A -- seen you around the office.
Q Could you tell the jury what you had seen the defendant doing when you had seen him around the office?
A I think I might have seen him in the cafe or something. We had a little cafeteria downstairs.
Q Your job in this corporation was the assistant counsel?
A Yes. Assistant general counsel and assistant corporate secretary.
Q How long had you worked in this corporation?
A Since March of 1998.
Q What was your previous position with the company before that?
A Originally, when the company was real small, I started out as vice president of human resources.
Q Did you hire Mr. Richard Saly?
A He was hired when I was heading human resources.
Q So he took over your position?
A Not really. He was brought in at a time when the company was going from about 200 employees to about 8,000 employees because there was an acquisition. So a new vice president -- senior vice president of human resources was brought in, John Comparin. Richard Saly was brought in at a lower level kind of director position.

Q This corporation, Global Crossing, it was acquiring a lot of different companies at this time; right?
A At the time I switched from human resources to the legal department, it was one big acquisition.
Q It was just growing, huge, leaps and bounds?
A It went from 200 employees to 8,000 employees.
Q And the stock went up along with it; is that correct?
A The stock went up and down.
Q But mostly up?
A No. It went up and down. It did. It went up to $62 and then it went back down to 20, and then it went back up to 62. So it was really an up-and-down.
Q It reached as high as about 62?
A Twice it did that.
Q That's not bad; right? Okay.

You became the assistant general counsel, and then you eventually became general counsel; is that true?
A No.
Q Could you tell me --
A No. I was assistant general counsel and assistant corporate secretary, and then when the general counsel left, they brought in an interim general counsel, and then I was laid off.
Q Is it fair to say that not everybody can be the assistant general counsel of a billion-dollar corporation? You've got to

be a pretty smart cookie to get up that high; isn't that a fair statement?

A There was more than one assistant general counsel. I wasn't the only one.

But, yeah. I mean, you do have to have a good education and be able to keep things --

Q You have to set goals and reach those goals, pay attention to details?

A Yes.

Q You mentioned that one of the goals was to -- have I got that right? -- was to get this information off that website; is that correct? Did you say that?

A It was to get the information that had come from Global Crossing, so the personal information of the employees and directors, off the website, yes. That was what the civil lawsuit was about.

Q In this website that is known as "evilgx.com", is it fair to say there was a lot of information on this website?

A Yes.

Q Can you define "a lot"?

A I think there were over a thousand pages.

Q It varied also like the stock; sometimes it was maybe 10 pages?

A I think that's correct, that it went up and down in size.

Q Fair enough.

As a lawyer, you don't exaggerate things, do you?
A I try not to.
Q And you wouldn't embellish testimony?
A I try not to.
Q And you wouldn't make material misrepresentations, would you?
A I try not to.
Q You try not to. Okay.
Now, going back to the time when you first met the defendant, what was your impression of the defendant the first time you met him and he came to fix your computer?
A He seemed very nice -- you seemed very nice.
Q And we got into a discussion --
A Yes.
Q -- briefly, while I was working on the computer?
A Yes.
Q And we discussed that we both had daughters --
A Yes.
Q -- in day care and stuff like that?
It was basically a friendly meeting, brief, and then that's all we ever saw each other; right? We didn't socialize or hang out?
A That's correct.
Q Now, there was some talk of a restraining order to get this website off the air and also a preliminary injunction; is

that correct?
A I don't believe there was any restraining order. There was just an effort to get a preliminary injunction, and then there was a preliminary injunction issued by a judge.
Q There wasn't a temporary restraining order sought?
A Oh, I see what you are saying.

Yeah. As a step to getting a preliminary injunction, a judge first -- the judge first issued a temporary restraining order, but it's the same thing as an injunction. It basically said you can't post this stuff that had been taken from Global Crossing. So there was a temporary restraining order and then there was the preliminary injunction.

Q Is this the temporary restraining order?

THE COURT: You have to show it on the ELMO.

MR. SUTCLIFFE: Okay. I'll be glad to, Your Honor. Thank you.

THE COURT: I'll permit this to be done even though it's not in evidence. It's not inappropriate.

BY MR. SUTCLIFFE:

Q This shows a law firm up in the top left-hand corner. That's the law firm you were discussing earlier: Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro; is that correct?
A Yes.
Q And this was filed, it appears, October 15, 2001; is that correct?

A Yes.
Q And this purports to be a temporary restraining order, and it's filed in conjunction with some other documents and declarations.
Do you see that down there?
A Yes.
Q I'll zoom in if you can't see that.
It's filed in conjunction with declarations of Richard Saly, Janet Troxell, Bruce Wieseltier.
Do you see that?
A Yes.
Q Did you file a declaration for this restraining order as well?
A I don't think so. I don't recall exactly, but my name wasn't on that front page.
Q I'm going to turn now to page 3, and I'm going to show you where the terms of the temporary restraining order purport to lay out what is to be restrained.
Do you see where it says, "Temporary restraining order"?
A Yes.
Q "It is hereby ordered that pending the hearing on the order to show cause herein, Defendant Steven Sutcliffe and his agents, employees, and all persons acting at his behest, in concert with or participating with him or acting at his

direction, are hereby directed and enjoined from."

Now, do you see the number "1" down at the bottom?

A Yes.

Q It says, "Disseminating in any manner," and then you see somebody has scratched out the confidential information?

A Yeah.

Q Is it fair to say that if this was a valid Court-issued order, that the judge might have done that --

A Yes.

Q -- or did that?

A That's my understanding.

Q So it says that, "Mr. Sutcliffe and everybody associated with him is prevented from disseminating in any manner," and then we'll skip over to where it says "confidential information," so the next line would be, "including the social" -- and I'm now turning to page 4 -- "social security numbers" -- and then again "confidential" is scratched out -- "plaintiffs' salary information" -- and then the scratched out "confidential" -- "board members' home telephone, address lists, including disseminating such information on the website." And then it has some handwritten text there.

Do you see that?

A Yes.

Q Could you read that for the jury, please?

A I think it says, "To the extent that such info was

obtained from plaintiff while defendant was employed by plaintiff."

Q That's correct. Okay.

And line 2, that says, "He's also prevented from disseminating in any manner the document entitled 'payroll register' for employee Gary Cohen, attached as Exhibit 14 to a document entitled 'confidential information' filed by plaintiff" -- that would be Global Crossing -- "on October 15, 2001, Exhibit 14, including disseminating such information on the website." And then we see some more handwritten words.

Again, that says, "To the effect that such info was obtained from plaintiff while employed by plaintiff"; is that correct?

A Yes, that's what it appears to say.

Q What does that mean to you, those first two handwritten words, by that judge?

A It means that Steven Sutcliffe and anybody associated with him can't disseminate the information to the extent that such information was obtained by Steven Sutcliffe while he was employed by the plaintiff.

Q That's correct.

So in other words, if Mr. Sutcliffe came into any information from inside Global Crossing that he obtained while he was not employed within Global Crossing, he could publish that; isn't that correct?

A Say it again, please.
Q I'm asking you, is this not only saying that Mr. Sutcliffe can publish information that he obtained from Global Crossing, so long as he did not obtain this information while he was employed at Global Crossing?
A That is what the temporary injunction -- temporary restraining order appears to say.
Q So in other words --
THE COURT: Well, I want to have the -- since there has been so much testimony, I want to have this marked and placed into evidence.
MR. SUTCLIFFE: Yes, Your Honor.
THE COURT: Who knows what it says in its entirety.
MR. SUTCLIFFE: Yes.
THE COURT: What is the next exhibit number, Mr. Reed?
MR. REED: 202, Your Honor.
THE COURT: This document from a different lawsuit will be marked as Exhibit 202 and received.
(Defendant's Exhibit 202 received.)
BY MR. SUTCLIFFE:
Q Then you see, under No. 2 -- there are two 2s, actually -- the second "2". You can see where the judge scratched out a bunch of conditions that Global Crossing was seeking; right?
A I see part of the text is crossed out.

Q Where it starts off "Making any use, directly or indirectly, of the confidential information, including, but not limited to, social security numbers, plaintiffs' confidential salary information, and board members' home addresses, address lists," etc.; is that correct?

A That appears to be crossed out.

Q And then No. 3 would be "Mr. Sutcliffe is prevented from altering, destroying, or otherwise disposing of any record or physical evidence related to Global Crossing," and then the word "employees" is written over the scratched-out confidential information, "including, but not limited to," and then it continues on to the social security numbers.

So, in essence, it says that I'm not supposed to destroy or dispose of any Global Crossing employees' social security numbers or information or confidential board members' home numbers, address lists, etc.; is that correct?

A Yeah.

Q Then he's written in something else at the bottom.

Could you read that again to the jury?

A "To the extent that such info was obtained from plaintiff while employed by plaintiff."

Q This was October 15th that this temporary restraining order was signed and went into effect; is that correct?

A I don't know. It was around then.

Q Now, then we have a subheading below which says, "Service

and briefing schedule."

Can you see that?

A Yes.

Q And could you -- do you see where it says, "It is further ordered" --

A Yes.

Q -- "that the plaintiff shall serve this order in the following manner"?

And can you read what that says? I'll be glad to zoom that in. I know it's written kind of tiny there.

Can you see that?

A "Personally served or" -- something. I don't know.

Q Right. "Personally served."

A There is something underneath it, though. I don't know what that says. "Or" -- something.

Q But the first line says, "Personally served"; is that correct?

A Yes.

Q So this temporary restraining order, when this was signed -- and it does have a date down below here.

Do you see that right there?

A Okay.

THE COURT: That's not the signature date, let the record reflect.

MR. SUTCLIFFE: That's correct. Thank you, Your

Honor.

Q Then there is a date here in the middle that this must be served on no later. "It must be served on Mr. Sutcliffe no later than" -- can you read that date?

A It looks like 10-17.

Q So we are going to go to the last page now.

Do you see the date it is so ordered?

A October 15, 2001.

Q So is it fair to say that on October 15th, the Honorable David Yaffe issued this order that we have just gone over, and he gave Global Crossing, or its agents, two days to personally serve this order?

A Yes, that's correct.

Q If the company was not able to personally serve the order, even these limited conditions would have no effect; isn't that true? In the law, if you don't personally serve somebody, then it's not a valid service?

A Well, they still have effect. I think you do have to serve it, though.

Q It has to be personally served like the judge ordered?

A That would be what Global Crossing would have to do.

Q Now, do you know who -- you mentioned Tracy Hall earlier.

Do you know who Tracy Hall was?

A She was a process server hired by the law firm of Christensen, Miller.

Q And she was to serve this order; is that correct?
A That's my understanding.
Q Do you know if she served it?
A It's my understanding that she did.
Q And was her picture ever posted on the "evilgx.com" website?
A Yes.
Q Her picture was.

And do you know what page that was on?

A No.
Q Do you know when that picture appeared?
A I think it was in October or November of 2001.
Q And do you know if this process server, while she was serving this process, ever happened to have an opportunity to see Mr. Sutcliffe's wife?
A It was my understanding that she did, but I never spoke with her directly about it.
Q You never spoke with her directly about it.

How did you know that?

A I believe Mark Block told me.
Q What else did Mr. Block tell you?

THE COURT: No. That's an improper question.

BY MR. SUTCLIFFE:
Q What else did Mr. Block tell you about Mr. Sutcliffe's wife?

A Nothing.

Q What else did Mr. Block tell you about what Tracy saw?

MS. DUARTE: Objection. Calls for hearsay, Your Honor.

THE COURT: Overruled.

It's not offered for the truth of the matter, just to see what was said.

BY MR. SUTCLIFFE:

Q What else did Mr. Block tell you about Tracy seeing Mr. Sutcliffe's wife?

A Mr. Block told me that -- I'm not sure. Am I allowed to --

THE COURT: You can answer the question. Whatever the answer is -- and I have, of course, no knowledge, ladies and gentlemen -- it's not necessarily offered for the truth.

Within limited scope, Mr. Sutcliffe has a right to find out what was said to this witness. But whatever was said to her doesn't necessarily establish the truth of what was said, just to go to her state of mind and to the background facts relating to this TRO.

So with that limitation, you may answer.

THE WITNESS: Okay. Mr. Block told me that Tracy had turned Mr. Sutcliffe's wife into Child Protective Services because she saw Steven Sutcliffe's wife beating their daughter, who was about two years old, I believe, at the time.

BY MR. SUTCLIFFE:

Q That would be the picture we were looking at earlier with Mr. Sutcliffe and his daughter; that's the daughter you are speaking of?

A That was my understanding. I never really saw your daughter, so I don't know. But that's my understanding.

Q So Mr. Block told you that Tracy had turned Orly in to Child Protective Services, to come and take the child away because --

A I don't know why, but that she had notified Child Protective Services.

Q Because she saw Mrs. Sutcliffe beating the two-year-old child; is that correct?

A That was what I was told.

Q Do you have any information that Child Protective Services was ever contacted?

A I never looked into it. I don't know.

Q Did Mr. Block ever mention anything about Child Protective Services being called?

A Nothing more than what I -- that he told me that Tracy had contacted them.

Q Did you ever make the statement that you believed the defendant had stolen this information that was being published on the website?

A That is what I believe.

Q Did you ever make the statement that you believe that Mr. Sutcliffe had used also some kind of hacking software to obtain the Global Crossing information?
A No. I don't believe you used hacking software.
Q Did you ever have a meeting with the FBI in the month of December?
A I don't recall, specifically.
Q Did you ever have a phone interview with Agent Cugno?
A Yes.
Q In December of 2001?
A I've spoken with him many times. It may have been in December 2001.

MR. SUTCLIFFE: Can I refresh the recollection of the witness, Your Honor?

THE COURT: Yes, but you'll have to hand the document to the clerk.

MR. SUTCLIFFE: I understand.

THE COURT: I'm handing the witness a two-page document. You are welcome to look at it for purposes of seeing whether it refreshes your recollection, one way or the other, as to whether in December of 2001 you spoke to Agent Cugno on the telephone.

THE WITNESS: (Witness reading document.)

Okay.

BY MR. SUTCLIFFE:

Q Does that refresh your recollection?
A Yes, it does.
Q On the third paragraph -- would you read the third paragraph for the jury, please?
MS. DUARTE: Objection, Your Honor.
THE COURT: Sustained.
Improper questioning. You showed the witness the document, and she's told you now, yes, she remembers that she spoke to Agent Cugno.
BY MR. SUTCLIFFE:
Q In the third paragraph, does it say that --
THE COURT: No, you don't ask about the third paragraph. The document is not in evidence. You are not entitled to read from it. You just ask her a question about whatever you think the third paragraph may deal with. You don't read it, though, Mr. Sutcliffe.
MR. SUTCLIFFE: Thank you, Your Honor.
Q Now, the third paragraph, are you able to read that?
A Yes.
Q Does that deal with Mr. Sutcliffe having been terminated because you claim he lied on his application?
A Well --
Q Does the third paragraph --
MS. DUARTE: Objection, again, Your Honor.
THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Let me rephrase the question.

Does it say that you requested background information on the defendant?

THE COURT: Mr. Sutcliffe, don't ask your questions by referring to the document. If you want to know if she requested background information, ask her if she requested background information. If you want to know whether she said you ought to be fired for some reason, ask her whether she said that. You don't need to refer to and you should not read from the document.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Did you request background investigation on the defendant?

A No. I suggested to the human resources department that they should do a background investigation on all employees.

Q Now, I remember yesterday, when you first took the stand -- let me see if I recall this correctly -- you mentioned -- you said -- or maybe I misunderstood you -- you said that the defendant did not recognize the federal government. Now, that's a bold statement.

A That's my recollection of what you told me.

Q That's your recollection.

When did I tell you this?

A In August of 2001, when you came into my office.

Q This was in a meeting?

A Yes. You had requested a meeting with the general counsel, and he met with you, very briefly, and sent you down the hall to talk to me.
Q In this investigation, did you determine that Mr. Sutcliffe's father is a 20-year veteran of the United States Air Force?
A In what investigation?
Q Well, there was an investigation done on the defendant; is that correct?
A It's my understanding that the human resources department did a background check after I had suggested that they should.
Q Did this investigation turn up the fact that Mr. Sutcliffe's father was a 20-year veteran of the United States Air Force?
A I don't know.
Q So is it your testimony that Mr. Sutcliffe, in this meeting, told you he didn't recognize the federal government?
A That's correct.
Q And did you memorialize this statement?
A I wrote down notes from my meeting with you after you left.
Q So if we looked at those notes, would that statement, that Mr. Sutcliffe claims he doesn't recognize the federal government, would that be in those notes?
A I think so, yes.

Q You think so or you know so?
A I don't know. I think it is. That's the best of my recollection. It's been a long time.
MR. SUTCLIFFE: May I show this to the witness to refresh her recollection?
THE COURT: Yes.
MR. SUTCLIFFE: Thank you, Your Honor.
THE COURT: I'm showing the witness documents Bates stamped 1680 and 1681.
THE WITNESS: (Witness reading documents.)
BY MR. SUTCLIFFE:
Q Is that an accurate representation of your notes from the meeting?
A Yes, these are my notes from the meeting.
Q Would you please read out loud and indicate which paragraph contains the statement from the defendant, "He does not recognize the federal government"?
A Well, it's not a quote. It's just that's what I was told.
Q The answer is, it's not in this document?
A That's what you told me. I didn't write down quotations, but that is what you told me. Well, I did write some quotations, but that is what you told me.
Q So is it your testimony now that when you first came into this courtroom and you said the words, "The defendant told me he does not recognize the federal government," this was during

this meeting that you memorialized in these notes; is that correct?

A That's correct.

Q But you didn't put that statement down?

A I did. I wrote it in paragraph 6.

Q Are you talking about, "He does not recognize the United States Federal Government"?

A That's what I wrote.

Q Now, did he elaborate on how he did not recognize the federal government?

A Yeah. You told me that you don't use ZIP codes for your address, you'd put something like "California, at or around the ZIP code known as," because you don't recognize the federal government, so you don't use ZIP codes. I think you told me that.

Q Did you put that in this statement?

A No, I don't think I wrote that part down.

Q Really? Okay.

Now, you said you saw the defendant picketing outside the company -- is that correct? -- after he was terminated?

A Yes.

Q And how long was he picketing out in front of this company, approximately?

A I don't know. Maybe three weeks. I don't know. I really don't remember.

Q Three weeks, roughly?
A I don't know if that's correct. I don't really recall exactly.
Q Did you ever see anybody else outside picketing with the defendant?
A I don't recall seeing anyone else.
Q You never saw his wife and his child with him?
A I was told that --
THE COURT: The question is whether you saw them.
THE WITNESS: No.
BY MR. SUTCLIFFE:
Q You never saw -- okay. I'll move on.
Now, just basically describe to the jury what the corporate headquarters was like. Is it a fair depiction to say it was basically two buildings, side by side, surrounded by a gate on the outside, and then when you would walk in through the gate, you would choose a building to the left or a building to the right?
A Correct.
Q Okay. And there were security cameras throughout the facilities?
A Yes.
Q You couldn't just walk willy-nilly into this place?
A Well, it was open to the public. The courtyard was open to the public.

Q The courtyard was. I'm talking about into these buildings.

When you enter into the corporate headquarter buildings, you couldn't -- you can get to the reception, but no further?

A You could walk into the buildings. There was no security guard or anything to stop you from going into the buildings.

Q Once you went into the building, could you move freely throughout the building if you were not an employee?

A Well, generally, people would stop at the reception desk and check in. I don't think they were supposed to just come in, you know, people who weren't affiliated with the company.

Q And the doors, was there any kind of security access on the doors?

A Not on the front door to the Global Crossing building, no.

Q Not on the front door?

A Not initially. Maybe later on they did put security in. Initially, there wasn't, I think, and then later you did need to use a key card to open the doors.

Q So the answer is, the general public could not walk through the front door without being asked or given permission to come in first or having a security card; is that correct?

A I can't recall when. Initially, for a good period of time, you could walk in the front doors without a key card, and then they changed it so you needed a key card.

Q Let me make it simple.

At the time the picketing was going on in the latter part of 2001, the general public walking through Global Crossing into the courtyard could not enter into any of those buildings without a security card; is that correct?

A Probably, but I'm not a hundred percent sure.

Q Now, when the employees would finish their half day of work, they would usually go out for lunch sometimes or eat in the cafeteria; is that a fair statement?

A Yes.

Q Did you ever go out for lunch?

A Sometimes.

Q Did you ever happen to see the defendant out there picketing?

A Yes.

Q Now, did he ever approach you?

A No.

Q Did he ever yell at you?

A No.

Q Make faces at you?

A No.

Q He just picketed; right?

A Correct.

Q Now, this restraining order that the company got, did you ever take out a restraining order on the defendant?

A No.
Q Is there any injunction or restraining order or any type of thing like that that would prevent me from calling you?
A No.
Q Or writing you?
A No.
MS. DUARTE: Objection to relevance, Your Honor.
BY MR. SUTCLIFFE:
Q E-mailing you?
THE COURT: Pardon me?
MS. DUARTE: Objection. Relevance.
THE COURT: No. I think it goes to one of the elements -- one of the counts.
Overruled.
THE WITNESS: No.
BY MR. SUTCLIFFE:
Q Coming to your home?
A No.
Q So isn't it fair to say that it would not be a violation of the law if I picked up the phone and called you?
A Correct.
Q Or wrote you a letter?
A Correct.
Q Or sent an e-mail to you?
A Correct.

Q Or even came to your home?
A Correct.
Q Now, is it your position that the defendant violated this injunction, this restraining order, that was sought by the company?
THE COURT: Ladies and gentlemen, I have already told you, but I may have occasion to remind you more than once, that this case is not about the rights of either Global Crossing or Mr. Sutcliffe as to each other.
This case is not about wrongful termination from firing, it isn't about the degree to which Mr. Sutcliffe's performance as an employee was satisfactory or not satisfactory.
I'm permitting limited cross-examination to provide Mr. Sutcliffe the opportunity to allow for the context of the evidence that the government put in, but I want you to understand that it is not relevant whether or not the company had a basis to acquire whatever relief it got.
We know it got a temporary restraining order. I don't think the evidence shows what happened after that, if anything.
But you are not to determine, and it is totally irrelevant, who was right or wrong in that employment dispute. That's not what this case is about.
Could you read back the pending question, please, and

I'll permit an answer.

(Record read as follows:

"QUESTION: Now, is it your position that the defendant violated this injunction, this restraining order, that was sought by the company?"

THE WITNESS: Yes, I think so.

BY MR. SUTCLIFFE:

Q You believe that the defendant had violated this injunction?

A Yes.

Q And did you ever seek any legal avenue to enforce this violation through the courts?

THE COURT: You mean on behalf of Global Crossing?

MR. SUTCLIFFE: Yes, Your Honor.

THE WITNESS: Well, I wasn't -- I wasn't representing Global Crossing on that. It was outside counsel.

BY MR. SUTCLIFFE:

Q Do you know if outside counsel ever did?

A I think they just pursued the preliminary injunction rather than going back to the Court regarding a violation of the temporary restraining order.

MR. SUTCLIFFE: Your Honor, has this temporary restraining order been marked as an exhibit yet?

THE COURT: Yes, it has.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: It's Exhibit 202.

BY MR. SUTCLIFFE:

Q Is it fair to say that the website was being hosted by different service providers over a period of time?

A Yes.

THE COURT: "The website," Mr. Sutcliffe, meaning "evilgx.com"?

MR. SUTCLIFFE: Yes. Thank you, Your Honor.

Q Is it fair to say that the website "evilgx.com" was hosted on different servers over a period of time?

A Yes.

Q And whose goal was it to get this website off these service providers?

A Well, Global Crossing wanted the information taken down.

Q Okay. And did they assign this goal to have it taken down to any particular person?

A I was told by the CEO and the head of human resources and the general counsel to get the site information -- get the information taken down from the site.

Q So that would be you?

A Yes.

Q So it was your goal, by the higher-ups -- they gave you the goal to take this site off the air?

A I would call it my job.

Q They made it your job?

A They made it my job -- part of my job.
Q And did you contact these ISPs?
A Well, initially, actually, it wasn't me doing it. It was Mark Labaton at Christensen, Miller. But he actually got assigned to another case that was taking up too much of his time, so he asked me also if I, you know, could do that.
Q Do you recall when this was?
A I don't recall exactly when.
Q Now --
A But he initially was talking to the Internet Service Providers.
Q September?
A No. It wouldn't have been that early because we had -- Global Crossing got the temporary restraining order in October and then sometime after that a preliminary injunction, so it wasn't until later.
Q So they got the temporary restraining order October 15th; is that correct? So it would be after October 15th?
A Correct.
Q And initially it was Mr. Block?
A No. At that point it was already Mr. Labaton.
Q Mr. Labaton, excuse me. I'm sorry.
So initially, it was Mr. Labaton and then at some later point you take over; is that correct?
A Correct.

Q And so would it be fair to say around November?
A I really can't recall exactly when.
Q Early November?
A I -- I can't recall exactly when.
Q Middle of November. Sometime in November?
THE COURT: She's already answered the question. Move on.
MR. SUTCLIFFE: Okay, Your Honor.
Q Was one of the people you ever contacted "intercosmos.com"?
A Could have been.
Q Does the name Sigmund Solares ring a bell?
A Yes, I recall that name.
Q Does that refresh your recollection as to "intercosmos.com"?
A It sounds like one of the ones that I -- one of the Internet Service Providers.
Q One of the beginning service providers?
A I don't know whether it was at the beginning or at the end.
Q And did you ever tell Sigmund that the defendant was in violation of that temporary restraining order?
A I think it was more the postings on the website were in violation of the temporary restraining order or the preliminary injunction. One of the two.

MR. SUTCLIFFE: May I refresh the witness's recollection, Your Honor?

THE COURT: Yes.

MR. SUTCLIFFE: Thank you, Your Honor.

THE WITNESS: (Witness reading document.)

BY MR. SUTCLIFFE:

Q Does that refresh your recollection?

A Yes.

Q I'll repeat the question.

Did you tell this gentleman who was hosting the website "evilgx.com" that the defendant was violating -- or the website was violating the terms of this restraining order?

THE COURT: That's a compound question.

MR. SUTCLIFFE: It is, Your Honor.

THE COURT: Break it down.

BY MR. SUTCLIFFE:

Q Did you ever say to the host of that website that Mr. Sutcliffe was violating the restraining order?

A No, I don't think I did.

Q Did you ever say to the gentleman who was hosting that website "evilgx.com" -- did you ever say to him that he was violating the restraining order?

A Yes.

Q Would you please explain to the jury how he would have been violating this restraining order?

A Well, nobody was allowed to disseminate the information that had been taken from -- the temporary restraining order didn't just block Steven Sutcliffe from disseminating the information. It said anybody in, you know -- I can't remember the exact words, but it wasn't just limited to Steven Sutcliffe disseminating the information.

So by posting the website with the information on it, it was a violation of the temporary restraining order.

Q Okay. I'm holding again that temporary restraining order in my hand.

You are referring to, are you not, where it says --

THE COURT: Put it on the screen. It's in evidence.

BY MR. SUTCLIFFE:

Q "Defendant Steven Sutcliffe and his agents, employees, and all persons acting in his behalf"; is that correct?

A Right.

Q "They are estopped or enjoined from disseminating, in any manner, including the social security numbers, plaintiffs' salary information," and a whole bunch of other stuff, "to the extent that such information was obtained from plaintiff while defendant was employed by plaintiff"?

A Right.

Q That's the order?

A Right.

Q What evidence can you tell this jury that that information

that was being published by that website host that you contacted, telling him to stop publishing this information, what evidence can you show this jury that that information was obtained while Sutcliffe was employed by Global Crossing?

A Well, we had a lot of records showing that you had worked at the help desk and you had worked on a lot of different computers, and it appeared to be information from computers that you had worked on. So it just -- it seemed that way.

Q Do you work in the IT department?

A No.

Q Have you ever been in the IT department?

A I was down there from time to time.

Q How many people work in the IT department?

A I think they had ten people.

Q Who is Lisa (sic) Penner?

A Licia Penner --

Q Excuse me. Thank you.

A -- was my assistant.

Q That's spelled L-i-c-a?

A L-i-c-i-a.

Q L-i-c-i-a, okay.

Now, going back to my original question, because the defendant -- it's your interpretation that because the defendant worked in the IT department, he stole it; is that what you are telling me?

A Well, we had signed affidavits from all the other employees saying that they had not. And it appeared, because the website seemed to be your website, that you had somehow acquired that information while you were working at the company.

Q You say "it appeared." What is "it"?

MS. DUARTE: Objection, Your Honor. Relevance.

THE COURT: I'll permit very limited inquiry.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Just answer the question what it was, from the "evilgx.com" website, that led you to conclude that the information on it Mr. Sutcliffe had obtained as a result of his employment.

THE WITNESS: Well, the website clearly seemed to be his website because he had all kinds of references to himself and his picture, and he was the one carrying the sign saying to go to "evilgx.com".

And the other people who were working at Global Crossing said that they had not posted that information or given that information to him, so I concluded that he had taken it.

BY MR. SUTCLIFFE:

Q You made a conclusion?

A Yes.

THE COURT: Okay. Now, I think you have exhausted

that very limited degree of relevance to the issues in this case, so please move on, Mr. Sutcliffe.

BY MR. SUTCLIFFE:

Q To your knowledge, was Mr. Sutcliffe ever arrested for stealing the information from this company?

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: Overruled.

THE WITNESS: No.

BY MR. SUTCLIFFE:

Q Did you ever tell anybody else that you believed Mr. Sutcliffe had stolen this information other than Mr. Sigmund Solares of "intercosmos.com"?

A I don't know that I told Sigmund Solares that.

Q Okay.

THE COURT: I'm not going to permit inquiry into every possible person she may have talked to about that, so please move on.

MR. SUTCLIFFE: Thank you.

Q Did you ever tell anybody that Mr. Sutcliffe had stolen someone's identity?

A No, I don't believe I did.

Q Did you ever make a reference to identity theft about Mr. Sutcliffe?

A I'm not clear on the question.

Q Did you ever send an e-mail to anybody and the subject

line was identity theft, and then in the lower part, Mr. Sutcliffe and -- you believe he's taken someone's identity?

A I don't recall.

Q Okay. Have you ever heard the words "We live and die together"?

A Yes.

Q Did you ever see those words on the website --

A Yes.

Q -- "evilgx.com"?

A Yes.

Q Could you tell the jury where you heard those words the first time you ever heard them?

A I don't know.

Q Does the name Leo Hindery -- I might be mispronouncing his last name -- does that name ring a bell to you?

A Yes, I know who Leo Hindery is.

Q Who is Leo Hindery?

A He was the CEO of Global Crossing for a short period of time.

Q Isn't it a fact that Mr. Hindery -- excuse me. I'll withdraw that.

Leo Hindery was the chief executive, or something, of Exodus Communications; is that not true?

A Subsequently.

Q And they were acquired by Global Crossing?

A No. You've got it backwards. He was the CEO of Global Center and then he became the CEO of Global Crossing. And then Global Center, which was a subsidiary of Global Crossing, was sold to Exodus and he went to Exodus, but I don't think he ever was the CEO of Exodus. They had a woman who was the CEO.

Q In pledging his allegiance to this new partnership, do you know that he said the words "We live and die together"?

A Exodus was not a partnership. I don't recall. He may have said it. I don't recall.

Q Okay. Did you feel threatened when you saw those words on "evilgx.com"?

THE COURT: Which words?

MR. SUTCLIFFE: The words "We live and die together."

THE WITNESS: I don't know if I felt personally threatened by that part of the website.

BY MR. SUTCLIFFE:

Q Could that be taken out of context and construed as a threat?

A It could.

Q Someone could come to a conclusion that that's a threat out of context; is that a fair statement?

A I'm not clear on the question. I'm sorry.

THE COURT: It calls for total speculation. It lacks foundation.

Don't interrupt me, please, Mr. Sutcliffe.

And I exercise my authority to overrule the question. Please move on, Mr. Sutcliffe.

BY MR. SUTCLIFFE:

Q Did you ever see anybody threaten the defendant?

A No.

Q Did you ever hear anybody threaten the defendant?

A No.

Q Who is Joe Shmoe?

A I don't know.

Q Who is Ann Bingham?

A She was a consultant for Global Crossing.

Q Like the defendant was a consultant?

A Well, she didn't work in the IT department.

Q Isn't it a fact she's the ex-United States Attorney -- Assistant United States Attorney and the wife of New Mexico Senator Jeff Bingham?

A That's probably correct. I don't really know.

Q You said you viewed this website daily; is that correct?

A No.

Q Almost daily?

A My assistant or Andrew Ramsey were viewing it daily, and I would look at it when they would tell me there was something that I should look at.

Q That would be your assistant Licia?

A Yes.

Q And who is the cochairman of Global Crossing?
A Lod Cook.
Q Is that Sir Lod Cook?
A Yes. He was knighted by Queen Elizabeth.
Q He received the Knights of the British Empire, or something to that effect?
A Yeah.
Q Who is William Cohen?
A He was a director -- wait. Yeah -- William Cohen was a director.
Q He was on the board of directors as well?
A Yes.
Q And he used to be ex-Secretary of Defense?
A He was the Secretary of Defense for the United States.
Q Is it fair to say that the board of directors has pretty powerful people on it?
A Yes.
Q And some of the contractors they hired were very powerful, connected people as well; isn't that correct?
A Yes.
Q Do you know how much money Global Crossing paid in political contributions to the parties?
MS. DUARTE: Objection to relevance, Your Honor.
THE COURT: Sustained.
BY MR. SUTCLIFFE:

Q Were there any other pictures of people within this "evilgx" website?
A I don't recall.
Q Might there have been?
A There might have been.
Q Okay. To your knowledge, did anybody else complain about having their picture on this website from within Global Crossing?
A Not about pictures, no.
Q Now, as a lawyer, you work with contracts quite a bit; is that correct?
A Yes.
Q In contracts, you have to define certain things; is that correct?
A Yes.
Q So an employee, like Ann Bingham or Mr. Sutcliffe, coming into Global Crossing, they would have to enter into a contract; is that a fair statement?
A I don't think you had a contract when you were working as a consultant. I think Global Crossing had a contract with TriStaff, the consulting company, and they provided people for the IT department.
Q But we're talking contracts here.
A Yes. I don't think you had a contract with Global Crossing when you were in the IT department --

Q Right.
A -- initially.
Q But upon becoming an employee, one would have to enter into a different type of contract?
A We didn't -- generally, we didn't do employment contracts. Global Crossing just did offer letters and people would sign that they accepted the offer.
Q Now, Mr. Saly, we talked about him earlier, he was, at one point, a contractor; is that not true?
A That may be true. I think that's true, yeah.
Q And Global Crossing employed him through a contract directly --
A Correct.
Q -- as an independent contractor?
A Correct.
Q And before you come in -- before you enter into employment with Global Crossing, you enter into a contract; and in that contract, it defines certain words and terms; is that not a fair statement?
A It may.
Q It may or it may not. Okay.

And as a lawyer, part of your job is to examine contracts; is that a fair statement?
A That's correct.
Q And are contracts usually binding?

THE COURT: We don't need to have a course in Contracts 101 in law school, Mr. Sutcliffe. Please get to the point.

MR. SUTCLIFFE: Thank you, Your Honor.

Q To your knowledge, has Global Crossing ever forced anybody to enter into a contract with them?

A No.

Q To your knowledge, has Global Crossing ever imposed themselves upon anybody to make them enter into a contract with them?

A No.

MR. SUTCLIFFE: Now, Your Honor, at this point, the defense would like to have Exhibit 23 from the government so I can bring it up on the screen, if that would please the Court.

THE COURT: Is that in evidence?

MR. SUTCLIFFE: Yes.

MS. DUARTE: Yes, it is, Your Honor.

THE COURT: You can bring it up yourself, can't you? Give the disk to him.

MR. SUTCLIFFE: I'm going to have to locate this file now. One second, please.

THE COURT: All right.

MR. SUTCLIFFE: I'm at a loss, Your Honor. I need the assistance of the government here to locate this index file. Perhaps they could point me in the right direction.

MS. DUARTE: We are assisting, Your Honor.

MR. SUTCLIFFE: Thank you.

Q Ms. Greenwood, do you remember seeing this page?

A Yes.

Q Do you remember reading this page?

A Yes.

Q And do you see this part here, the opening part, that I'm highlighting right now which is the first paragraph below the words "I disagree"?

A Okay.

Q Do you remember reading this?

A Yeah.

Q And do you see this part right here where it says that, "This site does not advocate or encourage or condone any conduct that is illegal at any time" --

A Yes.

Q -- "by any person or entity against any other person or entity"?

A Yes.

Q Do you see the last part of that paragraph where it says, "This site actively solicits files from known and unknown sources and makes no claim to the validity of the information contained within or without"?

Do you see that?

A Yes.

Q Do you understand that paragraph?
A Well --
THE COURT: Just answer "yes" or "no".
THE WITNESS: Yes.
BY MR. SUTCLIFFE:
Q So is it a fair statement to say that this site is looking for information and it doesn't advocate anybody coming in to do anything with this information other than read it, if they want to?
A Yes.
Q Now, moving on down there, there is a further subsection which is called "Definitions" where it spells out the terms of what certain words shall mean.
Do you see that?
A Uh-huh.
Q Now, as an attorney, you deal with definitions quite a bit; isn't that a fair statement?
THE COURT: That's been asked and answered, Mr. Sutcliffe.
MR. SUTCLIFFE: Okay.
Q Moving on to the agreement, do you see where it says that, "The user will agree to compensate the owner with liquidated damages in the amount of $5,000 for every complaint lodged in any manner against any ISP" -- and that would be an Internet Service Provider -- "or any other entity that is unfounded,

untrue, or which relies on unsupported allegations of material misrepresentations of facts, depictions, or scenarios contained within this site"?

Did you read that?

A Yes.

Q Okay. "And that such user shall pay damages in the amount of 5,000 for each day the site is removed."

Did you read that?

A Yes.

Q Did you read the subsection below that, "The user will enter the site willingly, voluntarily, and of his or her or its own volition"?

Did you read that line?

A Yes.

Q Okay. And where it says, "You have to be competent and over the age of 18 and not so impressionable that you'll take any action based upon the content of the site"?

A Yes.

Q And where it says, "The user agrees to all the terms and conditions of the site wherever they may be posted," did you read that?

A Yes.

Q And the license agreement, did you read that?

A Yes.

Q And the severability section, did you read that?

A Yes.
Q And the release of the liability, did you read that?
A Yes.
Q Where it says, "User releases its site, its owners, its moderators, its administrators from all liability resulting from any actions of any third party who takes any action against any person, including violent action, against a corporate officer, or any other person as a result of reading or viewing this site," did you read that?
A Yes.
Q Okay. And attorneys' fees and enforcement, did you read that section where "The user assumes all costs related to any legal action for any breaches of this agreement"?
A I may have gotten tired and not scrolled all the way down.
Q Did you read the last part here where it says, "These pages contained on the site may be unsuitable for some rather narrow-minded folks"?
A I'm not sure if I remember seeing that.
Q Let's move on.
Did you click on the "I read them and agree" --
A I don't know.
Q -- the top page?
A I don't recall.
Q You don't recall?
A I may have.

Q You may have?
A Yeah.
Q Do you know another way to get into this website other than clicking on "I read them and agree"?
A Yes.
Q You do?
A Yes.
Q So if you typed in "www.evilgx.com", you can get past this page?
A No. I mean --
THE COURT: Wait. Let Mr. Sutcliffe finish his question, please.
BY MR. SUTCLIFFE:
Q Not knowing anything about this website -- you come to this page and you don't know a thing about this website, do you know another way to get into this website other than clicking "I agree" or "disagree"? Do you see another hyperlink on this page?
I'm sorry, that question is compound, Your Honor.
THE COURT: Break it down, please, and ask a simple question.
MR. SUTCLIFFE: Thank you, Your Honor. I'm sorry.
Q Do you see anything other than two hyperlinks on this page anywhere?
A No.

Q Do you know another way to get into a Web page past this page -- if you just came to this page, without knowing anything about this website, the first time here, there is no other way to get into this website other than clicking "I agree" or "I disagree"; isn't that a fair statement?

A From this page?

Q Correct.

A Okay.

Q So if you disagree, do you know where you went?

A I don't recall.

Q Okay. So it's fair to assume, then -- correct me if I'm wrong, you clicked on "I read them and agree"; is that a fair statement?

A I may have.

Q You may have.

A Even if I did, I don't think that the contract --

THE COURT: Wait. Ms. Greenwood, you'll be questioned probably by the prosecutor, but you are not supposed to volunteer information.

THE WITNESS: Okay.

BY MR. SUTCLIFFE:

Q Did anybody force you to go to this Web page?

A No.

Q Did anybody impose upon you to go to this Web page?

A No.

Q So we will just assume, then, since -- assuming that you read the terms and you agreed, you would click on the button -- that's correct? -- and it would highlight and see where it's turning red?

A Uh-huh.

Q Okay. And then this is where we come to this page here.

I have no sound, Your Honor, for some reason. Can we establish sound?

THE COURT: I don't know how to establish sound. Just read what you want to read.

MR. SUTCLIFFE: I would like the sound to be played for the record, Your Honor.

MS. DUARTE: If I could have just a minute, Your Honor.

MR. SUTCLIFFE: Thank you.

MS. DUARTE: We were just conferring, Your Honor, over whether the problem is with the CD. We actually don't think it is. Special Agent Cugno can go take a look, if you'd like.

THE COURT: Just put the CD in yours and let's get this --

MR. SUTCLIFFE: Your Honor, actually, speakers were provided this morning.

THE COURT: I know.

MS. DUARTE: We can try it, Your Honor.

THE COURT: Go ahead. Give the CD to Mr. Reed.

MR. SUTCLIFFE: Your Honor, I would object at this point, only in the fact that I want to play an alternate sound for the witness to question her about this page. I think it's relevant to the defense, Your Honor. I would --

THE COURT: So play it. Give it to the prosecutor and have them play it.

MR. SUTCLIFFE: The file is within my computer only, Your Honor, the sound I wish to play.

MS. DUARTE: Your Honor, object to any playing of anything off this exhibit, if that's the intent -- excuse me, outside of this exhibit, which is in evidence.

THE COURT: You won't be permitted to play anything that hasn't been received in evidence, Mr. Sutcliffe.

MR. SUTCLIFFE: Okay. That's fine, Your Honor.

Can we establish --

THE COURT: Not right now, Mr. Sutcliffe. We'll try something at the break.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Ms. Greenwood, assuming that you clicked on "I agree to the terms," this would be the initial page that you saw; is that correct?

A I don't recall specifically, but it appears to be.

Q There is a lot of information on this page; is that a fair statement?

A Yes.
Q And this page goes scrolling down and there is a lot of different things.
Now, do you recognize those pictures right there?
A Yes.
Q Could you tell the jury who is in this picture?
A That's Gary Winnick.
Q Does it appear to be a real picture of him in a boat?
A It appears to be.
Q Right. But --
A It probably isn't.
Q It's probably not. It's probably a comedy thing.
THE COURT: Mr. Sutcliffe, don't testify. Ask questions.
BY MR. SUTCLIFFE:
Q Who is this gentleman here?
A That's John Ledger.
Q Who is Mr. Ledger?
A He is the current CEO of Global Crossing.
Q Right. And there seems to be some words below his name, "If I can define an infraction ticket as a crime, just imagine what I can do with the word indefeasible." Is that a fair statement of what's depicted?
A Yes.
Q And so it appears that he's -- this is a quote from him?

A I don't -- I don't think so, no. It doesn't have any quotation marks.
Q One could assume also that it could be; isn't that true?
A I did not.
Q It's a matter of interpretation, I guess; right?
A Okay.
Q Okay. And on the left-hand side, there appears to be a bunch of other words. Those appear to be hyperlinks as well; is that correct?
A Yes.
Q And there is -- what we were looking at earlier appears to be another picture of the defendant; is that true?
A Yes.
Q And there are more links below that; is that correct?
A Yes.
Q And there is a way to contact by, it says, e-mail; isn't that correct?
A Yes.
Q Did you click on all of these links here?
A I don't think so.
Q You don't think so.
Did you click on all these links that are on the center page here?
A I don't think so.
Q No. Okay.

Did you click on any of these links here in the center part?

A I probably did.

Q There appears to be one, two, three, four, five, six, seven, eight -- eight hyperlinks within that one center paragraph that we're now looking at.

Of those eight, do you know how many you clicked on?

A I don't recall.

Q Are there any there that you do recall?

A I don't recall specifically.

Q Okay. Earlier, there was a page that came up -- there is a Friday, 3-22, 2:00 and there is a word called "Lizzy."

A Okay.

Q Do you see that link?

A Yes.

Q Did you click on that link?

A I don't recall. If you click on it and then I can see what's there, I might recall, but I don't recall otherwise.

Q Okay. Do you remember looking at this earlier?

A Yes, I remember seeing that.

Q And there was a sound bite that played which said something to the effect of "The price is wrong, Bitch"; is that correct?

A Yes.

Q Have you ever seen the movie "Happy Gilmore" with Adam

Sandler, the comedian?
A No.
Q Have you ever watched the "Price is Right" with Bob Barker?
A Yes.
Q Have you ever been on that show?
A No.
Q Now, there is also -- on this page now, there is, "I'm having a really bad hair day." There is a link there; is that correct?
A Yes.
Q So if we click that, we don't -- there we go.

Now, this takes you to the page -- if this upsets you, please let the Court know and we can take a break.

A I'm okay. I got myself together.
Q Now, earlier, we were looking at this picture and it appeared to be really, really big. Okay. And there was some testimony about that.

This picture -- do you know who took this picture?

A Yes.
Q Do you know where this picture came from?
A Yes.
Q Could you tell the jury where this picture came from?
A Well, it was on my computer.
Q At work on your laptop?

A Yes.
Q And who had access to your laptop?
A I did.
Q Anybody else?
A Not generally, no.
Q Not generally, but sometimes?
A Well, like you had access when you worked on it to fix it.
Q That's correct.
And John Desanto -- do you know who John Desanto is?
A John Desanto?
Q John Desanto had access to it?
A John Desanto only fixed my computer once, I believe.
Q And Lupe Rodriguez?
A I don't recall Lupe working on my computer.
Q We will get back to that.
Other people had access to your laptop?
A From time to time.
Q Right. Licia Penner?
A No.
Q Never?
A She didn't use -- she had her own computer.
Q But she never had access to your laptop?
A No, she didn't.
Q She worked outside of your door?
A Yes.

Q And did you take your computer with you all the time whenever you left?
A No.
Q You left it there hooked up?
A Yes. But it would freeze. It had a function where if you don't move anything on your computer for a few minutes, then it kind of freezes and you have to put in a password again to make it -- to have access again.
Q Okay.
A So it wasn't like if I went away from my desk, anybody could have walked up and just used my computer.
Q Now, if you see where my hand is right now, it's over a link which is called "Who Stole Who"?
A Okay.
Q And if you look at the bottom down here where it says, "Document done," you'll notice that when I put my mouse over there, it says, "Java Script," and then it will say, "Colon, if," and then it will say "confirm." Then it has a website address "http://www.msnbc.com/news". Then it has a bunch of computer codes and stuff. And then it says, "This file was not retrieved by Teleport Pro because it" -- and then it stops.

Did you ever see any articles on "msnbc.com" where you accused the defendant, Steven Sutcliffe, of stealing this data?
A I don't recall that.

Q Do you recall ever seeing any articles in any newspapers where either you or somebody from the legal department of Global Crossing accused the defendant of stealing this data, this information, that was being published on "evilgx.com"?
A I don't recall specifically. I know there were some articles written about the situation, but I don't recall exactly what they said. I haven't looked at them in a long time.
Q Okay. Now, earlier, the United States Attorney talked about this paragraph right here which says, "Now, just say you are sorry and admit the infraction ticket is not a crime and tell your attorney friends to contact my counsel."
Do you remember reading that paragraph?
A Yes.
Q And it says, "We can make a new contract and I will sell you my domain lock, stock, and barrel if the price is right," and the "price is right" is a hyperlink; right?
A Okay.
Q "But I won't let you make this hostile takeover." Do you remember reading that?
A Yes.
Q Had you ever seen those words before, "hostile takeover," in the legal context?
A Yes. It's a term used in mergers and acquisitions.
Q Mergers and acquisitions, right. Okay.

Now, do you see this picture down here of Mr. Sutcliffe and his two-year-old daughter?

A Yes.

Q Do you see where it says, "Keep it up and watch what happens next"?

A Yes.

Q Did that cause you concern?

A Yes.

Q Can you tell me what "it" means?

THE COURT: You can only tell what you thought it meant and why it gave you concern.

THE WITNESS: Okay. Well, I think that it was referring to talking to the Internet Service Providers to ask that the material taken from Global Crossing be taken down.

THE COURT: Okay. We are going to take a break at this point, ladies and gentlemen, until a quarter to 12:00, which is a little more than 15 minutes.

We are going to stop today not at 1:30, but at 12:45, because I have to prepare for many matters in the afternoon, so you'll be going home today at 12:45 when we get back. In other words, there will be one hour of testimony today.

Please remember the admonition at the break, and we'll see you back here in about 15 minutes.

(Jury out.)

THE COURT: Just let me state that I've been

permitting lots of inquiry because I think the scope of examination, for purposes of bias, particularly under the circumstances in this case, needs to be -- I need to err on the side of allowing broad inquiry, and that's what I've been doing, but there are limits on what's relevant here, Mr. Sutcliffe.

I'm working as hard as I can not to interfere with your presentation in the case and with your cross-examination, but I want you to think about what you are at risk of doing if you go way off into tangents, because I won't be permitted -- I won't be doing my job if I permit that.

MR. SUTCLIFFE: I understand, Your Honor. Thank you.

(Recess taken from 11:30 a.m. to 11:52 a.m.)

(Jury in.)

THE COURT: Okay. We are back in session. I believe that the glitch with the audio has been repaired or fixed.

You may proceed, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

Q I guess I'll move on to a few questions because there still seems to be some small glitch with the computer.

Ms. Greenwood, you stated earlier that you had never seen anybody threaten the defendant; is that true?

A That's true.

Q And you have never heard anybody threaten the defendant; is that true?

A That's true.
Q And you testified that you don't know who Joe Shmoe is?
A That's true.
Q Have you ever heard the name Joe Shmoe?
A I have heard it used not in reference to a particular person, just casually.
Q Have you ever used the name Joe Shmoe as a moniker or an aka?
A No.
Q Do you recall when the first time was you heard or saw the name Joe Shmoe?
A No.
Q If I showed you a document that had his name on it, would that refresh your recollection?
A It might.
MR. SUTCLIFFE: Excuse me a second while I locate that, Your Honor.
THE COURT: Mr. Sutcliffe, this is a several-page document. It's going to take time. Is it the second page you want her to look at?
MR. SUTCLIFFE: Actually, it starts on the last page. I believe it is marked Bates 01554. The name appears there and --
THE COURT: I'll show you the last page first.
THE WITNESS: Is there a question?

BY MR. SUTCLIFFE:
Q I was just waiting for you to finish looking at the document.
A I read the last page.
Q Do you ever recall seeing the name Joe Shmoe?
A No.
Q You don't recall seeing that name?
A I don't recall seeing this.
MR. SUTCLIFFE: Okay. Your Honor, may I enter that document into evidence?
THE COURT: No. That would not be appropriate, Mr. Sutcliffe.
MR. SUTCLIFFE: May I display this document on the ELMO to refresh --
THE COURT: She just said it doesn't refresh her recollection. The questioner is bound by that answer. Now, go on and ask another question, please.
BY MR. SUTCLIFFE:
Q Did you ever send an e-mail to Scott Wanamaker referencing Joe Shmoe within that e-mail?
A I don't know who Scott Wanamaker is.
Q Have you ever seen the name Scott Wanamaker?
A It was on some of these documents, but I don't know who it is.
Q Who is "swana@fbi.gov"?

A That's Jeff Cugno's e-mail address -- or it was his e-mail address.
Q Could "swana" be Scott Wanamaker?
MS. DUARTE: Objection. Asked and answered, Your Honor.
THE COURT: Overruled.
THE WITNESS: It could be. I don't know.
BY MR. SUTCLIFFE:
Q And who is "mlabaton@chrismill.com"?
A That would be Mark Labaton's e-mail address.
Q Did you ever send an e-mail to Mr. Labaton referencing Joe Shmoe?
A I don't recall. I don't recall that.
Q Around December, just prior to Christmas of 2001, do you recall sending any e-mails to "swana@fbi.gov"?
A I may have sent e-mails there.
Q Do you recall ever sending any e-mails to "mlabaton@chrismill.com"?
A I may have sent e-mails there as well.
Q Was Joe Shmoe included in those e-mails?
A I just don't have any recollection of that.
Q Do you have any recollection of the subject lines of those e-mails that you sent to "mlabaton@chrismill.com" or "swana@fbi.gov"?
A No, not specific -- if you showed me something, I might

recall it, but I don't recall.

MR. SUTCLIFFE: May I show this to the witness, Your Honor, the first page of the document I handed to the Court?

THE COURT: Just look at the first page.

THE WITNESS: Okay.

THE COURT: What's the Bates number?

MR. SUTCLIFFE: I believe it's 1550, Your Honor.

THE COURT: Okay.

BY MR. SUTCLIFFE:

Q I'll direct your attention to the top.

A Okay. I've looked at the first page Bates stamped 1550.

Q Does that refresh your recollection of the events taking place on December 21, 2001?

A Well, I still don't have any specific recollection of sending this e-mail or the information in this e-mail, but it clearly looks like an e-mail that I sent.

Q Clearly.

A I'm not going to say I did not send this e-mail. I just don't recall it.

Q Before an e-mail gets sent out, you can choose to put a subject line in an e-mail; is that correct?

A Correct.

Q Okay. And you are free to choose any subject you want?

A Right.

Q And that would direct the receiver's attention to what you

want to talk about or point out; is that correct?

A It could be helpful.

Q It could be helpful. Okay.

Can you read the subject line of that e-mail you sent?

A Sure.

MS. DUARTE: Objection, Your Honor. It's not in evidence.

MR. SUTCLIFFE: Can we enter this document into evidence?

THE COURT: Do you have any objection to the document being received?

MS. DUARTE: Your Honor, may I see the document? I apologize. For some reason, I'm unable to locate it and I don't know the reference.

THE COURT: Put the document on the -- let's see if we can just simplify this. The mute is not working.

MR. REED: Should I just hand it to the government?

THE COURT: All right. Hand it to them.

MS. DUARTE: Thank you, Your Honor.

I don't have any objection to the admission of Bates 1550.

THE COURT: It's a four-page document.

MS. DUARTE: I just looked at the first page. I'm sorry.

THE COURT: Tell me, please, whether it's a single integral document or it's been compiled as such, and then tell me if you have any objection to its admission, please.

MS. DUARTE: Your Honor, it does appear to be a single five-page document in the form of an e-mail repeatedly forwarded. I don't have any objection to its admission.

THE COURT: It will be received, then, as Exhibit 203.

MR. SUTCLIFFE: Thank you, Your Honor.

(Defendant's Exhibit 203 received.)

THE COURT: Now display it on the screen, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Can you see that okay, Ms. Greenwood?

A Yeah, I can read this easier, but I can see that.

Q Let's start with the first page.

In this e-mail -- is that your e-mail address of "Elizabeth.Greenwood@GlobalCrossing.com" during the month of December on the date of the 21st in 2001?

A Yes.

Q Did you send this e-mail on December 21, 2001, at 11:31 p.m. Pacific Time?

A I don't have any recollection of it, but it appears to be something I sent.

Q And in the "To" line, it appears to be addressed to -- at

the top it says, "SA Scott Wanamaker," and then down below, in the "To" line, it says, "To: 'swana@fbi.gov'"; is that correct?
A That's correct.
Q And the "cc" would be like a carbon copy would go to "mlabaton@chrismill.com"?
A That's right.
Q Could I assume that that would be Mr. Mark Labaton?
A Yes.
Q And Mr. Labaton was the senior counsel for Global Crossing?
A No. Mr. Labaton was an associate at Christensen, Miller. He's the outside attorney who was handling the civil matter, the preliminary injunction and the temporary restraining order.
Q So he was handling the restraining order and the injunction?
A Yes. He was the outside attorney.
Q And in the "Subject" line, it says, "Forward" and so it appears it's being forwarded -- you are forwarding something from somebody else; is that correct?
A Right. I didn't type the "Subject" line. I just forwarded it.
Q Right. And the "Subject" line is "evilgxhr@yahoo.com", and then it has a colon and then it looks like "regarding" -- or "Re: you moron" and then again, in parenthesis, "(fwd)," which is short for forward; is that correct --

A That's what it says.
Q Now, "evilgxhr@yahoo.com", have you ever seen that e-mail address before?
A I think that was the e-mail address. If you were on the "evilgx" website and you wanted to send them an e-mail, that's the e-mail address.
Q So this website that was soliciting files to send a file, that's the e-mail address you would use, "evilgxhr@yahoo.com"?
A I think so.
Q That was pretty much the only e-mail address in the beginning on this website up until this point; is that correct?
A I don't know.
Q Okay. Were there other e-mail addresses?
A I don't know.
Q Did you ever send a file?
A No.
Q Moving on, it says, "Below are e-mails from one of the GX employees to evilgx and a reply from evilgx."
Can you explain what that means?
A Well, an employee of Global Crossing apparently sent an e-mail to the website "evilgx.com" and somebody at "evilgx.com" replied.
Q Okay. And below that, the next line says, "Also below is information that Andrew Ramsey, in GX Network Security, has been able to gather regarding the location of the sender of the

evilgx reply."

Did you write that?

A Yes.

Q Who is Andrew Ramsey?

A He was an employee of Global Crossing.

Q What was his function in relation to this website?

A Well, he was the one who was in charge of Network Security, and so he was storing the website and monitoring the website.

Q How do you know that?

A I have spoken with Andrew Ramsey.

Q How often did you speak to Andrew Ramsey?

A Gosh, I don't know. I don't know.

Q You don't know. Okay.

But he was -- that was his function, to monitor this website and download it?

A That's right. Because the website kept changing, so he would monitor it and store it.

Q He would store it. How do you know he would store it?

A He told me, I think.

Q So you remember that conversation?

A That was my understanding of what he was doing.

Q Do you recall any other conversations with him?

THE COURT: This is not an appropriate question, Mr. Sutcliffe --

MR. SUTCLIFFE: I will withdraw the question, Your Honor.

THE COURT: -- this is not discovery.

BY MR. SUTCLIFFE:

Q Moving on, the next line we see is from Andrew Ramsey -- is that correct? -- and a "mail to" with his e-mail address; is that correct?

A Correct.

Q This is part of what you were forwarding?

A Yes.

Q To the FBI and to Mr. Labaton; is that correct?

A Correct.

Q It appears that it was sent at 12:24 p.m. on the same day, December 21st, 2001; is that correct? He sent it to you? He forwarded it to you; is that correct?

A Right.

Q So because the time is different, we can assume that there is some kind of -- I believe he's not in California -- is that correct? -- Mr. Ramsey?

A That's correct. He was not in California.

Q That's why there is a time difference that shows an hour's difference in time?

A I don't know.

Q I'm just assuming.

A I don't know.

Q Okay. I'll move on.

He sent it to you, right there, and it's the same subject line. And then there is -- it says, "From," and then it seems to be blacked out, "MediaOne@AT&T Broadband".

Do you see that line?

A Yes.

Q Do you recall what it says behind that blackout?

A No.

Q Could it be from a buddy? A friend? A pal?

A I have no recollection of this particular e-mail.

Q Now, the next line I want you to pay close attention to.

Do you see where it says, "This is a customer in Manchester, New Hampshire"?

A Yes.

Q Then there is a bracket with a dot, dot, dot. Then it repeats, "New Hampshire customers are in our Northeast market along with Boston customers." And then it says, "More specific information will require legal process." And then it appears to be signed by Andrew Ramsey, his e-mail, and then "Manager, Policy Enforcement."

Do you see that?

A Yes.

Q So he's saying -- correct me if I'm wrong, but he's referring to something further down in this e-mail that we haven't gotten to yet? And whoever he is referring to, this

customer -- and the reason I say "we haven't gotten to yet," because, correct me if I'm wrong, when you read an e-mail that's been forwarded, usually you start from the bottom page and read up, the opposite of reading; is that a fair statement?

A If you wanted to read it chronologically.

Q Exactly. So he's referring to something further down below, living in Manchester, New Hampshire.

Can you tell -- do you know when the -- excuse me. Do you know where the defendant was when he was arrested?

A Somewhere on the East Coast.

Q Could it have been Manchester, New Hampshire?

A It could have been.

Q Now, below that, we see, on Friday, 21 December 2001, Andrew Ramsey wrote, "Sutcliffe's e-mail below," so he's referring to something further down, "was posted from" -- and you see a set of numbers.

Do you see those numbers?

A Yes.

Q "24.61.143.138." Do you know what those numbers are?

A I think that's an IP address.

Q Very good. That's an IP address.

What do you know about IP addresses?

THE COURT: That's a totally inappropriate question.

MR. SUTCLIFFE: I will rephrase the question.

Q Do you have any background in computers?
A Just using them.
Q Can you tell me what your background is in the Internet?
MS. DUARTE: Objection to relevance, Your Honor.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Could you tell me how you learned what an IP address is?
MS. DUARTE: Same objection, Your Honor.
THE COURT: Sustained.
Move on to what's relevant, please, Mr. Sutcliffe.
MR. SUTCLIFFE: Thank you, Your Honor.
THE COURT: This is not about who has the most prowess in computer technology.
MR. SUTCLIFFE: I'm not trying to make it that way, Your Honor, I assure you.
Q So is it fair to say that Mr. Ramsey has pointed out to you, which you were then forwarding to the FBI and you were forwarding to Mr. Labaton, that the customer Sutcliffe is in Manchester, New Hampshire, and his e-mail is coming from 24.61.143.138 on December 21, 2001; is that a fair statement?
A That appears to be what it is saying.
Q So it would be fair to say, then, that the FBI, Mr. Labaton, Andrew Ramsey, and yourself all have a pretty good idea that Steven Sutcliffe is in Manchester, New Hampshire, sending an e-mail from "evilgxhr@yahoo.com", from the IP

address of 24.61.143.138? Is that a fair statement?
A Well, I can't say what the other three people knew.
Q I'm just saying, is it a fair statement that you forwarded that particular information to those people which came from Andrew Ramsey?
A The information in this e-mail I forwarded to Jeff Cugno and Mark Labaton.
Q And that would be Special Agent Jeff Cugno sitting at the table there?
A Yes.
Q And were you working with Special Agent Cugno in this investigation of the defendant?
A I don't know if I was -- I wasn't working with Mr. Cugno, but he was doing an investigation through the FBI, and so I forwarded information to him.
Q Did you forward a little bit of information or a lot of information?
A The information that we had, I forwarded.
Q When you say "we" --
A Well, the information that Global Crossing had, I forwarded.
Q This would be part of that information; is that correct?
A Right.
Q Now, we talked about a temporary restraining order earlier and then we talked about a preliminary injunction. We also

talked earlier about valid service, did we not?
A A little bit.
Q And was that preliminary injunction to be lawfully served -- was it lawfully served on the defendant at any point, physically?
A I don't believe that the process server was able to serve you with the preliminary injunction.
Q So to make the preliminary injunction enforceable to the restricted terms of what the judge set out in the preliminary restraining order, it would have to be served; isn't that correct?
MS. DUARTE: Objection to relevance, Your Honor.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Okay. Was Global Crossing actively looking to serve Mr. Sutcliffe with any legal process related to that preliminary injunction?
MS. DUARTE: Same Objection, Your Honor.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q To your knowledge, was the FBI seeking Mr. Sutcliffe at this point on December 21st?
MS. DUARTE: Same Objection, Your Honor.
THE COURT: Overruled.
THE WITNESS: I don't know when the FBI started

looking for you. I don't know, specifically, when they started looking.

BY MR. SUTCLIFFE:

Q Let me ask you this, then. When is the first time you started sending stuff to the FBI?

A I don't recall exactly. If you had -- there may be some documentary evidence, but I don't recall.

Q Was it in 2001?

A It was in 2001 because there is this e-mail where I sent something to Jeff Cugno in December of 2001.

Q Is it your testimony that you have no recollection of sending e-mails in November?

A I don't have -- it's a long time ago. I don't specifically recall sending this e-mail.

Q Do you have any recollection of sending an e-mail to the FBI in October?

THE COURT: Mr. Sutcliffe, she's told you several times she doesn't remember when she began to send them. If you have some information that could refresh her recollection, you are welcome to show it to her. Don't keep repeating the same question in a slightly different context. We'll be here for a very long time. That's not what the trial should be about.

MR. SUTCLIFFE: I understand, Your Honor. It goes to her veracity.

THE COURT: Don't make an argument. Just ask a

correct question. Now, please continue.
BY MR. SUTCLIFFE:
Q Let's move on to this document that we're looking at here that you forwarded to the FBI and Mr. Labaton.
Now, the second page of that document, it's a continuation of Mr. Ramsey's letter to you from "abuse@gblx.net". In there it says, "This appears to be from the evilgx guy. What do we do with it? It came from behind 'sw1.det1'.
Do you see that?
A Yes.
Q Do you see the name S. Bateman?
A Yes.
Q Do you recognize the name S. Bateman belonging to anybody?
A I don't know who that is.
Q But it says that something came from behind something.
Is that a fairly accurate statement?
THE COURT: The document speaks for itself. It says it came from behind "sw1.det1". Now, please continue.
BY MR. SUTCLIFFE:
Q It says, "What do we do with it?"
Did you offer any advice as to what you should do with it to anybody?
A This didn't come from -- this didn't come to me. This came to Andrew Ramsey, so I didn't respond to this.

Q Nobody ever questioned you as to what legally, whatever "this" is this document is referring to, you should do with it?
A Nobody ever asked me.
Q That's my question. Okay. Thank you.

So moving on down here, do you see another -- I have highlighted it right here for your attention. There is two more -- a "cc" here and it starts off the day before this e-mail, and it says December 20, 2001, at 18:58:59 Pacific Standard Time.

Do you see that?

And it's addressed -- it says, "From: Whowants" and the second name is "Toknow." Then it has the e-mail address "evilgxhr@yahoo.com". Okay?

Then it's "cc," and that would be, the defendant, apparently, is sending a cc, like you sent a cc to the FBI and to Mr. Labaton?

MS. DUARTE: Objection to testimony, Your Honor.

THE COURT: Sustained.

Disregard the way he's testifying in the form of questions if that happens, ladies and gentlemen.

MR. SUTCLIFFE: Excuse me, Your Honor. I apologize for the way I'm phrasing this.

Q Do you see two e-mail addresses?

One is "trialattorney@hotmail.com" and the other one is "abuse@gblx.net", which, correct me if I'm wrong, we've

already ascertained that's Andrew Ramsey's e-mail address -- correct? -- on the first page?

A I don't know that "abuse@gblx.net" is Andrew Ramsey's e-mail address.

Q Well, maybe I'm wrong.

Let's look back at the first page. We have "aramsey@gblx.net"; right?

A Uh-huh.

Q Okay. So he's in at least the same sub-net; is that correct?

A "gblx.net" is the same, but it's a different address.

Q I understand.

But if this was -- whatever -- "@globalcrossing", it would be a safe bet to assume that no matter what's in front of here, it's going to the same place, which would be Global Crossing or "gblx.net"?

A That may be a different person.

Q That's correct.

But it's pretty much the same building or the same domain; is that a fair statement?

A Not necessarily the same building.

Q So we can assume it didn't go directly to Andrew Ramsey, but someone gave it to Andrew Ramsey since he's the head of Security; is that a fair statement?

A I don't think so.

THE COURT: Calls for speculation.

MR. SUTCLIFFE: All right. I'm moving on.

THE COURT: Move on, please, Mr. Sutcliffe.

BY MR. SUTCLIFFE:

Q This letter that is being forwarded and replied to, the name is Joe Shmoe that is being replied to, and it has the e-mail address "your_a_real_jack_ass@yahoo.com".

Do you see that?

A Yes.

Q So the receiver "evilgxhr@yahoo.com" is replying to this Joe Shmoe.

Do you see where it says, "Well Joe, looks like you are the real itiot(sic). I shall post anything I wish, which is mine. You own no claim against me for any number(s). You however just threatened me (Assault) across interstate lines.

"Now, before I go on, in the spirit of giving, I'll give you a number in return for this number you seem to be under the delusion you own. Here, you can have 818-566-1986."

Have you ever seen that phone number before?

A I think that was the phone number for Mr. McAfee, the attorney that represented you in the civil case.

Q Correct. Absolutely correct.

Then it goes on to say, "Wait this gets better... I'll give you another one!" Then it has what appears to be another IP address of "64.208.159.230." Then, in brackets,

"(See further below)."

Is that fair to say?

A Yes.

Q Then right below that, it says, "SpamCop version 1.3.3." Then it says, "Retrieved e-mail." And then the e-mail goes on.

MS. DUARTE: Objection, Your Honor, to the form of the question. The defendant is testifying. There is no question.

MR. SUTCLIFFE: I'll rephrase it in the form of a question. Excuse me.

Q Did you see this part right here that says "This page may be saved for future reference"?

A I don't have any recollection of this e-mail.

Q Okay. Do you see all this, "From: Joe Shmoe, Thursday, December 20th"?

A Yes.

Q Do you know what all of this -- this is all a bunch of computer gobbledegook. I'm sure it's pretty technical if --

THE COURT: Just ask the question, Mr. Sutcliffe.

BY MR. SUTCLIFFE:

Q Do you know what it all means?

A No.

Q Do you know what "nslookup" means?

A Where does it say that?

Q It says it up here. It says it up here. Right there.

A No.
Q It appears to look up IP addresses.
A Okay. I don't know that.
Q Do you know what "parsing header" means?
A No.
Q Do you know what a header is?
A Yes.
Q What's a header, please? Tell the jury.
A Well, what I think it is anyway is, at the top of an e-mail, when you print it out, it's got a header up at the top.
Q Absolutely correct.

Moving on, do you see that line right there at the top, "Taking name from IP"?

A Yes.
Q Do you know what that means?
A No.
Q Then we see that "nslookup" again. Do you see that?
A Yes.
Q It says, "Getting name."

So is it fair to say this program, or whatever is putting out this data, appears to be getting a name?

A I don't know.
Q Okay. Do you see another IP address?
A Yes.
Q Then do you see, next to it, "unknown"?

A Yes.
Q And then, "-230." Then do you see the words "Global Crossing" -- at the end -- ".com"?
A Yes.
Q Then it continues looking up, "nslookup, nslookup." And then it says, "Tracking message source."
Do you see that IP address right there?
A Yes.
Q That's the same -- correct me if I'm wrong, that appears to be the same name -- I'm going to show you page 1 again. It says, "I'm going to give you a number," which would provide Mr. McAfee's phone number, and then it lists "64.208.159.230."
Is that the same number that we're looking at right there?
A It appears to be the same.
Q Okay. Do you see the words "Global Crossing" below it?
A Yes.
Q It says, again, "checking IP"?
A Yes.
Q Then it says, "Paranoid reverse DNS passes"?
A Yes.
Q Do you know what "DNS" stands for?
A No.
Q Do you see this line right here? The next word after that is "abuse.net" --

A Yes.
Q -- "@globalcrossing.com". Then it says equals. And then it has the address of "abuse@gblx.net".
A Yes.
Q Okay. Then, at the bottom, it says --
THE COURT: Okay. Mr. Sutcliffe, you are just asking her what she sees. The document shows what it shows. She can tell you what she sees and so can anybody who looks at it. Ask a real question, please.
BY MR. SUTCLIFFE:
Q Do you see where it says, "Administrator of network where e-mail originates"?
A I don't see it. Where is that?
Q Right there. There is an IP address --
A I see that.
Q It says, "Administrator of network where e-mail originates."
A Okay.
Q And then the bottom line is "abuse@gblx.net"; is that not true?
A That's what it says.
Q Okay. Now we get to the bottom. Do you see the name Joe Shmoe?
A Yes.
Q Do you see the name "your_a_real_jack_ass@yahoo.com"?

A Yes.
Q Have you ever read that before?
A I have no recollection of this e-mail.
Q No recollection at all?
A No. I just don't remember it.
Q And you don't recall seeing where --
THE COURT: Mr. Sutcliffe, she has told you, time and time again, she doesn't recognize this e-mail. Now, I'm not going to permit you -- if you continue to ask questions like that, there will be consequences.
You have established what she knows. She has told you many times she doesn't recognize this e-mail. Don't keep asking that question. Ask a different question.
BY MR. SUTCLIFFE:
Q Let me ask you a question. If I said to you -- if I sent you an e-mail and I said, "Ms. Greenwood, if you don't stop censoring my website, I'm personally going to make sure you get your ass kicked," is that a threat?
MS. DUARTE: Objection to relevance, Your Honor.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Are you Joe Shmoe?
A No.
Q You didn't send this e-mail to the owner?
A No.

Q You don't know who sent this e-mail to the owner?

MS. DUARTE: Objection. Asked and answered, Your Honor.

THE COURT: Sustained.

MR. SUTCLIFFE: I believe the question was "you don't know who," not "you are."

THE COURT: Move on.

BY MR. SUTCLIFFE:

Q Did you ever make the statement that the defendant was threatening Mr. Labaton, the man who you cc'd in that e-mail?

A Well, whoever was doing the postings on the "evilgx" website --

THE COURT: No. Now, listen carefully to the question, because we are going to be here forever. He just asked if you ever made a statement. The answer calls for either yes, no, or I don't remember.

THE WITNESS: I don't remember.

BY MR. SUTCLIFFE:

Q Did you ever make the statement -- I'll take that question back.

Did you ever send an e-mail to "swana@fbi.gov" with a cc to "mlabaton@chrismill.com" in February, specifically 6, of 2002, with the subject line "death threat"?

A I may have.

Q Okay. And would that have been referencing Mr. Labaton?

A It may have.

MR. SUTCLIFFE: Can I refresh the witness's recollection, Your Honor?

THE COURT: Yes.

MR. SUTCLIFFE: Thank you.

THE WITNESS: (Witness reading document.)

BY MR. SUTCLIFFE:

Q Do you remember sending that e-mail?

A I don't have a specific recollection of sending it, but it's an e-mail that I sent.

Q The "subject" line -- would you read the "subject" line?

MS. DUARTE: Your Honor, I'm sorry to interrupt. Could I get a Bates number?

THE COURT: Do you see a Bates number on there?

THE WITNESS: Yes. 1543.

MS. DUARTE: Thank you.

THE COURT: I'm not going to permit the reading of the e-mail. What's the "subject" line?

THE WITNESS: "Evilgx-death threat."

THE COURT: Next question, please.

BY MR. SUTCLIFFE:

Q Did you type that "subject" line in?

A It appears that I did.

Q To your knowledge, was the defendant ever charged with making a death threat to Mr. Labaton?

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Did you ever accuse the defendant of making other death threats?

MS. DUARTE: Same objection, Your Honor.

THE COURT: "Other" meaning what, Mr. Sutcliffe?

MR. SUTCLIFFE: Other than that "subject" line she wrote.

THE COURT: Other than this document, whatever this document says?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: The objection is overruled.

The question is whether you ever accused the defendant of making other death threats.

THE WITNESS: Yes.

BY MR. SUTCLIFFE:

Q Could you tell the jury about that?

THE COURT: No. You have to ask a more appropriate question, Mr. Sutcliffe.

BY MR. SUTCLIFFE:

Q Who did you accuse the defendant of making death threats to?

A Death threats against Tracy Hall, myself, and my daughter.

Q You accused the defendant of making death threats against

your daughter?
A Yes.
Q Okay. Also, Tracy Hall and who was the other one?
A Me.
Q You. Okay.
Can you define for me the word "kill"?
MS. DUARTE: Objection, Your Honor.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Do lawyers -- lawyers define things for -- what's a "wordsmith"?
MS. DUARTE: Objection to relevance, Your Honor.
THE COURT: Overruled.
You can answer that question.
MR. SUTCLIFFE: I'm sorry, what?
THE WITNESS: I should answer that question?
THE COURT: If you know the answer. He wants to know what's a "wordsmith." You can answer.
THE WITNESS: I don't know. Somebody who is good with words.
BY MR. SUTCLIFFE:
Q Somebody who can bend words, shape words?
A Just somebody who is good with words.
Q And the word "smith" at the end, is that from a reference to like a blacksmith?

THE COURT: We are not going to have an etymology --

MR. SUTCLIFFE: Okay, Your Honor.

THE COURT: Overruled.

BY MR. SUTCLIFFE:

Q That document that you were referring to -- that we were referring to says, as the "subject" line, "failed death threat"; is that correct?

A No.

Q What is the "subject" line?

A "Evilgx-death threat."

Q And in there, is Mr. Labaton's name referenced?

A In the e-mail, yes.

MR. SUTCLIFFE: Your Honor, I'd like that document entered as an exhibit.

THE COURT: No. Because the document has lots of writing on it that hasn't been authenticated. It appears to be -- I won't comment on what it is.

Is that your objection to the document?

MS. DUARTE: Yes, Your Honor.

MR. SUTCLIFFE: Your Honor, I don't have a fresh copy of that document now.

THE COURT: Please move on, then.

BY MR. SUTCLIFFE:

Q Which Bates number is it?

A 1543.

Q You testified earlier about seeing social security numbers within the "evilgx.com" website; is that correct?
A Yes.
Q And how many, approximately, did you see within this website over the period of its life?
A Probably about 8,000.
Q Do you know how many of those were accurate?
A I think they were all accurate.
Q You think they were all accurate?
A I know that the Global Crossing human resources department did a run to check them.

MR. SUTCLIFFE: Your Honor, would you instruct the witness to answer just "yes" or "no". We are running out of time here.

THE COURT: I think that was a responsive answer.

BY MR. SUTCLIFFE:

Q Okay. So your testimony is, you think all of those numbers that appeared on that website were accurate?
A The human resources department did a check --

THE COURT: What do you think? Do you have a --

THE WITNESS: It was my understanding that they were correct.

THE COURT: That's all you need to answer.

At this point -- ladies and gentlemen, I'm going to excuse you a few minutes early -- there are some things I want

to take up that are designed to save time in the future days ahead, so you are excused until tomorrow. We will resume tomorrow at the same hour.

Please remember the admonition during the break. We'll see you tomorrow morning. Thank you for your service today.

THE CLERK: All rise.

(Jury excused at 12:35 p.m. and the following proceedings had.)

THE COURT: You may step down, and I would ask you to leave the courtroom, please, Ms. Greenwood. We will see you tomorrow morning. Everyone else may be seated.

Ms. Duarte, can you tell me whether it's any part of the government's theory of the case or will be any part of either evidence or argument as to efforts -- I'm looking at a document I was given this morning -- as to where the defendant was at the time of his arrest?

MS. DUARTE: We were going to put in evidence that he was -- that his property was searched in New Hampshire.

THE COURT: Right. But in terms of finding out where he was or evidence that shows what difficulty the government had in tracking him down?

MS. DUARTE: No, we weren't going to discuss that, Your Honor. I mean, if it comes out in cross, we certainly -- it's certainly not part of any kind of a theory, and I don't think it's come up thus far, Your Honor.

THE COURT: Is the government aware of any efforts by any Global Crossing agent or employee involving AT&T ascertaining or investigating where Mr. Sutcliffe was?

MS. DUARTE: I didn't quite understand the question. You mean other than what I've turned over and what that e-mail showed that he put in?

THE COURT: You mean Exhibit 203? Other than that.

MS. DUARTE: Yes.

THE COURT: I don't know what you have turned over, so I don't want you to qualify your answer with that.

Does the government intend to introduce evidence relating to anybody eliciting assistance from AT&T to determine the whereabouts of Mr. Sutcliffe before he was arrested?

MS. DUARTE: Not from anyone other than the AT&T Broadband custodian, who will testify as to the identity of the IP address that came from defendant's house. He's purely custodial. He'll identify the records.

THE COURT: Is that the same IP address that we just heard testimony about, 24.61.143.138?

MS. DUARTE: No.

THE COURT: Would you wait outside, please?

MS. DUARTE: Me?

THE COURT: Yes. Don't leave. But wait outside with the agent.

Are there any other representatives of the government

prosecution in here? Please wait outside.

(Ms. Duarte and Mr. Cugno left the courtroom.)

THE COURT: Mr. Sutcliffe, where are you trying to head with this totally baffling testimony and inquiry?

MR. SUTCLIFFE: Your Honor, I appreciate your patience on that last little thing I was trying to get in there.

Where I'm trying to go, Your Honor, is that Global Crossing and the FBI supposedly were searching for me for this identity theft, credit card fraud, whatever they were alleging, all these thousands of social security numbers. They were saying I stole it. They were suing me. Everybody was supposedly hot on my trail, can't find me, you know, I moved out of state trying to avoid them, elude them. He's gone undercover. They made numerous statements to the newspapers and everything.

It's my position, Your Honor, that the government knew (a) no crime was being committed. That up until December, right until January 1st, about that e-mail, nothing was illegal, per se, being done on that website. Because had there been something being done, the government would have done something with that e-mail.

The government then thereafter, in New Hampshire, has testified, under oath, that he didn't know where I was and that he found me only through this e-mail that was introduced

earlier, which was from Gary Winnick, "Stop by and say hi."

THE COURT: Who are you referring to as giving that testimony?

MR. SUTCLIFFE: Somebody gave testimony that --

THE COURT: Who, by name?

MR. SUTCLIFFE: I believe Ms. Greenwood.

THE COURT: Who are you referring to who supposedly gave this testimony in New Hampshire? What was the name of the witness?

MR. SUTCLIFFE: Special Agent Cugno.

THE COURT: What's the relevance of that?

MR. SUTCLIFFE: The relevance of it is is that he sees an e-mail forwarded to him by Ms. Greenwood. Supposedly, he's in a full investigation mode. He's issuing subpoenas left and right. Okay? But here he gets a hot lead. What does he do with it?

Well, just, I don't know. Nothing, you know.

THE COURT: Okay. Is that the reason why you want the subpoena -- want me to direct the marshal to serve the subpoena on Mr. Ramsey?

MR. SUTCLIFFE: You bet, Your Honor. That's the only reason I want the e-mail address.

THE COURT: So you think that it's a matter that will assist you in your defense to establish that, as you view it, the government took a long time?

MR. SUTCLIFFE: No. That the government witnessed a threat, "I'm going to kick your ass" -- "I'm personally going to kick your ass," directed to the owner of the website -- of that e-mail address "evilgxhr".

THE COURT: The owner being you?

MR. SUTCLIFFE: That would be me.

But they didn't even subpoena that e-mail address. They subpoenaed all the other ones, Gary Winnick, because he said, "Stop by and say hi." Oh, that needs a search warrant. But they never went after that e-mail address, and that goes to show the bias of the FBI agent also, Your Honor.

The fact that this FBI agent -- these people were supposedly hot on my trail, and then they see a threat being made to me, all of a sudden the trail goes cold. They stop issuing subpoenas.

Not only that, Your Honor, but immediately after that the website changed. And the testimony will show, as we come along, a whole new e-mail address appeared. And, again, this guy just sat on his thumbs until the alleged threat to Tracy, and then all of a sudden everything went into high gear.

THE COURT: I think I now understand what your position is, both what you were probing with Ms. Greenwood --

MR. SUTCLIFFE: Thank you.

THE COURT: -- which gave you considerable opportunity to probe, and you were nice enough to acknowledge

that.

I decline to issue the directive to the marshal to serve the subpoena. I'll try to explain to you why.

The theory that you have just explained as to why this evidence is relevant and why it might assist you in your defense doesn't hold up as a matter of law. This is not a defense to the allegations in the case or to the evidence that the government is putting on.

The requirements for a subpoena have to be that they are a good faith effort to not engage in kind of blind discovery or a fishing expedition but furnish defensive matter.

Defensive matter could be that people are testifying about information that they claim to have felt threatened by when they didn't feel threatened by it. That goes to a realm of defense. Information that may -- from what I've been gleaning, you may be intending to put on in your case-in-chief, that you relied on the advice of counsel as to why it was lawful for you to do whatever you are accused of doing, that would be within the realm of defense.

The information that would probe bias, I have bent over backward to give you broad latitude. But to seek information that, in your view, establishes that because the government took as long as it did to either file charges or arrange to have you arrested, there wasn't a crime before then, is not relevant. The existence or absence of a crime is not

going to, in any way, be determined by that kind of inquiry into the government's investigation.

Ramsey was here. If you had attempted to go into some of this, without understanding at the time why you thought you might go into it, I probably would have let you and it probably would have been a mistake and it definitely would have been an immense consumption of time.

Now, there may be something I'm missing here. Your view about the final e-mail on that series of pages, the one that was addressed to -- the clerk has handed me. I want to make sure I understand your position here. It says, "Joe Shmoe, your_a_real_jack_ass@yahoo.com".

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: Joe Shmoe is the sender of that e-mail?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: "Your_a_real_jack_ass" is his e-mail address?

MR. SUTCLIFFE: Yes, Your Honor.

If you'll note on page 2, the comments from Andrew Ramsey, it came behind -- it came from behind "sw1.det1," whatever that "1" or "L," or however you want to see it, which has S. Bateman, that's being addressed to Andrew Ramsey. I think it goes to --

THE COURT: Let me ask you this: What is the relevance of whoever was using the moniker Joe Shmoe sending to

"evilgxhr"? That's where it was sent?

MR. SUTCLIFFE: Yes, Your Honor.

That's why I issued the subpoena for the --

THE COURT: What is the relevance of Joe Shmoe sending to that e-mail address this message about, "I'm personally going to make sure you get your ass kicked"? Is that part of your selective prosecution theory?

MR. SUTCLIFFE: That's part of it. It's also the fact that the government did not -- the government witnessed this e-mail. They saw that it was sent to me.

These are not stupid people. It's the Federal Bureau of Investigation. They could have tracked this IP, the 138, Your Honor, in a heartbeat. It would have been right to me.

THE COURT: In other words, they are singling you out and they are not singling out whoever was sending the Joe Shmoe e-mail?

MR. SUTCLIFFE: Right. And not only that, Your Honor, it says right there "Manchester, New Hampshire." How hard is it for an FBI agent to go, "Gee, give me Manchester, New Hampshire, and give me Sutcliffe"?

I was in the -- my gas was registered in my name. My driver's license was in my name. This is not rocket science.

THE COURT: If you seek to elicit that evidence or provide it when you testify, to show that you didn't think you had done anything wrong and that you didn't have the intent

that the government has to prove, I'll permit you to do it. This I will not permit you to do.

The selective prosecution justification for these wide-ranging, totally irrelevant inquiries is, as a matter of law, Mr. Sutcliffe, totally inapplicable and absent. That's not what selective prosecution consists of. The necessary steps you would have had to take to even pursue a selective prosecution defense have not been taken.

I'm telling you now so that I don't in any way intrude on your examination and the jury doesn't think I'm taking sides, which I've been trying hard to avoid doing, you shouldn't go into that. It's not relevant. I'm going to prohibit you from doing it.

If you want to testify about the circumstances that go to your own state of mind as to how you wound up in New Hampshire and how you thought anybody who wanted to find you could, so you weren't fleeing, you weren't running, you didn't have a guilty conscious, that's relevant. I'll permit you to do that, but not this way.

MR. SUTCLIFFE: Can I ask for clarification on one point, Your Honor?

THE COURT: Yes.

MR. SUTCLIFFE: When you say you are not going to allow me to go into "it," am I going to be restricted from, in my cross of Agent Cugno, going into his reading of this posting

from Joe Shmoe?

THE COURT: No, you won't be.

MR. SUTCLIFFE: I won't be. Okay.

THE COURT: If you were to -- I don't think it's likely, but if you were to establish that Cugno was out to get you and fabricated evidence -- and that doesn't consist of what I understand you claim was his testimony in New Hampshire -- but if he fabricated evidence or you can establish that he's lying before this jury, you have a right to do it. This may help you.

But to get into the question of Ramsey's lengthy exchanges, all of this very technical -- I want the record to reflect that Exhibit 203, which is four and a half pages, Bates stamped 1550 to 1554, contains what, for most lay readers, would be incomprehensible e-mail references, numbers that go through practically a whole line, and references to e-mail technology that are incomprehensible and I don't think they have any relevance to this case.

I tried very hard to follow what you were doing. I don't think the jury could follow it. And I know that I didn't see any relevance. Now that I understand what you were trying to do, I find that there wasn't.

So you will be able to show it to Cugno. I'm not going to issue the subpoena because I don't think it calls for evidence that would promote or assist or in any way affect your

right to put on a defense.

We are adjourned. You'll get Exhibit 203.

Now, did you speak to the prosecutor about Winnick?

MR. REED: Yes, Your Honor.

THE COURT: Do you have a deal worked out?

MR. REED: No, we don't. They are trying to assist me in getting the name of the attorney who represents him who is a different attorney than Christensen, Miller. They are going to try to give that to me this afternoon.

THE COURT: Fine. We are adjourned until tomorrow. I have a lot of things I have to do.

MR. SUTCLIFFE: Thank you for your patience, Your Honor.

THE COURT: You are welcome.

Wait. We have some things to return to you. I didn't want to put this 1543 on the screen because you don't want the prosecutor to see your writing, Mr. Sutcliffe.

MR. SUTCLIFFE: I apologize for not having another copy of that, Your Honor.

THE COURT: Now, to preserve your record, I am going to give to the clerk for filing under seal the declaration you handed me this morning and the requested subpoena which I have declined to issue, so you can challenge it on appeal if it ever gets that far.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Put what I handed you under seal. Okay?

THE CLERK: Yes, sir.

THE COURT: I want to make one more statement. I understand that, with my concurrence, the marshals have removed the leg restraints from Mr. Sutcliffe, and I'm willing to proceed on that basis until and unless there is the slightest sign or reason to return to the restraints. I'll depend on the continuing information from the marshals in that regard. But you are still required to stay where you are --

MR. SUTCLIFFE: I understand.

THE COURT: -- during the course of the trial.

MR. SUTCLIFFE: I appreciate that. Thank you very much.

THE COURT: We are off the record.

(Adjournment at 12:52 p.m., to resume on Tuesday, November 18, 2003, at 8:00 a.m.)

C E R T I F I C A T E

I hereby certify that the foregoing is a true and correct transcript from the stenographic record of the jury trial proceedings in the foregoing matter.

Karen R. Pinn, RPR, CSR 5574
Court Reporter

Sept 13, 2004
September 13, 2004

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE A. HOWARD MATZ, JUDGE PRESIDING

UNITED STATES OF AMERICA, Plaintiff, vs. STEVEN WILLIAM SUTCLIFFE, Defendant.	)	Case No. CR 02-350(A)-AHM

CERTIFIED COPY

REPORTER'S TRANSCRIPT OF JURY TRIAL PROCEEDINGS

Los Angeles, California

Tuesday, November 18, 2003

DAY 5

(Pages 812-998)

KAREN R. PINN, RPR, CSR 5574
Court Reporter

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I N D E X

GOVERNMENT'S WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
GREENWOOD, Elizabeth				
By Ms. Duarte				
By Mr. Sutcliffe		815(resumed)		

GOVERNMENT'S EXHIBITS	FOR IDENTIFICATION	RECEIVED
24		962

DEFENDANT'S EXHIBITS	FOR IDENTIFICATION	RECEIVED
204		819
205		827
206		839
207		847
208		848
209		869
210		874
211	886	888
212		889
213	890	997
214		895
215	907	997
216	912	997
217		914
218	926	997
219	929	997
220	933	997
221	935	997
222	938	939
223	940	997
224	943	997
225	948	997
226	950	997
227	951	997
228	957	

LOS ANGELES, CALIFORNIA;

TUESDAY, NOVEMBER 18, 2003; 8:40 A.M.

(Jury in.)

THE COURT: Good morning, Ms. Greenwood.

I remind you again, of course, you are under oath, and you have the obligation to testify truthfully.

Do you understand that?

THE WITNESS: Yes.

THE COURT: All right. You may proceed.

MR. SUTCLIFFE: Thank you, Your Honor.

ELIZABETH GREENWOOD, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

CROSS-EXAMINATION (Resumed)

BY MR. SUTCLIFFE:

Q Mrs. Greenwood, how are you doing today?

A Good morning.

Q Where we left off yesterday, we briefly were touching on an e-mail from Joe Shmoe.

Do you recall that?

A Yes.

Q Did you ever happen to see within the website "evilgx" a page similar to that posted as a Web page?

A I don't recall that.

Q You don't recall that. Okay.

If I showed you a page, would that --

A It may. I don't know.

MR. SUTCLIFFE: May I show this page?

THE COURT: Okay. What we are going to do is, just put it on the screen. Look at your screen. Show it from there.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: You can enlarge it to the extent the witness asks you to.

BY MR. SUTCLIFFE:

Q Can you see that okay?

A Yes, I can see that.

Q Do you see the top where it says, "New page 0"?

A Yes.

Q Then it has that Joe Shmoe thing --

A Yes.

Q -- and that brief message.

And then below it, it says -- it's a bcc, which is a blind carbon copy; is that not correct?

A Yes.

Q It's to a Lod Cook?

THE COURT: The question is whether this refreshes her recollection. You look it over. Please, don't read from the document.

MR. SUTCLIFFE: Excuse me, Your Honor.

THE COURT: She can see what it says.

THE WITNESS: No, I don't recall seeing that on the

website.
BY MR. SUTCLIFFE:
Q Do you ever recall seeing a page called "spam" -- s-p-a-m -- ".htm"?
A I'm not sure.
Q Now, is it true that after "evilgx.com" first began broadcasting or posting information on this website, that you began to actively monitor this website?
A Initially, it was the human resources department that was monitoring it.
Q Did you take over?
A My assistant and Andrew Ramsey monitored it, and when there was something troubling on it, they forwarded it to me.
Q But other than that, you didn't actively monitor it yourself?
A Correct.
Q Did you send an e-mail to "swana@fbi.gov" on May 9, 2002?
A I may have.
Q If I showed you this document, would it refresh your memory?
A It might.
MR. SUTCLIFFE: May I show the document to the witness?
THE COURT: Yes. Let's do it the same way, please. This has not been marked as a government exhibit?

MR. SUTCLIFFE: No, Your Honor.

MS. DUARTE: No, Your Honor.

BY MR. SUTCLIFFE:

Q Do you see this page that's purported to be an e-mail from "Elizabeth.Greenwood@GlobalCrossing.com" dated May 9th?

A I see the top of it, yes. I can't see much of the text.

Q Let me zoom it in for you.

Do you see that?

A I see that, but I still can't see --

THE COURT: Please show her the rest of the page, Mr. Sutcliffe. There you go.

THE WITNESS: Yes, I see the e-mail.

BY MR. SUTCLIFFE:

Q The "subject" line is --

MS. DUARTE: Objection to the reading of the document, Your Honor.

THE COURT: Does that refresh your recollection as to whether you sent that e-mail, Ms. Greenwood? That's the only question.

THE WITNESS: I don't recall sending the e-mail, but it's definitely an e-mail that I sent. I mean, it appears to be an e-mail that I sent.

MR. SUTCLIFFE: May the defense enter this as an exhibit, Your Honor?

MS. DUARTE: Objection, Your Honor. Hearsay and

irrelevant.

THE COURT: Overruled.

The document will be received as Exhibit 204.

MR. SUTCLIFFE: Thank you, Your Honor.

(Defendant's Exhibit 204 received.)

THE COURT: You can at least try to establish its relevance. It's not hearsay, at least insofar as the fact that it was sent may be of some relevance to your defense.

MR. SUTCLIFFE: Thank you, Your Honor.

Now, may I publish the document?

THE COURT: Yes.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Let's describe it for the record. It's an e-mail from Greenwood to "swana" dated May 9, 2002. It will be Exhibit 204.

BY MR. SUTCLIFFE:

Q Now, is it true that you sent this e-mail to the FBI on May 9, 2002, to basically give them some early thoughts on the website when it first came out?

A That appears to be the case.

Q That's a fair statement?

A I have no specific recollection of sending that e-mail but that's what it appears to be.

Q You have no recollection?

A No.

Q Okay. Do you recall the message that's attached below? It's from Saly, Richard, September 26, 2001, where he sent a message to you, it appears --

MS. DUARTE: Your Honor, I'm sorry to interrupt. Is the jury supposed to be seeing this e-mail?

THE COURT: Yes.

MS. DUARTE: Because they are not.

THE COURT: I'm sorry. I forgot to turn on the screen. Thank you.

BY MR. SUTCLIFFE:

Q As we started discussing this, this was the e-mail you sent on Thursday, May 9th, that you have no recollection of and it was the subject of September '01 e-mails and some early thoughts you had on the "evilgx" website.

Below that, you attached some type of original message from a Saly, Richard, on Wednesday, September 26, 2001, which he had sent, it appears, to you and to -- I would assume this is Mark Block, correct me if I'm wrong, at Christensen, Miller dot-com. And he cc'd John Comparin -- or Comparin, John, excuse me. And the "subject" was "Regarding Sutcliffe Web update." And then there was a message to you, it appears, from, it says, "Liz: Can Bruce determine if employees are going to the site, & for how long?"

Now, do you know who Bruce is?

A I believe he's referring to Bruce Wieseltier.

Q Thank you.

It says, "As long as it's not being abused, I don't know why we would shut this particular site down. Incidentally, his edition of the discussion that he & I had, doesn't bode well for his memory capacity." It's signed Richard.

Do you know who "he" is that he's discussing there?

THE COURT: Show her the full page. Before you ask any question, show her the full page.

THE WITNESS: There is something below.

THE COURT: Scroll down, please, and show the full page. And if you need to enlarge it, Mr. Sutcliffe, so the viewer can see it, then just do it in increments so at least we all know it's on the full page, especially the witness.

MR. SUTCLIFFE: Okay. That's what I was trying to do, Your Honor.

THE COURT: Okay. Fine. Thank you.

BY MR. SUTCLIFFE:

Q Now, do you see below it right here where it says -- there is another original message below it, and it says, "From: Greenwood, Elizabeth"?

A Okay.

Q It's dated Wednesday, September 26, 2001. And it's at 11:09 a.m., which is approximately the same date but about approximately 20 minutes earlier than the original message we

were just reading?
A Uh-huh.
Q It's sent to Mark Block and Richard Saly.
Now, at the bottom here, do you recall making this statement, "He has posted additional info on his website, including an e-mail from Richard. I still think ignoring him may be the best tack (sic). Bruce W. says that he can block the site so that our employees cannot access it from work. This is probably a good idea, but for the fact that Richard and I won't be able to monitor the site from work."
Did you write that?
A Yes --
Q Now --
A -- probably. I mean, I don't have a specific recollection, but it appears to be something that I wrote and it is along the lines that I was talking about.
Q Okay. Do you recall my first question I asked you?
THE COURT: No. That's not --
MR. SUTCLIFFE: Excuse me, Your Honor. I'll rephrase it.
THE COURT: Ask a new question if the first one has already been answered. Just move on, please, to the next matter that you want to establish, if you can.
BY MR. SUTCLIFFE:
Q Is it still your statement that you did not monitor the

website in the beginning stages of the publishing of the information on this website?

A That's correct.

Q Did you ever see a disclaimer -- in the early stages of this website, when it first appeared, did you ever see a disclaimer in or on the website "evilgx.com"?

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: Overruled.

We got into the disclaimer yesterday. That's been asked and answered. The witness told you that she did see the disclaimer. You asked her some questions about it.

MR. SUTCLIFFE: That was a terms of service, Your Honor. I'm speaking of a different legal document.

THE COURT: Do you understand the question, Ms. Greenwood?

THE WITNESS: No. I had thought that the document we looked at yesterday was a disclaimer.

THE COURT: Then please clarify your question, Mr. Sutcliffe.

BY MR. SUTCLIFFE:

Q Did you ever see a different type of legal disclaimer in the early stages of the website "evilgx.com"?

A I'm not sure.

Q If I showed you a document, would that refresh your recollection?

A It might.

MR. SUTCLIFFE: May I show the document, Your Honor?

THE COURT: Yes. Put it on the screen.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: If this is the second page of a two-page document, could you please show her the first page --

MR. SUTCLIFFE: Yes, I will, Your Honor. Thank you.

THE COURT: -- as well, just so she sees what you are asking.

MR. SUTCLIFFE: Thank you, Your Honor. I'll try to get the whole thing in here.

THE COURT: Thank you.

BY MR. SUTCLIFFE:

Q Do you see that clearly?

A Not very well. I can sort of make it out.

Q I touched the wrong button here and something happened.

Is that any better?

A Okay.

MR. SUTCLIFFE: Can I show the second page, Your Honor?

THE COURT: Please.

MR. SUTCLIFFE: Thank you.

THE COURT: Does that refresh your recollection as to whether you saw some previous and different disclaimer than the one you talked about yesterday, Ms. Greenwood?

THE WITNESS: I don't specifically recall that page, but it's certainly along the lines of things that I recall seeing generally on the website.

MR. SUTCLIFFE: Permission, then, to enter this document as an exhibit, Your Honor?

THE COURT: I don't think there is any basis to do that. Now she just told you that she doesn't remember the document. She remembers seeing things like it. Please proceed with your next question.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Do you recall seeing any of the text that was on that document?

A I generally recall that there were disclaimers like that on the website.

Q Did you ever see the words "FAQ" on any documents within "evilgx.com"?

A I may have. It was on that document that you just showed me, so I may have seen that on the website also. I don't have a specific recollection of it.

Q Do you know what "FAQ" stands for on a website?

A "Frequently asked questions."

Q Did you ever see any frequently-asked-questions page within "evilgx.com"?

A I don't have a specific recollection of that.

Q Did you ever make the statement to anybody that

"evilgx.com" provides step-by-step instructions -- excuse me, I'll rephrase that.

Did you ever make the statement to anybody that "evilgx.com" provides step-by-step directions on how to commit identity theft?

A I don't recall.

Q Do you recall sending an e-mail to a Sigmund Solares on October 22, 2001?

A I don't have a specific recollection.

Q If I showed you a document, would it refresh your recollection?

A It may.

MR. SUTCLIFFE: May I show this document to the witness?

THE COURT: Yes.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Why don't you take this one. It may go faster this way.

Cindy, please take the document from Mr. Sutcliffe.

MR. SUTCLIFFE: This is a three-page document, Your Honor.

THE COURT: She's entitled to look at the full document. Tell us, please, what pages that you specifically --

MR. SUTCLIFFE: I believe it's on the third page, Your Honor.

THE COURT: Okay.

THE WITNESS: Okay. I've reviewed it.

BY MR. SUTCLIFFE:

Q Does that refresh your recollection at all?

A Somewhat, yes.

Q Did you send that e-mail -- those e-mails you are reviewing right now?

A The e-mails that are from me, I sent.

MR. SUTCLIFFE: Permission to enter the document into evidence, Your Honor?

THE COURT: May I see the document, please?

MS. DUARTE: Your Honor, I have not seen it, either.

THE COURT: It's Bates stamped 01763 through 765.

Any objection?

MS. DUARTE: No objection, Your Honor.

THE COURT: That exhibit will be marked and received as Exhibit 205. It's a series of e-mails, some of which were exchanges between Ms. Greenwood and Mr. Solares.

(Defendant's Exhibit 205 received.)

THE COURT: Please proceed.

MR. SUTCLIFFE: Permission to post the document, Your Honor?

THE COURT: Go ahead.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Just post the part that you started to

inquire about so we can move this along, please.
BY MR. SUTCLIFFE:
Q It starts on page 2. I'll direct your attention, Mrs. Greenwood, to the bottom of this document, on page 2, that we're looking at, dated October 22, 2001.
Did you send this document from within "GlobalCrossing.com"?
A Yes.
Q And could you tell the jury who it's sent to, please, who you sent it to?
A Well, it appears to be sent to a person named David Vinterella "@intercosmos.com".
Q And a carbon copy went to?
A That's "sig@intercosmos.com", which appears to be Sigmund Solares.
Q And the "subject" line is "evilgx.com", is it not?
A Yes.
Q And you start out talking to, I believe it's David, and you say, "I have not received a reply to the two prior e-mails which I sent to you last" -- I'm going to turn the page over -- "week. The evilgx website" -- excuse me, I'm going to move the document over slightly -- "which is hosted by directNIC continues to post stolen, confidential information regarding Global Crossing employees and board members. In addition, to posting names, social security numbers, place of birth, date of

birth, home address and spouse's name, this site now provides step-by-step directions on how to commit identity theft.

"Please contact me immediately to discuss directNIC's response to this outrageous abuse of its hosting services."

And then it appears to be signed by Liz Greenwood, Assistant General Counsel, Global Crossing.

Did you write that e-mail?

A Yes.

Q Would you please tell the jury the name of the document that you are referring to within "evilgx.com" which provides step-by-step directions on how to commit identity theft?

A Well, I think it was that article in there that's the click-through on identity theft.

Q The "click-through," could you be a little more specific?

A There is an article -- or there was an article on the website regarding identity theft.

Q It was within the website "evilgx.com"?

A I don't know if it was a link to another website that had it or if it was an integral part of the "evilgx" website.

THE COURT: Are you referring to the article or speech by the Congressman from Florida?

THE WITNESS: Yes.

THE COURT: Okay. Now you know what she's referring to. It's been shown to the jury several times as an attachment. It's got the Congressman's picture. I think the

jury understands what the witness is referring to.

Let's move along, please, Mr. Sutcliffe.

BY MR. SUTCLIFFE:

Q In that document that you are referring to, is it your testimony that the Congressman is providing step-by-step directions on how to commit identity theft?

A The article basically says that once you have certain parts of information -- at least that's my recollection -- that once you have certain pieces of information, you are able to commit identity theft.

Q Right. But it's not true, though, is it, that that document written by this Honorable Congressman provides step-by-step directions on how to commit identity theft? Is that not a fair statement?

MS. DUARTE: Asked and answered, Your Honor. Objection.

THE COURT: I'll permit one more answer --

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: -- as framed.

Objection overruled.

BY MR. SUTCLIFFE:

Q It's "yes" or "no".

A My interpretation of posting the information and posting that article together is that it is a step-by-step how to commit identity theft.

Q Okay. I'd like to direct your attention to another e-mail that's contained within this exhibit, and it is written on the same date. I'm now showing page 1 of this three-page document.

I'll direct your attention to the bottom of this document. Now, we discussed earlier, when you read an e-mail, you kind of move backwards. You start from the back and you work your way forward to the top of the document so you get an accurate representation of the time frame; is that not correct?

A That could be a way to read them.

Q Okay. Is it fair to say that later on in the evening, you sent a direct e-mail to Sigmund Solares, and this time you cc'd -- I believe that's David -- who you were referring to as David earlier; right?

A Yes.

Q In there, you brought to their attention that posting the information within the website "evilgx.com" was violating their "acceptable use" policy.

Do you see that?

A Yes.

Q And then you said, "Below is a portion of your policy."

I'm going to turn the page to that portion that you sent them of their own policy.

Do you see where it says "member conduct"?

A Yes.

Q And then down here it says, "You agree to not use the

System to:" and then it says, "a. Upload, post, e-mail or otherwise transmit any Content that is directed to inciting or producing imminent conduct that is unlawful, harmful, threatening, abusive, harassing," etc., etc., etc.

Do you see that?

A Yes.

Q Can you tell me, if something is not imminent, does that imply that it's okay?

MS. DUARTE: Objection, Your Honor. Vague.

THE COURT: Sustained.

MR. SUTCLIFFE: I'll rephrase the question.

THE COURT: It's also not relevant.

BY MR. SUTCLIFFE:

Q Is it against the law to post vague things on the Internet?

MS. DUARTE: Objection. Calls for a legal --

THE COURT: Sustained.

Ladies and gentlemen, what the law is and which laws are relevant to this case and to your responsibilities on this case are something that I decide and I articulate.

Although Ms. Greenwood is a lawyer, she's not qualified as an expert. She's not here to provide legal advice. It's inappropriate to question a witness about legal matters that the judge has the responsibility to charge the jury for.

Please proceed, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Ms. Greenwood, would you agree that context is important when analyzing a statement?

A Yes.

Q I'd like to direct your attention now to the top of this document. Specifically, I'd like to point out, on the same day, you were again speaking to Sigmund, and you said, "We have a temporary restraining order."

This is approximately seven days after the temporary restraining order was obtained from the Honorable Judge Yaffe, based on declarations filed by Bruce Wieseltier and other people from within Global Crossing.

Now, in this restraining order, you lay out the terms that "Defendant, Steven Sutcliffe, and his agents, employees, and all persons acting at his behest, in concert with or participating with him or acting at his direction are hereby directed and enjoined," meaning stopped, "from (1) disseminating in any manner, the social security numbers, plaintiff's salary information and board members' home telephone/address list, including disseminating such information on the evilgx website...."

Did you write that?

A Yes.

Q What comes after the end of the quote -- excuse me, after

the word "website" that you have omitted there?
A I don't recall.
Q Isn't it the part where it says, "Unless it was stolen or taken while he was an employee"?
A I don't know that it says, "Unless it was stolen."
Q Let's look.
THE COURT: It's Exhibit 202.
BY MR. SUTCLIFFE:
Q I'm going to show you Exhibit 202.
Now, you stop where it says the word "website." I'm now going to show you page 4 of the temporary restraining order, and I'm going to point to the word where it ends "website" and the judge wrote in something else.
Do you see that?
A Yes.
Q Is it a fair statement to say that you weren't giving these people who were hosting the website all of the facts, you stopped where the judge continued?
A No, that's not a fair statement. Because I had offered to fax it to him. In the next sentence I say, "Give me your fax number and I'll fax you the complete document."
Q Did you fax it to him?
A I believe I did. I don't know. That was certainly my intent and I was asking for his fax number.
Q But the ultimate way that you laid out this document,

which is you omitted the context, the entire context, of the restraining order; is that not a fair statement?

MS. DUARTE: Objection. Asked and answered. Argumentative.

THE COURT: Sustained.

MR. SUTCLIFFE: I'll move on, Your Honor.

Q Did Global Crossing, to your knowledge, ever accuse the defendant of posting instructions on how to use documents and information within the website "evilgx.com" to commit identity theft?

A Say the question again.

Q Did Global Crossing ever accuse or publish any document accusing the defendant of posting instructions on how to use information in documents within the website "evilgx.com" to commit identity theft?

A I'm not sure.

Q Okay. If I showed you a document, would it refresh your recollection?

A It might.

MR. SUTCLIFFE: Okay. I'd like to show this document, if I may, Your Honor.

THE COURT: Okay. Put it on the screen. Just describe what the document is.

MR. SUTCLIFFE: The document is an ex parte application regarding seeking a preliminary injunction based on

that restraining order that we have discussed.

THE COURT: It's a document filed with the state court?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: All right. Direct the witness to the part you want her to look at to see if she knows or has her recollection refreshed.

BY MR. SUTCLIFFE:

Q Do you see line 10 through 12?

A Yes.

Q Do you recall ever seeing that line within this preliminary injunction or any preliminary injunction?

A I don't have a specific recollection of that line.

Q Did you file a declaration in support of this preliminary injunction?

A I believe I did file a declaration. Not specifically on that point. I don't know. I can't remember what my declaration was -- I don't recall specifically.

THE COURT: Could you show the witness the signature page --

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: -- on this memorandum so she at least knows who signed it?

MR. SUTCLIFFE: Okay.

THE COURT: Please proceed, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Mrs. Greenwood, did you ever see a document filed in any way, shape, or form on behalf of Global Crossing to seek a restraining order to prevent dissemination of any information on this website that claimed to have evidence that the defendant stole from the company by illegally hacking into the company's computer system?

A I don't know.

THE COURT: The same document?

MR. SUTCLIFFE: The same document, Your Honor.

BY MR. SUTCLIFFE:

Q Do you see the highlighted part right there, Mrs. Greenwood?

A Yes.

Q Do you recall ever seeing that in a legal document, to sign the declaration in support of?

A I don't have a specific recollection of that.

Q Let me move on.

The preliminary injunction that was -- there was a preliminary injunction that was eventually gained by Global Crossing, was there not?

A Yes.

Q If you violate that preliminary injunction, the Court -- you can seek damages for contempt of court; isn't that true?

A That's my understanding.

Q To your knowledge, did Global Crossing ever seek contempt proceedings against the defendant for violating this temporary injunction?

MS. DUARTE: Objection. Irrelevant, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q I'll move on.

Now, I was just briefly discussing a declaration I asked you if you had ever filed in support of Global Crossing's application for a temporary restraining order. I believe that you answered in the affirmative, that you had; is that correct?

A No.

Q You never filed a declaration in support of Plaintiff Global Crossing Development's application for a temporary restraining order?

A I don't think I did file -- did sign a declaration when they were getting the temporary restraining order.

MR. SUTCLIFFE: May I?

THE COURT: Hand it to the clerk.

MR. SUTCLIFFE: Thank you, Your Honor.

THE WITNESS: I thought I signed one for the preliminary injunction.

THE COURT: Does that refresh your recollection that you did sign a declaration as part of the papers submitted in the application for a TRO?

THE WITNESS: Yes.

THE COURT: Did you, in fact, sign a declaration?

THE WITNESS: Yes.

THE COURT: Now you may proceed.

MR. SUTCLIFFE: Permission to enter that as an exhibit?

THE COURT: No. You first have to establish what it is that's relevant about it.

MR. SUTCLIFFE: Thank you, Your Honor. I will do that.

MS. DUARTE: Your Honor, may I have a Bates number, please?

THE COURT: No, I don't have a Bates stamp on this. It's a document filed November 1, 2001.

I'll tell you what, Mr. Sutcliffe. I think I will receive this document in evidence. I'm not sure where you are heading with this, but you have a right to at least ask questions, and I will rule on objections.

So that will be received as Exhibit 206. It's a declaration of Elizabeth Greenwood filed in superior court on November 1, 2001.

Please hand this back to Mr. Sutcliffe.

(Defendant's Exhibit 206 received.)

MR. SUTCLIFFE: Thank you, Your Honor.

Q Now that you have seen the document, is your recollection

refreshed?

THE COURT: She just said that. I established that.

MR. SUTCLIFFE: Thank you, Your Honor.

Permission to publish this document?

THE COURT: Yes, you may.

MR. SUTCLIFFE: Thank you, Your Honor.

Q This document, which was filed November 1st, purporting to be a declaration of Elizabeth Greenwood, can you just basically outline what you are declaring in this document as far as -- or why you filed this document?

A I signed it because Mark Labaton asked me to sign it, in support of the temporary restraining order that he was seeking.

Q Okay. So Mark Labaton drafted this document; is that correct?

A I believe so.

Q In section 3, on the second page, above your signature, do you see the words "As used herein, the term 'confidential information' refers to, but is not limited to"?

Do you see that?

A Yes.

Q Do you see it further down here, "Also refers to, but is not limited to"?

A Yes.

Q Is that not a legal term --

MS. DUARTE: Objection --

BY MR. SUTCLIFFE:

Q -- to your knowledge.

MS. DUARTE: -- to relevance.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q What does "not limited to" mean?

A It means not limited to.

Q It means unlimited; is that a fair statement?

MS. DUARTE: Objection. Argumentative.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Is it a fair statement to say that what you were signing, you didn't want your words to be limited to any one particular definition?

MS. DUARTE: Same objection, Your Honor.

THE COURT: Sustained. It's irrelevant what her motive was.

MR. SUTCLIFFE: I'll move on, Your Honor.

Q Now, yesterday, we were discussing an e-mail from Joe Shmoe dated -- that you were notified December 21, 2001.

Do you recall that?

A I recall the discussion from yesterday.

Q Now, prior to that, had you sent any e-mails to the FBI within the past week of that date?

A I may have. I don't know.

Q If I showed you a document, would it refresh your recollection?
A It might.
THE COURT: Just put this one on the screen. If it has a Bates number, please recite the Bates number.
MR. SUTCLIFFE: 1729.
Q Do you recognize that document?
A It appears to be a document -- an e-mail that I sent.
Q The date is December 20th; is that correct?
A Yes.
MR. SUTCLIFFE: Permission to enter this in as evidence, Your Honor?
MS. DUARTE: If I could have just a moment, Your Honor.
THE COURT: You may.
MS. DUARTE: This is Bates 1729?
THE COURT: That's what I was told.
MR. SUTCLIFFE: That's correct. 1729.
MS. DUARTE: Has the defendant established some relevance for its admission?
THE COURT: Not yet.
MS. DUARTE: Then I object to the admission.
THE COURT: Inquire further. I'm not denying the offer, but you need to lay a foundation and establish its relevance, please.

BY MR. SUTCLIFFE:

Q Does Global Crossing have other offices throughout the United States, other than the corporate headquarters where the defendant and yourself worked in Beverly Hills?

A Yes.

Q Is one of those offices in Rochester?

A Rochester, yes.

Q What state is that?

A New York.

Q Rochester, New York.

And this -- one of these e-mails that you might have sent the day before the December 21st Joe Shmoe one, that information, was there a newspaper article you recall reading from the Rochester area?

A Yes.

Q Is that why you sent the e-mail or you might have sent an e-mail to the FBI?

A Yes.

MR. SUTCLIFFE: Permission to --

THE COURT: Well, you have established the background. If you want to get to the Rochester newspaper article, then show it to her.

BY MR. SUTCLIFFE:

Q Do you recall what that article was about?

A Not specifically.

Q Do you recall any of the details at all?
A I think it had something to do with the "evilgx" website.
Q Do you recall what it had to do with the "evilgx" website?
A I don't remember exactly what it said.
Q You testified that you saw thousands of social security numbers in the "evilgx" website; is that correct?
A At one point, yeah.
Q Your best guesstimate, how many did you see, at the most?
A I think there were about 8,000.
Q That's a lot of social security numbers, isn't it?
MS. DUARTE: Objection, Your Honor.
THE COURT: Overruled.
BY MR. SUTCLIFFE:
Q Do you recall when you saw those 8,000 social security numbers?
A Not a specific date, no.
Q Do you recall a specific month?
A No.
Q Is it your testimony that you recall a conversation between you and I, that you didn't memorialize, about ZIP codes, two years ago, but you can't recall seeing 8,000 social security numbers on a website from within your own company?
MS. DUARTE: Objection. Argumentative, Your Honor.
THE COURT: Sustained.
MS. DUARTE: Your Honor, move to strike that last

question.

THE COURT: Motion granted.

BY MR. SUTCLIFFE:

Q Could this article have been right after the social security numbers appeared on the website?

A Well, the website changed. There would be a lot and then there would be a little and then there would be more and then there would be something different.

Q Could it be that a document you sent to the FBI about this newspaper article in Rochester, New York, was sent to him because it detailed the fact that just within several days or a week earlier, 8,000 social security numbers had appeared within "evilgx.com"?

A That could be the case.

Q Is that why you sent this article to them?

THE COURT: She's told you she doesn't remember and doesn't know. So I don't know how you can possibly get a different answer based on what's happened, since she told you that.

BY MR. SUTCLIFFE:

Q This news story was important enough to you to bring it to the attention of the FBI; isn't that correct?

A I passed along everything to the FBI that had to do with the "evilgx" website. I just passed it along.

Q Here you go. Here is something new?

A Yes.
Q Minor or major?
A Yes.
Q Daily?
A Whenever it came to my attention.
Q You testified that it changed all the time.
So is it a fair statement to say that you were passing along stuff to the FBI all the time?
A Whenever somebody brought something to my attention that was on the website, I passed it along.
Q Whenever you saw something on your own, you would pass it along also; is that true?
A I generally was not looking at the website except when my assistant or Andrew Ramsey pointed something out. I had a lot of other duties.
Q So you weren't monitoring the website?
THE COURT: That's been asked and answered many, many times, Mr. Sutcliffe. Now, please move on. It's inappropriate to go over ground more than once.
MR. SUTCLIFFE: I'll move on, Your Honor. Excuse me.
Q Do you recognize this document of an e-mail purported to be sent by you on December 21st also?
A Yes.
Q And do you recall sending this document?
A I don't recall that specific one, but I know that I sent

incident reports.
Q So this document is referencing an incident report?
A Yes.
MR. SUTCLIFFE: Permission to enter this as an exhibit, Your Honor?
THE COURT: Okay. That will be Exhibit 207. Allowing it to be displayed before the jury. It's an e-mail to the FBI.
(Defendant's Exhibit 207 received.)
BY MR. SUTCLIFFE:
Q And it's sent the same day as the e-mail you got regarding Joe Shmoe; correct?
A I don't know. I can't recall the date on the Joe Shmoe one. If it was December 21st, okay, it's the same day.
Q Yes, it is.
THE COURT: You can argue that at an appropriate time, Mr. Sutcliffe.
MR. SUTCLIFFE: Okay.
Would the Court like this document? Is it entered?
THE COURT: 207.
MR. SUTCLIFFE: Thank you, Your Honor.
THE COURT: It's a December 21, 2001, e-mail.
BY MR. SUTCLIFFE:
Q Do you recognize this document also on December 21, 2001?
A Again, I did forward -- you know, it appears that I

forwarded this. I don't have a specific recollection about this one, but it certainly looks like something that I would have written.

Q You sent this, is it a fair statement to say, because you believe that there was some type of fraud going on?

A Well, employees were reporting incidents of identity theft and fraud to the human resources department and they were preparing incident reports.

Q Okay. So you believe that this was important enough that there might be fraud being committed?

A I think there was in this incident report. I don't -- I don't see the incident report here, but apparently, from my e-mail, it appears that there was.

MR. SUTCLIFFE: Permission to enter this as an exhibit, Your Honor?

THE COURT: It will be received.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: The document will be marked and received as Exhibit 208. It's an e-mail from Ms. Greenwood to the FBI also on December 21st.

(Defendant's Exhibit 208 received.)

BY MR. SUTCLIFFE:

Q In this e-mail, on December 21st, you also cc'd Mark Labaton at Christensen, Miller; is that correct?

A Yes.

Q And the "subject" was "fraud" and some type of incident report was attached?
A Yes.
Q And this line right here, there was a fraud report from an employee. "This one looks like actual identity theft."
Can you explain that line?
A Well, sometimes the employees were reporting things like their credit card number was stolen and it wasn't really identity theft. It was that their credit card number was stolen. They were reporting some things that -- I don't know. They were reporting things that were -- didn't have a lot of substance, some of them. So the HR department was taking down all the incident reports and, you know, not all of them really had substance.
Q After the 8,000 social security numbers were published on this website, did Global Crossing notify all of the employees at this point?
MS. DUARTE: Objection. Irrelevant, Your Honor.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Did you ever notify any employees that there was a potential breach of security in the company?
MS. DUARTE: Same objection, Your Honor. Irrelevant.
THE COURT: I'll permit this witness to answer just in her own respect.

THE WITNESS: The head of human resources --

THE COURT: No, just you. The question was, did you?

THE WITNESS: No.

THE COURT: I'm not going to permit additional inquiry, but I'll let you answer the question.

THE WITNESS: When employees were forwarded to talk to me, I made sure that they were aware of the information that the company had circulated on how to protect yourself.

BY MR. SUTCLIFFE:

Q Okay. The next line that you wrote, you said, "The birth date used is not Sutcliffe's."

Can you explain what you meant by that line?

A I guess I meant that the birth date used was not your birth date.

Q Does that imply that you believe that this is me doing this?

A I don't know why I wrote that. I guess. I don't know.

MR. SUTCLIFFE: I'll move on. Thank you.

Did we enter this into evidence, Your Honor?

THE COURT: That was received as 208.

MR. SUTCLIFFE: Thank you.

Q Now, we were discussing the date of December 21st and Joe Shmoe and all of these e-mails that you were sending to the FBI.

Now, about a week later, did you have an interview

with the FBI agent in charge of these investigations, Special Agent Cugno?

A I may have. I can't recall specifically.

MR. SUTCLIFFE: May I show a document?

THE COURT: Just ask about what you want to get to as to whatever happened, as you understand it, at the meeting. You are not going to be able to establish it through the document. You have to ask questions, first.

MR. SUTCLIFFE: Thank you.

Q We talked briefly yesterday about an incident where this process server had allegedly called Child Protective Services.

Do you recall that conversation we had?

A Yes.

Q And that she had called on my -- Sutcliffe's wife, who was an Israeli citizen, because the process server saw the wife beating Sutcliffe's two-year-old daughter.

Do you recall that?

A Yes.

Q Do you recall that you had testified that you didn't say these words to the FBI agent, but that Mr. -- I believe Mr. Labaton had -- correct me if I'm wrong, Mr. Labaton or Mr. Block, from the Christensen, Miller law firm, had told you and you were just telling the FBI; is that your testimony?

A I had no personal knowledge of anything that happened between Tracy Hall and your wife or Child Protective Services.

Q But you testified that you saw Tracy's picture on the website, did you not?
A Yes, I did see her picture on the website.
Q In this interview that you had with the FBI, allegedly on 12-28, did you tell the agent, "Mr. Labaton said that Tracy said that she saw Mrs. Sutcliffe beating the two-year-old child"? Did you tell that to the agent?
A I don't know. I don't recall specifically what the conversation -- I don't even recall specifically whether I had a conversation with the FBI on that date.
Q If I showed you a document, would it refresh your recollection?
A It might.
MR. SUTCLIFFE: Permission to show the document, Your Honor?
THE COURT: Go ahead. Put it on the screen.
Just scroll down to the part or turn the page to the part that you are trying to explore, please.
MR. SUTCLIFFE: The second page, the center part, Your Honor.
THE WITNESS: Okay.
MR. SUTCLIFFE: Permission to enter?
THE COURT: No.
BY MR. SUTCLIFFE:
Q Do you recall having this conversation with the FBI agent?

A I don't recall specifically, but I passed along all the information I had to the FBI.
Q Do you recall any of the information that's contained within this document, the first or second page?
A Yes. I recall passing along that information to the FBI. I don't recall when I passed it along, whether it was in a conversation on that specific date, but I did pass along all the information regarding the website that was given to me.
MR. SUTCLIFFE: Permission to enter the document into evidence, Your Honor?
THE COURT: No.
BY MR. SUTCLIFFE:
Q Mrs. Greenwood, on 12-28, when you had this interview with the FBI agents, why did you have the interview with the FBI agents? Did they call you or did you call them?
That was compound. I'm sorry, Your Honor. I'll withdraw that question.
THE COURT: You can reframe it.
MR. SUTCLIFFE: Thank you, Your Honor.
Q This interview allegedly on 12-28, did you call the FBI?
A I don't recall who initiated the FBI contact.
Q Could they have called you?
THE COURT: It's not really relevant, Mr. Sutcliffe. The fact that she met with the FBI, you have established. The fact that something was said, it's not clear who said what

about this Tracy Hall, was established.

Now, please continue.

MR. SUTCLIFFE: Thank you, Your Honor.

Q In this interview, did you tell the FBI that you had requested a background --

THE COURT: Take the document off the screen, please.

BY MR. SUTCLIFFE:

Q Excuse me.

Did you tell the FBI that you had requested a background investigation on Steven Sutcliffe?

MS. DUARTE: Objection, Your Honor. We went over this yesterday. Asked and answered.

THE COURT: Sustained.

You did explore that, Mr. Sutcliffe.

MR. SUTCLIFFE: I'm sorry, Your Honor?

THE COURT: You did explore that yesterday.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Did you tell the FBI on 12-28 that "Global Crossing believes Sutcliffe used some kind of hacking" --

MS. DUARTE: Objection to reading from the document, Your Honor.

THE COURT: He's just asking a question.

Overruled.

You can ask the question.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Did you say to the FBI agent "Global Crossing believes Sutcliffe used some kind of hacking software to obtain the Global Crossing employee user names and passwords which were posted on 'evilgx.com'"?

MS. DUARTE: Objection to asked and answered again, Your Honor.

THE COURT: Overruled.

You can answer that question.

THE WITNESS: Did I tell the FBI that?

It's in his report. It appears that I did. I didn't recall the incident previously about the hacking software, but I think that was something that Bruce Wieseltier thought had happened.

BY MR. SUTCLIFFE:

Q To your knowledge, was any evidence turned over to the FBI to help them locate the suspect of this illegal hacking?

A All the information that I had was turned over. I don't know if it led to evidence of hacking.

Q To your knowledge, was anybody ever arrested because of this illegal hacking that Global Crossing believes had taken place?

MS. DUARTE: Objection to relevance.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Did you point out, in this meeting with FBI Agent Cugno,

that you had noted that several Global Crossing computers that were serviced by Mr. Sutcliffe contained sensitive information?
A I may have, yes.
Q You testified also that Mr. Sutcliffe had touched your computer; is that correct?
A Yes.
THE COURT: Yes, you've been through that many, many times. I guess you are laying a foundation, so go ahead. Get to the point.
BY MR. SUTCLIFFE:
Q Do you recall when Mr. Sutcliffe touched this computer?
A You worked on my computer in June of 2001.
Q That's correct.
And was he a contractor or an employee at the time?
A I believe you were a contractor at the time.
Q Do you recall when your meeting with the defendant was?
A In August of 2001.
Q And do you recall the date?
A I think it was August 23rd.
Q Right.
Right after that meeting, the following day, is it not a fact that Mr. Sutcliffe was sent home and told, "Hey, we are investigating you," based on the investigation that you requested, and told him "Don't come back until we call you"?
A I'm not sure if it was the next day. I'm not sure.

Q If I showed you a document, would it refresh your recollection?

THE COURT: Why is it relevant whether it was the next day?

MR. SUTCLIFFE: I'm trying to establish the relevance, Your Honor, that there has been an implication that the defendant stole this information. I'm trying to establish --

THE COURT: Whether you were sent home the next day, or two days later, or one day before isn't relevant.

MR. SUTCLIFFE: I believe it is relevant, Your Honor, because it shows there is lack of motive, lack of intent, and lack of opportunity, because --

THE COURT: Okay.

MR. SUTCLIFFE: -- she's testified that earlier, when she met with the defendant in her office --

THE COURT: You really shouldn't get into that under these circumstances.

I find that the need to refresh the witness's recollection as to what happened the next day does not justify resorting to the use of a document to do so. I'm not precluding you from asking about events that happened.

BY MR. SUTCLIFFE:

Q Okay. Did Mr. Saly ever have a conversation with you and inform you that he had sent the defendant home?

A I believe he did. He told me that he had sent you home.
Q Probably -- excuse me, I'll rephrase that.
Could it have been the next day?
A It could have been.
Q Or even that day, that you met with me?
A I don't recall when.
Q But is it fair to say --
THE COURT: Mr. Sutcliffe, do you want to ask her whether she had anything to do with you being sent home? Is that where you are heading?
MR. SUTCLIFFE: No, Your Honor.
THE COURT: Okay.
BY MR. SUTCLIFFE:
Q Is it fair to say that shortly after our meeting -- your meeting with the defendant, he was sent home and not allowed back into the company?
A That's correct.
Q Could you tell the jury of any possible motive that the defendant would have had, two to three months prior to this meeting, to allegedly stealing information from your laptop?
A No.
Q Did he work on your laptop after that meeting -- excuse me, I'll rephrase that.
Did he work on your laptop after that original time back in June?

A I don't know.
Q You'd probably recall that, wouldn't you?
A Well, I left my laptop downstairs in the IT department at least once, and I don't know who worked on it then.
Q When was that? Do you recall what month that was?
A In June I know I left it down there. There are IT records.
Q Right.

What I'm trying to get at is, can you give the jury any possible motive why -- you testified, as Mr. Sutcliffe worked on your computer, it was amicable. He sat down and you sat in the office across from him, basically, and we talked and he tried to fix your computer; right?

A Right.
Q How long did this meeting last? Maybe ten minutes?
A Maybe. Maybe a little longer.
Q In this ten minutes while he's trying to fix your computer, is it your testimony that you believe that he was actually downloading all your computer at the same time?
A No. I think it happened when I left it overnight.
Q When did you leave it overnight? In the same time frame; is that not true?
A In June of 2001.
Q Again, was there any animosity or any hard feelings between yourself and the defendant two months before this

meeting took place while he was still a contractor?
A No.
Q And then they hired him as an employee. As Mr. Wieseltier testified, he was a good employee.
Was he not a good employee?
A I wasn't in the IT department, so I wasn't the supervisor there.
Q You didn't hear any complaints -- legal complaints against him that he was running around taking pens and pencils and doing bad things or anything like that, did you?
A It wouldn't have been my --
THE COURT: Just answer "yes" or "no".
THE WITNESS: No.
BY MR. SUTCLIFFE:
Q Did you hear of any HR complaints against him for being a harasser or a discriminator or any kind of bad complaints at all from the HR department?
MS. DUARTE: Objection to the relevance of this line, Your Honor.
THE COURT: Overruled.
THE WITNESS: Yes.
BY MR. SUTCLIFFE:
Q Yes, what?
A Yes, I had heard complaints to HR.
Q To HR.

What month was this?
A Probably August 2001.
Q Was that after the first time he was fired or prior?
A I believe it was prior.
Q This was right after he was hired as an employee or before he was hired as an employee?
A I don't know specifically.
Q You don't recall at all?
A I'm not sure what day you were hired as an employee, and I'm not sure specifically what day I was informed that there was an HR issue.
Q Did Mr. Saly document this?
A I don't know if Mr. Saly documented it.
Q Okay. Now, you spoke -- you said that occasionally you would send stuff to the FBI that people sent to you; that's true?
A I forwarded to the FBI everything that I had.
Q And you said people were notifying you of stuff?
A Correct.
Q Now, were you heading up the effort to stop the dissemination of information or was Mr. Labaton?
A Mr. Labaton -- well, Mr. Block, initially, and then Mr. Labaton. They were the counsel who were in charge of the civil litigation.
Q So it's a fair statement to say that Mr. Labaton was

heading up the effort to stop this dissemination posted on "evilgx.com"?

A He was the attorney.

Q So he was heading up the effort to stop this dissemination?

A He was the attorney.

Q Okay. Did you ever head up the effort to stop this dissemination?

A I was, within the company, sort of the point person, because people would send me stuff and then I would forward it to the FBI, because we didn't want to -- the feeling was that we shouldn't give all the employees the FBI contact.

THE COURT: You have a tendency, Ms. Greenwood, to go beyond the scope of the question, to explain why things happened, when you haven't been asked to, to volunteer information.

Please don't do that. Just limit your answers to the question. Listen carefully to the question and respond appropriately.

Please continue, Mr. Sutcliffe.

BY MR. SUTCLIFFE:

Q Did you happen to send an e-mail on January 2nd of 2002, approximately four days after the alleged meeting with the FBI?

A I don't know.

Q If I showed you a document, would it refresh your

recollection?

THE COURT: Send it to whom?

MR. SUTCLIFFE: Excuse me, Your Honor. Thank you.

Q Donna Reeves with a cc to Peter Spinelli and John Comparin.

THE COURT: Just ask her -- you know, the way to do this in a way that is painless is to say, did you ever say to Donna Reeves, or whoever the person is, such and such and such and such.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: I don't know. I did. I didn't know. The question isn't whether she sent the e-mail. The question that you want to get to is what was said, if that's relevant at all. Try to do it that way, please.

MR. SUTCLIFFE: I will try my best, Your Honor. Thank you.

Q Mrs. Greenwood, did you send an e-mail on January 2nd to Donna Reeves, Peter Spinelli, and John Comparin, "subject: Evilgx website" with the words, "Donna, I have been heading up the effort to stop the dissemination of information"?

A I may have.

Q If I showed you this document, would it refresh your recollection?

A It might.

THE COURT: I think that that's unnecessary

impeachment. She already told you she was the point person. There is no dispute about that. So whether she also used the words "heading up" isn't relevant because the person who is the point person is the one in charge.

Would you agree that you were the one in charge within the company?

THE WITNESS: Okay.

THE COURT: I'm not putting words in your mouth. Is that a correct statement?

At any time during the saga of what happened, were you the person who was, at any given time, in charge from within the company?

THE WITNESS: I take my instructions from the general counsel and the CEO.

THE COURT: Did that person or persons delegate to you the responsibility to do what could be done to prevent the dissemination of information?

THE WITNESS: Yes.

THE COURT: Now we have established that, so let's move on.

BY MR. SUTCLIFFE:

Q My original question to you, which was, were you heading up the effort to stop the dissemination, your answer is not Mark Block or Mr. Labaton, but yourself; is that correct?

A I had -- I was very peripheral on the civil litigation.

Q Would you define "peripheral"?

THE COURT: No.

MR. SUTCLIFFE: I'll move on, Your Honor. I'm trying to understand her --

THE COURT: Mr. Sutcliffe, it has been established what the witness just said. Now ask what she did or what was done. The precise characterization is no longer relevant.

MR. SUTCLIFFE: I'll move on, Your Honor.

Q This document you sent to Donna -- can you tell us, what is Donna's last name?

A Reeves.

Q -- and also to a Peter Spinelli.

Who is Peter Spinelli?

A I don't remember -- actually, I do remember. It was her attorney.

Q And the reason for this e-mail -- could you explain to me why this e-mail was so important on January 2nd?

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: Sustained.

MR. SUTCLIFFE: I'll move on, Your Honor.

Q After the new year of 2002, did you notify the FBI, Special Agent Cugno, that Mr. Sutcliffe had moved the website to North Carolina to a company called HostOnce?

A I may have.

Q Did you notify the FBI that Mr. Sutcliffe had moved this

website "evilgx.com" to North Carolina on a server called "carolina.net"?

A I may have forwarded that information to the FBI.

Q And did you maybe forward this information to the FBI on December 6th?

A That's possible.

Q Do you recall -- did you hear this information from Andrew Ramsey?

A He was gathering that sort of information.

Q You felt this was important to notify the FBI that the website had now moved; correct?

A I was forwarding all information.

Q But did you feel it was important to let the FBI know that the website had moved?

A Yes.

Q Why did you feel that's important?

MS. DUARTE: Objection. Irrelevant.

THE COURT: Overruled.

THE WITNESS: I don't know.

MR. SUTCLIFFE: Your Honor, permission to enter this document?

THE COURT: No.

MR. SUTCLIFFE: Okay. Permission to show the document to the witness?

THE COURT: Ask a question about the document, and

then if --

BY MR. SUTCLIFFE:

Q Did you say that the misappropriated information had been unlinked in this document that you sent to the FBI?

A Had been what?

Q Did you say that the -- excuse me. I'll rephrase that.

THE COURT: Mr. Sutcliffe, the painless way to do this is put the document on the screen. Here's how you go about it: Did you send this document to so-and-so? "Yes" or "no". Okay. And wait for an answer.

And if you can establish the foundation for the document, you can move for its admission and that gives the opposing lawyer the basis to frame whatever objections she may think are valid.

If the document is admitted, then you can ask about it. That's the way you do it.

THE WITNESS: I can't see the text at the bottom of the page. Okay.

THE COURT: Is that a one-page document?

MR. SUTCLIFFE: It's a two-page, very brief.

THE WITNESS: Okay.

MR. SUTCLIFFE: Your Honor --

THE COURT: Did you send those -- I'm not your lawyer, Mr. Sutcliffe.

MR. SUTCLIFFE: I understand, Your Honor. I'm not a

lawyer, either. I'm trying to do the best I can.

THE COURT: Well, follow the instructions I gave, please. Now the witness has looked at the document. Ask your next question.

BY MR. SUTCLIFFE:

Q In this e-mail message that you forwarded to the FBI regarding the reappearance of the website "evilgx" on a different server, did you read where Mr. Ramsey had stated that "all the misappropriated information had been unlinked"?

Do you recall that?

A I saw that on the e-mail just now.

Q Do you believe that the misappropriated information refers to stolen information?

A Yes.

Q So you thought that it would be important that the FBI be notified of this so they could get some evidence of misappropriated information that could possibly be used for fraud; is that correct?

A I don't think so in this e-mail. It's saying that it was unlinked.

Q Right. But Andrew had pointed to where it was; is that correct?

A Yes.

Q Isn't it a fair statement that you wanted to let the FBI know about this information because it was important that they

know that this website, that had just allegedly posted 8,000 social security numbers, had moved to a new place, and that you guys are trying to find this guy; right? You wanted -- the goal was to stop the publishing of this information; is that true?

A Yes.

Q So that's why you -- part of the reason why you sent this document; correct?

A Yes, if the FBI was looking for where the website was being posted.

MR. SUTCLIFFE: Permission to enter the document into evidence, Your Honor?

THE COURT: Any objection?

MS. DUARTE: No objection, Your Honor.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: This document will be received as Exhibit 209.

(Defendant's Exhibit 209 received.)

MR. SUTCLIFFE: Permission to publish the document?

THE COURT: Yes. Granted.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Mrs. Greenwood, do you recall sending this document right here -- I'm pointing to the top -- from "GlobalCrossing.com" to the FBI and, again, to -- a carbon copy to Mark Labaton at Christensen, Miller dot-com on December 7th of 2001?

A I don't have a specific recollection of this e-mail, but it is an e-mail that I sent.

Q Did Andrew give you any reports about this website being moved to --

THE COURT: Other than what's in the e-mail, Mr. Sutcliffe?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: Other than what's in the e-mail.

The e-mail is now in evidence. The jury will have a chance to read it again when they retire to deliberate. They can read it on the screen. So you don't have to say what's already been admitted into evidence.

Other than that.

THE WITNESS: Other than in this e-mail, he may have at some other time.

BY MR. SUTCLIFFE:

Q Do you recall this company "carolina.net"?

A I don't recall that one, no.

Q You testified that you had no recollection of when these 8,000 social security numbers first appeared on this website; is that not a true statement?

A I couldn't nail down when.

Q Not even the month?

A No.

Q Could you tell me, briefly -- you were following up, were

you not, on forwarding e-mail messages of possible identity theft, and you testified that a lot of these employees were sending all kinds of stuff that was not even close to identity theft; is that a fair statement?

A Some of the things that the employees reported were not.

Q Do you remember when they first started forwarding these reports, what month that was?

A Either in November or December 2001.

Q Now, you testified, in the beginning of "evilgx.com", only the board members' information had been published; is that true?

A No.

Q You said that the board members' information, and then another document containing approximately a hundred social security numbers had been published, of which you recognized half the people; is that fair?

A No.

Q Okay. Help me out here, then.

You saw the board members' personal information, originally. How many social security numbers following alongside or within that website were with the board members' personal information?

A When are you --

Q In the early stages of "evilgx.com", late September, early October.

A Probably a hundred.
Q But it wasn't like the whole entire company; right?
A Right.
Q Did there come a point in time where you notified -- you said you notified the -- Global Crossing notified all the people that their information probably might be out there; true?
A Yes.
Q And did a lot of people start contacting -- I believe you testified that two people were set up to handle just that type of call.
A Yes.
Q Do you recall what time frame that was?
A I think it was November or December of 2001.
Q So it's right about this time, the latter part of -- near Christmastime?
A Probably.
Q So is it a fair statement that Global Crossing was concerned towards the end of December?
A Concerned?
Q About 8,000 numbers being out there and all this identity theft.
A Yes.
Q And it was important to make sure that leads are followed up; is that not a fair statement?

A Yes.
Q And that contacts are kept with the proper law enforcement agencies?
A Yes.
Q And you were heading up this effort?
MS. DUARTE: Asked and answered, Your Honor.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Excuse me. I'll move on.
Did you send an e-mail to the FBI on January 2, 2002, right after the New Year, telling the FBI that "evilgx" is in the process of moving, and then listing an address in Rochester, New Hampshire?
A I don't know.
Q If I showed this document to you, would it refresh your recollection?
A Maybe.
MR. SUTCLIFFE: Permission to show the document?
THE COURT: Display it on the screen.
MR. SUTCLIFFE: Thank you, Your Honor.
Q Do you see the date January 2nd and the address?
A Okay.
Q Do you see, below that, there appears to be some kind of general counsel by the name of Clint Smith?
A Okay.

Q Is it fair to say that that would be the general counsel for this ISP in Rochester, New Hampshire?
A Yes.
Q Did you glean this information somehow or was this information given to you?
A It was given to me.
Q Who was this given to you by?
A Andrew Ramsey.
Q And you thought that this was important to let the FBI know that the website had moved to New Hampshire; is that correct?
A Yes.
Q Because it's right after Christmas and all this stuff had just happened and so -- okay.

Permission to enter this into evidence, Your Honor, this exhibit?

THE COURT: No objection having been heard, it will be received as Exhibit 210.

(Defendant's Exhibit 210 received.)

MR. SUTCLIFFE: Permission to publish the document?

THE COURT: Go ahead.

But you have established already what you needed to.

MR. SUTCLIFFE: Yes, Your Honor. I just want to touch on one point.

Q Mrs. Greenwood, we talked about earlier Andrew Ramsey

forwarding you another e-mail from Joe Shmoe, and it had the address of Manchester, New Hampshire; is that correct?

A Yes.

Q Here we have about a week or so later, and we see that the website is moving. And now it's another New Hampshire address, Rochester, New Hampshire; correct?

A Yes.

Q So is it a fair statement to say that within a period of two weeks, New Hampshire seems to be a predominant location for this website or the owner of the website?

A Yes.

MR. SUTCLIFFE: Nothing further, Your Honor.

THE COURT: Okay. We'll take a break here, ladies and gentlemen, a 15-minute break.

(Jury out.)

MS. DUARTE: I didn't want to offer this in the presence of the jury, but I will stipulate to whatever I can do to help move this trial along. I just want to make sure that the Court and Mr. Sutcliffe are aware of that.

We turned over those e-mails. If there is an issue about the e-mails that a stipulation would cure, I'm willing to do that.

I'm not privy to the ex parte, whatever was discussed about the theories of defense or whatever the Court and the defendant may be aware of.

THE COURT: What specifically are you proposing to stipulate to?

MS. DUARTE: The problem is, I don't know because I'm not sure where he's going. We certainly would stipulate that the e-mails were sent.

And if I could just look at what he wants to introduce to their introduction, most likely, then he could ask a few isolated questions about the e-mails themselves and we could move on.

THE COURT: I will instruct the jury that there is no issue as to e-mails having been sent and received if they are being explored.

Do you have any objection to that, Mr. Sutcliffe? Because this is getting agonizing. And you are not helping yourself by taking so much time.

If you look at the jury, as I know you have sometimes been doing, I think you'll probably agree with me. So we need to move the case along.

That would mean that you could say -- instead of, did you send an e-mail on January 2nd, 2002? You could say, there is an e-mail that was sent on January 2nd, 2002; do you remember it?

Okay? Do you understand that?

MR. SUTCLIFFE: I'm writing it down, Your Honor.

MS. DUARTE: Beyond even that, Your Honor, there are

a number -- if I remember correctly -- I don't have them in front of me -- there are a number of additional e-mails. And I was just offering -- I was making sure that everyone knew if there was any way to not go through these e-mails one by one and to get the relevant admissible portions in front of the jury, I would do it.

THE COURT: I do not anticipate that Mr. Sutcliffe is going to go through every e-mail.

MR. SUTCLIFFE: Well, Your Honor, I'm going to walk her up through --

THE COURT: You are finished.

MR. SUTCLIFFE: Excuse me?

THE COURT: You are finished.

MR. SUTCLIFFE: I don't understand that.

THE COURT: You said no further questions.

MR. SUTCLIFFE: No.

THE COURT: You just said that, Mr. Sutcliffe.

MR. SUTCLIFFE: Regarding this document. I had no further questions regarding this document, Your honor.

THE COURT: How much more time do you expect to explore with this witness?

MR. SUTCLIFFE: I expect to try to impeach this witness, Your Honor.

THE COURT: How much more time do you expect to use on your cross-examination of this witness? This has gone on

for many, many hours. Give me your best estimate.

MR. SUTCLIFFE: I would say at least another -- a couple more hours, at least.

THE COURT: What do you intend to do with these e-mails?

MR. SUTCLIFFE: Your Honor, I'd like to --

MR. REED: Your Honor, the witness is present.

THE COURT: Why don't you leave the courtroom.

(Ms. Greenwood left the courtroom.)

THE COURT: Mr. Sutcliffe, do you intend to ask this witness about every e-mail that her name is on?

MR. SUTCLIFFE: No, Your Honor. I intend to ask her about e-mails that I believe are relevant to the defense to establish that this witness is not telling the truth, not being forthcoming. Her veracity is questionable.

Further, Your Honor, just for the record, I would like to object to --

THE COURT: No. You tell me about the e-mails and then you can object at the appropriate time when something else is about to happen.

MR. SUTCLIFFE: What would you like me to tell you about these e-mails?

THE COURT: How many e-mails do you intend to ask this witness about?

MR. SUTCLIFFE: I don't have an exact number, Your

Honor.

THE COURT: You give the e-mails to the clerk. They are going to all be admitted. Every single one of them is going to be admitted as a single exhibit. Copies will be made at the break. They'll be up there with the witness. Copies will be made for the government. Copies will be made for you. You'll question that way.

I'm reserving the right, as I would with any case and any lawyer, to rule that objections based on relevance are sustained.

MR. SUTCLIFFE: Your Honor, I have handwritten notes within each of these series of e-mails that I detailed out in my line of questioning of these e-mails. I would object to disrupting my defense by having to take out each one of these and then try to resort them back in. That's going to cause a big time delay, Your Honor.

THE COURT: They will be in exactly the order you want. And if you don't want to move them into evidence, you won't move them into evidence. The witness will have them before her. Because you are wasting huge amounts of time, Mr. Sutcliffe.

MR. SUTCLIFFE: Your Honor, I don't think that's necessarily true because I've had 20 months of my life wasted. Okay? I think that this witness, who is the main leader in charge -- and she's tried to deny she was heading up the

effort.

I object to Your Honor's comments to the jury and to anybody in this courtroom regarding my line of questioning as to her heading up this investigation. You steered the jury into a different direction than I was trying to take that witness.

THE COURT: That's not so, Mr. Sutcliffe.

MR. SUTCLIFFE: I'm trying to impeach that witness, Your Honor. And I object to your comments, respectfully, just for the record. Again --

MS. DUARTE: Your Honor --

MR. SUTCLIFFE: -- I don't see why you are forcing me to stop my line of questioning to impeach this witness, who is heading up this investigation --

THE COURT: What are you trying to establish? That she's not telling the truth?

MR. SUTCLIFFE: I'm trying to establish that she was heading up this effort. I'm trying to --

THE COURT: That's been established.

MR. SUTCLIFFE: She was being evasive.

THE COURT: She just told us all that she was the one in charge after getting that delegation.

Now, I'm not going to permit more inquiry into that. That's out of the question. Nobody has the right to establish something that's been established and to go over it time and

time again. No one has the right, not any lawyer, not any client, to impeach somebody about something that hasn't been inconsistent.

MR. SUTCLIFFE: Okay.

THE COURT: That's been established.

MR. SUTCLIFFE: I'll grant Your Honor that, and I won't go into that line of questioning.

However, I would like the record to reflect that I don't like being yelled at by Your Honor.

THE COURT: It's true, I raised my voice and I shouldn't have.

MR. SUTCLIFFE: I'm trying to be respectful, as you have asked me. I'm also trying to show Your Honor that this witness became, I believe, very good friends with the agent -- Cugno -- on a personal level.

I'm trying to establish that she's trying to come across like --

THE COURT: Don't get into that too much. Just ask her if she became friends. Okay? See what she says.

MR. SUTCLIFFE: That's one of my questions way down --

THE COURT: No. Don't go through all of these e-mails to show that she became friends. See what see tells you. If she said she became friends, then you don't have to go through all of these e-mails. If she tells you she didn't

become friends, then maybe the e-mails become relevant.

MR. SUTCLIFFE: There is a lot of information in here, Your Honor, that she made certain statements that I wish to impeach, okay, and I've already set the tone for that.

THE COURT: Let me hear from the prosecutor.

MS. DUARTE: Your Honor, to the extent that there is -- Mr. Sutcliffe keeps saying there is something in these e-mails that he wants to use to impeach her.

Frankly, I haven't heard anything yet, and we've been through 50 e-mails. If he feels that way, if the Court could inquire as to what that is, I'm pretty sure that I would stipulate to it.

I just don't know what to offer to stipulate to because I don't know what he's doing. But if it's that even though on the stand she said "X" and some e-mails she said "Y," I'll stipulate to that and we can move on.

But I don't know what --

THE COURT: So far, I haven't heard anything that's inconsistent that would constitute impeachment and nothing about what she said to the jury, at any stage of her examination, either direct or cross.

MS. DUARTE: Perhaps Mr. Sutcliffe could give that information if he really knows where he's going, Your Honor. I suggest that if he's unwilling to give that information, that he does not know where he's going.

THE COURT: Well, that I'm not going to comment on. He has a right to put on his case in a way that he thinks is going to be helpful to him even though you would put it on differently. That's not going to be the standard that I apply.

Now, Mr. Sutcliffe, you can't establish a basis to refer to documents and consume time on the hope that something is going to impeach something. You first have to get somebody to commit to a position --

MR. SUTCLIFFE: Okay.

THE COURT: -- that you think is a lie. Then if you have evidence that would help you prove that it's a lie, you can resort to that evidence.

You first have to get the lie out. You have to confront her with something that she said that was a lie, either to the prosecutor or to you, already.

MR. SUTCLIFFE: I understand that part, Your Honor.

THE COURT: You can't establish as impeachment --

MR. SUTCLIFFE: But there is another line of questioning I'm trying to take with this witness other than impeachment, Your Honor.

THE COURT: Well, that's all you've told me so far, that you are trying to attack her for her credibility. If you want to attack her for bias because she's friendly with the agent, you are welcome to try. You go about it the way I told you.

MR. SUTCLIFFE: I'm also trying to establish, Your Honor, the fact that this witness was, as I have established, heading up this investigation; that this witness was the first one, allegedly, who had her information posted on this website.

She was the head girl in this corporation and everybody is mad at her, so she gets appointed by these very powerful people within Global Crossing. "Take care of this mess. You made the mess. Now you fix it."

So now here's her job. She's going to field all this --

THE COURT: Mr. Sutcliffe, why is that a defense? How does that help you?

MR. SUTCLIFFE: Your Honor, it goes to the motive to lie for this witness. She's got -- her goal -- she admitted her goal was to get that website -- that information off.

When she figured out she can't get that information off, she comes up with a little lawyer thing. She goes, "Well you know what? I'll just twist his words. I'll bend his words, like a good little wordsmith, and I'll create a threat."

THE COURT: Mr. Sutcliffe, you have gone far enough. That's the kind of thing you might be able to argue to the jury at the end of the case.

The way you are going to do it -- and listen carefully -- you are going to ask about the things you want to prove. Okay?

MR. SUTCLIFFE: Okay.

THE COURT: "Were you trying to get the heat off your back, Ms. Greenwood?"

"Didn't you try to put words into my mouth I never said?"

"Didn't you try to distort what I did say?"

If she says "no," then you show her what you think is the evidence that constituted proof that she did try to do that.

MR. SUTCLIFFE: Your Honor, you are chopping my defense.

THE COURT: That's not so. That's the way we are going to do it.

I'm not going to require Mr. Sutcliffe to tell you exactly what documents he's planning to use and for what purposes. I don't think that would be an appropriate thing to do at this stage. Maybe at a later stage.

Okay. Let's take a break.

(Recess taken at 10:11 a.m. to 11:13 a.m.)

(Jury in.)

THE COURT: Welcome back, members of the jury.

We had a technical problem or equipment problem, and I want to thank the representative -- I think he stepped out -- from the Court's Management Information Systems Unit who assured me that it's been fixed.

This has been a little bit of an imposition on us all, and most especially on you. And I hope you accept my apologies. I don't like this kind of thing to happen, ever. I can't really control it or prevent it.

Mr. Sutcliffe, it turns out, has some additional questions for this witness, so he's entitled to proceed.

MR. SUTCLIFFE: Thank you, Your Honor, members of the jury.

CROSS-EXAMINATION (Resumed)

BY MR. SUTCLIFFE:

Q Mrs. Greenwood, when we left off, we were discussing, early in January of 2002, you had notified the FBI that the website had moved.

Do you recall that?

A Yes, I recall the e-mail that you showed me.

MR. SUTCLIFFE: Now, Your Honor, I'd like to have this document marked as exhibit next in order, if it please the Court?

THE COURT: What is the document, Mr. Sutcliffe?

MR. SUTCLIFFE: It's an e-mail from Mrs. Greenwood to the FBI and Mr. Labaton on January 11th.

THE COURT: Okay. It will be assigned as Exhibit 211.

MR. SUTCLIFFE: Thank you, Your Honor.

(Defendant's Exhibit 211 marked for identification.)

MS. DUARTE: Is there a Bates on it, Your Honor?

MR. SUTCLIFFE: Yes. Would you like me to read the Bates, Your Honor?

THE COURT: The Bates and the date.

MR. SUTCLIFFE: Thank you, Your Honor. 1548 and 1549 --

MS. DUARTE: Thank you, Your Honor.

MR. SUTCLIFFE: -- dated January 11, 2002.

THE COURT: Okay.

MR. SUTCLIFFE: Your Honor, I'd like the witness to look at the document.

THE COURT: All right. You can display it.

MR. SUTCLIFFE: Thank you.

THE COURT: Enable the ports, please, all the ports.

All right. Proceed.

THE WITNESS: I can't read the bottom of the page there after No. 5.

BY MR. SUTCLIFFE:

Q I'll be glad to show it to you.

Can you see that?

A Is there more to this e-mail or is that it?

Q Yes, I believe there is another page.

Do you recall this document?

A I don't have a specific recollection of it, but looking at it, it definitely looks like an e-mail that I sent.

Q It looks like you're telling the FBI and Mr. Labaton that the site is back up again in a different ISP -- is that correct --

A That's correct.

Q -- than the one you had just told them several days earlier, so it looks like it moved again?

A That is correct.

Q Now, from Rochester, New Hampshire, it's gone to Virginia; is that correct?

A That is what it appears to say.

Q And it talks a little bit about that disclaimer --

THE COURT: The document speaks for itself. I'll receive it in evidence. You don't have to repeat what it says.

MR. SUTCLIFFE: All right.

THE COURT: 211 is received.

(Defendant's Exhibit 211 received.)

MR. SUTCLIFFE: I'd like to show this next document, Bates 1546, a January 16, 2002, e-mail, again from Mrs. Greenwood to the FBI and Mr. Labaton.

THE COURT: Okay. You can show it to the witness.

MR. SUTCLIFFE: Thank you, Your Honor.

THE WITNESS: Can you scroll down?

BY MR. SUTCLIFFE:

Q Sure.

A Okay.

Q Do you recognize this document?
A I don't have a specific recollection of it, but it looks like an e-mail that I sent.
Q Could you tell me what you meant by, "Is there any interest by the U.S. Attorney's office in this case?"
THE COURT: 212 will be received in evidence. It's admitted.
(Defendant's Exhibit 212 received.)
MR. SUTCLIFFE: Thank you, Your Honor.
THE WITNESS: I was inquiring as to whether or not the U.S. Attorney's Office was interested in this case.
BY MR. SUTCLIFFE:
Q Did you get a response to this e-mail?
A I don't recall.
Q You say, "That Sutcliffe now claims he 'lawfully owns' all present GX employee social security numbers, birth dates and home addresses and will either republish or sell this information," and that "he has secured another ISP," another host, "out of this country's jurisdiction."
You typed that; is that correct?
A I believe I sent this e-mail.
Q Thank you.
Did Mr. Sutcliffe move the website out of the country's jurisdiction?
A I don't recall. There may have been an ISP outside the

jurisdiction.

Q Why do you think he would say that?

MS. DUARTE: Objection, Your Honor.

THE COURT: Sustained. Calls for speculation.

BY MR. SUTCLIFFE:

Q To your knowledge, after this website, it never went out of the country, though; right?

A I don't recall.

MR. SUTCLIFFE: Okay. Thank you, Your Honor.

Q One last question on this document.

At the bottom of this document, do you see where it says, "Help!" and an exclamation mark?

A Yes.

Q What does that mean?

A I was requesting assistance, help.

Q With an exclamation mark; correct?

A I wrote an exclamation mark.

Q You were very concerned at this point; right?

A Yes.

MR. SUTCLIFFE: Okay. That's all. Thank you.

Your Honor, I'd like to have Bates 1545, a January 22, 2002, e-mail sent to again the FBI and Mr. Labaton.

THE COURT: It will be marked as Exhibit 213.

MR. SUTCLIFFE: Thank you, Your Honor.

(Defendant's Exhibit 213 marked for identification.)

MR. SUTCLIFFE: May I show it?

THE COURT: Yes.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Do you want to ask -- go ahead. Have you finished reading it?

THE WITNESS: I have read it, yes.

BY MR. SUTCLIFFE:

Q Did you send that e-mail on January 22nd?

A I don't have a specific recollection of it. But, yes, it is an e-mail that I sent.

Q And the "subject," is it "death threat"?

A Yes.

Q And who did you send this e-mail to?

A I sent it to Jeff Cugno and Mark Labaton. Jeff Cugno of the FBI and Mark Labaton of Christensen, Miller.

Q You didn't send it to Special Agent of the FBI, Jeffrey Cugno -- it doesn't appear -- I mean, this name right here, that doesn't seem to be Special Agent Jeffrey Cugno of the FBI, does it?

A That was the e-mail address that he gave me.

Q No. I understand the e-mail address.

I'm talking about the salutation at the beginning of the e-mail addressed to him regarding a "death threat." That's not "Attention, Special Agent Jeffrey Cugno of the FBI," is it?

A I am unclear as to the question.

THE COURT: Well, he's pointing to the word "Jeff." We all know that Jeff is a word that's different than Special Agent Cugno. Will you concede to that?

THE WITNESS: Yes.

THE COURT: Please proceed, Mr. Sutcliffe.

BY MR. SUTCLIFFE:

Q At this point, were you like friends with "Jeff" after you've been corresponding with him over these many months?

A No.

Q Could you just pick up the phone and say, "Hey, Jeff, got some new info. I'm going to shoot it over to you by e-mail"?

A I was delivering information to the FBI.

Q I mean, my question was, did you have his phone number and you could just call up and say, "Hey, Jeff, I'm going to shoot you over some e-mails. I think you should take a look at it"?

A I had his phone number.

Q Now, you said that, "Sutcliffe is threatening to murder the process server."

You are an attorney; is that correct?

A Yes.

THE COURT: Asked and answered many times.

BY MR. SUTCLIFFE:

Q You know that, as an attorney, there is a big difference between the word "kill" and the word "murder"; is that not true?

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: Overruled.

THE WITNESS: I'm not a criminal attorney.

BY MR. SUTCLIFFE:

Q But you are making a statement of a criminal act.

THE COURT: That's argumentative, Mr. Sutcliffe. Reframe the question, please.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Are you not making a statement that Sutcliffe is threatening a criminal act of the most heinous type known to man?

MS. DUARTE: Objection. Argumentative, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Are you not making a statement that Mr. Sutcliffe is threatening to do a criminal act?

A Yes.

Q And is it not true that murder is defined as the unlawful killing of a human with malice aforethought?

A I would have to check. That's certainly my basic understanding of murder.

Q And in this document that you read that you believe that Mr. Sutcliffe was preparing to unlawfully kill another person with malice aforethought, can you elaborate on the details of this, whatever you read, that you believe was going to cause

Mr. Sutcliffe to imminently go and murder somebody with premeditated aforethought with malice?

A That's what it said on the website. It said, "I know how to stalk, too. I will kill you."

Q That doesn't say, "I will murder you," does it?

A It used the word "kill."

Q But it didn't use the word "murder"; correct?

A Correct.

Q We've already established that murder is the unlawful killing of a human with malice aforethought; correct?

A Okay.

Q Isn't it fair to say that Sutcliffe is threatening to kill? It doesn't say Sutcliffe is threatening to murder? Will we agree on that?

A It says that "I will kill."

Q Nothing further -- oh, and you pointed out and you are still asking, "Is there any progress on the legal front?" from the government -- is that correct? -- at the bottom of that document?

A Yes.

MR. SUTCLIFFE: Okay. Nothing further. Thank you, Your Honor. This is Exhibit 213.

Q You attached some files, did you not, to that document that you sent that we were just looking at?

A I don't know. I would have to look at it again.

MR. SUTCLIFFE: Your Honor, I'd like three exhibits marked next in order, if it please the Court, Bates, 47, 48 and 49.

THE COURT: Are they separate documents, Mr. Sutcliffe?

MR. SUTCLIFFE: Yes, they are, Your Honor.

MS. DUARTE: Your Honor, I haven't seen these documents. Are they e-mails?

MR. SUTCLIFFE: They were.

THE COURT: Show them to Mr. Reed and have him show them to the prosecutor, please.

Is there any reason why we can't give them a single number?

MR. SUTCLIFFE: Not at all, Your Honor.

MS. DUARTE: I don't have any objection to this, Your Honor.

THE COURT: They will be assigned collectively Exhibit 214 and all will be received.

MR. SUTCLIFFE: Thank you, Your Honor.

(Defendant's Exhibit 214 received.)

MR. SUTCLIFFE: Permission to show the witness the document?

THE COURT: Yes. They are in evidence. You can show it to her.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Mrs. Greenwood, these were government exhibits, turned over, of attachments that were attached to that e-mail where you said -- that you sent, saying "Sutcliffe is threatening to murder the process server."

The first one I'm showing you now appears to be -- it's kind of hard to read. That's the copy I got.

A I'm still not sure that there was any attachment to that e-mail. I need to see the e-mail again. I'm not sure there was an attachment to it.

Q Allow me to display this for you.

THE COURT: Exhibit 213 is on the screen.

BY MR. SUTCLIFFE:

Q Do you see where it says "attach"?

A Yes, but why aren't they showing -- where are the links? It says, "See the attached links." Maybe I didn't attach the links. I don't see any attached links.

Q I don't think it says --

A I don't see any attachment there.

Q What you did was, you -- I believe, maybe I'm wrong, but according to my knowledge of computers, when you attach something, you attach it as an attachment and then whoever is the receiver can then click on the attachments and view the pages or the attachment.

THE COURT: Okay. But Mr. Sutcliffe is permitted to ask you about Exhibit 214 even if you don't have a recollection

of whether you actually attached it.

THE WITNESS: Okay.

THE COURT: 213 does refer to attachment.

Now, proceed, please, with 214.

MR. SUTCLIFFE: Thank you, Your Honor.

Q There was three attachments there: One called "ChristensenShapirolist.htm," one called "ChristensenMillerFinkJacobsGlaserWeilShapiro.htm", and one called "tracytalk.htm".

The threat to murder, would that be on the "tracytalk" attachment that you sent to the FBI and Mr. Labaton?

A I think so, but I'd have to see it.

MR. SUTCLIFFE: I apologize to the jury for these printouts. This is what I received from the government.

THE COURT: Well, you can access it on your own computer system there from the net, can't you, Mr. Sutcliffe, if you choose?

MR. SUTCLIFFE: Well, Your Honor, I believe that an exhibit was previously marked as -- it was identified as Exhibit 24, which were Andrew Ramsey's downloads from late 2001 to early 2002.

If Your Honor -- if it please the Court, I move that Exhibit 24 be moved into evidence at this time so that I could then ask the witness some questions regarding Exhibit 24 and

these pages in question.

MS. DUARTE: Your Honor, if I may. Exhibit 15, the first page of it, which has already been introduced, appears to be an exact copy of what that attachment is, and would make a much better site if placed on the monitor.

THE COURT: Is that acceptable to you?

MR. SUTCLIFFE: Do we have the other two exhibits that I wish to show?

THE COURT: She'll get those out, too. Let's start with the one that says, "Tracy, let's talk," Exhibit 15. Exhibit 15 has been received, only pages 1 through 5.

MS. DUARTE: Correct.

THE COURT: Does what you gave Mr. Sutcliffe include that?

MS. DUARTE: Yes. I gave him the entire exhibit, but page 1 appears to be the --

THE COURT: Please use Exhibit 15 to display page 1 of that.

Okay. Look at the last two lines, please. You may proceed, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Now, as the judge was just pointing out, "If I ever see you near my family again, and I know how to stalk, too, I will kill you. That's my offer." It doesn't say, "I will murder you," does it?

A No.

Q Does it say how I will kill you at the end there?

A No.

Q Is it possible that the intent of the author was to say, "I will kill you in a court of law"?

THE COURT: It calls for speculation as to what the intent of the author was.

Ladies and gentlemen, as you will hear at the conclusion of the case, you are to evaluate a number of factors applying the words that were used for the threats that have been alleged in this indictment.

The government will have to prove there was a specific intent, but that will be different than the actual motive. I'll explain that at the time that I deliver the jury instructions.

In any event, the question was objectionable because it calls for speculation.

Please proceed, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

Q This document that you looked at on this day where you sent that e-mail saying that the defendant was threatening to murder the process server, can you tell us what was your impression of this first paragraph up here?

THE COURT: You mean what did she understand it to mean?

MR. SUTCLIFFE: Yes, Your Honor.

THE WITNESS: Well, it says that you have been stabbed with a knife and it punctured your lung and it hurt and it was messy.

THE COURT: He's asking you for your understanding of what it meant, not what it says. The jury can read what it says.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Did you have an understanding?

THE WITNESS: I think it was meant to intimidate.

BY MR. SUTCLIFFE:

Q Why do you think it was meant to intimidate?

A Because it discusses a very violent occurrence.

Q Do you ever read books?

A Yes.

Q Do you ever watch movies?

A Yes.

Q Do you ever go to plays?

A Yes.

Q Do you believe that everything you see is real?

A No.

Q Do you believe that everything you hear is real?

A No.

Q Do you believe that everything you read is real?

A No.

Q Did you ever read any other stories that were published by the defendant within the "evilgx.com" website?
A There were some stories, yes.
Q Were those stories real?
A I don't -- I don't think that things occurred the way they were depicted in the story.
Q So it could have been fiction blended with reality?
A Yes.
Q Kind of like a drama?
A I don't know if a drama is the way to describe it.
Q But you don't see the word "murder" anywhere on this page at all, do you?
THE COURT: That's been established, Mr. Sutcliffe. Move on.
BY MR. SUTCLIFFE:
Q The last line right there, "Now go in the peace and lie about me no more." Did you follow that link?
A I probably did, but I don't recall where it goes.
Q Did you follow this link right here, "I was just trying to do my job"?
A I probably did, but I don't recall where it goes.
Q Did you follow this link down at the bottom?
A I probably did.
Q But you don't recall?
A I don't recall.

Q Now, at the top of this document, it's really hard to see. I'm going to try to zoom in.

Do you see where it says the title of the page?

A Yes.

Q What does that say?

A "Tracy, let's talk."

Q It doesn't say, "Tracy, I'm going to murder you," does it?

A No.

MR. SUTCLIFFE: Let's move on.

Your Honor, on another one of those pages, I believe, that we were looking at that was attached to that e-mail that was sent, I believe it's "ChristensenShapirolist.htm," I have that document here. May I show that too, Your Honor?

THE COURT: Yes.

BY MR. SUTCLIFFE:

Q Do you recall this document?

A Yes.

Q Did you ever click this link and follow where this went?

A I probably did.

Q But you don't recall?

A I don't recall specifically where it goes. If you show me where --

THE COURT: Excuse me one second, Mr. Sutcliffe, so we can have a clear record here.

What was the number assigned to this document when

the government introduced it?

MS. DUARTE: Your Honor, that appears to be Exhibit 15. I believe it's page 4, but I can't see the page number.

MR. SUTCLIFFE: You are correct.

MS. DUARTE: Page 4, Your Honor, of Exhibit 15.

THE COURT: Fine.

You may proceed, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: The previous document was Exhibit 15, page 1?

MS. DUARTE: Correct.

MR. SUTCLIFFE: This is page 4.

Q Now, do you see this other hyperlink right there, "prove it"?

A Yes.

Q Did you follow that link?

A I probably did.

Q But you don't recall?

A Right.

Q Now, where it says, "Until then I shall fight your accusations under the law." It doesn't say I'm going to fight you with a knife or a hatchet or a gun or anything like that, does it?

A No.

Q It says, "under the law"; correct?
A Correct.
Q Thank you.
Now, it says, "With a tooth for a tooth and a nail for a nail."
Does that appear to be kind of like rhetoric?
A I don't know.
Q Hyperbole?
A I don't know.
Q Did you form an impression in your mind at the time you read this page?
A Yes.
Q And you thought there was something threatening on here?
A Yes.
Q We'll get there.
Now, "All the rights reserved," is that a legal term?
A Yes.
Q Now, I assume, correct me if I'm wrong, but this is where you assume that there was some kind of danger or imminent threat of death -- correct?
A Yes.
Q -- "Let the games begin once again until death"?
A Yes.
Q Did you follow that link right there?
A I probably did.

Q And can you tell the jury what that link took you to?
A I can't recall.
Q So is it safe to assume that you see the word "death" and you believe that something illegal is happening or going to happen -- is imminent; is that correct?
A That it's a possibility.
Q Do you remember me asking you about Leo Hindery in the beginning, a phrase that he had made, "We live and die together"?
A Yes.
Q Did you hear those words and say, "Oh, I've got to call the FBI"?
A No.
Q So is it your testimony that only executives of Global Crossing can use words like "die"?
A No.
Q Now, the last document that you forwarded to the FBI, I'm going to try to guess which one this one is.

If the Court will give me one minute here.

I don't see it in Exhibit 15.

MS. DUARTE: If I can see it one more time, Your Honor, I will be able to tell.

If we could have just a minute, Your Honor.

Your Honor, this document is not in the government's evidence. I have no objection to its admission, but I do not

have a better copy.

THE COURT: All right. Thank you.

MR. SUTCLIFFE: It's marked Bates 48 for the record.

THE COURT: It will be Exhibit 216 -- no, 215.

MR. REED: Your Honor, that was a group, 214. You already marked that.

THE COURT: Is this part of 214?

MR. SUTCLIFFE: Yes, Your Honor, it is.

MR. REED: I believe it is.

THE COURT: All right.

BY MR. SUTCLIFFE:

Q Can you point out any type of threat in this document?

A I can't read all of it, but I don't see any apparent threat on this page.

THE COURT: Let the record reflect that the document is barely legible. Most of it is not legible.

MR. SUTCLIFFE: I'll be glad to zoom in, the best I can.

Q Do you see this line at the bottom right there, "No good thing will God withhold from those who walk with integrity," And then it appears to quote Psalm 84, verse 11?

A Yes, I see that.

Q Was that threatening to you?

A No.

Q Is it your understanding that the defendant was terminated

for integrity?
A No.
Q Was the defendant terminated because he lied on his employment application?
A That's my understanding.
Q Did Mr. Saly ever tell you that that was an integrity issue with him?
A I don't know that he told me that.
Q Is it your opinion that an infraction ticket, a parking ticket, a speeding ticket constitutes a crime?
MS. DUARTE: Objection. Irrelevant.
THE COURT: Overruled.
THE WITNESS: I believe it's a misdemeanor.
BY MR. SUTCLIFFE:
Q An infraction ticket is a misdemeanor?
A I don't know what you mean by "infraction ticket."
THE COURT: Move on, please, Mr. Sutcliffe.
MR. SUTCLIFFE: Thank you, Your Honor.
Q Now, on February 5th --
Excuse me, Your Honor. I'd like to have another document marked as an exhibit next in order.
THE COURT: Okay. The number assigned will be 215.
(Defendant's Exhibit 215 marked for identification.)
THE COURT: What's the document?
MR. SUTCLIFFE: Thank you, Your Honor.

It's an e-mail from Mrs. Greenwood to the FBI, Special Agent Cugno, and Mark Labaton on February 5, 2002.

MS. DUARTE: May I have the Bates number, Your Honor?

MR. SUTCLIFFE: Bates 01524.

MS. DUARTE: Thank you.

MR. SUTCLIFFE: Permission to show the document to the witness, Your Honor?

THE COURT: You may.

BY MR. SUTCLIFFE:

Q Can you see that document okay, Mrs. Greenwood?

A Yes.

Q Now, did you send this document to the FBI and Mr. Labaton on Tuesday, February 5th, with the "subject" line "identity theft"?

A Let me just read it a minute.

Q Sure. Take your time.

A Yes.

Q Now, have you ever told Special Agent Cugno, "Hey, you are using Scott Wanamaker's e-mail. You are not Scott Wanamaker. You are committing identity theft"?

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: Sustained.

MS. DUARTE: Also, Your Honor, for the record, this exhibit currently on the screen is also page 1 of Exhibit 21, previously admitted.

THE COURT: Okay.

BY MR. SUTCLIFFE:

Q Is it your interpretation of the law that to go to "yahoo.com" and set up an e-mail account in any other name but your own constitutes identity fraud?

MS. DUARTE: Objection. Asking for interpretation of the law, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Who is the former member of Global Crossing's board of directors who sent you the e-mail below that you forwarded to the FBI?

Let me ask you a different way.

A I'm trying to recall.

Q Let me ask you a different question.

Do you recall who sent you this e-mail? I notice it doesn't identify the sender who sent it to you.

Do you recall who sent this document to you?

A I'm not certain. I know it came from the assistant of one of the former directors. I just can't remember which one of the directors it was.

Q Could the director have been Doug McCorkindale?

A McCorkindale, yes.

Q And the person who sent this to you, could that have been Joyce Cherry?

A Yes.
Q Does that refresh your recollection?
A Yes.
Q Did Doug McCorkindale, a former Global Crossing board member, tell you this is identity theft?
A No.
Q Joyce Cherry, did she say, "Hey, this is identity theft"?
A No.
Q So it's safe to assume, then, that you made the accusation identity theft?
A No.
Q You didn't type in that "subject" line, "identity theft"?
A Yes.
Q Nothing further. I'll move on.

Now, you really wanted to get this website off the air at this time, didn't you?

A Yes.
Q You were pretty much doing what you thought you could to get rid of this website; that was a paramount goal for you; correct?
A That was my job.
Q And that was your goal?

MS. DUARTE: Objection. Asked and answered.

THE COURT: Overruled.

Don't argue with a lawyer who objects. I'll rule on

objections. That objection is overruled.

THE WITNESS: It was my job.

BY MR. SUTCLIFFE:

Q Wasn't it also your goal?

A It was my job.

Q And your goal?

THE COURT: Answer the question whether it was also your goal. Either it's "yes" or "no".

THE WITNESS: Yes.

BY MR. SUTCLIFFE:

Q And this website was moving all over the place; correct?

A Yes.

Q You couldn't shut it down, could you?

A That's not correct.

Q At the time you wrote to the FBI, you said, "Help!," did you not?

A Yes.

Q Nobody was responding; correct?

A That's not correct.

Q The FBI responded to you when you sent the "Help!" e-mail?

A I don't recall.

Q You don't recall.

Now, I'd like the next document, Your Honor, to be marked in order, the February 6th e-mail from Mrs. Greenwood to FBI Agent Cugno and again to Mr. Labaton. It's Bates 1543.

THE COURT: Okay. It will be assigned Exhibit 216.

(Defendant's Exhibit 216 marked for identification.)

MR. SUTCLIFFE: Permission to publish the document, Your Honor?

THE COURT: Yes.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Did you send this document several days later to the FBI, on February 6, 2002, "yes" or "no"?

A I don't have a specific recollection of sending it, but it is an e-mail that I sent.

Q Did you type in that "subject" line "evilgx-death threat"?

A Yes.

Q And you have no recollection of another death threat appearing?

A I recall seeing the page that is referenced in this e-mail on the website.

Q And do you see the line that's highlighted, "The site also contains a veiled death threat against Mark Labaton"?

A Yes, I see that.

Q And it was your interpretation, I understand, the next line which says that "The link for Mark says that it is dedicated in honor of the deceased"; is that true?

A Yes.

Q And that line there caused you to believe that there was a death threat against Mark Labaton; is that true?

A Yes.
Q Now, did you notify Mr. Labaton by phone? Did you call him when you saw this death threat?
A I don't recall whether we spoke by phone.
Q So you see a death threat to the senior counsel of Global Crossing and you don't -- you just send him an e-mail and hope he gets it? You don't notify him, "Hey, this guy is coming to murder you"?
A Mr. Labaton was not senior counsel at Global Crossing.
MR. SUTCLIFFE: I'll move on, Your Honor.
Your Honor, I'd like another document marked as the next exhibit in order.
THE COURT: All right.
MR. SUTCLIFFE: It's a three-page document, Bates 1719, 1720, and 1721. It's an e-mail dated February 11th from Elizabeth Greenwood to Mark Labaton and Special Agent Cugno of the FBI.
THE COURT: Okay. That will be assigned Exhibit No. 217.
MR. SUTCLIFFE: Thank you, Your Honor.
Permission to publish the document?
THE COURT: Any objection to it?
MS. DUARTE: Your Honor, may I just look at it? 1719 --
THE COURT: -- through 1721.

MS. DUARTE: I don't have any objection, Your Honor.

THE COURT: 217 will be received and you may publish it.

MR. SUTCLIFFE: Thank you, Your Honor.

(Defendant's Exhibit 217 received.)

BY MR. SUTCLIFFE:

Q Do you recognize this e-mail, Mrs. Greenwood?

A Yes.

Q And did you type that "subject" line in there, "ComputerWorld article"?

A Yes.

Q And is it fair to say that this was just a copy of an article that you maybe found on -- I don't know where you found it. Maybe you can tell us where you found it.

A Someone sent it to me.

Q And in this article, had you been approached by anybody from "computerworld.com" or anybody related to this document before it was published?

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Do you recognize the document -- the article that's being shown?

A I can't see the whole article, but I recall that there was an article in "Computerworld."

Q Did you ever speak to anybody from "Computerworld"?

MS. DUARTE: Same Objection, Your Honor. Relevance.

MR. SUTCLIFFE: I'll get there, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Now, in the middle of this article that's being published, it says, "An attorney for Bermuda-based Global Crossing."

Do you know who that attorney is?

MS. DUARTE: Irrelevant, Your Honor.

THE COURT: Overruled.

THE WITNESS: I'm not positive.

BY MR. SUTCLIFFE:

Q It says that, "An attorney for Bermuda-based Global Crossing said the company is pursuing both civil and criminal action against the former IT worker. Both the FBI and the police department in Beverly Hills, California, where the information is alleged to have been stolen, are on the case."

Do you see that?

A Yes, I see that.

Q And then, "Global Crossing confirmed that the suspect is a former network computing technician but declined to identify him. The company's attorney said that the ex-worker stole a hard disk containing the personal information but that he contended through his lawyer that the information was given to him."

Do you see that?

A I see that.

Q Do you know who this Global Crossing attorney is who said that the ex-worker stole a hard disk?

A I'm not positive.

Q Excuse me. I'm going to bring this into frame here.

Do you see where it's highlighted, "'Attempts to serve the technician with an injunction preventing dissemination of the information have failed because no one can locate him,' the Global Crossing attorney said"?

A Yes, I see that.

Q And "'Since last September, the individual responsible for the alleged theft of the data continues to put up the website on occasion,'" quote unquote, "'using Internet service providers not yet aware of his actions,' said the attorney, who requested that her name not be used for fear of retribution by the individual."

Do you see that?

A I see that.

Q Is that you?

A It may have been.

Q Was that you giving this interview?

A I don't know that I gave an interview.

Q Well, they seem to be quoting an attorney.

A Well, I'm not sure if they are quoting me throughout the

article.
Q Do you know of any other female attorney within Global Crossing who claims to have been threatened by the defendant?
A I don't know.
Q Did you ever make the statement that Mr. Sutcliffe had stolen a hard drive?
A I don't think I made that statement, but I'm not sure.
Q Okay. Did you ever make the statement that any worker stole a hard disk containing this information that was being posted?
A I'm not sure.
Q And you are not sure if you gave this interview for this article, either; right?
A I'm not -- I mean, I think that it may be referring to me where it says "her." But I don't have a -- I don't know about the whole article.
Q You say "may be" referring to you.

Can you explain to me how someone can refer to you, without talking to you, by quoting you?
A Well, I may have talked to them.
Q Okay. So you may have said that Mr. Sutcliffe or some ex-worker, who you don't want to talk about for fear of retribution, stole a hard disk; is that true?
A I may have said that, but that's not what I -- I don't think I said, "stole a hard disk."

THE COURT: Now, that has been asked and answered three times. Don't ask that one again.

MR. SUTCLIFFE: Okay.

Q Now, again, it has a quote of you, "'However, as soon as the site is posted, it is taken down again by Global Crossing working with the authorities on ISPs,' she added"; right?

A Yes.

Q Did you make that statement?

A I may have.

Q Now, I want to turn to the next page of this document.

Do you see where it says, "Troubles Mounting"?

A Yes.

Q It's talking about the security breach that you were being interviewed for -- or might have been. You have no recollection of being interviewed for; right? It says it "comes at a difficult time for Global Crossing. It filed for bankruptcy protection January 28th."

Do you recall that?

A That the company filed for bankruptcy?

Q Right, on January 28th.

A Yes.

Q Which is just about the time all of these threats of death are taking place; right?

A Okay.

Q Okay. And the company "is now facing questions about

aggressive accounting practices," what does that mean?

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Okay. Were you ever investigated -- excuse me. Were you ever interviewed by the United States Securities and Exchange Commission?

MS. DUARTE: Objection, Your Honor. Relevance.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q It says right here, "Global Crossing's handling of the incident has been harshly criticized by some former IT workers who say the company delayed informing employees."

Did the company delay informing the employees of the security breach of this information that was being posted?

MS. DUARTE: Objection. Irrelevant, Your Honor.

THE COURT: Overruled.

THE WITNESS: No.

BY MR. SUTCLIFFE:

Q Did the company notify the employees right away?

A Very soon after the initial posting of the social security numbers.

Q Would you agree that very soon is not right away?

A I don't believe we delayed.

Q Which social security numbers are you talking about that

you referred to when you said "after the initial posting of the social security numbers," the first initial back in the beginning of the website when there was the board of directors and maybe, I don't know, a hundred social security numbers, or are you talking about the latter part of the year when there was allegedly 8,000?

A When there were only a few, there was no need to notify all the employees. But once there was a large number, there was a need to notify the employees. And Global Crossing's human resources vice president did notify the employees is my recollection.

Q Is it your recollection, then, that a security breach which could lead to identity theft has taken place within Global Crossing involving board of directors and half the people that you claim that you knew on this list of a hundred people, but you didn't notify all the employees that, "Hey, there has been a breach of security here. The numbers are being let out. You might want to take some precautions. Here is some information on how to protect yourself"?

You didn't do that until the latter part of 2001; is that your testimony?

A Global Crossing notified the board members after the board information was posted.

Q Right. But --

A And when a lot of the employees were posted, Global

Crossing notified the employees and gave instructions on how to check your credit and put a fraud alert on your credit account.

Q But you waited months?

MS. DUARTE: Asked and answered, Your Honor. Objection.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q All right. Moving on.

Now, this document purports to say that "The breach occurred in early September. Global Crossing waited until mid-December" --

Do you see that?

A Yes.

Q -- before they informed any employees how to protect themselves.

Do you know who Cynthia Carter is?

A Well, it says she's a former project manager in Global Crossing.

Q She's apparently quoted here by saying that the company "still hasn't taken any steps to inform former workers whose names were on the compromised list."

Do you see that?

A Yes.

Q Do you agree with that statement?

A No.

Q Okay. Do you see this line right here, "Global Crossing's attorney defended the company's decision to hold off on informing employees, claiming that the goal was to prevent the rogue site from getting publicity."

Do you know who that attorney is?

A It may have been me.

Q That was part of your goal; right?

A That certainly would have been something that Global Crossing would have thought was a good thing to do.

Q And you always make your goals -- right? -- no matter what?

A (No response.)

Q Down here at the bottom where it says that, "For instance, instead of ensuring that access to employee information was restricted to relevant staff, all software developers always had full 'read' access to the information."

Do you see that?

A Yes.

Q Did you confirm that?

A Bruce Wieseltier told me that that's not correct.

Q That's a lie. Okay.

MS. DUARTE: Objection, Your Honor.

BY MR. SUTCLIFFE:

Q The next line --

THE COURT: Mr. Sutcliffe, slow down, please.

Do you have an objection?

MS. DUARTE: Yes. The defendant followed the testimony by "That's a lie" and then continued.

I object to those comments on the testimony.

THE COURT: Sustained.

Just take the answer and move on to your next question.

MR. SUTCLIFFE: Thank you, Your Honor. I was just trying to clarify her answer.

THE COURT: Then you need to make it clear that you are asking a question and not making a statement.

MR. SUTCLIFFE: Thank you, Your Honor.

Q The next line here, "The customer billing system was wide open to manipulation by a large number of employees who shouldn't have had access to that information, the former worker claimed."

Do you see that line?

A Yes.

Q Do you disagree with that statement?

A I don't have any personal knowledge, but I was told that that's not correct.

Q Down at the bottom of this document, it says, "The Global Crossing spokeswoman said the company had taken adequate measures to protect critical information."

And there is a quote from this Global Crossing

spokeswoman. "'I think it is very difficult to protect against an IT department employee stealing things off computer hard drives,' she said. 'This particular individual did not have any kind of legitimate access to'" -- I'm turning the page for the record -- "'it,' she said, adding that people who were raising questions about IT security 'are just pushing their own agendas.'"

Did you make that statement?

A No.

Q Again, I'm going to show you a little further down this document. I'm going to zoom in. It seems to be forwarded from a Ravi Moorthy, or whatever, to Madelyn Smith and then her original message from Shelly Tripp was forwarded to Ravi Moorthy. And she's saying -- I'm going to zoom in so you can see it a little better -- "Subject: Interesting reading. 'Ravi, how are you? Things are going well here. A former GX colleague of mine just sent me this website. I thought you would find it interesting. Someone's a little angry, huh?'" Then it is signed by Shelly.

Do you see this address right there --

A Yes.

Q -- "globaldoublecrossing.com"?

A Yes.

Q Are you familiar with the website "globaldoublecrossing.com"?

A Yes.
Q What is "globaldoublecrossing.com"?
A It's a parity of the "globalcrossing.com" website.
Q A parody?
A Yes.
Q There is nothing illegal against parodies; right?
A Correct.
Q Did you go to visit "globaldoublecrossing.com"?
A Yes.
Q Was the owner of that website a little angry?
A I think so, yes.
Q Used some rough and tumble words in there?
A Yes.
Q Did you have him investigated?
A No.
Q Did you call the FBI on him?
A No.
Q Did you make any acquisitions against him?
A No.

MR. SUTCLIFFE: Your Honor, I'd like to enter another document in order, if it please the Court --

THE COURT: Describe what it is, please.

MR. SUTCLIFFE: -- as an exhibit.

THE WITNESS: It's an e-mail from Elizabeth Greenwood on Thursday, February 14th, to a Justin O'Neill, with a subject

line regarding "www.evilgx.com" identity theft.

THE COURT: And the Bates number?

MR. SUTCLIFFE: The Bates numbers are 1657 and 1658.

THE COURT: Okay. You can display it.

(Defendant's Exhibit 218 marked for identification.)

MR. SUTCLIFFE: Thank you, Your Honor.

Q Can you see the document, Mrs. Greenwood?

A Yes.

Q Did you send this document to Justin O'Neill on February 14th?

A It appears that I did, but I can't see the bottom part of the e-mail.

Q I just want to draw your attention to the top line right here, "I am happy to call this former employee."

A Yes.

Q Were you happy at this time, literally?

A I was being helpful.

Q So this was a figure of speech?

A Yes.

Q Okay. You understand what a figure of speech is; right?

A Yes.

Q I just wanted to clarify that.

And in the middle, there is an e-mail that was forwarded to you from Justin; is that not true?

A Yes.

Q And in that the "Importance" is "High"; is that not true?
A Yes.
Q It says, "Please, let's discuss this." And then below that is an e-mail from somebody named John Legere that was sent to Justin O'Neill and a bunch of other people; is that correct?
A Yes.
Q And who was John Legere?
A He's the CEO of Global Crossing.
Q Did you ever see his picture on "evilgx.com"?
A I think so, yes. Yes.
Q Okay. He's the "top dog"; right?
A He was the CEO.
Q When he barks, people run; right?
A Yes.
Q Down at the bottom, this purports to be an e-mail from David Alkins to a bunch of people and he's saying, "All, as a former employee of Global Crossing, I have just learned that my name and birth date, as well as other private information from my Global Crossing employment record, is on a website as of 2/14/02 called www.evilgx.com."

He says, "I demand to know: (a) If it was announced in a generic e-mail sent to Frontier employees on December 18, 2001, that" -- let me stop there for a second.

Was a generic e-mail sent to Frontier employees on December 18, 2001, to your knowledge?

A I'm not sure exactly, but I know that a generic e-mail was sent.

Q And it goes on and says -- he wants to know if that was sent December 18, 2001, quote, "that 'Global Crossing, with help from the FBI and other police agencies, was able to shut down the website on Friday, December 14th, 2001, by serving a court injunction to the Internet Service Provider (ISP) hosting the site.' Why was there no update?"

Do you see that?

A Yes.

Q Now, let me ask you about that.

Did the FBI, to your knowledge, on December 14, 2001, assist Global Crossing, along with other police agencies, in shutting down the website that was being hosted by the ISP on December 14, 2001?

A I don't think so.

Q Do you know who wrote that e-mail to these employees?

A Which e-mail to these employees?

Q Well, the one that was sent approximately December 18, 2001, this generic e-mail informing the employees.

A Somebody in human resources. I'm not sure which e-mail they are referring to.

MR. SUTCLIFFE: That's fine. Somebody in HR. Okay. I'd like to move on. Thank you.

Your Honor, I'd like to have another document marked

as next in order. It's Bates 1717. It's an e-mail from Elizabeth Greenwood to FBI Agent Cugno on February 15th.

THE COURT: Okay. That will be assigned No. 219. What's the Bates number, please?

MR. SUTCLIFFE: 1717 and 1718.

THE COURT: You can display it.

(Defendant's Exhibit 219 marked for identification.)

BY MR. SUTCLIFFE:

Q Do you recognize this e-mail sent February 15th to the government that basically details an article which is running in the "Rochester Democrat & Chronicle today"?

A I recall the article. I don't have a specific recollection of this e-mail, but I certainly sent it and I recall the article being printed.

Q And this was a Rochester, New York, newspaper, I assume?

A Yes.

Q It's called the Democrat and Chronicle.

It starts out by saying, "Global's data is still on protest website" written by Richard Mullins.

Now, I'd like to bring your attention down to the yellow highlighted portions of this article that's being published.

Can you see that okay?

A Yes.

Q Now, it purports to have a quote from a Matt McLaughlin, a

spokesman for the FBI, in Los Angeles. He's saying, "We have an investigation concerning Global Crossing.... there have been no arrests"; is that a fair statement?

A That is what Mr. McLaughlin apparently said.

Q So is it safe to assume that the writer of this article had called up the FBI and said, "Hey, what are you guys doing about this? There is a rogue website out there publishing information"?

MS. DUARTE: Objection, Your Honor. Calls for speculation --

THE COURT: Sustained.

MS. DUARTE: -- and the document speaks for itself.

BY MR. SUTCLIFFE:

Q Moving on to the next paragraph, do you know who these officials are who are quoted in this article who say that "they know who stole the information but have been unable to track down their prime suspect -- Steven Sutcliffe -- to deliver a court injunction"?

Do you know who these officials were that participated in this article?

A No.

Q Were you one of the officials who participated in this article?

A I don't recall.

Q You don't recall.

Now, it says in the next highlight that "Attempts to locate Sutcliffe for comment were unsuccessful. A phone number listed on the website was answered by Leslie McAfee, an attorney in Burbank, California, who said he represents Sutcliffe."

Do you see that?

A Yes.

Q Now, correct me if I'm wrong, but you've, at this point, got reporters coming, they are all knocking at the door, they are wanting interviews, Global Crossing is spinning out control, it's going bankrupt -- or it's already gone bankrupt --

MS. DUARTE: Objection to the question, Your Honor. It's argumentative.

THE COURT: It is. You are giving a speech, Mr. Sutcliffe. Just ask the question, please.

Objection sustained.

BY MR. SUTCLIFFE:

Q Global Crossing is bankrupt at this point; correct?

A Correct.

Q It's under investigation by the SEC; correct?

MS. DUARTE: Objection to relevance, Your Honor.

MR. SUTCLIFFE: I'll get there.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q It's under investigation by the SEC?

MS. DUARTE: Same Objection, Your Honor.

THE COURT: Sustained. Same ruling.

BY MR. SUTCLIFFE:

Q It's under investigation by the FBI at this point?

MS. DUARTE: Same Objection, Your Honor, as to Global Crossing.

THE COURT: I'll permit an answer to that.

BY MR. SUTCLIFFE:

Q It's under investigation by the FBI at this point, is it not?

A I don't know.

Q You knew where Sutcliffe was as far back as December; is that not true?

A I did not.

Q Are you sure of that answer?

A I don't believe I did.

Q I'll move on.

One last thing. Did you ever call up Mr. McAfee? Did you ever pick up the phone and say, "Hey, Mr. McAfee, can we talk?"

A No.

Q Okay. Were you instructed not to talk?

A No.

MR. SUTCLIFFE: Your Honor, I'd like to enter another

document next in order. Give me one second, Your Honor.

It's dated February 18th from Elizabeth Greenwood to FBI Special Agent Cugno. It's Bates 1714.

THE COURT: Okay. You may display it.

(Defendant's Exhibit 220 marked for identification.)

MR. SUTCLIFFE: Thank you, Your Honor.

Q Do you see that document, Mrs. Greenwood?

A Give me a minute to read it.

Q Sure. Take your time, please.

A Okay.

Q Do you recall sending that document?

A I don't recall sending it, but I remember the issue.

Q It's talking about constitutional rights and privacy and -- what was the purpose of sending this document to the FBI?

A I thought that the court case had interesting dicta.

Q That's what you said.

But what was the point of this, other than this "interesting dicta"?

A I thought it was good that a court was agreeing that addresses are personal information that people have a reasonable expectation of confidentiality with.

Q All right. What's reasonable? Can you define "reasonable"? Is that like the saying that common sense, there is nothing so uncommon?

MS. DUARTE: Your Honor, objection to the extent that it calls for a legal definition.

THE COURT: Yes. And the second question which preceded an answer to the first --

MR. SUTCLIFFE: I'll move on.

THE COURT: -- is vague and ambiguous.

There is going to be a concept that I already told you about, ladies and gentlemen of the jury, called reasonable doubt.

The word "reasonable" is relevant in that context. And you will be told about how a reasonable person would evaluate and respond to the language that has been incorporated into the e-mails that are the subject of these counts.

Reasonable can have certain meanings in this lawsuit, and I will define what those are for you to apply.

MR. SUTCLIFFE: Thank you, Your Honor.

I'd like to enter the next document in order.

THE COURT: Before you do that, Mr. Sutcliffe, this is a question I want to pose to the jurors. It's 12:15. We had an unusually lengthy break. I would prefer, if it's not an inconvenience to you -- but if it is, please tell me -- to continue to 1:30, assuming the court reporter can do that. We can take a few minutes' break, stand up and move around, just to stretch a little bit.

Would it be an inconvenience to either the members of

the jury or the court reporter to continue to 1:30? If so, please tell me. I don't want you to feel bashful about it.

Are you all capable of proceeding to 1:30?

The jurors are acknowledging okay.

It's a very tough job for the court reporter. Can you do that?

Let's take a seventh inning stretch.

(Brief recess.)

THE COURT: The court reporter is signaling that she can proceed. With that, let's all proceed.

Thank you for your willingness to make up for the time that we've lost with the delay.

Continue with your questioning, please, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

Defense would like to enter another document, Bates 1526, an e-mail from Elizabeth Greenwood sent on February 26th, 2002, "Subject: Fraudulent use."

THE COURT: That will be assigned Exhibit 221. You may display it.

(Defendant's Exhibit 221 marked for identification.)

MR. SUTCLIFFE: Thank you, Your Honor.

Q Do you have a recollection of sending this e-mail to the government -- the FBI agent in charge on February 26, 2002?

A I don't have a specific recollection of sending it, but it

is an e-mail that I sent.
Q Did you type in the "subject" line "fraudulent use"?
A Yes.
Q Now, "fraudulent" is a criminal term, is it not?
A I think it can also be civil.
Q But it can also be criminal?
A Yes.
Q It can also be slanderous too, couldn't it?
MS. DUARTE: Objection, Your Honor.
THE COURT: Overruled -- no, I sustain the objection. It's irrelevant whether it's slanderous.
BY MR. SUTCLIFFE:
Q Now, this e-mail that you forwarded to the FBI, there was an original message sent to you; is that not true?
A Yes.
Q And this was the original message that you received from somebody; right? Somebody forwarded you this message?
A Yes.
Q Do you recall who forwarded you this message?
A No.
Q No recollection at all?
A No.
Q Okay. And the "to" line is "prnightmare@gx.com", and then it has below it a "Subject: Global public relations nightmare."

Do you see that?

A Yes.

Q Was Global Crossing having a public relations nightmare at this point?

A I don't know.

Q Reporters are calling -- right? -- for interviews?

A They were not calling me.

Q You weren't giving any interviews?

A I spoke with one reporter.

Q So they were calling? At least one called.

A They didn't call me.

Q Global Crossing has gone bankrupt.

Isn't it a fact that Global Crossing's bankruptcy was the fourth largest in the history of the United States?

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: Sustained.

MS. DUARTE: Also, Your Honor, for the record, this exhibit on the screen is also page 2 of government's Exhibit 21 previously entered into evidence.

THE COURT: Okay.

BY MR. SUTCLIFFE:

Q Now, the person who forwarded you this e-mail, you say you have no recollection of who this was; is that true?

A That's correct.

Q Could it have been ex-Secretary of Defense and board

director William Cohen?
A It could have been, but I don't recall that.
Q Could it have been --
THE COURT: You must allow the witness to finish her answer.
MR. SUTCLIFFE: I thought she was finished. Excuse me.
THE WITNESS: I don't recall.
BY MR. SUTCLIFFE:
Q Okay. Do you recall if it was from ex-U.S. Attorney Ann Bingham, wife of New Mexico Senator Jeff Bingham?
A I don't recall.
Q Do you recall if it was from Camilla Parker Bowles, girlfriend of Prince Charles of England?
MS. DUARTE: Objection, Your Honor. Asked and answered. She said she doesn't recall.
THE COURT: That one hasn't been asked, but the witness has told you several times she doesn't recall.
MR. SUTCLIFFE: I'll move on. Thank you, Your Honor.
I'm pretty sure the government already entered this as an Exhibit, but I'd like to enter this also. It's Bates 1522. It's an e-mail from Elizabeth Greenwood dated February 26, 2002. The "subject" line also is "Fraudulent use."
THE COURT: Okay. That will become Exhibit 222 for

identification.

(Defendant's Exhibit 222 marked for identification.)

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: What's the date on it?

MR. SUTCLIFFE: It's dated February 26, 2002.

Permission to publish, Your Honor?

THE COURT: Yes.

MR. SUTCLIFFE: Thank you.

Q Do you recall this document?

A Yes.

Q And it appears from -- it's forwarded to you again from somebody or was this sent directly to you?

A This was sent to me and then I forwarded it.

Q Okay. It's talking, basically, about censorship, the "subject" line?

A The original message.

Q Correct.

And it doesn't say, "I'm going to murder you," does it?

THE COURT: Mr. Sutcliffe, that's not a proper way to question, to ask a witness what something doesn't say. What it says is what it says. It's in evidence.

We'll receive 222. The jury will know what it says and, by definition, will know what it doesn't say.

MR. SUTCLIFFE: I apologize to the Court.

(Defendant's Exhibit 222 received.)

BY MR. SUTCLIFFE:

Q Mrs. Greenwood, what does it say after you say, "You like to censor, Liz"?

A It says, "Then let's play a game I call fetch."

Q It says, "Let's play a game"; right?

A Yes.

Q Do you remember playing any games as a kid?

A Yes.

Q Fantasy games? Make-believe games?

A Yes.

Q But this e-mail, again, became fraud to you; is that correct?

A Yes.

Q Was this, in your mind, now becoming criminal? Did it move from civil to criminal?

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: Sustained.

MR. SUTCLIFFE: I'll move on, Your Honor.

Your Honor, I'd like to enter the next document in order. It's Bates 1541. It's an e-mail from Elizabeth Greenwood to, again, Special Agent Cugno on March 1st, 2002.

THE COURT: Okay. That will be assigned Exhibit 223 for Identification.

(Defendant's Exhibit 223 marked for identification.)

MR. SUTCLIFFE: Permission to publish, Your Honor?

THE COURT: Yes.

MR. SUTCLIFFE: Thank you, Your Honor.

THE WITNESS: Can you scroll down, please?

BY MR. SUTCLIFFE:

Q Do you recognize that document?

A Yes.

Q Do you see the highlighted portion?

A Yes.

Q Can you explain -- what does that mean, "I am going to do the usual drill and contact the site owner and ISP"? What is the "usual drill"?

A Can you go back up to the top again?

Q Sure.

A A little more to the top of the e-mail.

By this time, Global Crossing had contacted a number of Internet Service Providers, and the site had been taken down and gone up on new locations. It had happened a few times, I think, at this point.

Q Can you tell us what the "usual drill" was?

A Just contacting the Internet Service Provider and asking them to either remove the specific information or remove the whole site.

Q Based on what law?

A Based on the preliminary injunction against the posting of

the information, and also sometimes based on the "acceptable use" policies of the Internet Service Providers.

Q Their terms of service, what's acceptable?

A Correct. Yes.

Q And this was, you said, based on the preliminary injunction?

A The preliminary injunction and the "acceptable use" policies for the site.

Q The one that hadn't been served because you couldn't find the defendant?

A Well, it would be valid as against the Internet Service Provider if they were served with it.

Q Provided that you had proof that you could show that the information obtained had been taken by or stolen by the defendant while he was employed; is that correct?

MS. DUARTE: Objection, Your Honor --

THE WITNESS: No.

MS. DUARTE: -- we have been through this.

THE COURT: Ladies and gentlemen, the parties' positions, their rights, and their relationships with each other during the course of the underlying litigation are largely irrelevant to this lawsuit.

Whether the preliminary injunction was effective at any point, and if so, under what circumstances, is irrelevant to the issues in this lawsuit.

Please proceed, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

I'd like the next document to be entered. It's Bates 1740.

MS. DUARTE: I'm sorry, Your Honor. If I may, as a point of clarification, in its instruction, the Court just said "It's irrelevant to this lawsuit"?

THE COURT: "To this lawsuit" meaning this prosecution.

MS. DUARTE: Thank you, Your Honor.

MR. SUTCLIFFE: Your Honor, the next document is Bates 1740, an e-mail from Elizabeth Greenwood, Thursday, February 28th, 2002, to K. Johnson at "eli.net", subject "evilgx.150m.com".

THE COURT: All right. That will be assigned Exhibit No. 224.

(Defendant's Exhibit 224 marked for identification.)

MS. DUARTE: May I have a Bates number, Your Honor, if it's available?

MR. SUTCLIFFE: 01740 is what I have, Your Honor.

Permission to publish, Your Honor?

THE COURT: Yes.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: You may proceed, Mr. Sutcliffe.

BY MR. SUTCLIFFE:

Q Do you recognize this e-mail you sent, Mrs. Greenwood?
A Yes, I recognize that as an e-mail I sent.
Q We were just speaking a minute ago about an e-mail you had sent to the government on March 1st, which is right after this document that we're looking at, and you were speaking about "evilgx.150m.com" and saying you were going to do the "usual drill."

Does this document -- is this the document that you were referring to when you said the "usual drill"?
A Yes.
Q Okay. And, again, did you type up this document, this "usual drill" document?
A Yes.
Q So you prepared this document? Mr. Labaton didn't prepare it; right?
A Correct.
Q And we see that -- I see that statement again "included but not limited to." Do you see that statement that's highlighted? I'll point it out for you.
A I see it.
Q You don't want to get cornered into the definition of one word or one meaning; is that true?
A Correct.
Q Now, it says, "The site also contains many menacing statements and threats."

Did you write that?

A Yes.

Q Is it against the law to write menacing statements?

MS. DUARTE: Objection, Your Honor. Vague. Calls for a legal conclusion. Irrelevant.

THE COURT: Ladies and gentlemen, I will give you the instructions as to under what circumstances it can be against the law to communicate threats. This witness is not the judge, and she doesn't have to answer the question.

MR. SUTCLIFFE: Your Honor, I'd like to object on the record that I'm not asking her about menacing threats. I'm asking her about statements. There is a distinct difference between a menacing statement and a menacing threat.

THE COURT: I give you the same instruction, ladies and gentlemen. This witness doesn't have the basis to and isn't required to answer a question about whether it's against the law to issue a menacing statement.

MR. SUTCLIFFE: It goes to her knowledge, Your Honor.

THE COURT: I've made my ruling, Mr. Sutcliffe. Please proceed.

MR. SUTCLIFFE: I will. Thank you.

Q The last line that's highlighted, you said that this website is "enabling the dissemination of stolen information in violation of this court order."

Did you ever seek an injunction -- excuse me. I'll

rephrase that question.

Did you ever seek a contempt of court order against the defendant for violating this preliminary injunction?

A No, I don't believe so anyway.

Q Is it your position that Mr. Sutcliffe, because of these people that he was allegedly hosting this data on, were violating this preliminary injunction? Is that not a fair statement?

A I'm sorry. Say that again.

Q The preliminary injunction enjoined Mr. Sutcliffe and all his agents and anybody acting in concert with him -- correct?

A Correct.

Q -- from posting information if it was taken while he was an employee?

A I would have to see the preliminary injunction again to know what the exact wording on the preliminary injunction was.

Q Okay. Do you have any recollection of what the injunction prevented?

MS. DUARTE: Objection. Asked and answered, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q To your knowledge, nobody from Global Crossing ever went to a court and said, "Hey, Mr. Sutcliffe is violating this preliminary injunction. We want a contempt of court order to

be issued so we can serve it on you"; is that true?
A I believe that's correct. I wasn't handling the civil case.
Q I understand. But you were in contact with the civil lawyer, Mr. Labaton?
A Yes.
Q Pretty much daily; right?
A I don't know that that's correct.
Q Pretty much every time -- is it a fair statement that every time we've seen an e-mail sent to the government, it's been sent to Mr. Labaton, pretty much?
A Most likely, yes.
Q So it wouldn't take nothing to reach out and say, "Hey, let's go get an injunction" -- "let's go get a contempt of court order against Mr. Sutcliffe for violating this preliminary injunction"? Your goal is to stop the website --

MS. DUARTE: Objection. Argumentative.

THE COURT: It's argumentative and it's irrelevant.

Whether or not Global Crossing chose to or could have or did or didn't seek a preliminary injunction is irrelevant, ladies and gentlemen.

The relationship of the underlying litigation between Global Crossing and Steven Sutcliffe is not determinative and you need not take it into account in determining the elements of -- whether or not the elements of this case had been proven

beyond a reasonable doubt at the conclusion of all the evidence.

MR. SUTCLIFFE: Your Honor, the defense at this time would like to enter another document as an exhibit in order. It's Bates stamped 1746. It purports to be a March 15th, 2002, letter to AT&T IP Services, attention: General counsel.

THE COURT: It is a letter or an e-mail?

MR. SUTCLIFFE: It doesn't look like an e-mail. It looks like a letter.

THE COURT: It will be assigned Exhibit 225.

(Defendant's Exhibit 225 marked for identification.)

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Did this witness write it?

MR. SUTCLIFFE: It has her name on it, Your Honor.

THE COURT: You may show it.

MR. SUTCLIFFE: Permission to publish?

THE COURT: Yes.

MR. SUTCLIFFE: Thank you, Your Honor.

THE WITNESS: Okay. I've read it.

BY MR. SUTCLIFFE:

Q Do you see the highlighted portion of this document, Mrs. Greenwood?

A Yes.

Q Did you write that statement?

A Yes.

Q Can you see where the adjective "unambiguous death threat" -- do you see those words?
A Yes.
Q What does that mean, "unambiguous death threat"?
A "Unambiguous" means clear.
Q Is it against the law to --
MS. DUARTE: Objection, Your Honor.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Okay. Did you write the word "unambiguous" in any other documents?
MS. DUARTE: Objection. Vague. Overbroad.
THE COURT: What's the objection?
MS. DUARTE: Overbroad and vague "any other documents."
THE COURT: Sustained.
MR. SUTCLIFFE: It wasn't vague.
Q Did you write the words "unambiguous death threat" to any other ISPs when doing a request that they take down the website?
MS. DUARTE: Irrelevant, Your Honor. Objection.
THE COURT: I'll permit an answer.
THE WITNESS: I may have. I don't recall.
MR. SUTCLIFFE: Moving on, Your Honor.
At this time, the defense would like to enter another

document marked as exhibit next in order. It's Bates 1540. It's a March 4th e-mail from Elizabeth Greenwood at Global Crossing to Special Agent Cugno again.

THE COURT: Okay. It will be assigned Exhibit 226.

(Defendant's Exhibit 226 marked for identification.)

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: You can display it.

BY MR. SUTCLIFFE:

Q Do you see the words -- you are pointing out there is "a new file on this website."

Did you go and see this file or did someone bring this to your attention?

A I'm not sure if I happened to see it or if someone brought it to my attention.

Q You have no recollection of that. Okay.

You see it's called "Pacman --

A Yes.

Q -- like the game we all played when we were kids?

Now, it's supposedly -- you said it's "an Excel chart showing political contributions."

Did you write that line?

A Yes.

Q And you said you thought it came from Sherri Cook's computer?

A Yes.

Q Who is Sherri Cook?
A She was an attorney with Global Crossing.
Q Do you have any knowledge that the defendant ever worked on Sherri Cook's computer?
A I don't know.
Q Did they investigate if the defendant ever worked on Sherri Cook's computer?
A I think there were IT records that were looked at.
Q But nothing, to your knowledge, ever showed that the defendant took this file from Sherri Cook?
A I don't know one way or the other.

MR. SUTCLIFFE: Moving on, Your Honor.

The defense would like to enter the next document marked in order, Your Honor. It's Bates No. 1539. It's a March 15, 2003 (sic), e-mail to the FBI and the "subject" line is "The Web Group & FBI call."

THE COURT: March 15, 2003?

MR. SUTCLIFFE: 2002, Your Honor. Excuse me.

MS. DUARTE: Is there a Bates number, Your Honor?

MR. SUTCLIFFE: I have a Bates of 1539.

MS. DUARTE: Thank you.

THE COURT: That will be assigned Exhibit 227.

(Defendant's Exhibit 227 marked for identification.)

MR. SUTCLIFFE: Permission to publish, Your Honor?

THE COURT: Yes.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: What's your question, Mr. Sutcliffe?

BY MR. SUTCLIFFE:

Q On March 15, 2002, you did speak with a Steve Orosz -- I hope I'm not mangling his name -- of The Web Group?

A I don't recall specifically, but that is what the e-mail says and so I believe that's correct.

Q Can you tell us why he was extremely angry?

THE COURT: The letter speaks for itself. It says so on there.

Ask a different question, please.

BY MR. SUTCLIFFE:

Q Who was he extremely angry at?

A He was angry with Global Crossing and maybe also angry at the website.

Q Is it fair to say that because he was just a guy trying to provide a service to the defendant and Global Crossing was threatening him with legal action?

A He didn't want to be in the middle. I think he may have been being threatened on both sides with legal action.

Q Do you have any knowledge that the defendant threatened legal action against Steve Orosz?

A He told me he didn't want to be in the middle, and so he was sort of on both sides he was taking heated.

Q That's not my question.

My question is, do you have any evidence of any legal action threatened against Mr. Orosz by the defendant?

A No.

Q When I first started talking to you, when we first met, I asked you -- I said, "You wouldn't exaggerate or embellish?" and you said you would try not to; is that correct?

A That's correct.

Q Now, you write that he told you that he also "recently got a call from someone on his cell phone purporting to be with the FBI"; is that true?

A That's what he told me.

Q Did you call the FBI and ask them, "Hey, call this guy"?

A No.

Q Do you know of anybody from Global Crossing or the FBI who called there purporting to be from the FBI?

A I don't know.

Q Isn't it a federal offense to impersonate an FBI agent?

MS. DUARTE: Objection, Your Honor. Irrelevant.

THE COURT: Sustained. This entire inquiry is irrelevant.

Move on to the next document, please.

MR. SUTCLIFFE: All right. I think it is highly relevant, Your Honor.

THE COURT: Please move on, Mr. Sutcliffe.

BY MR. SUTCLIFFE:

Q So you were basically doing the usual drill, calling up this guy, this ISP, and threatening, "If you don't take this stuff off the air, we are going to make your life miserable, legally"; right?

A I requested cooperation and people cooperated. I never threatened to sue anybody.

Q And if they don't cooperate?

A It never got to that.

Q You'd get somebody from the FBI to call them maybe?

MS. DUARTE: Objection, Your Honor. Asked and answered.

THE COURT: Overruled.

THE WITNESS: No.

BY MR. SUTCLIFFE:

Q Another police agency?

A No.

Q Did Global Crossing have a security force in its headquarters?

A It had security guards.

Q Isn't it a fact that when you were in the HR -- you mentioned earlier that you were in charge of HR at one point or worked high up in HR?

A Yes.

Q Isn't it a fact that as part of the security personnel, Global Crossing employed ex-FBI agents, ex-law enforcement

officials, ex-CIA?

A When I was the head of HR, there were no people like that employed, to the best of my knowledge.

Q So are you saying that after you gave the job to Richard Saly, that --

MS. DUARTE: Objection to relevance.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Okay. To your knowledge, was anybody in security at Global Crossing ex-FBI?

MS. DUARTE: Same Objection, Your Honor.

THE COURT: Sustained.

Please move on, Mr. Sutcliffe.

We are trying very hard, I hope, to be able to finish with this witness today, both sides.

This has gone on a very, very long time. Let's move along, please.

MR. SUTCLIFFE: All right, Your Honor.

Defense would like to enter the next document in order. I have Bates 1700 through 17 -- it appears to be 1707. I'm lacking 1706, though, in my -- they appear to be the same.

If the government has 1706, I would appreciate that.

MS. DUARTE: May I have a moment, Your Honor?

THE COURT: This is a single document that's three pages?

MR. SUTCLIFFE: Yes.

THE COURT: You are missing the middle page?

MR. SUTCLIFFE: Yes. It was a series of e-mails on March 22nd from Elizabeth Greenwood to and from a lot of people.

MS. DUARTE: Your Honor, I have the document Bates 1700 to 1707. To the extent that this document contains statements by other people, I object to it as hearsay and irrelevant, but I will provide it.

THE COURT: All right. I'm not going to be able to permit you to display it, Mr. Sutcliffe.

Let me have the document.

MS. DUARTE: He could have my copy. It's complete. I can provide my copy to the Court.

THE COURT: Thank you. I've been handed a series of more than three pages.

MR. SUTCLIFFE: I believe I said it was 1700 to 1706, Your Honor.

MS. DUARTE: I heard through 1707, Your Honor, which is why I gave the Court seven pages.

MR. SUTCLIFFE: Correct, 1707.

THE COURT: I've been given Bates Nos. 1700 to 1707. Just tell me, by Bates number, what page do you intend to question about?

MR. SUTCLIFFE: I intend to question the witness on

1700, 1701, 1702, 1703, 1704, and 1707.

THE COURT: 1706 and 1707 are not the same and don't appear to be part of the preceding pages. Am I correct about that?

MS. DUARTE: I am not looking at it right now, Your Honor.

THE COURT: Mr. Sutcliffe, there are limits on a party's right to go into everything that may be of interest to that party.

I will permit these documents to be identified for purposes of identification as the next in order. I think we are up to number 228.

(Defendant's Exhibit 228 marked for identification.)

THE COURT: Now, I'm not going to permit you to display these documents. You just ask some questions. You know what's in these documents. If you think there is some relevant information, ask questions without regard to the documents.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Mrs. Greenwood, on March 22, 2002, did you happen to send an e-mail to the FBI and the "subject" line "FYI internal e-mails"?

MS. DUARTE: Your Honor, objection to the form of the question, asking about the document rather than the contents of it, the question based on that.

THE COURT: I'll permit an answer to that.

THE WITNESS: I may have.

BY MR. SUTCLIFFE:

Q You have no recollection of internal e-mails?

A I have no specific recollection of that, no.

Q In this e-mail that you might have sent on March 22, 2002, do you recall a New York Times newspaper reporter contacting Cynthia Artin, vice president of Media Relations?

A Yes.

Q Do you recall the names of the New York Times reporter?

A I think it might have been Simon Romero because he is the one who generally did the Global Crossing articles.

Q You are correct, exactly.

And in these internal e-mails that were being talked about regarding this New York Times reporter, is it because he was looking to do a story?

A Most likely.

Q Do you remember the "subject" line of the e-mails that were being sent back and forth?

A No.

Q If I showed you a document, would it refresh your recollection?

A It might.

THE COURT: The "subject" line of the e-mails is irrelevant. Just ask her whether --

BY MR. SUTCLIFFE:

Q Were the "subject" lines "Urgent and confidential: New York Times writing a story on 'evilgx' for Monday"?

Do you have any recollection of that "subject" line?

A Not a specific recollection of that "subject" line.

Q Do you have any recollection of any "urgent and confidential" e-mail being sent on March 22nd regarding the New York Times story?

A Not a specific recollection of the e-mail.

Q March 22nd was -- do you recall what day that was?

A No.

Q Could it have been a Friday?

A It could have been.

Q Do you recall who was involved in these e-mails being sent back and forth, who the personnel were that were sending --

A You mentioned Cynthia Artin, and she would have been, you know, the contact person for Simon Romero.

Q Were one of those people Justin O'Neill?

A Could have been.

Q And remind me again, who is Justin O'Neill?

A He's --

MS. DUARTE: Objection to the relevance of this line, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Was there some concern at Global Crossing that the New York Times was about to publish the address of the website "evilgx.com"?
A Yes.
Q Earlier, you had been able to prevent news articles -- newspapers that came looking for an interview from publishing this website address; is that not correct?
A No.
Q The website address hadn't appeared in any news articles, to your knowledge; is that correct?
A That's correct.
Q And so now, all of a sudden, on March 22nd, there is going to be a newspaper article coming out from the New York Times -- is that correct? -- you've been notified?
A Most likely it was around that time.
Q And this is pretty urgent because -- correct me if I'm wrong, the goal is to keep the information from being published; correct?
A The information that was taken from Global Crossing, yes.
Q The information on this website, the goal was to keep it from being published.

If a New York Times article, in your own opinion, as -- if a New York Times article came out and published the website address "evilgx.com", how devastating would that have been for Global Crossing?

A Well, I think it would have been very hard on the employees because then their personal information would be widely available and people would be more in danger of having their identity stolen.

Q And you are referring to the 8,000 social security numbers?

A Yes.

Q To your knowledge, at the time of this e-mail going around, was there, in fact, 8,000 social security numbers on this website?

A I don't know. There was -- from, you know, time to time, the website changed.

Q Okay. When you say "from time to time, the website changed," does that mean that the publisher took off the social security numbers?

A I don't know why, but sometimes information was up and sometimes it was down.

Q When is the last time you saw these 8,000 social security numbers?

A I don't recall exactly when there were the 8,000. It was somewhere between September of 2001 and March of 2002 when the website was up.

MR. SUTCLIFFE: Your Honor, previously there was -- previously, there was an Exhibit 24 marked, which was the Andrew Ramsey downloads in late 2001 through early 2002, which

the witness is referring to. I would like to move that Exhibit 24 be moved into evidence at this time. I would also like to ask the witness some questions regarding Exhibit 24.

MS. DUARTE: No objection to the moving of it into evidence, Your Honor.

THE COURT: Pardon me?

MS. DUARTE: No objection to the moving of it into evidence.

THE COURT: If 24 isn't already in evidence, it's now received.

(Defendant's Exhibit 24 received.)

MR. SUTCLIFFE: May the Court please instruct the government to provide me with Exhibit 24?

THE COURT: It's doing so now.

MR. SUTCLIFFE: Thank you, Your Honor.

I would ask that the pages be posted as I ask the questions.

THE COURT: Okay.

MR. SUTCLIFFE: Thank you, Your Honor.

I'll need a few minutes just to -- if the Court doesn't mind.

MS. DUARTE: Your Honor, while he's doing that, the Court should be aware that the contents of this CD are not actually in printout form as of yet because the government didn't publish it. So anything that he may show, there is not

a printout copy, at least that the government is aware of.

THE COURT: Thank you.

MR. SUTCLIFFE: I do have a printer to the right of me, if the Court requests a printout.

Permission to show the witness what I'm looking at, Your Honor?

THE COURT: Go ahead.

MR. SUTCLIFFE: Thank you.

Q Can you see what I'm observing, Mrs. Greenwood?

A Not yet.

THE COURT: Enable the ports, please.

BY MR. SUTCLIFFE:

Q Do you see this folder called "nonwget"?

A Yes.

Q Do you see the folder below it called "wget"?

A Yes.

Q What is the extent of your knowledge as to the meaning of these two folders?

A None. I don't know what that means.

Q You testified earlier that Andrew Ramsey had been downloading the website; is that not true?

A That was my understanding of what he was doing.

Q And that he had placed these files within these individual zip files and that these eventually had been sent to the FBI?

A I have not seen this before.

Q You have never seen any of these zips before?
A I haven't seen this in this format like this, no.
Q When you say "in this format," I'm looking at a file which has a name of a -- a number: 2001.1018204812.

Do you have any knowledge as to what those numbers mean?

A No.
Q Is it your testimony today that you've never seen a file that starts out with 2001 and then another sequence of numbers and then ends with a dot-zip?
A I don't recall seeing these.
Q I'm not speaking about these.

I'm speaking about any file with the extension of dot-zip which begins with 2001 or 2002?

MS. DUARTE: Objection. Relevance.

THE COURT: That's totally irrelevant.

Move on, please.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Now, you testified that you had seen 8,000 social security numbers sometime in the latter part of 2001; is that a fair statement?
A I think that's correct.
Q To my knowledge --

MS. DUARTE: Objection. The defendant is testifying.

MR. SUTCLIFFE: Has the government stipulated that

these are, in fact, the downloads from Andrew Ramsey, Your Honor?

THE COURT: No, they haven't.

MS. DUARTE: Stipulate, Your Honor.

THE COURT: They now have.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Mrs. Greenwood, the government has stipulated that these files that we're looking at in the folder called "nonwget" were downloaded from Andrew Ramsey.

Mr. Ramsey had testified that --

MS. DUARTE: Objection. The witness is --

THE COURT: Sustained.

MS. DUARTE: -- not here.

MR. SUTCLIFFE: Okay.

Q I'm going to expand one of these zip files, Mrs. Greenwood, and I want you to tell me if you recognize any of the files contained within -- if you will just give me a minute to locate one.

I'm going to extract the contents of this file marked as "2001.1018204812.zip." I've expanded that file into this folder called "temp" on the local drive of this computer.

And you can see that the file --

MS. DUARTE: Your Honor, I'm going to object to this process. That CD, in its present form, is in evidence and is an exhibit.

To the extent that the defendant isn't able to explain why he has to do this, we ask that it be shown in its original form and not have the files extracted.

THE COURT: As long as the file will not be destroyed, I'll permit him to do it this way.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Mrs. Greenwood, I'm going to click on a file right now from this "2001.1018.zip" that we just expanded. It's a file called "faq.htm."

Do you remember we had a conversation about FAQ?

A Yes.

Q You said it was "frequently asked questions"?

A Yes.

Q Do you see this document I'm now looking at?

A Yes.

Q Can you read this part at the top right there, clearly?

A It cuts off on the left margin.

"This site has been made available to those who request the opportunity to post information hereon. Therefore, the owners of this site make no representation that any of the information herein is true or accurate unless the provider of the same makes such a representation. As to any such representation, the owners of this site make no representation as to their truth or veracity."

Q Below that, there appears to be a table of contents.

Do you see that?

A Yes.

Q There are a bunch of questions like, "How do I contact you? How long are you going to picket? Aren't you hot? Why don't you get a job?"

Do you see those right there?

THE COURT: All right. Don't read everything. Get to the question. I thought you were trying to establish when these names were posted.

MR. SUTCLIFFE: I'm getting there, Your Honor.

THE COURT: Well, then, get there, please.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Did you read this FAQ ever within the website?

A I don't recall seeing it.

Q Do you ever recall reading this question: "Are you armed and dangerous?" and then the answer, "Only with the knowledge of the company, some might say that's dangerous. Time will tell"?

A I don't specifically recall that.

Q Now, within this website that we just looked at -- I'm going to switch the view to "details" here.

Do you see the "details" on this document? Can you see the modified date on the right-hand side of the screen?

A Yes.

Q Do you see the date that it's listing?

A Yes.
Q Can you read that out loud for me?
A 10-18-2001.
Q Is it a fair representation that on 10-18-2001, Andrew Ramsey downloaded these files into the zip?
MS. DUARTE: Objection, Your Honor.
Ramsey has already testified. This is outside the scope of her knowledge.
THE COURT: Sustained.
It calls for speculation.
BY MR. SUTCLIFFE:
Q On 10-18-2001, did you happen to be monitoring the website "evilgx.com"?
A I don't know.
Q During any day in the month of, I believe, 10, which is October, do you recall any day that you were monitoring the website "evilgx.com"?
THE COURT: I'm going to sustain the objection to that that the prosecutor was rising to make.
You have established and inquired, I'm not sure how many times, Mr. Sutcliffe, about the extent to which and the time in which this witness monitored. She told you about her secretary. She told you about Andrew Ramsey. She told you when she personally was doing it.
I'm not going to permit this to be gone over time and

time again. There are other participants in this trial, very much including the jurors, who have a right to make sure that the case is prosecuted in a fair, balanced, and efficient way.

Please proceed.

MR. SUTCLIFFE: Maybe the Court could give me some guidance.

THE COURT: No, I'm not in a position to give you guidance. Ask your next question. I am not anybody's lawyer in this case.

MR. SUTCLIFFE: Your Honor, I'm trying to establish -- the witness's testified that the website went up and down -- excuse me, if you will.

THE COURT: No, no. It would not be appropriate for you to tell me what you are trying to establish. Just go about trying to establish it, please.

MR. SUTCLIFFE: Establish what?

THE COURT: Whatever you -- ask your next question. That's what I'm trying to tell you, Mr. Sutcliffe.

MR. SUTCLIFFE: I'm trying to establish something, but you --

THE COURT: Ask your next question. I have made my ruling.

BY MR. SUTCLIFFE:

Q Mrs. Greenwood, did Mr. Ramsey ever send you any zip files?

A Yes.
Q Do you recall the names of that zip file or zip files?
A No.
Q None at all?
A No.
Q Do you know when he sent you the zips?
A From time to time.
Q Could you define "time to time"?
A Over the course of, you know, from September or October 2001 through March of 2002.
Q Over a five-month period?
A Yes.
Q And over a five-month period, did you forward any of those zips to the FBI?
A I may have.
Q Did you ever look inside of those zips?
A Yes.
Q Did you ever add or delete anything from those zips?
A No.
Q Were you able to if you wanted to?
A I don't know how to.
Q Were they password-protected zips?
A I don't think so.
Q Was there any encryption or security that you saw on any of those zips?

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: Overruled.

THE WITNESS: I don't think so.

BY MR. SUTCLIFFE:

Q You said that towards the end of 2002 -- excuse me, 2001, there came a time where you saw 8,000 social security numbers; is that correct?

A That's my recollection.

Q So that would be around twelve -- something or other; is that correct?

A That's my recollection, that it was sometime in the fall of 2001.

MR. SUTCLIFFE: Your Honor, I really don't know how to do this. I apologize to the Court and to the jury. I'm totally at a loss how to establish that --

THE COURT: Mr. Sutcliffe, please don't explain what you are currently thinking about your current situation.

Your obligation and your right is to ask this witness questions. If you have no further questions, please tell me, and we can see if there is any redirect.

MR. SUTCLIFFE: Your Honor, I'd like the government to produce, then, at this point, Exhibit -- I believe it's 23, which was the download by FBI Agent Harrill on March 28th; is that correct?

MS. DUARTE: I have Exhibit 23, Your Honor.

THE COURT: All right. Please return Exhibit 24.

BY MR. SUTCLIFFE:

Q Mrs. Greenwood, earlier, we went over, when you initially went to this website, you would see this page with some terms of service, a disclaimer, conditions, and a license agreement.

Do you recognize that again?

A Yes.

Q And you testified earlier --

THE COURT: Don't go over questions that were previously asked and answered.

Please ask your next question.

BY MR. SUTCLIFFE:

Q You read them and you agreed and we entered the website.

Now, is it your testimony that upon coming into this page here, you heard some sounds? I believe that you testified you heard "scary voice" --

MS. DUARTE: Objection, Your Honor.

BY MR. SUTCLIFFE:

Q -- "and scary music"?

MS. DUARTE: Objection, Your Honor. Asked and answered.

THE COURT: Sustained.

You've gone over this already with this witness.

BY MR. SUTCLIFFE:

Q If there was no music like we just -- or no scary voice

like we just opened up the Web page, would you have not have been scared?

MS. DUARTE: Objection. Irrelevant, Your Honor.

THE COURT: Overruled.

THE WITNESS: I don't recall whether or not there was scary music on this particular page.

BY MR. SUTCLIFFE:

Q Did you not testify that when you went to this page, you heard scary music -- a scary voice and you felt scared?

A I don't think we were talking about this page.

(Playing audio.)

BY MR. SUTCLIFFE:

Q Does that refresh your recollection? Let me refresh the page.

A I don't think I was asked about that page.

(Playing audio.)

THE COURT: Listen to the question, please, Ms. Greenwood.

BY MR. SUTCLIFFE:

Q I'm going to stop the page and turn up the volume just a little bit.

(Playing audio.)

BY MR. SUTCLIFFE:

Q Now, there were three things that just happened there: A voice said, "Welcome to my domain" and then music started

playing, and then -- it was from the theme "My Nightmare" or something, and then you hear another voice saying, "This is all far from over"; correct?

A Yes.

Q Is that the scary voice and the scary music you referred to when you said you went to the Web page and you heard scary music and you heard a scary voice and you felt scared?

THE COURT: The jurors will be entitled to apply their own recollection as to what was said in previous testimony, by any witness, at any stage of the trial.

It is not a proper form of question to ask a witness if this is something that she said before. But you are entitled to follow up on it, so feel free to do that, if you'd like, Mr. Sutcliffe.

BY MR. SUTCLIFFE:

Q Do you consider that a scary voice?

A Yes.

Q Do you consider that scary music?

A Yes.

Q The first time you heard that, you felt scared?

A Yes.

Q But you didn't feel threatened?

A I don't know.

Q Okay. When you went to this website, did you see these words right here at the top, "This website is under a

censorship attack by the agents of Global Crossing. They think they have won and it is over. This is all far from over"?

Do you remember reading that?

A Yes.

Q Could that be what the voice meant when it said, "This is all far from over"?

MS. DUARTE: Objection. Calls for speculation.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Do you remember reading that statement right there?

THE COURT: She just told you she remembered reading it.

MR. SUTCLIFFE: I didn't hear her.

Q Do you see where it says, "My name is Steven. Welcome to my domain"?

A Yes.

Q And "I was fired for having no integrity"?

Then it goes on to -- it's like a self-biography. "I worked at the help desk."

Do you see that?

A I see that.

Q If you click on that --

(Playing audio.)

BY MR. SUTCLIFFE:

Q Now, did you ever happen to read this page?

A I don't recall this page.
Q Okay. I'll close this one out.
That was the first link that you would have come to if you entered this website, but you didn't click on the first link?
A I don't think that's the first link.
Q Well, it says, "This is a website." There is no links there, I can see; right? "This is all far from over" isn't a link, is it?
A No.
Q And "My name is Steven," that line, there is no links, is there?
A No.
Q So the next paragraph, "I worked with the help desk," that would be the first link. Do you see the link changing right there?
A No.
Q You don't see "help desk"?
A I see the link changing.
Q Now, these other links on the left-hand side, did you click on any of those?
A I don't recall.
Q Do you recall how you got to -- say, you come to this website and you want to find the social security numbers or any things that you think have been stolen, where do you go in this

website? What's the first thing you do? This looks like -- this is a big page, is it not? It looks to be a lot of links, does it not?

A Yes.

Q Okay. There is also links on this side here. So if you click on one of those --

(Playing audio.)

BY MR. SUTCLIFFE:

Q -- you get another page -- right? -- like this one here, "Class action lawsuits filed against Global Crossing for the fraud"? So now you have lost --

MS. DUARTE: Objection to the form of the question, Your Honor.

MR. SUTCLIFFE: I will rephrase the question.

Q If you came into this website and you happened to click on one of these links on the left, how do you get back to where you were in the beginning? Do you know how?

A Maybe there is a homepage.

Q Is there?

A I don't know.

Q You don't know.

So somebody could come into this website and get totally lost; isn't that true?

A Could be true.

Q There was like thousands of pages within this domain at

any given one time, was there not?
A At times, yes.
Q And you could actually click a link and actually be taken out to "globaldoublecrossing" and you'd probably never even know you left the website; isn't that true?
A I don't know.
Q You said that after you came to this Web page, I believe, there was a click on -- let me find -- there was a "Lizzy," I believe, that somebody clicked on. Let me try to locate that.
Did you happen to read this document right here on 3-18-2001, a phone call was made to the host of this site claiming to be from the FBI, claiming they wanted to serve an injunction to shut me down?
A Yes.
Q Do you see where it says, "I just thought the FBI people might like to know this little fact just in case that really wasn't one of you"?
MS. DUARTE: Your Honor, objection to this line of questioning. The document speaks for itself.
THE COURT: Sustained -- no, no. I overrule the objection. He asked if she read it.
THE WITNESS: I read it.
BY MR. SUTCLIFFE:
Q Did you click on this link? Isn't it against the law to impersonate an FBI agent?

A I may have.
Q But you don't have any recollection of that?
A I may have.
Q This next line, "If it was one of you, since when did the FBI get in the business of serving injunctions for private businesses? Have they bought you off as well?"
Did you click that link?
A I may have.
Q But you don't have any recollection of that?
A I don't have a specific recollection of it.
Q What does that line mean to you, "Have they bought you off as well?"
MS. DUARTE: Objection to relevance, Your Honor.
THE COURT: Overruled.
BY MR. SUTCLIFFE:
Q Now, I'm going to click on this link right here which is called "Lizzy," and it says that "Lizzy called another one of my freeservers. At last count, I have 24."
Do you know how many freeservers the defendant had?
A No.
Q Did you ever ask anybody?
A No.
Q Is it not your testimony that Global Crossing was concerned that the defendant was spidering this information across the Internet to prevent the censorship of the website?

A I don't understand the question.
Q Your goal was to prevent the publishing of information within this website; correct?
A The information that was Global Crossing information.
Q Okay. I'll accept that.
Your goal was to prevent the information within this website that you considered to be Global Crossing's information?
A From being disseminated, yes.
Q So along with information that can lawfully be disseminated, you considered some information in there not lawful to be disseminated?
MS. DUARTE: Objection, Your Honor. Calls for a legal conclusion. Irrelevant.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Do you see this statement right here, "3-15-2001, two phone calls were made to the host of this site by Elizabeth 'Lizzy' Greenwood"?
A Yes, I see that.
Q Do you see the next line where it says "a-tor-knee" (phon)?
A Yes, I see that.
Q What's an "a-tor-knee" (phon)?
A I don't know. I think that it's a funny way of writing

attorney.

Q What's "knee"?

MS. DUARTE: Objection, Your Honor.

THE COURT: Sustained.

Move on, please.

BY MR. SUTCLIFFE:

Q Do you know what a "knee" is?

MS. DUARTE: Objection.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Is it a --

THE COURT: For the sake of the record, knee is spelled k-n-e-e in this document.

Please move on, Mr. Sutcliffe.

BY MR. SUTCLIFFE:

Q My point, Mrs. Greenwood, is, couldn't that be construed as a threat, "a torn knee"? Is he going to cap me in the knee like Tanya Harding?

MS. DUARTE: Objection. This is argumentative.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Now, the next line goes on, "Due to this continued harassment and unsubstantiated accusations, in the violation of the contract," do you know violation of what contract that the author is referring to right there?

A I think he's referring to the terms of use of this website.

Q I believe you are correct.

THE COURT: Mr. Sutcliffe, I have told you many times --

MR. SUTCLIFFE: My mistake.

THE COURT: I don't intend to tolerate more mistakes. This isn't a debate. This is a lawsuit. It's a prosecution. Your job is to ask questions. Don't comment on the evidence. Don't comment on the answers, please.

Please frame your next question, please.

MR. SUTCLIFFE: I'm very well aware of the prosecution, Your Honor.

Q This says, "The site was shut off for almost 72 hours until I was alerted to the situation. I have reassured the owner of the domain that there are no files other than this index file residing on this server."

Then it goes on to state, "Elizabeth, you now owe me $15,000 for the violation of the contract, and I'm coming to collect from you personally. Care to try again? I can sure use the money right now."

Do you remember reading that?

A Yes.

Q Now, is that threatening to you?

A Yes.

Q Can you tell the jury why that's threatening to you? Were you broke?

THE COURT: Those are two different questions. You can answer the first question, first.

THE WITNESS: Was that threatening to me?

Well, in the context of this whole website --

BY MR. SUTCLIFFE:

Q No --

THE COURT: She is answering the question, Mr. Sutcliffe. You asked her why she felt it was threatening.

THE WITNESS: I was scared of you. I am scared of you.

BY MR. SUTCLIFFE:

Q My question to you is, what in this statement, directly in this statement, that --

A "I am coming" --

Q Excuse me. I have not finished my question.

-- "Elizabeth, you now owe me $15,000," is that threatening?

A No.

Q "For the violation of the contract," is that threatening?

A No.

Q Okay. "I'm coming to collect from you personally," is that threatening?

A Yes.

Q How is "my coming to collect from you personally $15,000," that I'm alleging that you legally owe for violating a contract, threatening?

MS. DUARTE: Asked and answered, Your Honor.

THE COURT: Overruled.

THE WITNESS: Yes. It sounds like a mafia-type thing where you are going to come collect the money with, you know, violence.

BY MR. SUTCLIFFE:

Q So the "a-tor-knee" (phon) could be, "I'm going to cap you in the knees"?

MS. DUARTE: Objection, Your Honor --

THE COURT: Sustained.

MS. DUARTE: -- we've already been over this.

BY MR. SUTCLIFFE:

Q Is it not true that you could construe -- a lot of the words in here, such as "We live and die together," the quote from Leo Hindery, and a lot of other quotes in here, one can construe these as threats if one wanted to bend them?

THE COURT: Sustained. It's argumentative.

BY MR. SUTCLIFFE:

Q Isn't it true, then, that there is no threat in the words, "I'm now coming to collect. You now owe me $15,000 for the violation of the contract, and I'm going to collect it from you personally"?

MS. DUARTE: Same objection, Your Honor.

THE COURT: That's been asked and answered.

MS. DUARTE: Your Honor, the witness may need a break at this point.

THE WITNESS: No. I'm okay.

THE COURT: We only have five more minutes. If you could hang in there.

BY MR. SUTCLIFFE:

Q Mrs. Greenwood, do you see the next line, "I can sure use the money right now"?

A Yes.

Q That doesn't say, "I can sure use the blood on my hands," or anything like that, does it?

MS. DUARTE: Objection.

THE COURT: Sustained.

Ladies and gentlemen, you know what you read when you read it and you know what you don't read if it's not there.

For those reasons, in any lawsuit, in any prosecution, it's not proper to get into what's not said.

MR. SUTCLIFFE: I'll move on, Your Honor. Excuse me.

THE COURT: You can argue what's not said at the appropriate time.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: There are a lot of things in the world that haven't been said in the documents that are introduced in

a lawsuit. It's not proper to inquire into everything that wasn't said.

Now, I've told you that many times, and I expect you to adhere to that.

MR. SUTCLIFFE: Yes, Your Honor.

Q Mrs. Greenwood --

THE COURT: You can't argue your case in the form of asking questions.

BY MR. SUTCLIFFE:

Q Mrs. Greenwood, the next line is, "Tell you what. You can define it as an interest-free loan if that makes you feel better."

Do you see that line?

A Yes.

Q Did you read that line?

A Yes.

Q Did that line make you feel threatened?

A No.

Q Did you follow that link?

A I don't recall.

Q Let's follow that link. Maybe you'll recall.

Do you recall this page?

(Playing audio.)

BY MR. SUTCLIFFE:

Q I'm going to refresh that for you.

(Playing audio.)

BY MR. SUTCLIFFE:

Q Do you recognize this document titled "Unsecured promissory loan"?

A Yes.

Q How do you recognize this document?

A I believe it was on my computer.

Q Did you follow this link at the bottom? There is only one link on this page.

A I don't recall.

Q Let's click it and see.

(Playing audio.)

BY MR. SUTCLIFFE:

Q This appears to be another unsecured promissory note in the amount of 1,300,000.

Do you recognize this document?

A Yes.

Q During the investigation of Global Crossing, was there not an investigation into unsecured loans made to members of the board and executives within the company?

MS. DUARTE: Objection. Relevance.

THE COURT: Sustained.

Disregard the question. It's totally irrelevant.

BY MR. SUTCLIFFE:

Q Are you familiar with the Sarbanes-Oxley Act?

MS. DUARTE: Objection, Your Honor.

THE COURT: Okay. We're going to excuse the jurors for today. Please return tomorrow at 8:30.

That question is overruled.

(Jury excused at 1:29 p.m. and the following proceedings had.)

THE COURT: You may step down, Ms. Greenwood.

MS. DUARTE: Your Honor, is Ms. Greenwood required to be back tomorrow morning?

THE COURT: Yes.

MS. DUARTE: 8:30?

THE COURT: Yes.

MS. DUARTE: Your Honor, before we break, could we just discuss scheduling, briefly?

THE COURT: Yes. There are a few things we need to discuss, but I'll permit Ms. Greenwood to go about her business.

Everyone may be seated.

THE COURT: Mr. Sutcliffe, I've tried, in simple terms, to give you a usable, clear, fair, balanced, and legally correct road map as to what's relevant and what isn't.

In the last hour or so, it's become regretfully and regrettably clear to me that you don't intend to comply with that. I hope I'm wrong. I really do. You are not helping yourself by disregarding limitations on questioning that are designed, in good faith, to pursue relevant topics.

If you continue to follow through on a line of inquiry where I've sustained objections and ruled that they are irrelevant, it will leave me no choice but to hold you in contempt. I really don't want to do that. I don't think you want me to do that. I don't think you want to have that be done before the jury.

Now, I understand that you're probably mad and frustrated, but you should not succumb to the desire to just ask whatever you think is on your mind when it isn't relevant to the issues in this lawsuit.

I ask you, I ask you respectfully, to reconsider that course of conduct because you are going to doom yourself if you continue it, and I'm not going to tolerate it.

Now, you've been cross-examining this witness for several hours. I'm not entirely sure when. You began yesterday, and you took most of today -- all of today.

It's now 1:30. We began at 8:30. We had a glitch with the equipment that may have lasted approximately a half hour. I'm not sure how long. No other breaks that I recall. In other words, hours and hours and hours, probably altogether by now six hours. That's unconscionable.

People who are not involved in this lawsuit -- I'm not saying for sure how they will think, will think it's a form of torture you are inflicting all over again on her. Consider that when you decide what you want to follow up on.

Now, how much more -- in terms of time, how much more of an estimate in terms of time do you think you have -- give me a good faith estimate -- in your cross-examination of this witness?

MR. SUTCLIFFE: Your Honor, if I could be permitted to remain after court is adjourned for about a half hour to prepare some -- tomorrow's computer, I would like to show some displays to the witness.

THE COURT: I'll give you that opportunity.

MR. SUTCLIFFE: I appreciate that.

I'm down to about -- I'll try to chop this to barebones, Your Honor. I would guesstimate that two hours, maybe three, at the max.

THE COURT: Reconsider that, Mr. Sutcliffe. Because the government has, for probably sound, tactical reasons, up until the last couple of hours this morning, refrained from voicing objections on relevance.

I could tell -- I don't want a response about this -- it was probably for tactical reasons. The government is not required to do that.

If you pursue irrelevant things and they object, I'm going to routinely sustain them. Then we are going to be back down the very narrow path that I just talked about that I hope we can avoid. So I don't know what you have in mind for three hours, but that sounds to me to be grossly excessive.

Now, what were the issues that you wanted to raise on cross -- raise about scheduling?

Before you say that, I have refrained from reminding the jury, but I reserve the right to remind the jury, that you are not accused of theft. You are not accused of violating the terms of a TRO or preliminary injunction.

You are accused of two different crimes and a total of nine counts. There are different elements to those crimes. The crimes relating to the posting of the social security number does not accuse you of stealing it. Whether or not you stole it is totally irrelevant. The government doesn't have to prove that you stole it. The jury is going to be told all of those things.

It's just a very clear example that I'm trying to give you, in simple, plain and fair-minded language, as to what's relevant and what isn't.

So to taunt the witness with inquiries about what evidence she or he may have about how you got the social security information, or whether they knew that you stole it, or what their evidence was if they said you stole it, is not relevant.

I have permitted some areas that I think are probably equally irrelevant under the theory that -- under the view, my view, that what you were trying to do, in your fashion, was to establish bias. You've exhausted every possibility for

pointing out bias. It's inherent in the nature of who this witness is as a supposed victim.

And I respectfully tell you, I think you are victimizing her in the eyes of some people all over again.

MR. SUTCLIFFE: I'd like to show the Court, it's not my intention --

THE COURT: I'm not saying it's your intention. The way you are going about this is achieving exactly that.

Ms. Duarte?

MS. DUARTE: Your Honor, normally, I wouldn't ask the Court's guidance and I'm not really asking it to the extent the Court doesn't want to give it, but I have several scheduling issues that I wanted to bring up.

The first is, if Mr. Sutcliffe is going to take a substantial length of time, or any significant length of time, tomorrow with Ms. Greenwood, my intention today was to immediately, as soon as possible, put Special Agent Cugno on the stand because, as the Court knows, he's scheduled to leave after Wednesday.

THE COURT: So let's put him in out of order.

MS. DUARTE: Well, I'm going to when we are done with Ms. Greenwood.

THE COURT: No. I can do it tomorrow morning. If Mr. Sutcliffe is going to have a lot of cross-examination of Mr. Cugno, he's got to do it too. Let's put Mr. Cugno on

before you finish with Ms. Greenwood. That happens all the time.

MS. DUARTE: That was one of the things I was going to ask the Court, and I apparently should have asked earlier; however, I didn't anticipate it would go this long today.

The second thing is, in the event that -- I know I'll be done with direct in 30 minutes. In the event that cross-exam takes the remainder of the day, I would have to then be in the position to ask the Court to break that cross and resume it when Special Agent Cugno returns, which, at this pace, I anticipate we will still be in trial and it will probably be defendant's case.

THE COURT: When will that be when he returns?

MS. DUARTE: He returns and is available the morning of December 4th.

MR. SUTCLIFFE: Your Honor, I want to object strenuously to this -- he's taking off. We've got a break -- to come in the middle of my defense, recross.

I expect to have that agent on the stand for quite some time, and I don't want to be interrupted at all. I would like -- once I start examining this witness, I want to continue until I'm finished with this witness. It's detailed examination, Your Honor.

THE COURT: I'll tell you what I'm going to do, Mr. Sutcliffe. I'm permitting the government to put

Agent Cugno on the stand. The government can elicit what it wants in its case-in-chief, and you can cross-examine or agree to cross-examine, and I can tell the jury that you've chosen to cross-examine when he returns on December 4th if you don't want to interrupt it.

You are the one who has, knowing what the schedule is, incurred these grossly excessive amounts of time.

This issue of Mr. Cugno's availability was raised a long time ago. I'm not going to interfere with your ability to conduct cross-examination, but I'm going to put him on tomorrow, and you are going to have the right to cross-examine him tomorrow.

And you can tell Ms. Greenwood that she is still subject to completing her testimony, and still subject to having her cross-examination completed.

We'll see how far we get with Mr. Cugno tomorrow. When you explore issues with Mr. Cugno, I advise you that you need to understand what's relevant and what isn't because I don't intend to permit this trial to go on until Christmas.

MR. SUTCLIFFE: I don't either, Your Honor.

THE COURT: Yes, you do.

MR. SUTCLIFFE: No, I don't. I object to that statement.

THE COURT: You appear to by the way you are going about it.

MR. SUTCLIFFE: No.

THE COURT: Anything else, Ms. Duarte?

MS. DUARTE: Yes, Your Honor. And I apologize.

If there is any way to get some kind of a good faith estimate as to Mr. Sutcliffe's anticipated time on cross of Special Agent Cugno. The reason I ask is because tomorrow is our last court date this week, and I have five witnesses from out of state that have now been waiting two full days, and I would rather send them home.

THE COURT: Send them home because Greenwood and Cugno will consume tomorrow for sure.

MS. DUARTE: I appreciate that, Your Honor.

And then we will pick up next Tuesday -- is that correct? -- not Monday? Or is the Court having court on Monday?

THE COURT: I will have to let you know. It's extremely rare. Given what's happened in this case, I probably will have trial on Monday. But I'll have to think about that and check with my staff.

MS. DUARTE: Then I'll just let the witnesses know I will tell them at a later time.

Your Honor, my significant concern with scheduling, just so the Court knows, I know that two things were brought up earlier, and one was my plans and one was Special Agent Cugno's plans. His are significant to me. Mine, whatever happens

happens.

THE COURT: Yours I'm not going to be able to defer to. I don't remember exactly what your timing was.

MS. DUARTE: I understand that, Your Honor. I'm just making it clear that I understand that.

THE COURT: I think it was a marriaging question or something. Am I right about that?

MS. DUARTE: It's a private matter, your Honor.

THE COURT: Yes, it's a private matter. Okay.

MR. SUTCLIFFE: Your Honor, I think I can help the Court move that along regarding who wants to take off.

If the Court would permit the defense to obtain a copy of the transcript of his testimony tomorrow, I will defer on cross-examining the witness until he comes back in my case-in-chief. But since I'm not going to go into cross-examining him tomorrow, I'd like the Court to respectfully grant me at least the transcript so I can refresh my recollection if I do get him down the road.

THE COURT: I'll order a transcript and have him be available when he comes back.

But now I'm going to be telling the jury, I don't know about this December 4th. This is way beyond what I told the jury would be the estimate.

I gave more time than I had been told would be needed. I'm not blaming anybody.

But I don't think you understand that I'm a judge who works very hard to deliver on promises to jurors, to make the experience of serving their civic duty as jurors something that is less than painful, and to avoid unnecessary impositions.

I'm not trying to achieve any result ever, in any case, including this case, by my rulings, but I am trying to achieve fairness for the jurors as well as fairness for the parties. You need to understand that, Mr. Sutcliffe.

I will order that transcript. It will be available. I'll see what we're doing on calendaring. Be ready to go tomorrow at 8:30.

Tell Greenwood to show up tomorrow. Cugno goes first.

MR. SUTCLIFFE: Thank you, Your Honor.

MS. DUARTE: Thank you, Your Honor.

MR. REED: Your Honor, do you have Exhibit 228 up there on the bench?

THE COURT: Yes, but it wasn't received. All the other exhibits, other than 228, I'll rule were received. 228 is excluded.

(Defendant's Exhibits 213, 215, 216, 218, 219, 220, 221, 223, 224, 225, 226, 227 received.)

THE COURT: We are adjourned.

(Adjourned at 1:42 p.m., to be resumed on Wednesday, November 19, 2003, at 8:00 a.m.)

C E R T I F I C A T E

I hereby certify that the foregoing is a true and correct transcript from the stenographic record of the jury trial proceedings in the foregoing matter.

Karen R. Pinn, RPR, CSR 5574
Court Reporter

September 20, 2004

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE A. HOWARD MATZ, JUDGE PRESIDING

UNITED STATES OF AMERICA, Plaintiff, vs. STEVEN WILLIAM SUTCLIFFE, Defendant.	Case No. CR 02-350(A)-AHM

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REPORTER'S TRANSCRIPT OF JURY TRIAL PROCEEDINGS

Los Angeles, California

Wednesday, November 19, 2003

DAY 6

(Pages 999-1217)

KAREN R. PINN, RPR, CSR 5574
Court Reporter

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I N D E X

GOVERNMENT WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
CUGNO, Jeffrey	1030			
By Ms. Duarte				
By Mr. Sutcliffe		1136		
		1168(Resumed)		
GREENWOOD, Elizabeth				
By Ms. Duarte				
By Mr. Sutcliffe		1067(Resumed)		
		1089(Continued)		
GILMER, Maurice				
By Ms. Duarte	1107			
By Mr. Sutcliffe		1114		
FULLER, Kathleen				
By Ms. Duarte	1116			
By Mr. Sutcliffe		1129		

GOVERNMENT'S EXHIBITS	FOR IDENTIFICATION	RECEIVED
47		1038
15(6-9)		1048
16		1049
46		1060
30		1061
44		1063
36		1111
48		1122
49(1-4)		1123
51		1127
52		1128

DEFENDANT'S EXHIBITS	FOR IDENTIFICATION	RECEIVED
229	1073	1073
230		1076
231	1081	
234		1194

LOS ANGELES, CALIFORNIA;

WEDNESDAY, NOVEMBER 19, 2003; 8:15 A.M.

(Jury out.)

THE CLERK: In the matter of calendar item No. 1, the United States of America v. Steven William Sutcliffe, Criminal 02-350(A)-AHM.

Counsel, please state your appearances.

MS. DUARTE: Good morning, Your Honor.

Elena Duarte for the United States, with Special Agents Frank Harrill and Jeff Cugno at counsel table.

THE COURT: Good morning.

MR. SUTCLIFFE: Good morning, Your Honor.

Steven William Sutcliffe, accused, present in court.

MR. REED: Good morning, Your Honor.

David Reed, advisory counsel. Mr. Cruz is present in court as are several witnesses.

THE COURT: Which witnesses are in court?

MR. REED: These are the witnesses who were subpoenaed by the defense, Your Honor. They were kind enough to report to the court today.

Some of them have some motions to quash. Some of them have some concerns and clarifications with respect to the subpoenas.

Mr. McAfee, for example, wanted to come down and be courteously placed on 24-hour standby, and he's consented to do

that so that I can call him. But he did want to comply, technically, with the subpoena, so he did come down personally.

THE COURT: The subpoena didn't even call for his appearance today, did it?

MR. REED: Yes, it did. Today was the day that everybody was supposed to be here for the defense.

THE COURT: All right.

MR. REED: That's why they are here.

MS. DUARTE: I've been served with two motions to quash in this case.

THE COURT: Right. I just got them, too.

Mr. McAfee can go about his business. I think I need to --

MR. REED: He wants to remain and watch the action for a little bit, Your Honor.

THE COURT: I'm going to question Mr. Sutcliffe about various aspects of these subpoenas, which I think entitle him, unless he wants to forgo it, to have it done ex parte.

So what's your decision?

MR. SUTCLIFFE: I have no problem with open court, Your Honor.

THE COURT: All right. Tell me, Mr. Sutcliffe --

MR. REED: Your Honor, could I just confer with my client before we do that just for a second?

MR. SUTCLIFFE: Just for the record, I object to him

referring to me as "his client."

MR. REED: He's right, Your Honor.

MR. SUTCLIFFE: If he's referring to me, I object to him --

MR. REED: I made a mistake.

THE COURT: Let's not get bogged down.

MR. REED: Do I have permission to confer with Mr. Sutcliffe?

THE COURT: Yes.

All right. Mr. Sutcliffe --

MR. SUTCLIFFE: Yes, Your Honor. Thank you.

THE COURT: No. I'm going to ask you some questions.

MR. SUTCLIFFE: Your Honor, I'm going to move at this point for the quashing of the subpoena of Yahoo! and Christensen, Miller. I'm going to ask that this be done ex parte for the defense to be heard, and I would ask the Court to do it ex parte. Thank you.

THE COURT: All right. Everybody except Mr. Reed and his investigator and the marshal shall leave the courtroom, and that includes people who showed up in response to these subpoenas.

(Ms. Duarte, Mr. Cugno, Mr. Harrill, Mr. Wright, Ms. Lai, and all witnesses left the courtroom.)

THE COURT: Will the marshals close the door, please. The courtroom has been cleared.

With respect to the website referred to as "evilgxhr@yahoo.com", who was the subscriber at that website?

MR. SUTCLIFFE: That is the accused -- that's the accused's e-mail. I own that e-mail.

THE COURT: Who set up that account?

MR. SUTCLIFFE: I did, Your Honor.

I personally set up that account when I first created "evilgx.com". That was the primary e-mail address that was used to solicit files from approximately September until -- or late September, early October, until -- I kept that until the later part of the year -- excuse me, all the way through, I believe, up until the time I was arrested.

I switched the e-mail to "evilgxhrdept" as of the New Year, but I still retained possession of the "evilgxhr@yahoo.com". I just added another account with the "dept" at the end of it, which the government has already subpoenaed and has obtained a search warrant in this instant case.

THE COURT: What was that about a search warrant?

MR. SUTCLIFFE: The government served a search warrant on two e-mail accounts belonging also to the accused. One of them was the "gary_winnick2002@yahoo.com" and the other search warrant was "evilgxhrdept@yahoo.com".

THE COURT: What's the relevance of the subpoena that you served on Yahoo!?

MR. SUTCLIFFE: The relevance, Your Honor, goes to show that the government knew that there was no identity theft being committed, for one, for the simple reason they never even issued a search warrant for the initial e-mail address that was broadcast on this website for the first part of their investigation, from September -- or excuse me, October until the New Year.

If they truly believed that 8,000 social security numbers with matching names and dates of birth was being used to facilitate and aid and abet --

THE COURT: Okay. So that's the relevance that the government knew that --

MR. SUTCLIFFE: That's one.

THE COURT: What's the other basis?

MR. SUTCLIFFE: The other basis, Your Honor, is that, as we have heard in testimony, Mrs. Greenwood was notified by Andrew Ramsey that Andrew Ramsey had traced that e-mail address "evilgxhr@yahoo.com" back to an IP address of 24 dot, whatever, dot 138. I don't recall the exact number. But it began with 24 and ended with 138. They tracked it to Manchester, New Hampshire. Here's where he is. Here's his IP.

As the agent has testified to in New Hampshire, that's the bread and butter -- or excuse me. He used the words "meat and potatoes," tracking somebody who you believe is up to no good. You get their e-mail address. You get their IP

address. Bang, you got him.

They had everything they needed. They had the whole full-course meal, the meat and potatoes --

THE COURT: What's the relevance of that, Mr. Sutcliffe?

MR. SUTCLIFFE: The relevance, Your Honor, is that they were notified that, "Here he is. Come get him. He's in Manchester, New Hampshire." But, whoops, somebody, maybe from the board of directors, might have said they are going to kick his ass. You can't have the target becoming a victim now, can we?

It goes to show bias, Your Honor.

THE COURT: Okay. Anything else?

MR. SUTCLIFFE: It also goes to show that there was no intent on the defense to commit any type of identity theft at all.

There are e-mails in there which I -- the defense received from people. It also goes to negate the element that Mr. Sutcliffe stole anything.

There are e-mails, I believe, that are contained within there from people inside and outside of Global Crossing who were sending files to me saying, "Hey, check this one out. Here's a file for you."

So there is a lot of elements within that that's relevant to this case in there.

THE COURT: I am going to grant Yahoo!'s motion to quash the subpoena.

Here are my findings: Working backwards, theft is not an element of these defenses -- excuse me, of these allegations and of these crimes. And the intent to commit theft is not an element, either. There is absolutely no relevance to the fact that Mr. Sutcliffe was receiving e-mails from other people.

And I want the record to reflect that it has become very, very clear that Mr. Sutcliffe's view about what is relevant, I think, is misguided and has resulted in an enormous consumption of time.

Now, I'm going to permit, and I think I have gone to extreme lengths to permit, reasonable inquiry, including as to issuance in obtaining of materials through subpoenas.

The fact that the government was notified, in the manner that Mr. Sutcliffe believes the subscriber numerical identification on "evilgxhr@yahoo.com" shows, that he was in Manchester, also is irrelevant. He's not accused of any crime or any fact relating to his decision and his presence -- his decision to move to New Hampshire and his presence in New Hampshire. It's a totally irrelevant and bogus issue.

And to establish that because the government did not serve a search warrant on a particular premise or, in this case, an ISP for a particular -- for information about a

particular website, and the fact that it did not serve a search warrant shows that the government knew that no identity theft was being committed, the logic is absent; the conclusion is flawed. This information would not in any way extend to anything that remotely would constitute a permissible or available defense to these charges.

For all of those reasons, I'm going to quash the subpoena to Yahoo!.

In fairness to Mr. Sutcliffe, I'll accept his representation that he opened up that e-mail account and that he was a subscriber, and that would dispel -- not dispel, but if that's true -- and I'll accept it as true -- would address one of the grounds that Yahoo! has made and negate that ground relating to the application of 18 U.S.C. 2702. So that's not my basis. And the record will reflect what is my basis.

Now, as to the second subpoena, which is on the Christensen, Miller firm --

MR. SUTCLIFFE: Your Honor, one quick second, if I may?

THE COURT: Yes.

MR. SUTCLIFFE: I notice that you didn't address the issue that I was trying to establish, also through this e-mail, that the agents in charge were biased. And specifically, I need to be able to question them regarding those e-mails, that they did witness that e-mail which came from that account, and

did they recognize, "I'm going to kick your ass" to be a threat and did they follow-up on any type of investigation within Global Crossing to see who was threatening the owner of that e-mail account.

If they didn't follow-up on any type of threats that were directed to the defendant, it would clearly go to show bias on the part of the FBI; wouldn't you agree?

THE COURT: I don't think it would, Mr. Sutcliffe, neither bias nor selective prosecution.

The fact that the FBI was out to get you -- let's get right to the point -- knowing, at some point, as they evidently did, that, in their eyes at least, you were responsible for what was being done with "evilgx.com" is bias, as you see it, right there, is already proven. That's who they were targeting and that's who they were after.

Now, the fact that they didn't follow-up on an e-mail that you thought was offensive is totally irrelevant.

I understand your theory. I couldn't until I saw where you were trying to go yesterday, about this other e-mail, "I would kick your ass," whatever it is, but that would open up inquiry into an absolutely unrelated, totally irrelevant, extraneous, and impermissible area of inquiry. So that's my ruling on that one.

Let's turn, please, to the Christensen, Miller subpoena, because there they have produced some things.

MR. SUTCLIFFE: Your Honor, respectfully, I would just like to point out for the record that these two e-mail addresses I mentioned earlier, the "gary_winnick2002", which was -- a search warrant was issued because of the fact that an e-mail was sent which said, "Stop by and say hi," which sounds really threatening, huh?

But inside that one and the "evilgxhrdept@yahoo.com", which was also served with a search warrant, the defense is going to introduce another e-mail which was sent to the defendant again. And it has almost the identical words to the Joe Shmoe. This was in the latter part of the investigation.

THE COURT: I'm not making a ruling prohibiting you from introducing something or calling attention to something that's on the evidence that the government is relying on. You'll be permitted to do that.

MR. SUTCLIFFE: I understand, Your Honor.

THE COURT: Now, Mr. Sutcliffe, I've thought about this and I've made my ruling. And I cannot and will not engage in a debate about it.

Let's move on to Christensen, Miller. Did you see their attachment, Exhibit B, to their -- they have styled it "Objections."

MR. SUTCLIFFE: Exhibit B, that's the Greenwood --

THE COURT: It's the -- let me help you out. There is a declaration of someone named William Wright. He may be

here, for all I know.

MR. SUTCLIFFE: Yes, I'm looking at that.

THE COURT: In that declaration, he raises certain -- and in the memorandum in support of their objections, they raise certain legal issues, which I don't want to get into at the moment, but we may need to in any event.

He also says that -- turning to the four requests that that subpoena encompassed, one of them --

MR. SUTCLIFFE: Are you looking at page 3?

THE COURT: Right.

-- one of them, apparently -- I don't know if I have the subpoena right here.

MR. SUTCLIFFE: It's Exhibit A.

THE COURT: Thank you.

Let me turn to that so I get it straight.

There are four enumerated items on the subpoena that was served on the law firm of Christensen, Miller. And the first reads, "E-mails related to 'evilgx.com'; e-mails related to Global Crossing; e-mails related to Elizabeth Greenwood related to previous two subjects, from or to the e-mail address 'mlabaton@chrismill.com'," that's category 1.

We will break it down by categories.

The objection notes that this firm has represented Global Crossing, which the evidence has established, on a number of matters. And the representation that Mr. Wright

makes in his declaration is that they haven't found any nonprivileged -- referring to, I think, attorney-client privileged -- e-mails responsive to that request.

Now, bear with me for a second while I look over this because this was just handed to me a couple of minutes ago.

MR. SUTCLIFFE: Me, too.

May I be permitted to sit down, Your Honor?

THE COURT: Yes. Go right ahead.

MR. SUTCLIFFE: Thank you.

THE COURT: I think I will have to question Mr. Wright about that first objection.

The second category enumerated in the subpoena is "Greenwood e-mail from 'Elizabeth.Greenwood@GlobalCrossing.com' and 'liz.greenwood@stanfordalumni.org'."

As to that, the law firm has said that -- interpreting that to mean e-mails from Ms. Greenwood relating to Mr. Sutcliffe and/or "evilgx.com", they have found only one nonprivileged e-mail and attached it as Exhibit B.

MR. SUTCLIFFE: Right.

THE COURT: And you've had a chance to look at Exhibit B?

MR. SUTCLIFFE: Yes, I have, Your Honor.

I think -- yes, I have.

THE COURT: Okay. Now, do you have a response to that portion of the objection, just as to category 2?

MR. SUTCLIFFE: Yes, I do, Your Honor.

There is clearly a lot more e-mails from "Elizabeth.Greenwood@GlobalCrossing.com". And you'll notice, in the "to" line of this Exhibit B, Your Honor, it's from Greenwood, Elizabeth, and then it's sent to, and it says "swana." I believe that's Scott --

THE COURT: That's the FBI.

MR. SUTCLIFFE: Right.

THE COURT: Those you've already gotten in discovery, Mr. Sutcliffe.

MR. SUTCLIFFE: Yes, that's correct.

But this was directed, I believe, to -- this was directed to Christensen, Miller, was it not, this subpoena?

THE COURT: They got a copy of this, and that's what they are producing.

MR. SUTCLIFFE: I don't see their name in here anywhere in the "to" or the "from." Where did they get this from?

THE COURT: It doesn't matter. They have it. It was delivered to them and they are producing it.

MR. SUTCLIFFE: Right.

THE COURT: You can ask Agent Cugno about that, if you want. They are complying with their obligation. They don't have an obligation to tell you where they got it. They are producing it.

MR. SUTCLIFFE: But this isn't from their law firm.

THE COURT: Mr. Sutcliffe, they probably get the ABA Journal at their law firm and keep it. It's not from their law firm.

MR. SUTCLIFFE: But they think --

THE COURT: If the subpoena were addressed to producing every journal from the American Bar Association, they would have the obligation to respond to it. So please don't get confused by that fact.

MR. SUTCLIFFE: Okay.

THE COURT: They are producing it.

MR. SUTCLIFFE: I'm just confused how they are only producing this one single document.

THE COURT: What they are doing -- and I'm going to sustain their objection -- is construing the subpoena in the proper fashion, which is to call for information not about a host of other things. You have no right to all of the e-mails from Greenwood or either of these two e-mail addresses that they may have.

She could have exchanged e-mails about any number of things relating to other clients, other matters for her clients, social matters, or the like. They are totally irrelevant. They have no obligation to produce them.

I'll question Wright about this declaration, but I'm going to consider it to be responded to as to category 2.

Category 3 is "E-mail from 'fharrill'" -- he's the agent -- "'@fbi.gov' and e-mail to or from 'swana@fbi.gov'", "swana" being the e-mail address that apparently Greenwood sent a lot of materials to and may have received some from, and evidently, the one that was used by the case agent here.

Now, as to that one, this firm says that as to e-mails that have a relation to Mr. Sutcliffe or to "evilgx.com", there has been one e-mail that was responsive also attached as Exhibit B.

MR. SUTCLIFFE: Well, I think they said it had no relation to Mr. Sutcliffe, if I'm reading this correct.

THE COURT: What they have said is, to the extent that it has no relation to this case, basically, the request is overbroad. They are right. I sustained that objection.

To the extent it is responsive, they have attached what is responsive as Exhibit B.

MR. SUTCLIFFE: Right. The same one.

THE COURT: Then the last category in the subpoena is "E-mail to 'elena.duarte@usdoj.org'." She's the prosecutor. And the response there is that they don't have any. So there is nothing further that can be done about that.

I think that I'll need to have inquiry from Mr. Wright. And, of course, you have a right to be present. But I will conduct the inquiry as to the characterization of privilege that supports their objection as to the first

request.

And after I hear from that, I will make a ruling, and then we can get on with the matter.

Would you be good enough, Madam Clerk, to tell the jury we're dealing with some matters and we'll bring them out very shortly. And would you, Mr. Security Officer, please bring in the people who were excluded from the courtroom.

(Ms. Duarte, Mr. Cugno, Mr. Harrill, Mr. Wright, Ms. Lai and witnesses entered the courtroom.)

THE COURT: Let the record reflect that a number of individuals have returned to the courtroom.

As to the subpoena that was served upon Yahoo! Inc., I have granted the motion to quash, not on the basis that Title 18, I think it's Section 2507, precludes any response, but because I think that I'm satisfied that the elements, or at least some of them that would be necessary to qualify for production, Mr. Sutcliffe could establish.

However, I think that the subpoena is totally beyond the scope of a proper 17(c) subpoena because it does not seek information that is relevant, much less material, to the defense or to the issues in this trial. And so for that reason, I have quashed that subpoena.

If you want to go about your business, whoever is here from Yahoo!, you are free to do so.

(Ms. Lai left the courtroom.)

THE COURT: Is Mr. Wright here, the representative from Christensen, Miller?

MR. WRIGHT: Yes, Your Honor.

THE COURT: Would you approach the lectern, please.

MR. WRIGHT: Yes.

THE COURT: Now, you are an officer of the court, you understand?

MR. WRIGHT: Yes, Your Honor.

THE COURT: And you are admitted to practice in the bar of this court; is that correct?

MR. WRIGHT: Yes, that's correct.

THE COURT: I have looked over your declaration, which was handed to me and also to Mr. Sutcliffe just a very few minutes ago, and I want you to explain to me, particularly with reference to your objection to category 1 of the subpoena that was served on your firm, on what basis -- what standards you applied to determine that information that might otherwise be responsive and that might otherwise be in the possession of your law firm, which in this particular instance is also your client, is privileged.

MR. WRIGHT: Well, Your Honor, we -- our interpretation of request No. 1, as I've stated in my declaration, is seeking e-mails to or from the e-mail address "mlabaton" which relates to the three subject areas: Global Crossing, "evilgx.com", and Elizabeth Greenwood, which also

relates to the previous two subjects.

Now, we've found a small amount of e-mails that were between Elizabeth Greenwood, who was counsel at Global Crossing, and our firm related to our representation of Global Crossing in a civil action against the defendant, Mr. Sutcliffe, relating to "evilgx.com".

So those e-mails, which is a small set of e-mails, are attorney-client privilege.

THE COURT: Hold on just a second.

Ms. Duarte, did you turn over to Mr. Sutcliffe all of the e-mails that ever came into your possession that were transmitted to this Christensen, Miller firm by Ms. Greenwood?

MS. DUARTE: I believe so, Your Honor.

There were a few e-mails that I read that had absolutely nothing to do with anything in this case.

THE COURT: But if they did.

MS. DUARTE: If they did, yes, Your Honor.

THE COURT: Okay. And --

MS. DUARTE: And we --

THE COURT: -- and the client that your firm was representing, in connection with these matters that you are asserting the privilege over, was Global Crossing; correct?

MR. WRIGHT: Correct.

THE COURT: And Ms. Greenwood was the assistant general counsel of Global Crossing; right, Ms. Duarte?

MS. DUARTE: That's correct, Your Honor.

THE COURT: Right, Mr. Wright?

MR. WRIGHT: Correct.

THE COURT: The material that you are claiming was privileged has already been disclosed. It was not only produced to the government, presumably in response to a subpoena, but it's been produced to the defendant.

The assertion of privilege, even if it were valid and even if it could override Mr. Sutcliffe's constitutional right to mount a defense, appears to have been effectively waived not by your firm, so you are not on the hook for some kind of malpractice action, but by the conduct of the client.

What's your response to that?

MR. WRIGHT: Well, I'd just like to be -- I'd like to ask for clarification. The e-mails that were -- I'm talking about e-mails directly between our firm.

THE COURT: Yes. We've seen a lot of those e-mails in the course of this trial already.

MS. DUARTE: May I clarify, Your Honor?

THE COURT: Yes.

MS. DUARTE: The e-mails that I received that were in my possession and that I turned over were the e-mails that were also cc'd to the FBI at the time of their writing.

I don't know about e-mails and I don't have any e-mails that might be between Ms. Greenwood and Mr. Labaton

which were not, at the time of the writing, cc'd to the FBI, which I determined -- I'm not a civil attorney -- but I determined may have waived that privilege and were discoverable because they were Jencks and possibly relevant to the case.

So I'm only speaking to those e-mails that were simultaneously sent from Ms. Greenwood not only to Mr. Labaton, but to the FBI, and I just wanted to clarify that.

THE COURT: Okay. I understand the distinction.

How many e-mails fall within category 1 that relate to "evilgx.com" and not to anything else, either e-mails exchanged to or by or between Greenwood and Labaton relating to "evilgx.com", not necessarily to Global Crossing? I wouldn't require the production of e-mails relating to -- if Global Crossing was contemplating an acquisition of Company X,Y,Z and Labaton and Greenwood exchanged e-mails about that subject, it would be totally irrelevant and beyond the scope of the 17(c) subpoena and not necessary for you to produce.

If it's an e-mail relating to "evilgx.com" and, on its face, it doesn't show that it was copied to the FBI, but it was exchanged between your firm and Greenwood, how many such documents are there --

MR. WRIGHT: Before --

THE COURT: -- numerically?

MR. WRIGHT: If I could say one thing before that, Your Honor.

THE COURT: No. Just answer that question.

MR. WRIGHT: All right. Four or five.

THE COURT: Do you have them here with you?

MR. WRIGHT: No, I don't.

THE COURT: I'm going to require that you bring them here before I make a ruling as to whether or not they are discoverable. I think I have an obligation, and in fairness to Mr. Sutcliffe, I intend to exercise it, to look over those e-mails to see whether or not the basis for a claim of privilege, to start with, is valid.

I'm not making a finding that even if it's valid, they are beyond the scope of a 17(c) subpoena. So I may require you to produce them anyway.

Now, what did you want to tell me?

MR. WRIGHT: I just wanted to clarify. We have not withheld any e-mails that were copied to the FBI or any third party. These are strictly e-mails between Greenwood and Christensen, Miller in an attorney-client capacity as part of the attorney-client relationship.

THE COURT: Relating to "evilgx.com"?

MR. WRIGHT: Relating to -- yes, the civil action that was brought against the defendant.

And, you know, I have no information that Global Crossing has, in any manner, waived that attorney-client privilege or disclosed those documents.

THE COURT: I'm not sure who had the authority to do so, but to the extent the documents have already been provided to the FBI and certainly to the extent they have already been the subject of inquiry and evidence in this case, there is no issue of waiver that's still applicable.

Go back to your office or arrange for somebody from your office to bring every one of the subpoenas -- every one of the documents that's responsive to category 1.

MR. WRIGHT: Your Honor, just to clarify, "responsive to category 1," you mean e-mails between Labaton and Greenwood that relate to "evilgx"?

THE COURT: Or Sutcliffe.

MR. WRIGHT: Okay.

THE COURT: And I have found that you are in sufficient compliance or are otherwise entitled not to have to respond to categories 2, 3 and 4.

But I want to see what you withheld, on the basis of privilege, as to category 1. Bring them here. You'll hand them to the clerk. I'm not even going to go through the cumbersome process of having them sealed. I, personally, and only I, will look at them initially. I'll make a ruling later today. As soon as you have them in your hands, come back to the courtroom.

MR. WRIGHT: Thank you, Your Honor.

(Mr. Wright left the courtroom.)

THE COURT: Let's bring the jury in.

MR. SUTCLIFFE: Your Honor, may I be heard on one thing, very briefly --

THE COURT: Yes.

MR. SUTCLIFFE: -- to expedite this?

I gave strong consideration to Your Honor's admonition yesterday. And in the spirit of --

THE COURT: Everyone may be seated.

MR. SUTCLIFFE: I wanted to object to the prosecution calling the witnesses out of order. And I did understand that you were concerned about speeding up the process of this -- defense's cross-examination of Elizabeth Greenwood.

I went through my cross-examination last night, and I wanted to assure the Court that if we can keep the jury from becoming confused by calling witnesses out of order, I can finish my cross-examination of Mrs. Greenwood in probably an hour and a half or probably an hour or less, if it pleases the Court.

THE COURT: Okay. Well, Mr. Sutcliffe, thank you for reconsidering your approach. I salute you for that. And I'm sure that everybody involved, and ultimately, I think, you, will be benefited by that.

Any judge has the authority, under the Federal Rules of Evidence, to manage the production and proffering of evidence at a trial in a manner that's designed to promote

efficiency, and that entitles the judge to take into account a number of factors.

I don't think that your defense is in any way going to be impeded if we call Mr. Cugno out of order. It's incumbent that the government have a right, before it chooses to rest, to elicit the testimony from Mr. Cugno.

I have already agreed to require the court reporter to prepare a transcript of the direct testimony of Mr. Cugno only. I'll speak to her at a break and find out when that could be made available to you before he returns.

I should tell you all that this is going to be the schedule for next week, and I'll tell the jury when they come out or before they leave today.

We are going to go on Monday from 8:30 to 12:30, not to 1:30. We are going to go on Tuesday from 8:30 to 12:00, take a 75-minute lunch break, and go from 1:15 to 4:30. We are going to go on Wednesday, the day before Thanksgiving, from 8:30 to 1:30.

I'm not sure what, if anything, to tell the jurors about the probable future duration of the trial. I think I owe it to them, and I'm likely to say something today that would enable them to do some planning, to the effect that -- as I recall, I told them that the case would probably be over by December 3rd -- I'm looking at my notes -- and it clearly won't be. So I'm going to give them that heads-up today as well.

Anyway, are you going to be calling Cugno now?

MS. DUARTE: Yes, Your Honor.

THE COURT: We'll have to have him approach to be sworn.

Yes, Mr. Sutcliffe.

MR. SUTCLIFFE: Did the Court understand that I clearly object to Agent Cugno being called out order?

THE COURT: I do understand that.

MR. SUTCLIFFE: The prosecution has also stated that they were ready. And to call this witness out of order will place a burden on the defense, Your Honor, that even a seasoned trial attorney, such as Mr. Reed, would have difficulty overcoming. It's going to prejudice this jury.

I should have the right to continue cross-examining the witness that was on yesterday so as to not confuse the jury and to not prejudice and place this undue prejudice upon the defense.

I've told the Court that I will be glad to quickly and efficiently finish with my cross-examination.

THE COURT: I heard that and I responded to that. You've made your record. I understand that you believe you'll be prejudiced, and I don't think there is any risk whatsoever. So that's my ruling. We'll call him out of order.

I'll explain to the jury, in neutral terms, that it's designed to promote scheduling efficiency.

Let's please bring in the jurors.

(Jury in.)

THE COURT: Everyone may be seated.

Let me explain to you -- and I think you already understand this -- that as in many trials, I've been working as best I can to assure that we pursue this trial, with everyone's rights on both sides fully respected and, at the same time, your rights respected, to an efficient and timely prosecution and defense of the case.

In that regard, I want to tell you about next week's schedule and where things might occur after next week as well, because there is a little bit of change in the schedule. The change is designed to make sure that, if we are unable to -- if you are unable to conclude your service on or before December 3rd -- and I think you will probably not be able to -- the additional time will be minimal.

I can only do what I can do. But I have reason to think that the date of December 3rd, which I told you was almost certain the outside date, we will not be able to meet.

In order to see if we can, in any event, to minimize any additional time that might be required for all of us to complete our obligations, I have juggled my schedule next week, and here is the time that we'll be in session:

On Monday, which is usually not a trial day in our court, as I think I explained, I've shifted my morning

calendar, and we will meet on Monday from 8:30 to 12:30. You'll be able to go home on Monday at 12:30.

On Tuesday, we are going to have a longer day. We are going to begin in the courtroom at 8:30. You'll have to be here before then. We are going to go until 12:00, break for lunch at 12:00 for 75 minutes. You'll be expected to be back in the courtroom and ready to go at 1:15. And we will continue on Tuesday until 4:30.

On Wednesday, the day before Thanksgiving, we'll have the same hours in court that we've ordinarily been using, namely, 8:30 to 1:30. So on that Wednesday before Thanksgiving, you'll be excused at 1:30, not later.

We will not meet, of course, on Thanksgiving. We will not meet on Friday. I'm sure the jurors have plans and we want you to be able to enjoy those.

So, next Wednesday, I will tell you what the schedule will be for the following week, and it may well be that we have trial on Monday, the 1st, as part of my effort to make sure that we use all available time, but I'll have to let you know next week.

Once again, Monday, 8:30 to 12:30. Tuesday, 8:30 to 12:00 and then 1:15 to 4:30. Wednesday, 8:30 to 1:30. That's the trial schedule for next week. Today, we will go to 1:30.

Okay. Now, the second thing I want to tell you is, as is frequently the case in many, many trials, both civil and

criminal, we are going to take one witness out of order to accommodate certain scheduling conflicts, so that Mr. Sutcliffe's right to complete his examination of Ms. Greenwood will be interrupted probably briefly.

The witness who will be called is Agent Cugno. Mr. Sutcliffe has chosen to delay his cross-examination of Agent Cugno until later in the trial when Agent Cugno will be available again to finish his testimony. So Mr. Sutcliffe will not be cross-examining Mr. Cugno.

I want you to keep in mind, as I have told you right from the beginning, that you have no basis to make up your mind until all of the evidence is in, and no basis to make any findings, silently, to yourself about Agent Cugno's or anyone else's testimony until all the testimony is in.

Keep in mind, when you listen to whatever Agent Cugno tells us, that Mr. Sutcliffe has the right and intends to exercise the right to cross-examine Agent Cugno. So there is more to be heard from Agent Cugno at the point that Mr. Sutcliffe questions him.

Let's call the next witness.

MS. DUARTE: Your Honor, the government calls Special Agent Jeffrey Cugno to the stand.

SPECIAL AGENT JEFFREY CUGNO, GOVERNMENT'S WITNESS, SWORN

THE CLERK: Sir, please state your name and spell your last name for the record.

THE WITNESS: Jeffrey Raymond Cugno, C-u-g-n-o.

DIRECT EXAMINATION

BY MS. DUARTE:

Q Good morning, Special Agent Cugno.

A Good morning.

Q Where do you work?

A At the FBI in Los Angeles.

Q How long have you been with the FBI in Los Angeles?

A Since approximately May of 1996.

Q What is it that you do there?

A I'm a special agent.

Q How long have you been a special agent?

A For approximately three years.

Q What did you do in the time before you became a special agent with the FBI?

A I was a clerk and then I was later a computer specialist.

Q Both with the FBI?

A Correct.

Q What did you do as a computer specialist?

A My responsibilities included repairing computers for users at the FBI in Los Angeles, and then I also was responsible for creating databases and graphical presentations such as wanted posters.

Q And now, as a special agent, do you have any particular emphasis or category that you do your work -- a majority of

your work in?
A Yes. Similar to Special Agent Harrill, I also investigate computer crimes; that also includes computer intrusions and intellectual property right violations.
Q Did you participate in this investigation regarding the defendant?
A I did.
Q We've heard that you are the case agent; is that correct?
A That's correct.
Q When did you become the case agent? Do you remember?
A I believe it was approximately in November of 2001.
Q Did you access the Internet as part of your investigation?
A I did.
Q What specifically did you access on the Internet?
A The website that was known as "www.evilgx.com".
Q Did you see the website when you accessed --
A I did.
Q More than once?
A Yes, I did.
Q Just in general, what did you see on the "evilgx.com" website when you accessed it?
A I saw what appeared to be individuals' names, social security numbers, dates of births, home addresses, telephone numbers, spouses' names, and threats.
Q Did you ever make downloads of the site?

A I did.
Q Specifically, did you download the site in December of 2001?
A I did.
MS. DUARTE: Your Honor, permission to approach with Exhibit 45?
THE COURT: Granted.
BY MS. DUARTE:
Q Special Agent Cugno, I've shown you Exhibit 45. Do you recognize it?
A I do.
Q What is it?
A That is the download preservation of the "evilgx.com" website I made on December 12, 2001.
Q Did you also view the site on the Internet at the time that you were making the download?
A I did. Previous to making that preservation, I viewed the website.
Q By "previous to," do you mean the same day?
A Correct.
Q Now, in Exhibit 45, were you able to download every link that you saw on the Internet?
A Every link, yes.
Q And were you able to download the content of every link?
A I was not.

Q How is that?
A The application I was using is known as Adobe Acrobat software. As that software grabs the website from the Internet, it grabs the contents. However, external links, which you've heard described before as newspaper articles or Yahoo! Map pages, were not captured, which I later discovered you had to then go back in and capture it.

The link itself was there. However, the content may not have been necessarily captured.

Q Have you seen this happen, which you just described, this failure to capture the content of links, in downloads from this case other than your own?
A I did.
Q In the case of -- I'm sorry. My fault.

Did you mention the social security number article as an outside download?
A I did not, but that was one of the articles.
Q Okay. In the case of this social security -- first, let me ask you, Could you just describe the article we're talking about so we are all clear?
A That was the article that we had seen previously, "Protecting Social Security Numbers," by the Honorable Clay Shaw, I believe it is.
Q And that "social security protecting numbers" article, did you see it often on the Internet on this site?

A I did.
Q I should say linked to the site?
A I did.
Q And did you review the article often during the course of your investigation?
A I did.
Q At various times?
A Correct.
Q Was it always at the same link, as far as you were able to tell?
A It was at the same Web address. Correct.
Q That's what I meant.
So the name of the link was always the same? Go ahead and clarify if you need to.
A Sure. The link, as it was shown on the website "evilgx.com", would sometimes differ as to how it was going to point you to that Web address, but that Web address stayed consistent with the article.
Q Did the article stay consistent, as far as you could tell?
A It did.
Q Did the content ever change that you were able to tell?
A Not that I was able to tell.
Q Have you looked for that article recently on the Internet?
A I did.
Q Did you find it?

A I did. Last week I did find it.
Q Did you cause any exhibits to be made for trial this week or last week using the download that you've identified as Exhibit 45?
A I did.
Q I should clarify. When I say "this week," I meant trial this week. You actually caused the exhibits to be created earlier; isn't that right?
A That's correct.
Q How did you cause those to be created, just in general terms?
A I selected webpages from that download that were then to be used here in court for trial.
THE COURT: Excuse me one second, please.
You may proceed.
BY MS. DUARTE:
Q We were discussing trial exhibits that you caused to be made, and you said that you selected webpages?
A That's correct.
Q And why was that?
A To graphically display for the jury and for those in the court each count that was represented.
Q By "each count," do you mean each count in the indictment?
A That's correct.
Q Directing your attention to Exhibit 11 -- that should be a

printout that is in a file -- excuse me, a binder behind you.

Special Agent Cugno, did you see the contents of Exhibit 11, which is a series of printouts already in evidence, on "evilgx.com" when you viewed the website on December 12, 2001?

A I did.

Q And when you first saw the names and numbers listed in Exhibit 11, pages 1 through 49, what did you understand this information to be?

A I understood these to be the names and social security numbers of employees of Global Crossing.

MS. DUARTE: Your Honor, may I ask that port 1 be enabled?

THE COURT: All right. Please enable it.

BY MS. DUARTE:

Q This is page 1 of Exhibit 11 up here. These are the names and numbers that we're discussing --

A Okay.

Q -- is that correct?

A Yes, ma'am.

Q And you said -- did you do anything to confirm that these indeed were, or at least a portion of these were, valid social security numbers with names?

A I did. I submitted requests to Global Crossing and to the Social Security Administration to verify the accuracy of these

numbers.
Q What did you request from the Social Security Administration?
A That they verify the authenticity of these numbers with those names.
Q When you say "these numbers" and "those names," you are indicating at the moment Exhibit 11; correct?
A Correct.
Q Did you request any certification of any type?
A I did.
Q Did you ever see certifications for these numbers?
A I did.
Q Look at Exhibit 47, if you will.
Before you came to court, or currently as you are doing, have you seen Exhibit 47 before?
A I have.
Q Have you reviewed it?
A I have.
Q Now, you have a copy up there. Do you recall if Exhibit 47 that is the actual exhibit has any kind of a seal on it?
A It does. It has a gold seal on the bottom left-hand corner.
Q What are these documents that you are looking at? What's the title of the documents?

A These are the certifications of those names and social security numbers.

MS. DUARTE: Your Honor, move to admit Exhibit 47.

THE COURT: 47 will be received. It's admitted.

(Government's Exhibit 47 received.)

THE COURT: You can display it.

BY MS. DUARTE:

Q We are going to look at the first page, page 1, of this exhibit.

While I'm putting this up, does Exhibit 47 have more than one certification?

A Yes, it does.

MS. DUARTE: May I ask that port 1 -- it is. Okay. Let's go out a little bit.

Your Honor, could I have just a minute to see if I could get these lights adjusted?

THE COURT: Yes.

BY MS. DUARTE:

Q Okay. I've put page 1 of Exhibit 47 up on the ELMO. Is this the gold seal document that you are talking about?

A That's correct.

Q There is actually two of those in Exhibit 47, are there not?

A That's correct.

Q They contain a number of names and social security

numbers?
A That's also correct.
Q And what notation follows each of these names and social security numbers that is contained -- I'm putting up page 2 -- that is contained in Exhibit 47?
A On the -- I'm sorry. Would you like me to go through the whole thing or just --
Q The far right column.
A The far right side indicates the letters "POS," which were positive.
Q What's your understanding of that?
A That those names and social security numbers were accurate.
Q Did you receive any negative certifications --
A I did.
Q -- when you made that inquiry?
A I did.
Q Approximately how many? Do you remember?
A I believe it was approximately 80.
Q 80 names and numbers?
A Correct.
Q And what did those negative certifications indicate?
A I believe some said "invalid" and some said "negative," to indicate some were not actually good social security numbers and others just did not match the name with the social security

number.

Q That was, you said, approximately 80 of those you submitted?

A That's correct.

Q Now, I'm going to put up the first page of Exhibit 7 on the ELMO, if I can, and ask you a question about it.

THE COURT: Exhibit 7?

MS. DUARTE: Yes, Your Honor.

Q These numbers -- and I'm going to point to a couple that now appear on the screen, this number up here that I have drawn pink next to and this number down here.

Were these among the numbers that you submitted to the Social Security Administration?

A They were.

Q And in addition to these numbers that I've pointed out, did you also submit all the names and numbers contained in Government's Exhibit 7?

A I did.

Q And did you go through the certifications that we've looked at in Exhibit 47 to determine how many of these names and numbers that appear in Government's Exhibit 7 were validly issued social security numbers?

A I did.

Q Approximately how many?

A 15.

Q I'm going to put up the first page of Exhibit 9 on the ELMO and ask you to take a look at it.

And this is the first page of Exhibit 9?

A That's correct.

Q Do you remember this exhibit from trial?

A Yes, ma'am.

Q These names and numbers, such as the ones I've drawn arrows toward here with the names, did you submit the names and numbers contained in Government's Exhibit 9 to the Social Security Administration?

A I did.

Q And did you review the certifications -- or I should say the names and numbers that were positive in Exhibit 47 to determine how many of these names and numbers in Government's Exhibit 9 were validly issued numbers belonging to the name with which they are associated?

A I did.

Q What did you determine? Approximately how many were?

A There were approximately 120 matches, positive matches.

Q In Exhibit 9?

A Correct.

Q Lastly, Exhibit 11, putting the first page up here for you. You have already seen this exhibit. This is only page 1.

Did you submit the names and numbers contained -- and I should say the names and apparent social security numbers

contained in pages 1 through 49 of Government's Exhibit 11, were those among the names and numbers you submitted to the Social Security Administration?

A They were.

Q Did you review the certifications that we've seen in Exhibit 47 to determine how many of these that we see in Exhibit 11 are validly issued numbers belonging to the name of which they are associated?

A I did.

Q These are only social security numbers; correct?

A Correct.

Q Approximately how many were matching?

A Approximately 1,400.

Q Now, for Exhibit 11, as we have seen before, some of those names and numbers appear not to be social security numbers; is that right?

A That's correct.

Q And were -- these numbers that did not appear to be social security numbers, were those submitted by you to the Social Security Administration?

A They were not.

Q Why not?

A Some of these numbers, usually represented by an alphanumeric reference, were -- I was told were foreign-based identification numbers; and therefore, Social Security would

not be able to verify their accuracy.
Q So you didn't submit them?
A Correct.
MS. DUARTE: If I could have just a moment, Your Honor.
THE COURT: All right.
BY MS. DUARTE:
Q Special Agent Cugno, as part of your investigation, did you have any contact with Andrew Ramsey?
A I did.
Q Did you receive anything from him?
A I did. I received a CD-ROM.
MS. DUARTE: I'm going to -- actually, Your Honor, I'll do this. I'm going to show you an exhibit.
Permission to approach with Exhibit 24, Your Honor?
THE COURT: You may.
Did you say 24?
MS. DUARTE: Yes, sir.
Q Special Agent Cugno, have you seen Exhibit 24 before?
A I have.
Q Where have you seen it? How do you recognize it?
A That was the CD-ROM I received from Andrew Ramsey.
Q And you heard Mr. Ramsey talk about that same CD-ROM?
A I did.
Q Have you looked at the contents of Exhibit 24?

A I have.
Q What did you find it to contain, in general?
A There were two electronic folders, much like filing cabinets, and within each of those folders were a series of files. Those all represented downloads of the website "evilgx.com".
Q What did you do with this CD when you received it that is Government's Exhibit 24?
A I made copies of that, electronic copies, which then became CD-ROMs, which contained that material.
Q Did you put it into evidence?
A I did.
Q Did you cause any exhibits to be made for trial using this download, Exhibit 24?
A I did.
Q How did you do that?
A I selected, again, similar to the previous exhibit, certain webpages that were to demonstrate the actual counts that were going to be presented here in trial.
Q Could you tell -- when you reviewed Mr. Ramsey's downloads that are Exhibit 24, could you tell whether his programmer method captured the contents of those external links that we have already discussed at length in trial?
A Some of them were not captured.
Q Was the link itself visible?

A The link itself was there. Just the content was not present.

Q Were you able to reconstruct or reload, if you will, the missing links that you only had the name of but not the content?

A Yes.

Q Did you do that in a couple of cases to complete these exhibits?

A Yes.

MS. DUARTE: Exhibit 7, already in evidence, permission to put up page 1 again, Your Honor?

THE COURT: You may.

If it's already in evidence, you can show any exhibit at any time without requesting permission.

MS. DUARTE: Okay. Thank you.

Q Exhibit 7 which page 1 is of, this is a printout of Exhibit 8; correct?

A Correct.

Q And did you cause --

THE COURT: Wait. You are showing Exhibit 7?

MS. DUARTE: Yes, sir.

THE COURT: And you say it's a printout of the hard drive that was Exhibit 8?

MS. DUARTE: The floppy disk.

THE COURT: The floppy disk?

MS. DUARTE: Yes.

THE COURT: Go ahead.

BY MS. DUARTE:

Q Did you cause this exhibit, as well as -- I'm indicating Exhibit 7 here on the ELMO -- as well as the electronic version contained in Exhibit 8, to be created from a download contained in Exhibit 24, Mr. Ramsey's downloads?

A I did.

Q What was the date of the download that you created Exhibit 8 from?

A From October 24, 2001.

Q Did you look for this file, particularly the first page of Exhibit 7, but did you look for this file as it appears in Exhibits 7 and 8 on the CD in Exhibit 24?

A I did.

Q What's the first date that the specific content appears in the downloads that you could tell?

A It was also October 24, 2001.

Q Directing your attention next to Exhibits 13 and 14 already in evidence, if you could take a look at Exhibit 13.

Have you seen Exhibit 13 before?

A I have.

Q Did you cause Exhibit 13 to be created as part of the preparation for this trial?

A I did.

Q And is Exhibit 14 the electronic version of Exhibit 13?
A That's correct.
Q Putting up the first page of Exhibit 13, let's see what we are discussing here.

Special Agent Cugno, did you arrange for the pages that are Exhibits 13 and 14 to be copied from Mr. Ramsey's download?
A I did.
Q What was the date of the download that Exhibits 13 and 14 were copied from?
A October 24, 2001.
Q Did you look for this file as it appears in Exhibit 14, and particularly -- actually, let me rephrase. I apologize.

Did you look for the contents of page 1 of Exhibit 13, which we have right here up in front of us, on those downloads contained in Exhibit 24?
A I did.
Q What is the first date that the contents of Exhibit 13, page 1, as we have on the screen, appears on those downloads in its current form?
A That was October 23, 2001.
Q Turning your attention to Exhibit 15, have you seen Exhibit 15 before?
A I have.
Q Where did you see Exhibit 15?

A This was part of Andrew Ramsey's download.
Q What about pages 7, 8, and 9 of Exhibit 15? Were the contents of those pages actually on the download?
A The contents of these webpages were not part of Andrew Ramsey's download.
Q Was the link?
A The link was there.
Q And did you -- what did you do to get those pages, then, and make them part of the download?
A I ensured that a copy of the actual contents of those webpages be attached to the rest of the file, to be complete.
Q What about page 6? Was this part of the download?
A It was.
MS. DUARTE: Your Honor, move to admit the remainder of Exhibit 15 at this time?
THE COURT: Pages 6 through what?
MS. DUARTE: 6 through 9, Your Honor.
THE COURT: Okay. 6 through 9 will be admitted. So that means that all of 15 is now in evidence?
MS. DUARTE: Yes.
THE COURT: Okay.
(Government's Exhibit 15 (pages 6-9) received.)
BY MS. DUARTE:
Q Special Agent Cugno, is there an electronic version of Government's Exhibit 15?

A Yes, there is.
Q Have you seen it before?
A I have.
MS. DUARTE: Permission to approach with Exhibit 16, Your Honor?
THE COURT: Granted.
BY MS. DUARTE:
Q Special Agent Cugno, have you seen Exhibit 16 before?
A I have.
Q What is it?
A It is an electronic version of webpages that were selected from Andrew Ramsey's download.
Q Did you verify, after Exhibit 16 was created, that it was indeed from the download?
A I did.
Q What is the date of the download that Exhibit 16, the electronic version of Exhibit 15, was copied from?
A January 31st, 2002.
Q Is Exhibit 16 a fair and accurate representation of a portion of the download from January 31st?
A It is.
MS. DUARTE: Your Honor, move to admit Exhibit 16. Permission to publish?
THE COURT: Granted.
(Government's Exhibit 16 received.)

MS. DUARTE: If we could put up Exhibit 16 and enable port 4, please.

(Playing audio.)

THE COURT: You'll have to start again. What page is this from? This is from Exhibit 16; right?

MS. DUARTE: This is Exhibit 16, and it should begin with page 1 of 15, if you are following the 15.

THE COURT: Okay.

BY MS. DUARTE:

Q Now, we heard some sound. It was a little bit low at the beginning of that. I'm going to go ahead and ask Special Agent Harrill to refresh it and perhaps turn up the volume a little so we can hear the sound.

(Playing audio.)

BY MS. DUARTE:

Q That's enough. All right.

Special Agent Cugno, we're looking now at the opening page of Exhibit 16. Did you actually cause the links, if you will, in this exhibit to be re-created -- I should say certain of the links?

A Certain links, yes.

Q And among them -- were the links among them this "Tracy" link right here that I have indicated "and threatening"?

A I believe so, yes.

Q Do -- those two links, do you remember if they go to the

same place?
A I believe they do.
MS. DUARTE: Why don't we go ahead and click on "Tracy."
(Playing audio.)
BY MS. DUARTE:
Q Have you seen this page before?
A I have.
MS. DUARTE: Why don't we go ahead and click on "Tell that to whoever is running the ship."
(Playing audio.)
BY MS. DUARTE:
Q Now, when we look at this page, "Tell that to whoever is running the ship," why don't we go ahead and put the cursor on the link "America today," if we can.
Now, Special Agent Cugno, did you actually cause this link to be captured for purposes of this exhibit?
A I did not.
Q Can you tell what that link goes to by its name despite the fact that it is not captured in this exhibit?
A Yes. On the bottom of the screen, you can see -- that is then displayed what the webpage was the link was referring to. It is "www.politicsol.com/guest-commentaries/2001-06-01.html."
Q Is that down in the area where I have drawn that horrible looking arrow?

A It is.
Q All right. Do you recognize the title of that link?
A That is the address for the social security article that we've seen several times.
Q What about if we put the cursor on "Name" and "Last known location." Actually, let's move it to "If you have their date of birth."
A Again, on the bottom, it is referring to a webpage identified as "MasterDOBReport.html."
Q Have you seen the "Master DOB Report" before?
A I have.
Q Okay. What, in general, is the "Master DOB Report"?
A It is several webpages -- in fact, I believe it was one of -- well, approximately 285 pages of names and dates of birth.
MS. DUARTE: Then if we could go back to page 1, the original page.
(Playing audio.)
BY MS. DUARTE:
Q We'll stop the sound and go back to this link here, "Add you to my domain list." Click on there.
(Playing audio.)
BY MS. DUARTE:
Q Special Agent Cugno, did you also see in here this link when you were looking -- when you were going through the downloads?

A I did.

MS. DUARTE: And if we could go ahead and click on No. 2, which is "Mark I. Labaton."

(Playing audio.)

BY MS. DUARTE:

Q We see here a link that we haven't seen before in the courtroom, "In honor of the deceased."

Did you see that on the download of the website?

A I did.

Q And that was linked to Mark Labaton's name?

A The number right next to his name, yes.

MS. DUARTE: And then if we go back, please, to page 4, which was the domain list.

(Playing audio.)

BY MS. DUARTE:

Q Did you click on the link -- this link here, "Death"?

A I did.

MS. DUARTE: Why don't we go ahead and click on that and see where it goes.

(Playing audio.)

BY MS. DUARTE:

Q So that went back to the original address, to "Tracy"?

A It did.

Q Did you look for this file, as it appears and we've been through it, contained in Exhibit 16? Did you look for that

file -- and specifically this page, page 1, the initial page of page 15 and the initial page of page 16, did you look for that on the downloads made by Andrew Ramsey?

A I did.

Q What's the first date that the specific contents we have up, this first page, appears on the downloads?

A January 22nd, 2002.

Q Directing your attention now -- we can go ahead and take this one out. Exhibit 17, that should be up in front of you.

Have you seen Exhibit 17 before?

A I have.

Q Where did you see it before?

A This was also webpages from Andrew Ramsey's download.

Q What is the date of the download that Exhibit 17 was copied from?

A February 13, 2002.

Q Specifically, as to page 1 of 17 -- I'm going to go ahead and put it up here. May I ask that port 1 be enabled?

Specifically, as to page 1, which we have up, of Exhibit 17, did you look for the content appearing in that portion of the file on Government's Exhibit 24, the downloads made by Mr. Ramsey?

A I did.

Q What's the first date that you were able to determine that that content appeared on there?

A February 10th, 2002.
Q I want to take a quick look at Exhibit 18, which I will present here.
Now, Special Agent Cugno, Exhibit 18 is already in evidence. Have you seen Exhibit 18 before?
A I have.
Q Do you understand that to be the electronic version of Exhibit 17, which we've just looked at?
A That's correct.
Q I'm just going to look at a couple of the links I want you to explain for me here.
While we are actually enabling that, let me ask you a question. The social security number that appears for Gary Winnick, which we are about to see in a minute and we just saw on Exhibit 17, page 1, did you look for that name and social security number in the positive certifications received from the Social Security Administration?
A I did.
Q And were you able to determine whether or not that name and number for Mr. Winnick is actually a true social security number for him?
A It was.
Q You determined that it was?
A Correct.
MS. DUARTE: If we could enable port 5.

Q This is the -- down here I pointed to the social security number that we're talking about -- right?
A Correct.
Q -- rather poorly?
And if we could scroll down just a bit on this. That's far enough. Thank you. And click on "employees," the link.
Now, what is this file that we've come to when we click on "employees"? Do you recognize this?
A I do. The file that I referred to earlier known as "Master DOB Report," this is what we're currently looking at.
Q And scroll down, if you will. There appear to be a number of names that start with "A"; is that correct?
A Correct.
Q Go down to the second page, if you will. You can scroll. One up. Perfect. If we could stop there. And here we have a date. What's the date there?
A January 22nd, 2002. Tuesday, January 22, 2002.
Q And then over here to the right, we have a page number.
Would you go ahead and read that?
A Page 1 of 285.
Q Is it your understanding that there were 285 names and dates of birth on this list?
A I believe that referred to how many pages there were.
Q Pages of the list?

A Correct.
Q Did you see more names and numbers than just these we see in page 1?
A I did.
Q If we could scroll up, I believe. I'm looking for the link "Write us." Right here in the middle of the page, there is a link "Write us."

Now, this link was not captured; correct?

A That's correct -- well, the link was captured similar to what Special Agent Harrill has described as a link that will open up an e-mail client, which will then allow you to send an e-mail to whichever address this link refers to.

And here the e-mail address is "evilgxhrdept@yahoo.com", and just like Special Agent Harrill had described, the subject line would be "Details, please." That would be automatically inputted for you.

Q It's your understanding, at the time this were on the Internet, if you clicked on the "Write us" link, it would send an e-mail to that address?
A Correct. In fact, I think I did click on it and "my e-mail client" did open and it opened those portions.

THE COURT: What exhibit is this that's being displayed right now?

MS. DUARTE: This is Exhibit 18.

Do you want the page number, Your Honor?

THE COURT: Yes.

MS. DUARTE: Let me find it. This on the screen is page 5 and 6. This is 5.

THE COURT: Okay. Thank you.

BY MS. DUARTE:

Q Okay. We can go ahead and take out that exhibit. We are done with that.

Special Agent Cugno, I want to ask you a quick question about Government's Exhibits 21 and 22. If you would turn to those.

If I could enable port 1, please.

THE COURT: 25 and what else?

MS. DUARTE: 21 and 22, Your Honor.

Q Special Agent Cugno, up here you see the name SA Scott Wanamaker?

A Yes, ma'am.

Q We've heard testimony at length about these e-mails; right?

A Correct.

Q What e-mail address were you using at the FBI at this time that these e-mails were sent?

A "swana@fbi.gov".

Q This was you --

A Correct.

Q -- for all intents and purposes?

A Correct.
Q Is there a Special Agent Scott Wanamaker?
A There is.
Q Were you sharing his e-mail?
A I was.
MS. DUARTE: That was page 1 of Exhibit 21, Your Honor.
THE COURT: All right.
BY MS. DUARTE:
Q Special Agent Cugno, did your investigation involve obtaining the defendant's driver's license information?
A It did.
Q Why was that?
A To verify his address, his current address, and also to get a picture of him.
Q If you look in your binder at Exhibit 46, have you seen Exhibit 46 before?
A I have.
Q Do you recognize it?
A I do.
Q What is Exhibit 46?
A This is a copy of the defendant's, Mr. Sutcliffe, driver's license from New Hampshire.
Q Have you seen the original?
A I have.

Q Is there a raised seal on the original?
A There is.
MS. DUARTE: Your Honor, move to admit Exhibit 46.
THE COURT: 46 will be received. It's in evidence.
(Government's Exhibit 46 received.)
BY MS. DUARTE:
Q Is there an address on Exhibit 46, this driver's license?
A Yes. On the bottom left-hand corner, the mail address is Steven W. Sutcliffe, 315 East High Street, Manchester, New Hampshire 03104. Then again off to the side, legal address, 315 East High Street, Manchester, New Hampshire 03104.
Q As part of your investigation or your confirming of where defendant was living, did you also receive any utilities information?
A I did.
Q If you'll look at Exhibit 30, the binder in front of you.
A Okay.
Q Is this information that you obtained from the utility company?
A It is.
Q Are you aware as to whether a certification of regularly conducted activity was obtained from the company?
A One was.
MS. DUARTE: Your Honor, move to admit Exhibit 30.
THE COURT: Where is the certification?

MS. DUARTE: Under 902.11, Your Honor, I previously provided it to the Court, but I can provide another copy.

THE COURT: This is the one from Patricia Gedney?

MS. DUARTE: Yes, sir.

THE COURT: Okay. Let the record reflect that I am looking at a certification of regularly conducted activity that is part and parcel of Exhibit 30.

MS. DUARTE: Yes, sir.

THE COURT: Okay. Exhibit 30 will be received.

(Government's Exhibit 30 received.)

BY MS. DUARTE:

Q Special Agent Cugno, does Exhibit 30 show the name of a subscriber?

A It does.

Q Does it show an address?

A It does.

Q I'm sorry. What was the name of the subscriber?

A Steven W. Sutcliffe.

Q And the address again?

A 315 E. High Street, 3rd Floor, Manchester, New Hampshire 03104.

Q Do these records show a date of service initiation?

A It does. 11-21-01.

Q Thank you.

Now, as part of your investigation, did you receive

any information regarding Web hosts?
A I did.
Q Among this information that you received, did you receive any records from The Web Group?
A I did.
Q If you will look in your binder at Exhibit 44, do you recognize Exhibit 44?
A I do.
Q And are these records that you obtained from The Web Group?
A It was.
Q Is this a subscriber record?
A Correct.
Q Special Agent Cugno, are you aware as to whether certification of regularly conducted activity was obtained from The Web Group for this record?
A One was.
MS. DUARTE: Your Honor, move to admit under 902.11, and that certificate was previously provided.
MR. SUTCLIFFE: Your Honor, the defense would like to object to that. I believe we previously raised an objection to that as to the content of information.
THE COURT: Yes, you did raise the objection, Mr. Sutcliffe, and I overruled the objection.
The certification complies with rules of evidence,

but I want to make sure. You are talking about Steve Orosz?

MS. DUARTE: Yes, sir.

THE COURT: Okay. That's part and parcel of Exhibit 44?

MS. DUARTE: Yes, sir.

THE COURT: Okay. Exhibit 44 will be received along with the certification from Mr. Orosz.

(Government's Exhibit 44 received.)

MR. SUTCLIFFE: Clarification, Your Honor?

THE COURT: Yes.

MR. SUTCLIFFE: So the defense understands, the defense is not allowed to impeach the statements represented to be true in that document; is that correct?

THE COURT: That's correct. That document has been received.

MR. SUTCLIFFE: Thank you, Your Honor.

BY MS. DUARTE:

Q Special Agent Cugno, directing your attention to Exhibit 44 -- you can go ahead and put this up. Exhibit 44 is up on the ELMO. What is the subscriber name on this record?

A Steven-William:Sutcliffe.

Q What is the requested domain name?

A "www.evilgx.com".

Q What's the charge for the service?

A It appears to be $11.99 per month.

Q Special Agent Cugno, did you participate in a search warrant on this case, specifically the search warrant of a residence?
A I did.
Q And where was that search warrant served?
A At 315 East High Street in Manchester, New Hampshire.
Q Did the search actually occur?
A It did.
Q Approximately when? Do you remember?
A March 26, 2002.
Q Were you actually there when the search was going on?
A I was not.
Q Did you review any materials as a result of that search?
A I did.
Q What materials were those, just in general?
A Several documents, computer evidence, and a rifle and ammunition.
Q How were these materials identified when you received them from New Hampshire?
A They were identified by the case ID, very specific individual case ID.
Q You said documents were among those materials that you received from the New Hampshire search?
A Correct.
Q In what form were the documents that you received from the

search?
A They were all contained in a large brown box.
Q Did you go through the box?
A I did.
Q Did you pull or select a few documents to use at trial?
A I did.
Q In the binder right in front of you, Exhibits 48 through 50, if you could look at those for me, please.
A Okay.
Q Have you seen those documents before?
A I have.
Q Where have you seen those before, without telling me what they are?
A These are some of the documents I found within that box.
Q That you received from New Hampshire?
A Correct.
Q Are those documents -- as you see the copies there in front of you, are those in substantially the same condition as they were when you retrieved them from the box?
A Most of them are, yes.
Q When you say "most," is that because they are copies or is that because there has been something added?
A That's because they are copies.
Q Other than the fact that they are copies, are they in substantially the same condition?

A Yes.

MS. DUARTE: Your Honor, I'm not seeking admission at this time of those exhibits. If I could have just a moment.

Your Honor, I have nothing further at this time. Thank you.

THE COURT: Okay. Do you want to question him at a later stage, Mr. Sutcliffe?

MR. SUTCLIFFE: I can begin my cross-examination now; is that correct, Your Honor?

THE COURT: Well, we really need to complete the cross-examination of Ms. Greenwood before you cross-examine him today.

MR. SUTCLIFFE: We are breaking at what time today, Your Honor?

THE COURT: 1:30.

MR. SUTCLIFFE: The defense would like to cross-examine. I expect to finish very quickly with Mrs. Greenwood.

THE COURT: Mr. Cugno will be here and you can start in with him when we finish with Ms. Greenwood.

You can step down, please, and bring in Ms. Greenwood.

MS. DUARTE: Yes, Your Honor.

ELIZABETH GREENWOOD, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

THE COURT: Okay. Go ahead, Mr. Sutcliffe.

Welcome back. I'll remind you that you are still under oath and you have the obligation to testify truthfully.

CROSS-EXAMINATION (Resumed)

BY MR. SUTCLIFFE:

Q Mrs. Greenwood, how are you?

A Good morning.

Q Mrs. Greenwood, you stated yesterday, I believe it was, correct me if I'm wrong, you had seen the picture of Tracy contained within the "evilgx.com" website; is that not true?

A That's correct.

Q And how did you know that this picture you saw was Tracy?

A I believe either Mark Block or Mark Labaton told me that that was Tracy.

Q But you never met Tracy?

A No.

I think the page also said "Tracy" or it was addressed to Tracy.

Q It was addressed to Tracy?

A I think so.

Q So you assumed, because Mr. Labaton told you this was Tracy, that this was Tracy?

A Yes. And also because the website page seemed to indicate that it was Tracy.

Q And Mr. Labaton wouldn't mislead you; he wouldn't tell lies; correct?

MS. DUARTE: Objection, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Now, you said, also, that it had some personal information along with this picture of Tracy; is that not true?

A I'm not sure. I would have to look at the page for whether or not it had personal information on that page.

Q Didn't you say that -- didn't you have an interview with the FBI agents around 12-28 of 2001 where we discussed your testimony that you had given them?

A I wasn't sure if I had an interview on 12-28.

Q Okay. Let's just forget about that.

Let's move on to -- we were discussing yesterday Exhibit 228 concerning a New York Times article that was coming out. It was the subject of an e-mail that was titled "Urgent."

Now, did you read the e-mail contained within 228 that we showed yesterday?

MS. DUARTE: Your Honor, object to further questioning on this line as immaterial, irrelevant, and asked and answered yesterday.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q As a result of this e-mail that was being sent back and forth regarding this New York Times article, isn't it true that you learned that there was a problem with the government's case

and your goal to shut down this website; isn't that a fact?

MS. DUARTE: Objection, Your Honor. Irrelevant, argumentative, and misquotes the witness.

THE COURT: It doesn't misquote the witness.

MR. SUTCLIFFE: I'm not --

THE COURT: Don't argue, Mr. Sutcliffe, I'm about to rule, especially when I'm about to rule in your favor. I don't think you want to snatch defeat from the jaws of victory, do you?

MR. SUTCLIFFE: I apologize to the jury and the Court and everybody present.

THE COURT: Okay. The objection is overruled.

To the extent that the witness is able to answer whether she had reason to believe that the effort to shut down the website had -- went into problems.

THE WITNESS: Can I have the question repeated, please.

THE COURT: Repeat the question, Mr. Sutcliffe.

MR. SUTCLIFFE: Can the court reporter read it back from the screen?

THE COURT: Just reframe it, please. It will go faster.

Q As a result of reading that material that was being requested by the New York Times and the contents of the communications that were being sent back and forth, you learned

that there was a problem with the government's case and your goal on March 22nd of stopping this website, didn't you?

A No.

MR. SUTCLIFFE: Your Honor, I'd like to, at this time, publish page 1707.

MS. DUARTE: Your Honor, I object to that. I don't think the document is in evidence.

MR. SUTCLIFFE: I believe it was entered as Exhibit 228, Your Honor.

THE COURT: No, 228 was not received.

MR. SUTCLIFFE: All of it was not received?

THE COURT: None of it was received. 228 is not in evidence. I'm not going to permit it to come into evidence.

BY MR. SUTCLIFFE:

Q Mrs. Greenwood, isn't it a fact that you learned that this reporter from the New York Times was seeking a laundry list of questions?

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Isn't it a fact that somebody from within Global Crossing, in this discussion with you or your discussion with them, had told you that, one, there was no proof Mr. Sutcliffe had stolen anything; and two, that under California and state laws, posting personal information is not a crime?

MS. DUARTE: Objection, Your Honor. Move to strike the question. No foundation.

THE COURT: Sustained.

And I remind the jury that the charges in this case are not based on and do not accuse Mr. Sutcliffe of theft. And the question of the strength or weakness of Global Crossing's civil lawsuit against Mr. Sutcliffe, at any given time, is irrelevant to the issues in this case.

Now, please move on to a different topic, Mr. Sutcliffe.

BY MR. SUTCLIFFE:

Q Mrs. Greenwood, isn't it a fact that within those e-mails, you learned that as of March 22nd, under California and many other state laws, it is not against the law to publish personal information?

MS. DUARTE: Same Objection, Your Honor.

THE COURT: As framed, the objection is overruled, but the question calls for a legal conclusion. And to the extent it calls for her state of mind as to what she understood was the state of the law in some other jurisdiction, it's totally irrelevant.

The question need not be answered.

Move on, please, Mr. Sutcliffe.

BY MR. SUTCLIFFE:

Q To your knowledge -- let me rephrase the question.

Did you ever learn that it's not against the law to publish personal information?

MS. DUARTE: Same Objection, Your Honor. Irrelevant.

THE COURT: Sustained.

Mr. Sutcliffe, I've given rulings. I've tried to tell you that you are not going to be permitted to ask questions about her knowledge or her understanding about the state of other jurisdictions' laws concerning privacy rights. It is not relevant to this case. Please move on to a different topic.

MR. SUTCLIFFE: To an entirely different topic, Your Honor?

THE COURT: Yes.

BY MR. SUTCLIFFE:

Q In those e-mail conversations on March 22nd, did you or did you not send out an e-mail to the FBI on March 22nd, at 10:42 p.m., saying that you had personally spoken with the U.S. Attorney, Mrs. Duarte?

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: I'll overrule that.

You can answer that question.

THE WITNESS: I have no specific recollection of sending an e-mail on March 22nd.

MR. SUTCLIFFE: Your Honor, the defense moves to enter -- or publish an exhibit, Bates 1705, or would like to

enter it as an exhibit if it's not already entered.

MS. DUARTE: Your Honor, I believe that's a portion of the pages that I gave the Court yesterday that I didn't get back that I objected to yesterday.

THE COURT: Let me see what it is, please. Hand it to the clerk.

MS. DUARTE: It's part of Exhibit 228, Your Honor.

THE COURT: Exhibit 228, which is Bates stamped 01705, says it's page 1 of 1, which signifies to me at least that it is a stand-alone document. It may have been included, along with other irrelevant documents, in 228, but I will permit this to be shown to the witness and to be received in evidence as Exhibit 229.

That doesn't mean that you can cover all the ground, or any of the ground, about the New York Times inquiry. There may be some relevance that you are permitted to try to establish, so I'll allow it on that basis.

Please return it to the witness. It will be marked as Exhibit 229 and it will be received.

(Defendant's Exhibit 229 marked for identification and received.)

MR. SUTCLIFFE: Thank you, Your Honor.

Permission to publish, Your Honor?

THE COURT: Yes.

BY MR. SUTCLIFFE:

Q Mrs. Greenwood, do you see this document I'm pointing to right now dated March 22, 2002?
A Yes. I haven't read it yet.
Q Are you aware of what date the defendant was arrested in this case?
A Not exactly.
Q Do you have an approximate date when he was arrested?
A I believe it was in March of 2002.
Q Could it have been March 26, 2002?
THE COURT: You don't have to answer that. It calls for speculation.
MR. SUTCLIFFE: Withdraw the question. Sorry.
Q Now, in this e-mail, at 10:42 p.m., you spoke with the U.S. Attorney, I believe that's Elena Duarte; is that correct?
A Can I have a minute to read the e-mail?
Q Sure. Take your time.
A Can you scroll up or down, or whatever, so I can see the rest?
Q Sure. Do you see the rest of that?
A Can you just scroll down to the bottom where it says Cynthia.
Q That's the last --
A Yes, I have read it.
Q Now, what we're looking at right now, this was the people you were talking with on this day regarding the urgent and

confidential e-mail we were discussing earlier; is that not true?

A This e-mail says "Subject: Good news."

Q I see that. I'll get to that.

So, obviously, "urgent" had changed all of a sudden to "good news"; is that correct?

A I have not seen the "urgent" e-mail.

Q Did you ever see any e-mails on March 22nd that said "Urgent: Regarding: New York Times story"?

A I don't have a specific recollection of that.

THE COURT: Again, it's irrelevant. I'm not going to permit -- whether something would refresh her recollection won't matter for this trial, so don't even bother trying, please, but you can ask about this document.

BY MR. SUTCLIFFE:

Q Mrs. Greenwood, did you ever send a letter to the FBI on February 22nd "Regarding: Urgent and confidential: New York Times story on evilgx on Monday"?

MS. DUARTE: It's irrelevant, Your Honor. Asked and answered.

THE COURT: I don't think that was answered or asked, so I'll overrule that objection. Just "yes" or "no".

THE WITNESS: I have no recollection.

MR. SUTCLIFFE: Your Honor, at this time, defense would like this document to be marked as the next exhibit in

order. It's Bates 1700.

MS. DUARTE: Object to that, Your Honor. It's another page of Exhibit 228, apparently.

THE COURT: Let me see it.

MR. SUTCLIFFE: I'll direct the Court's attention to the very top.

THE COURT: For the limited purpose of establishing that there was a communication to the FBI that this witness apparently sent, I will permit inquiry about the document Bates stamp No. 1700. It will be assigned 230.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: You might as well -- I'll admit it into evidence and you can display it.

(Defendant's Exhibit 230 received.)

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Give it back to the witness, please.

And the inquiry will be limited as to whether she sent that to the FBI.

BY MR. SUTCLIFFE:

Q Mrs. Greenwood, I'm going to show you this document that we are referring to right now.

Do you see your name up there at the top?

A Yes.

Q You are directing the FBI to see a bunch of e-mails below -- is that correct?

A Yes.
Q -- regarding the New York Times reporter?
A Yes.
Q Do you see the title of the e-mail that you were forwarding to them?
A Yes.
Q And it's from Cynthia Artin.
Who is Cynthia Artin?
THE COURT: That was asked and answered yesterday.
MR. SUTCLIFFE: Was it?
THE COURT: Yes, it was.
MR. SUTCLIFFE: I don't recall that.
Q What is the "subject" line of this e-mail?
A It says, "Regarding: Urgent and confidential: NYT writing a story on evilgx for Monday."
Q And then down there it says, "I will let Simon" --
MS. DUARTE: Objection, Your Honor. Outside the scope of the Court's ruling.
THE COURT: Sustained.
Ask her what you wanted to establish. Did she send that to the FBI?
BY MR. SUTCLIFFE:
Q Okay. Did you send that to the FBI?
A Yes.
THE COURT: Now move on to another question,

please -- another inquiry.

BY MR. SUTCLIFFE:

Q Earlier, we discussed that you said that you didn't know who Scott Wanamaker was; is that correct?

A Correct.

Q And that you had no recollection of who or knew Scott Wanamaker?

A Correct.

MR. SUTCLIFFE: Your Honor, at this time the defense would like to enter into evidence Bates 1691, 1689, and 1690 -- excuse me, 1689, 1690, and 1691 as one exhibit.

MS. DUARTE: If I could have just a minute to look at them, Your Honor.

THE COURT: These are about the identity of Mr. Wanamaker?

MR. SUTCLIFFE: This goes to the truthfulness of the witness's testimony --

THE COURT: Let me see the documents.

MR. SUTCLIFFE: -- memory of the witness, veracity of the witness.

MS. DUARTE: Your Honor, if I may?

THE COURT: Yes.

MS. DUARTE: Object particularly to the relevance of this because it's after this whole line is being --

THE COURT: The first of these dates is April 25th --

MS. DUARTE: Yes, which is after --

THE COURT: -- 2002, after the defendant was arrested.

MS. DUARTE: Yes. And charged, Your Honor.

THE COURT: It's irrelevant anyway.

There has already been testimony. I've made my ruling. It doesn't, in any way, go to credibility. So move on to something else, please.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Mrs. Greenwood, March 22nd comes and goes. You call the U.S. Attorney. You call the FBI. You learn something urgent, but the urgent turns into good news; is that a fair statement?

A I don't -- I saw in that e-mail that I had called the U.S. Attorney, or I said that I did, but I don't recall whether or not I called the FBI.

Q Now, you claim the defendant had made threats against you; correct?

A Correct.

Q And you brought that to the attention of the FBI when?

A Whenever the threats were made, I brought them to the attention of the FBI.

Q Do you remember what day that was that you brought to the attention of the FBI that you felt threatened?

A Well, I brought all threats to the attention of the FBI. So whenever they were posted on the "evilgx" website, I passed

the information along to the FBI.

Q That's right. It was your interpretation that these words that you -- you classified them as "threats." You passed that along to the FBI. Hey, here's a threat; hey, here's a threat; hey, here's a threat. Right?

A Yes.

Q My question to you is, when did you -- this threat appear from the defendant personally towards you? When did you notify the FBI?

A Well, there was -- early on, there was the letter that had my electronic signature on it and my home address and social security number and birth date and a map to my house. There was information that had my salary and other members of the legal department's salaries.

THE COURT: But the question, Ms. Greenwood -- and I know sometimes it's hard to follow -- is, do you remember, just "yes" or "no," the precise date that you first called to the attention of the FBI the information about yourself you've been describing?

THE WITNESS: There would have been multiple dates. And no, I don't recall the specific dates.

MR. SUTCLIFFE: Your Honor, the defense would like to enter exhibit next in order Bates 1698, an e-mail sent to the FBI on March 26, 2002.

MS. DUARTE: If I could have just a moment?

THE COURT: May I see it, please?

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Okay. I think that you are entitled to show this to the witness, so we'll have it marked as Exhibit 231.

(Defendant's Exhibit 231 marked for identification.)

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: You can publish it.

BY MR. SUTCLIFFE:

Q Mrs. Greenwood, do you see this document I'm publishing right now?

A Yes.

Q Do you see where it says, "New threats" --

A Yes.

Q -- as opposed to old threats?

Now, right below there, "The page on me is pasted below from the zip file that Andrew sent to me"; right?

A Yes.

Q So Andrew is sending you files. You are looking at the files, you determine whether they are a threat, and then you forward it to the FBI; correct?

A Correct.

Q Okay. Were you aware that the defendant was arrested that same day, March 26th?

MS. DUARTE: Asked and answered, Your Honor.

MR. SUTCLIFFE: I'm sorry. I did ask that question.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Now, these threats we were just looking at, let's go through them step by step.

"The site is up again today. The page for me has new added threats."

THE COURT: This was dated March 25th.

MR. SUTCLIFFE: Right. I'm just going down. She's forwarding this e-mail on the 26th.

THE COURT: What is the question?

MR. SUTCLIFFE: I'm waiting for her to finish reading, Your Honor. I don't want to rush her.

THE WITNESS: Okay. I have read it.

BY MR. SUTCLIFFE:

Q Do you remember sending this document?

A I don't have a specific recollection of sending it, but yes, I recall this sort of thing.

Q Now, did you ever send an e-mail to the FBI saying, "Hey, I feel threatened by the words, 'This is all far from over'"?

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: Overruled.

THE WITNESS: I don't recall.

BY MR. SUTCLIFFE:

Q Okay. "Keep it up and watch what happens next," now,

Mrs. Greenwood, couldn't that reasonably mean that the defendant was going to sue you if you didn't stop accusing him of falsely stealing --

MS. DUARTE: Objection. Calls for speculation.

BY MR. SUTCLIFFE:

Q -- hard drives, illegal hacking, and censoring his rights to publish and speak?

THE COURT: Sustained. The objection is sustained. You don't have to answer that question.

You can argue what you think the evidence allows as an inference at the appropriate time, Mr. Sutcliffe.

BY MR. SUTCLIFFE:

Q Would you not agree -- Mrs. Greenwood, you are an attorney. Would you not agree that, "Keep it up and watch what happens next" is a pretty vague sentence?

A Yes.

Q It could mean a lot of things?

A Yes.

Q Now, "You've done enough damage to my family. Don't mess with my family anymore," what does that -- could that mean exactly the same thing: Don't mess -- quit -- stop censoring me, leave me alone, stop slandering me?

MS. DUARTE: Objection, Your Honor. It's argumentative.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q The next line down there, "You can run but you can never hide," Global Crossing was actively serving Mr. Sutcliffe with civil papers in the beginning of this case, weren't they?

THE COURT: At the beginning of what case?

MR. SUTCLIFFE: The civil case against Mr. Sutcliffe.

Q For instance, Tracy was a process server.

A The outside law firm that Global Crossing retained hired a process server to serve you.

Q Didn't they also hire private investigators?

A I think that the outside law firm may have hired a private investigator to help find you in order to serve you.

Q That's before I left -- the defendant left for New Hampshire or after?

A I don't know.

Q Did you ever see pictures of vehicles that the defendant claimed were private investigators who were following him and harassing his neighbors and himself?

A I recall seeing a picture of Tracy's vehicle -- or her license plate on the website.

Q But no other vehicles?

A I don't recall.

Q Do you know who Bob Mule is?

A That may have been an investigator that was hired.

Q Might have been.

With Pinkerton Investigations?

MS. DUARTE: Objection to relevance of this line, Your Honor.

THE COURT: Sustained.

MR. SUTCLIFFE: She's claiming she has no knowledge of private investigators.

THE COURT: And that's irrelevant anyway.

Now, move on.

BY MR. SUTCLIFFE:

Q So, usually, when you hire someone to serve someone, you've got to -- people who don't want to be served try to avoid service sometimes, don't they?

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Have you ever had, as part of your job at Global Crossing, to serve -- get people to serve civil papers on people?

MS. DUARTE: Same objection, Your Honor. Irrelevant.

THE COURT: Sustained.

MR. SUTCLIFFE: Nothing further -- I'll move on with this page.

THE COURT: Let's take a 15-minute break. I told you we would, so we will. Please remember the admonition during the break. We'll see you back here in around 15 minutes.

(Recess taken at 10:14 a.m. to 10:34 a.m.)

(Jury out.)

THE COURT: Does somebody have something to bring up with me?

MR. REED: Yes, Your Honor.

David Reed, advisory counsel. We are almost finished serving all the subpoenas, Your Honor. There are just two left. They involve the Court. We're requesting the Court issue an order to help us. We want the marshals to serve these subpoenas.

Mr. Cruz is unable to do it because of the area where you have to go in to serve the subpoenas. It's a gated community-type thing and nobody is allowed in.

I don't want to let the government know the names of the subpoenas. I've told your clerk that I need the Court to issue a minute order so that we could attach that minute order to these subpoenas. And the marshal said, with the minute order, they would be able to serve the subpoenas.

Could I get the permission of the Court to issue that minute order for those two subpoenas?

THE COURT: Cindy, do you have something to show me that Mr. Reed gave you?

THE CLERK: No, Your Honor.

We just had a discussion.

THE COURT: Just write down their names.

THE CLERK: I don't have that information.

MR. REED: I can write their names down and give it to her, Your Honor.

THE COURT: Okay.

And you have some witnesses you want to take out of order?

MS. DUARTE: I do, Your Honor.

They are not actually out of order. I just wanted to alert the Court to the fact that I anticipate, as we discussed yesterday, that Special Agent Cugno would not be crossed today, so my two witnesses that came in from out of town. I sent the rest back. But the ones that came in additionally, before I could call them off, they are present and ready to testify.

THE COURT: How long will they be and who are they?

MS. DUARTE: I have Maurice Gilmer here. He should be, on direct, ten minutes or less. He's going to testify only to Exhibit 36, which is a record. He's a Web host.

I also have Kathy Fuller, who is the FBI agent that did the seizing of the items in the search warrant.

THE COURT: Did what?

MS. DUARTE: The seizing of the items -- the evidence in the search warrant. She probably will be 20, 25 minutes.

THE COURT: How much redirect do you estimate, if any, on Elizabeth Greenwood?

MS. DUARTE: None.

THE COURT: How much more time do you need with

Greenwood, Mr. Sutcliffe?

MR. SUTCLIFFE: I'm almost finished, Your Honor.

But I would object, though, to the witnesses being called out of order. I thought we established that I was going to continue and get my cross-examination of the agent.

THE COURT: I'll permit the witnesses to testify out of order because they are out of state. It's commonly done as a courtesy and saving of federal money as well. So we'll take those very nominal witnesses out of order.

Let's bring the jurors in.

You proposed --

MR. REED: Just one subpoena now, Your Honor.

If the Court could just simply write on the subpoena, I think that would be sufficient.

THE COURT: All right. I'll do it.

MS. DUARTE: Your Honor, I'm sorry, just as a clarification. The Court was going to permit the witnesses, after Ms. Greenwood; right?

THE COURT: Yes.

MS. DUARTE: The Court wants Ms. Greenwood in now?

THE COURT: Right. Let's finish with her at last.

MS. DUARTE: We are going to get her now.

THE COURT: Bring the jury in.

(Jury in.)

THE COURT: Welcome back, everyone. You may be

seated.

Mr. Sutcliffe.

CROSS-EXAMINATION (Continued)

BY MR. SUTCLIFFE:

Q Mrs. Greenwood, in earlier testimony, you testified that you believe that all of these social security numbers that were published and this personal information on the website was true and accurate; is that not correct?

A That is what I testified.

MR. SUTCLIFFE: Your Honor, at this time the defense would like to enter as exhibits three documents, Bates 1732, 1688, 1684, and 1685.

THE COURT: These are a single document?

MR. SUTCLIFFE: No. 1684 and 1685 is stapled together as one. 1688 and 1732 are separate.

THE COURT: Let's try it this way. Put it on the screen.

Could you enable the port, please, the ELMO, for the defendant.

What's the relevance of this?

MR. SUTCLIFFE: The relevance is to impeach the witness. She's testified that she believed that these -- all this information was true. It clearly is not.

MS. DUARTE: I object to that, Your Honor. It's irrelevant.

MR. SUTCLIFFE: She knew -- excuse me.

THE COURT: Let me see the other two documents.

This is clearly inadmissible, this one, which is -- for the record, what's the Bates number on this one, Mr. Sutcliffe?

MR. SUTCLIFFE: 1688, Your Honor.

THE COURT: You may not show or inquire into 1688. May I see the last one, please?

MR. SUTCLIFFE: There is also an additional one on the back I need to show, Your Honor.

THE COURT: Okay. Mr. Sutcliffe, you don't have to show any of these documents. I won't permit you. If you want to ask the witness, who has glanced at these documents, whether she is sure that the information that she referred to before was, in fact, complete and correct, you can ask her that. No reference to the documents.

MR. SUTCLIFFE: Just for clarification, Your Honor, may I inquire why the second part of this e-mail is not admissible? Not the top part. I'll show it to the Court again. I'm sure Your Honor is concerned about this.

THE COURT: I'm not concerned --

MR. SUTCLIFFE: This is not the government at all, Your Honor. She's writing an e-mail to whoever this is, but he's, obviously -- I've never heard his name. This is definitely not the government.

THE COURT: It's not at all remotely relevant. None of these is necessary. None of them is relevant.

You can ask a single question as to whether or not she wants to change her testimony based on anything that has happened since she gave it.

BY MR. SUTCLIFFE:

Q Based on these documents that I have just shown the Court, do you want to your change your testimony that all the information that was contained within the website "evilgx.com" was accurate?

A Yeah. I actually had a recollection last night that there were some social security numbers that were posted that did not match up. They were not accurate. And the e-mails refreshed that recollection as well. So many of the social security numbers were correct. There were some that were not.

Q Right.

And do you remember -- when we were looking at the FAQ page the other day and the disclaimer at the top, the website didn't make any representations as to the accuracy of the numbers contained within the website until the provider of such had verified it. Do you remember reading that document?

A I recall reading that document yesterday or the day before.

Q Right.

Does it make any sense to you that somebody who is

going to aid and abet identity theft, or commit identity theft, is going to publish incorrect information?

MS. DUARTE: Objection. Argumentative.

THE COURT: Sustained.

MR. SUTCLIFFE: At this time, Your Honor, defense would like the government to produce Exhibit 23 so we can just briefly display that.

Q And while we are waiting on that, Mrs. Greenwood, have you ever had someone misunderstand what you said?

MS. DUARTE: Objection. Relevance.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Have you ever heard someone and misunderstood what they meant, only to learn --

MS. DUARTE: Same objection.

THE COURT: Let him finish the question.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Frame your question.

And then if you have an objection, please rise.

BY MR. SUTCLIFFE:

Q Have you ever heard someone and misunderstood what they meant, only to learn later that you were wrong?

MS. DUARTE: Objection. Irrelevant, Your Honor.

THE COURT: Sustained.

It's argumentative, Mr. Sutcliffe. Save it for the

appropriate time in the trial.

BY MR. SUTCLIFFE:

Q Mrs. Greenwood, did you ever make the statement to anyone that, "Early on" -- this is a quote.

Did you ever make the statement to anybody, "Early on, however, Sutcliffe posted teasers. I originally thought the numbers below were bank accounts or credit cards. Tom told me they were actually telephone numbers and cell phone numbers just rearranged with different" --

MS. DUARTE: Objection to reading some document.

MR. SUTCLIFFE: I'm asking if she ever made the statement, Your Honor.

THE COURT: Okay. The objection is overruled.

Did you make the statement?

THE WITNESS: I don't have a specific recollection.

THE COURT: Okay. It's collateral if you go any further, so I'm not going to permit it. It's totally collateral, cumulative. Under 403, I preclude any further inquiry.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Did you ever make the statement to anybody, "Sutcliffe likes to play with words"?

MS. DUARTE: Objection, Your Honor. Irrelevant.

THE COURT: Overruled.

THE WITNESS: I don't have a specific recollection.

BY MR. SUTCLIFFE:

Q Okay. Now, the Web page that we talked about earlier -- there was a series of three Web pages. I'm about to put the CD-ROM in so we can examine one of them.

Specifically, I'm talking about the one that contained a picture of the defendant and his daughter and a picture of yourself and your daughter.

MS. DUARTE: Your Honor, unless these questions are new, I object. We've seen this two times already.

THE COURT: Let's see if they are new. If they are not new, I'm going to shut it down right away. You can't go over the same ground. But you are entitled to see if there is something new.

MR. SUTCLIFFE: I have no intention of going over the same ground.

THE COURT: You put Exhibit 23 --

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: -- in the equipment at your table; is that correct?

MR. SUTCLIFFE: Yes, Your Honor, that's correct.

THE COURT: Now, inquire about it.

Enable the ports, please.

BY MR. SUTCLIFFE:

Q Mrs. Greenwood, on that page that we were specifically referencing, did you ever send an e-mail to the government

saying that the earliest that you had found the page that contained the picture of the defendant and his two-year-old daughter and yourself was February 22nd of 2002?

A That's possible.

Q But you didn't complain to the FBI until March 25th that you felt threatened by these pages within the website; isn't that true also?

MS. DUARTE: Objection, Your Honor. Asked and answered.

THE COURT: Sustained.

Move on.

BY MR. SUTCLIFFE:

Q Isn't it a fair statement to say -- if it took your computer expert, Andrew Ramsey, over a month to locate a page that you could interpret as threatening, isn't it fair to say that the average guy coming to this Web page could have never found it?

MS. DUARTE: Objection. Irrelevant and argumentative.

THE COURT: And calls for a conclusion and speculation.

Sustained.

MR. SUTCLIFFE: I'll move on, Your Honor.

Q I'm going to bring up -- did you see this page we're looking at right now, Mrs. Greenwood? It says, "... in honor

of the deceased." There was discussion about that, and you had said that that was "a veiled death threat against Mark Labaton."

Do you remember that? Do you see the link right there?

A Yes, I see that link.

Q And the page name is "marklabaton.htm".

A Yes, I see that.

Q Can you tell us why you considered this hyperlink to be a "veiled threat"? How did you come up with that?

A Mr. Labaton is not deceased.

Q Right.

Did you follow that link to this page?

A I may have.

Q And is this a threatening page? I'll refresh it for you. Can you see that?

A Yes, I can see that.

Q It says, "Global Crossing sinks into chapter 11"; correct?

A Yes.

Q So is it fair to say that maybe you came up with -- you came up with the wrong conclusion, that he wasn't threatening Mr. Labaton, but the "honor of the deceased" was the demise -- the death -- of Global Crossing, as it sank into Chapter 11, as the fourth largest bankruptcy in the history of the United States; isn't that a fair statement? Couldn't that reasonably

be interpreted?

MS. DUARTE: Objection, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Couldn't you reasonably interpret that that's what the author meant?

MS. DUARTE: Objection, Your Honor --

THE COURT: Sustained.

MS. DUARTE: -- move to strike.

MR. SUTCLIFFE: I'll move on, Your Honor.

Q Now, I'm going to bring up the exhibit we were looking at earlier. It started off with an index page. It will take me a second. Please give me one minute.

(Playing audio.)

BY MR. SUTCLIFFE:

Q Do you recall, we looked at this page and then we decided to go in, and down here, we were talking about this section right here, that this $15,000, if we followed it, would take you back to the contract, and that this interest-free loan took you to some unsecured promissory loans to Global Crossing executives?

Now, you said that -- you came up with the words "a mafia-type thing," did you not? That was your interpretation?

MS. DUARTE: Objection. We've been over this, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q How did you come up with the words "a mafia-type" threat out of this?

MS. DUARTE: Objection. Asked and answered.

THE COURT: Sustained.

She already answered that question. She already explained to the jury.

BY MR. SUTCLIFFE:

Q It was you who came up with the idea that --

THE COURT: Could you stand up when you are questioning.

MR. SUTCLIFFE: Yes. I'll close this out.

Q It was you who came up with the idea that these e-mails the defendant was using in February, under the name Gary Winnick and Richard Saly, that was fraud; correct?

MS. DUARTE: Objection. Irrelevant as to "whether or not."

THE COURT: Overruled.

Are you asking her whether she's the first person who used the word "fraud" in connection with the false use of those e-mails?

MR. SUTCLIFFE: Yes.

THE COURT: Do you know if you are the first person who did?

THE WITNESS: I don't know.
BY MR. SUTCLIFFE:
Q You sent the e-mails to the FBI and the "subject" line was "fraud"; correct?
A Correct.
Q Do you have any recollection of someone saying to you, "Hey, this is fraud"?
A I don't recall.
Q How did Tracy find out about this page that you called -- you said it was "a death threat to murder her"?
MS. DUARTE: Objection. Calls for speculation.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Did you inform Tracy?
A No.
Q Did you call somebody and tell them about the page? Tell them to tell Tracy?
A It's a compound question.
THE COURT: Okay. Break down the question, please.
BY MR. SUTCLIFFE:
Q Do you remember first viewing the page that had what you call the "murder threat" on it?
A I don't have a specific recollection of the first time I saw it.
Q Do you recall what your first reaction was when you saw

the page?
A I don't have a specific recollection of my reaction when I first saw it.
Q Were you monitoring the page at that time and you just stumbled across it?
A No.
Q Somebody sent it to you?
A Most likely, yes.
Q Then you did what with the page? Forwarded it?
A Possibly.
Q Did you put the subject header there, "Murder threat, new threat"?
A I would have to see the e-mail again.
Q Let me find it.
MS. DUARTE: Your Honor, object to this. We've been over this.
THE COURT: Sustained.
You explored that very extensively, Mr. Sutcliffe.
MR. SUTCLIFFE: Thank you, Your Honor.
Q "I am now armed," is that a vague statement?
A No.
Q No. Couldn't I be armed with a whole notebook full of information?
MS. DUARTE: Objection. Speculation and conclusion.
THE COURT: And also previously asked and answered.

You went over that.

BY MR. SUTCLIFFE:

Q Okay. "I am now armed." What am I armed with?

MS. DUARTE: Objection. Vague.

MR. SUTCLIFFE: Exactly. Thank you. No further questions.

MS. DUARTE: Your Honor, move to strike.

THE COURT: The motion to strike is granted. You will not be permitted to try to argue what you think the evidence shows --

MR. SUTCLIFFE: I'm not trying to argue.

THE COURT: -- and to debate with anybody, whether it's the prosecutor, the witness, or with me. You are to ask questions. I think I've made that clear.

Now, move on to your next question.

BY MR. SUTCLIFFE:

Q Mrs. Greenwood, did you ever make the statement to anybody, "On the Sutcliffe indictment, could he get more time if counts were added? If yes, I could search through and come up with more threats"? Did you ever make that statement?

A I don't recall.

MR. SUTCLIFFE: May I refresh the witness's recollection?

THE COURT: You may.

I'm showing the witness a document Bates stamped as

01692.

THE WITNESS: Okay. I have read it.

THE COURT: Does that refresh your recollection?

THE WITNESS: Yes.

THE COURT: And now that your recollection is refreshed, did you make such a statement?

THE WITNESS: Yes.

THE COURT: Move on, Mr. Sutcliffe.

MR. SUTCLIFFE: May I have the document back, Your Honor?

Q So this statement, "On the Sutcliffe indictment, could he get more time if more counts were added? If yes, I could search through and come up with more threats," what did you mean by that?

A I meant what it says.

Q You could go through this website and come across, like, a link saying, "In honor of the deceased," which points to the bankruptcy of Global Crossing and call that a "veiled threat," couldn't you? You could come up with that idea, too; right?

MS. DUARTE: Objection, Your Honor. It's not a question. It's argumentative.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q There was a lot of statements within this website which, one, could twist to be made out to be a threat; isn't that a

fair statement?

MS. DUARTE: Same Objection, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Isn't it true, Mrs. Greenwood, that the reason that you were really afraid was because you had learned that it is not against the law to publish information, and your goal was never going to be met; you had to come up with a new tactic to shut down this website because your old goal was never going to fly anymore, so you came up with this idea to come up with threats and create them out of nothing?

MS. DUARTE: Objection. Move to strike. Argumentative.

THE COURT: Sustained.

It's also compound.

MR. SUTCLIFFE: Your Honor, may I have a minute?

THE COURT: Yes.

MR. SUTCLIFFE: Thank you, Your Honor.

Your Honor, defense would like to move this Bates 1692 into -- as an exhibit next in order.

THE COURT: Which one is that?

MR. SUTCLIFFE: Where the witness -- her recollection was refreshed that she had made the statements.

THE COURT: It's not permissible to enter something where it's already succeeded in its limited purpose, which was

to refresh recollection, so --

MR. SUTCLIFFE: May I publish the document, Your Honor?

THE COURT: No.

BY MR. SUTCLIFFE:

Q Mrs. Greenwood, after you made the statement, "On the Sutcliffe indictment, could he get more time if more counts were added? If yes, I could search through and come up with more threats," did you not continue and say, "For example, he had a page from Mark Labaton 'In honor of the recently deceased'"?

Did you not make that statement immediately following that?

A No. My recollection, from what I saw a few minutes ago, is yes. I'm not a hundred percent sure because I don't have the document in front of me, but that is my recollection from what I saw a few minutes ago.

Q To accomplish your goal, which you couldn't do by shutting down the website because it's not against the law to publish information, you decided you were going to go through this website and you were going to get your goal and you are going to create threats that are not there, and you are going to take statements that are just out of context or vague statements --

THE COURT: Okay, Mr. Sutcliffe, I have told you --

MR. SUTCLIFFE: I'm just trying to ask her a

question, Your Honor.

THE COURT: Okay. You asked that question before. I granted the government's objection and you heard why and you are doing it again.

Don't repeat anything which you've already been precluded from doing or about which I've already issued a ruling.

I want to explain something to you, ladies and gentlemen. Mr. Sutcliffe is entitled, and will have the opportunity, to argue what he thinks the evidence shows and fails to show and permissible inferences from the evidence.

Whether or not it is a legally correct proposition that it's not a crime to post threats is something I will explain to you, and I will tell you what the law is as to that.

So whether it's Mr. Sutcliffe or the prosecutor, if somebody asks a question of a witness and puts into the question an assertion of what the law is, you are not bound by that. I told you that at the beginning.

A question isn't evidence. And counsel and the defendant in this case are not entitled to try to tell you what the law is in the form of their questions.

Now, proceed, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Now, Mrs. Greenwood, where you were interested in coming up with more threats where you wanted to search through this

website so that Mr. Sutcliffe could get more time added, other than the -- when I read to you the, "For example, he had a page from Mark Labaton 'In honor of the recently deceased,'" now, did you ever make the statement also in there that the Labaton threat was "particularly disturbing"?

A Yes, I believe I did write that in there.

Q So the words, "In honor of the recently deceased," which linked to an article on the demise and Global Crossing sinking into Chapter 11, was particularly disturbing; is that your testimony?

A Well, there was more to what I said.

MR. SUTCLIFFE: I have nothing further for this witness, Your Honor. Thank you.

THE COURT: Okay. Thank you, Mr. Sutcliffe.

Any redirect?

MS. DUARTE: None, Your Honor.

THE COURT: Okay. Thank you very much. You are excused. You have no obligation to appear again. You may go back about your business.

THE WITNESS: Thank you.

THE COURT: Now we are going to take another witness out of order to accommodate questions of travel and logistics as well. So please call your next witness.

MS. DUARTE: The government calls Maurice Gilmer to the stand, Your Honor.

Your Honor, may I address Mr. Reed for just a minute?

THE COURT: You may.

MAURICE GILMER, GOVERNMENT'S WITNESS, SWORN

THE CLERK: Sir, for the record, please state your full name and spell your last name.

THE WITNESS: My full name is Maurice N. Gilmer. The spelling of my last name is G-i-l-m-e-r.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MS. DUARTE:

Q Good morning, Mr. Gilmer.

A Good morning.

Q Mr. Gilmer, where do you work?

A I work for Hosting Solutions in Virginia.

Q What do you do there?

A It's a computer-based business. We provide Web hosting and domain registrations.

Q What is your specific role there?

A I own the company.

Q Do you also work at the company?

A Yes.

Q Do you charge -- does the company charge for hosting service?

A Yes, it does.

Q Did you ever host the website "evilgx.com"?

A Yes.
Q And what is the process by which you, at Hosting Solutions, become the host to a website, just briefly?
A When a client is interested in hosting with us, they provide us with their credit card information. After billing their credit card, we then provide them with their account information so they can start uploading their website.
Q By "uploading their website," is there a particular method or way to upload that your system used?
A Yes. Our clients, they use a protocol FTP. And what they'll do, from their home PC, they'll just upload their contents to our servers.
Q And by "home PC," do you mean their computer, wherever they are creating the website?
A Yes.
Q And by "upload" to your computer, does that constitute a physical transfer to your computer?
A Yes, it does.
Q Where are your computers -- or your servers located?
A They are located in Virginia.
Q As the owner of Hosting Solutions, are you familiar with its records?
A Yes.
Q Take a look, if you will, at Exhibit 36 in the binder before you. Excuse me, it's a binder behind you, the thick

one. There should be a blue tag with 36 on it. If you would look at that exhibit.

A Okay.

Q Have you seen that exhibit before?

A Yes.

Q Now, without telling me the contents of it, what is Government's Exhibit 36?

A What I have in front of me, these are the printouts. When the client signed up with us, we e-mailed -- the first page is a receipt of billing their credit card, and we just e-mailed it to them just so they can have a receipt for their records.

The second and third page is his account information. After we billed his credit card, we then sent him his log-in information.

Q So there are three pages in total -- no, there are four.

What about the fourth page?

A The fourth page is a continuation of pages 2, 3 and 4.

Q Okay. Page 1 of Exhibit 36, is that kind of an auto receipt?

A Yes. It's generated automatically by the server.

Q It's a receipt for what again?

A It's a receipt for signing up for hosting.

Q Does it show, in general, subscriber information?

A Yes. It has his credit card information, his full name, and his address.

Q And documents such as these, as Exhibit 1, when would this document be created?
A This is created in realtime. As the client is actually going through our website and putting his name in and his credit card information, at the same time the server is recording it.
Q So it's actually created by the client?
A Yes, it's created by the client.
Q I should say the information within it?
A Yes.
Q Okay. How is it transmitted or sent to you?
A E-mail.
Q Is that automatic?
A Yes.
Q A record such as this record on page 1, is that kept in the ordinary course of Hosting Solutions' business?
A Yes.
Q Is it kept as a business record by Hosting Solutions?
A Yes.
Q Pages 2 through 4 that you have previously described, when in time are pages 2 through 4 generated?
A Pages 2 through 4 are generated right after the credit card is billed. After we have verified that funds are on the card and we're able to bill the credit card, then the pages are automatically sent to him.

Q Is that automatic?
A Yes.
Q Oh, you just said it was. Sorry about that. Okay.
Do you also keep this portion of the record, pages 2 through 4?
A Yes, I do. I keep everything.
Q Has that been the ordinary course of your business?
A Uh-huh.
MS. DUARTE: Your Honor, at this time move to admit Exhibit 36.
THE COURT: Okay. 36 will be received. 36 is in evidence.
(Government's Exhibit 36 received.)
MS. DUARTE: Your honor, I ask that port 1 be enabled.
Q I have put a portion of page 1 of Exhibit 36 up there on the monitor.
Is that the customer billing information that we've been referring to?
A Yes, it is.
Q And who does that show is the customer of Hosting Solutions?
A Steven William Sutcliffe.
Q Now, I'm going to point to the monitor for a minute. If you'll look at it, I will show you some punctuation that I'm

underlying: "Steven-William: Sutcliffe." Is that something that you -- punctuation that you added yourself?

A No.

Q Who would have added this punctuation to the name? How is this name actually physically typed in?

A When the user was actually inputting his information, the user actually put the hyphen in there and the colon in there.

Q Okay. Now, do these records show, Exhibit 36, show the start-up date, if you will, or the time when you first began hosting the website "evilgx.com"?

A The date on the top of the receipt is when we started to host the website.

Q If you'll look at the monitor, is that the date up here that we are discussing or shall I look somewhere else?

A Yes, that's the date.

Q What is that date?

A January 9, 2002.

Q As best as you can determine, is January 9, 2002, the date that Hosting Solutions became the host, if you will, for "evilgx.com"?

A Yes.

Q Did there come a time when Hosting Solutions ceased to host "evilgx.com"?

A Yes, there was.

Q And at the time that that occurred, were you personally

involved in that?
A Yes.
Q Right now, as you sit here, do you have a specific memory of what date that was?
A No, I don't have a specific date.
Q Is there something that would refresh your recollection?
A Yes. If you were to have information that -- when I was contacted by you, then that would help me give a range of when the site was suspended or cancelled.
MS. DUARTE: Permission to approach, Your Honor?
THE COURT: Granted.
MS. DUARTE: I'll show counsel. This is Bates 163.
Q Mr. Gilmer, that document you have up there, if you could just read it to yourself. Take your time. When you are done, let me know if that document refreshes your recollection as to when you ceased to host "evilgx.com".
A Yes, it does.
Q Without referring to the document, you can go ahead and turn it over up there.
When did Hosting Solutions cease to host the website "evilgx.com"?
A February 18th.
Q Of 2002?
A Can I turn it back over?
Q Yes.

A Yes.
Q Okay. So just to clarify, you began hosting approximately January 9, 2002, and ended approximately February 18, 2002; is that accurate?
A Yes, it is.
MS. DUARTE: Your Honor, I have nothing further at this time.
THE COURT: All right. Thank you.
Any cross-examination?
MR. SUTCLIFFE: Yes, Your Honor, just briefly.

CROSS-EXAMINATION

BY MR. SUTCLIFFE:
Q Good morning.
A Good morning.
Q How are you doing today?
A Fine. How are you doing?
Q Good, thank you.
Now, had you ever been contacted by the FBI prior to sometime in January or February?
THE COURT: About "evilgx.com" or about anything in the world?
MR. SUTCLIFFE: About anything in the world.
MS. DUARTE: Objection to relevance.
THE COURT: Sustained.
BY MR. SUTCLIFFE:

Q Mr. Gilmer, have you ever been arrested by the FBI?
A Yes, I have.
MS. DUARTE: Objection to relevance and a 403 objection.
THE COURT: It's a totally inappropriate question. The question is stricken. The answer is stricken.
If the prosecutor rises -- you should sit down so that I know when you are trying to frame an objection.
MS. DUARTE: I'm sorry, Your Honor.
THE COURT: If you see that lawyer rise, that means that she is about to assert an objection to a question. Please hold off on your answer until I've ruled upon her objection.
THE WITNESS: Sorry.
BY MR. SUTCLIFFE:
Q Mr. Gilmer, is it not a fact that in 1995, you were convicted for conspiracy to distribute cocaine?
A Yes.
MS. DUARTE: 403 objection, Your Honor.
THE COURT: Ladies and gentlemen, the limited purpose for which you may consider that evidence -- and I won't permit any further inquiry -- is as to whether or not this witness has been truthful in his testimony, not for any other purpose, not as to his character, not as to anything else.
Now, move on to another question.
MR. SUTCLIFFE: I have nothing further, Your Honor.

THE COURT: Thank you, Mr. Gilmer. You are excused. You may go about your business.

THE WITNESS: Thank you.

THE COURT: The next witness, please.

MS. DUARTE: Your Honor, the government calls to the stand Special Agent Katherine (sic) Fuller. It might be Kathy, Your Honor. I'm sorry.

THE COURT: We are getting very informal around here. I don't know if we can handle it.

SPECIAL AGENT KATHLEEN FULLER, GOVERNMENT'S WITNESS, SWORN

THE CLERK: Ma'am, for the record, please state your full name and spell your last name.

THE WITNESS: Kathleen Nora Fuller, F-u-l-l-e-r.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MS. DUARTE:

Q Good morning, Special Agent Fuller.

A Good morning.

Q Where do you work?

A I work in Bedford, New Hampshire, a division of the Boston headquarters city in New Hampshire.

Q And what agency do you work for?

A I work for the Federal Bureau of Investigation.

Q And you are a special agent there?

A That's correct.

Q How long have you been a special agent with the FBI?
A I've been a special agent for approximately seven and a half years.
Q Before you were a special agent, were you with the FBI?
A I was a logistics officer with the Marine Corps.
Q How long were you with the Marine Corps?
A I was with them approximately 12 years.
Q Did you participate in a search warrant at 315 East High Street in Manchester, New Hampshire?
A Yes, I did.
Q Was that in approximately March of 2001 (sic)?
A Yes. I believe it was March 26, 2002.
Q My mistake. 2002?
A That's correct.
Q Did you have a specific role in the execution of the search warrant?
A Yes. I was the search team leader at that particular residence.
Q What would the search team leader be responsible for, just in general?
A Primarily, I had the responsibility of coordinating the search team members.
Q Did you also have any responsibility for inventory or for the items that were seized?
A That's correct. We would seize the items, inventory them,

mark them accordingly with the FBI case number, and then transport them -- the items back to the office.

Q Now, at the time that you were doing the search warrant, were you assisting or working with the FBI from Los Angeles?

A Yes, I was.

Q And were you actually, then, present for the search warrant when it was ongoing?

A Yes.

Q Directing your attention to the binder in front of you there, I'm going to have you look at Exhibits 25, 26, and 27.

Your Honor, these are in evidence, so may I ask that port 1 -- never mind.

Putting up on the screen Exhibit 25, you may also look at the picture in front of you, Special Agent Fuller.

Do you recognize Exhibit 25?

A Yes. That looks to be the property of 315 East High Street, Manchester, New Hampshire.

Q And that was where you executed the search warrant or participated?

A That's correct.

Q Now, did you actually go inside the house in order to participate in the warrant?

A Yes, I did. The search warrant was for the property on the third floor.

Q Was that -- do you know if that was, like, an apartment or

part of a residence or --
A Yes. This was an apartment that takes up the entire third floor of that building.
Q And when you were inside the residence, did you see any computer equipment?
A Yes, I did.
Q Putting on the ELMO Exhibit 26 -- I've put a picture on the ELMO that is Exhibit 26.
Do you recognize it?
A Yes, I do. That is the computer that was located in the bedroom, as you enter the apartment, on the right side.
Q Was this the only computer, if you remember, the only setup within that apartment?
A Yes, it was.
Q And was this computer that we see in Government's Exhibit 26 seized?
A Yes, it was.
Q Now, during the service of the search warrant, how is the computer seized, just generally, briefly?
A Generally speaking, the components are taken apart, marked as evidence with the file number, transported back to our office, and placed in a secure evidence room.
Q When you say "the components are taken apart," do you remember if the drives were actually taken out of the CPU -- or the tower at that time?

A In that particular computer, the entire tower was taken from the residence.
Q Was there a reason for that, do you remember?
A Because of the time of the search being late at night, it was decided that the examination of the computer itself would be conducted at a later date.
Q So the tower as-is was packaged up and taken away?
A That's correct.
Q And you said that it was marked with the case number?
A Yes, it was.
Q And was there paperwork -- did you arrange for the transport of that computer back to Los Angeles?
A Yes, I did. The computer, once it was transported from our evidence room in Bedford, New Hampshire, the appropriate paperwork was placed with the computer and it was then forwarded to the Boston office, and from there, it was FedEx'd to the Los Angeles FBI office.
Q Now, in the search warrant that we've been discussing, besides the computer that we just talked about in Exhibit 26, was there any other electronic evidence seized from that location?
A Yes. There were several floppy disks, CDs, and other disks in both the bedroom and the built-in closet in the living room.
Q So throughout -- in different portions of the residence?

A That's correct.
Q When you say "several," do you mean a few or multiple?
A There were many.
Q Were those seized as well?
A Yes, they were.
Q What did you do with them when they were seized?
A We put those in a bag marked "evidence," marked them with the case number, sealed them, stored them in a secure location. And then, with the appropriate paperwork, they are transported, like the computer, to the Boston evidence room, and the evidence technician forwards those items to the Los Angeles Division.
Q Did you seize any documents at the search warrant on High Street?
A Yes, we did.
Q What did you do with those after seizing them?
A The same. We would box them up, mark them as evidence, mark them with the appropriate inventory number, case number, transport them to our office, store them in evidence, secured. And then the next day or so, we would have them transported to the Boston office. And, again, they would be FedEx'd to the Los Angeles Division for examination.
Q During the course of the time that you were there at the search, did you actually have occasion to go through or to see any of these documents?

A Yes, I did.
Q If you will turn, in front of you there, to Exhibit 48.
Have you seen Exhibit 48 before?
A Yes, I have.
Q Where have you seen it before?
A I saw at least one copy of this during the search at the residence of the defendant.
Q As far as you are aware, was it seized at the time of the search?
A Yes, it was.
Q At least, I should say, one copy of it?
A Yes.
Q And is there a name on this services agreement? Does it indicate who it's discussing?
A It does. It appears to be that of the Global Crossing Development Company -- or Corporation.
Q Is there a consultant's name or another name on the document?
A Services retained for Steven William Sutcliffe as the consultant.
MS. DUARTE: Your Honor, move to admit Exhibit 48.
THE COURT: Okay. 48 will be received. It's admitted.
(Government's Exhibit 48 received.)
BY MS. DUARTE:

Q Turning your attention to Exhibit 49, also there in front of you in the binder, if you could go through these documents, and you have copies up there.

Have you seen these documents before?

A Yes, I have. I saw these also at the search site.

Q Did you see all pages that you remember at the search site or only certain pages of the document?

A Looking through these documents, I believe I saw every page, except for page 5, at the search site.

Q Are pages 1 through 4 in substantially the same condition as you remember seizing them in?

A Yes, they are.

MS. DUARTE: Your Honor, move to admit pages 1 through 4 only of Exhibit 49.

THE COURT: Okay. Pages 1 through 4 of Exhibit 49 are received. There is a page 5 that is not received.

(Government's Exhibit 49 (pages 1-4) received.)

BY MS. DUARTE:

Q And Exhibit 50, also there in front of you in the binder -- if you'll look through Exhibit 50, and without telling me the contents of Exhibit 50, do you have a recollection of seeing these pages in Exhibit 50 at the time of the search warrant?

A Yes, I remember seeing these exhibits.

Q Are these pages in substantially the same condition as

they were as you remember at the time that you seized them?
A Yes, they are.
Q And these documents, 48, 49, and 50, in addition to all the other documents you seized, you said that those were sent to Los Angeles?
A Correct. In the same manner, as I stated before, with the other evidence. They were also marked as evidence with the file number, transported to a secure location, and then forwarded to the Los Angeles FBI office.
Q Were all the documents that you seized, including Exhibits 48, 49, and 50 contained in the same box?
A Yes, they were.
MS. DUARTE: Your Honor, I'm not seeking admission of Exhibit 50 at this time.
THE COURT: Okay.
BY MS. DUARTE:
Q Now, besides the documents and the computer equipment that we have discussed, did you seize anything else at the time of the execution of the warrant?
A Yes, we did.
Q Specifically, what did you seize in addition to those items?
A We seized a Russian rifle along with the ammunition.
Q Directing your attention to Exhibit 28, which is also in front of you, previously admitted, and I'll go ahead and

publish it. This is Exhibit 28.

Is this -- what is Exhibit 28?

A Exhibit 28 appears to be a photograph of the rifle that we discovered at the residence.

Q What about down here beside it, do you recognize that?

A Beside it looks to be the ammunition that was also found at the same location.

Q In preparation for trial, have you seen these actual items?

A Yes, I have.

MS. DUARTE: Your Honor, permission to approach and show her the items? I'm just not sure how you want me to do that.

THE COURT: Are the items in those --

MS. DUARTE: Yes, sir. Exhibits 51 and 52.

THE COURT: Okay. And 51, although they've been given separate numbers, the tall thin item, is that the rifle?

MS. DUARTE: That will be the testimony, Your Honor.

THE COURT: Has it been -- any ammunition been removed?

MS. DUARTE: Yes, sir.

THE COURT: All right. Just approach the witness and show it to her. You can do the same with the other.

MS. DUARTE: Can I go ahead and take that out, Your Honor?

THE COURT: Yes. Remove the contents.

MS. DUARTE: I'll retrieve the box, Your Honor.

Q Special Agent Fuller, you are holding Exhibit 51. Do you recognize it?

A Yes, I do. This is the same item we found at the residence of the defendant.

Q And how do you know it's the same rifle that you found?

A The serial number on the item matches that of the exhibit description given to me.

Q Did you previously check that to make sure?

A That's correct.

Q Now, up at the top of the rifle, are you familiar with that apparatus up there? Was that apparatus affixed to the rifle at the time that you seized it?

A Yes, it was. This is a bayonet.

Q Is that the way that you -- it was there, when you seized it, on the rifle?

A That's correct.

MS. DUARTE: Permission to ask the witness to extend the bayonet, Your Honor.

MR. SUTCLIFFE: Objection, Your Honor. Relevance.

THE COURT: Overruled.

But I want to caution you, before you do that, the defendant is not accused of any crime relating to the acquisition, use, or possession of weapons.

The purpose for which this information is being received is not to establish criminal conduct or an inclination to commit criminal conduct just by mere virtue of possessing this rifle.

There are other bases on which the information may be relevant, including for you to determine what may have been meant or was meant by "I am armed," and including whether or not the defendant actually had the intent with which he is charged.

Those are the limited purposes under which and for which you may consider this evidence.

You may proceed. You can display the weapon.

MS. DUARTE: The bayonet is now extended. Okay. Thank you, Special Agent Fuller.

Your Honor, I'm sorry. Did I remember to ask for admission of that exhibit?

THE COURT: I don't know if you did, but it will be received in evidence.

MS. DUARTE: Okay. Move to admit Exhibit 51, then.

(Government's Exhibit 51 received.)

THE COURT: That's 52, I thought.

MS. DUARTE: That is 51, Your Honor.

THE COURT: 51 is in evidence, the rifle.

MS. DUARTE: Permission to retrieve Exhibit 51 and show Exhibit 52?

THE COURT: Yes. Granted.

BY MS. DUARTE:

Q Special Agent Fuller, you are looking at Exhibit 52. Do you recognize it?

A Yes, I do.

Q How is it that you recognize it?

A These boxes were found, along with the rifle, inside the cardboard box where they were located behind the closet door.

MS. DUARTE: Move to admit Exhibit 52.

THE COURT: 52 will be admitted.

(Government's Exhibit 52 received.)

BY MS. DUARTE:

Q I'm sorry. Special Agent Fuller, where did you say that those items in Exhibit 52 were located?

A These ten boxes, each containing a hundred rounds, were found inside the cardboard box, along with the rifle, behind the closet door in the bedroom.

Q And those are rounds of ammunition?

A Yes, they are.

MS. DUARTE: If I could have just a moment, Your Honor.

Your Honor, I have nothing further at this time.

May I retrieve the exhibit?

THE COURT: You may.

Cross-examination?

MR. SUTCLIFFE: Yes, Your Honor. Thank you.

CROSS-EXAMINATION

BY MR. SUTCLIFFE:

Q Good morning, Mrs. Fuller. How are you doing today?

A Good morning.

Q You are also from Bedford, New Hampshire, you said?

A That is correct.

Q And the defendant was living in Manchester, New Hampshire, which is right next to that town; is that not correct?

A That's correct.

Q Would you please tell the members of the jury, what's the state motto of New Hampshire?

A "Live" --

MS. DUARTE: Objection. Irrelevant.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Isn't the state motto "Live free or die"?

THE COURT: I'll permit an answer.

MR. SUTCLIFFE: Thank you, Your Honor.

THE WITNESS: Yes, it is.

BY MR. SUTCLIFFE:

Q And you are familiar with the Second Amendment of the Bill of Rights in the Constitution, are you not --

MS. DUARTE: Objection. Relevance.

BY MR. SUTCLIFFE:

Q -- "the right of the people to keep and bear arms"?

THE COURT: The objection is sustained.

I already gave a limiting instruction. We are not here for a lesson on your understanding of constitutional law or other law. Move on.

The objection is sustained.

BY MR. SUTCLIFFE:

Q How long had the defendant owned the arms in question? Were you able to determine that?

A I did not determine that.

Q Did you inquire of anybody in the house?

A No, I did not.

Q You didn't say, "Hey, did he buy this thing recently?"

MS. DUARTE: Asked and answered.

THE WITNESS: No.

MR. SUTCLIFFE: I'll move on, Your Honor. Excuse me.

BY MR. SUTCLIFFE:

Q Now, the rifle, it wasn't on the bed when you came in the house; right? It was in a box, you testified?

A That's correct.

Q And was the box sealed?

A The box was located behind the door of the closet. There was a search team. When they initially grabbed the box, I was not there to determine whether or not it was sealed or unsealed.

Q But it could have been sealed?
A It could have been.
Q And the ammunition that you located, that was also sealed in a plastic sealed thing; it hadn't been opened up?
A The ammunition in this exhibit that was found was not opened up.
Q Right.

Now, when did you start conducting surveillance of the defendant or his residence?

A The surveillance began after I was requested by the Los Angeles Division for some assistance in this matter.
Q Right.

And do you recall what month that was?

A I do not recall which month I began surveillance.
Q Could it have been December of 2001?
A Perhaps.

THE COURT: Excuse me one minute. If there is anybody who has a cell phone that's not turned off, turn it off right now. And if anybody who is in the room now has a cell phone that goes off, I'm going to confiscate it, which I have done before. Everybody should have been forwarned by the sign outside.

Go ahead, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Could it have been approximately right before Christmas,

December 21st?
A It may have been.
Q Could it have been February?
A Without my particular surveillance notes, I'm unable to determine the exact day when I began my surveillance.
Q Do you conduct a lot of surveillances in Manchester, New Hampshire?
A Yes, I do.
Q This particular surveillance, what were you asked to first ascertain or do by the --
MS. DUARTE: Objection to the relevance of this line, Your Honor.
THE COURT: Overruled.
THE WITNESS: Primarily, to establish the residence -- your residence.
BY MR. SUTCLIFFE:
Q Okay. What steps did you take to determine this?
A I inquired of various local law enforcement, various electrical company records, phone companies, neighbors, vehicle registration through the Department of Motor Vehicles in New Hampshire.
Q The public utilities or DMV, you can do that from your office; is that true?
A Primarily, yes. Sometimes in person, sometimes via fax or telephone.

Q Okay. So you can basically sit there at the computer and say, "Hey, give me Steven Sutcliffe," for any public utilities in New Hampshire; is that a fair statement?
A That's a fair statement, but it's not -- all the information must be verified.
Q I understand that. Sure.
But as an FBI agent, you have extraordinary powers, more than the average guy or a woman --
THE COURT: That's argumentative.
Just move on, Mr. Sutcliffe.
MR. SUTCLIFFE: I'm trying to frame the question, Your Honor.
THE COURT: You are phrasing it in a way that's facially inappropriate. Now, ask the right question.
BY MR. SUTCLIFFE:
Q Is it not a fair statement that you have access, as an FBI special agent, to information that might not be publicly available to a member of the jury?
A That's correct.
Q And to find that same information, it would be a lot harder for a member of the jury to locate this information than yourself, sitting in your office?
MS. DUARTE: Objection to relevance, Your Honor.
THE COURT: Sustained.
BY MR. SUTCLIFFE:

Q When you conducted the investigation through these public utilities, were you able to ascertain whether Mr. Sutcliffe was indeed registered through the public utility?
A Yes.
Q How long had he been registered through this public utility?
A I don't have those exact dates with me.
Q Could it have been as far back as November --
A That's correct.
Q -- of 2001?
A I believe that that sounds possible.
Q Does that refresh your recollection of the month --
A Yes.
Q -- that was listed?

Is it fair to say that Mr. Sutcliffe wasn't trying to hide?

MS. DUARTE: Objection. Calls for a conclusion. Speculation.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q In your experience as a special agent, somebody who is doing criminal acts, don't they usually try to avoid publicly announcing where they are if they know you are looking for them?

MS. DUARTE: Objection. It's irrelevant.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Mr. Sutcliffe also had established postal service in Manchester, New Hampshire, as well, had he not?

A That's correct.

Q He also had a New Hampshire driver's license; is that not correct?

A Yes.

MR. SUTCLIFFE: I have nothing further for the witness, Your Honor.

THE COURT: Anything further?

MS. DUARTE: No, Your Honor.

THE COURT: Thank you for coming. You may step down. You are excused.

THE WITNESS: Thank you, Your Honor.

THE COURT: Okay. Mr. Sutcliffe, do you want to begin your cross-examination of Agent Cugno?

MR. SUTCLIFFE: Sure.

THE COURT: Step forward, please.

AGENT JEFFREY CUGNO, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

THE COURT: I remind you that you are under oath and you have the continuing obligation to testify truthfully.

Do you understand that?

THE WITNESS: Yes.

MR. SUTCLIFFE: One second to locate the exhibit that

we were looking at earlier.

CROSS-EXAMINATION

BY MR. SUTCLIFFE:

Q Good morning, Special Agent Cugno.

A Good morning, sir.

Q How are you doing?

A I am well. Yourself?

Q Good. Thank you.

Special Agent Cugno, you testified that you had reviewed an article on another website by the Honorable Clayton Shaw, I believe his name was, called "How to Protect your Social Security Number from Identity Theft"; is that not true?

A That's correct.

Q That article -- would you categorize that article, in your own professional opinion, as step-by-step instructions on how to commit identity theft?

MS. DUARTE: Objection to the relevance of this agent's opinion on that, Your Honor.

THE COURT: Overruled.

THE WITNESS: I would say that it was an article displaying how dangerous it can be if certain information is available to certain people, that, in fact, identity theft can occur.

BY MR. SUTCLIFFE:

Q That wasn't my question. Would you like to have the --

Could I have the question read back to the witness, please?

THE COURT: Do you remember the question?

THE WITNESS: I do not, sir.

THE COURT: Please read it back.

(Record read.)

THE WITNESS: I guess I'm unclear as far as step-by-step, sir.

BY MR. SUTCLIFFE:

Q Well, you read the article; correct?

A Correct.

Q You probably read it many times?

A Several times.

Q Right. Is the Honorable Clayton Shaw giving step-by-step instructions on how to commit identity theft?

THE COURT: Okay. As to that question, ladies and gentlemen, you will have the document before you, and it has been displayed, although I doubt anybody has had an opportunity to read it fully.

The article speaks for itself as to what it does or doesn't constitute and comprise. This witness's opinion, unless it's inconsistent with something he previously, personally, as opposed to someone else, said, is irrelevant.

BY MR. SUTCLIFFE:

Q Did you ever witness any documentation by Global Crossing

which accused the defendant of publishing on his website step-by-step instructions on how to commit identity theft?

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Have you seen any documents by Global Crossing provided to you which said that the defendant was publishing step-by-step directions on how to commit identity theft?

MS. DUARTE: Same objection, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Could you tell the jury, When did you first begin your investigation of this website or the defendant?

A I was certainly aware of the investigation that was ongoing by Special Agent Harrill. I believe I had stated that I think in November of 2001 is when I became the case agent.

Q Do you have any recollection as to the actual day?

A I'm sorry, sir, I don't.

Q Could it have been November 7th?

A I'm not sure, sir.

Q You say that Special Agent Harrill was in charge of this investigation?

A He was the case agent previous to me -- prior to me.

Q He was handing you the ball; is that --

A Yes, sir.

Q You were taking over as of November?
A Correct.
Q Could it have been early November, middle of November, late November?
MS. DUARTE: Asked and answered, Your Honor.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q So you were first notified of this website by Special Agent Harrill; is that your testimony?
A I believe that's correct.
Q It wasn't from a phone call by Elizabeth Greenwood?
A No. I was aware of the investigation prior to me speaking to Mrs. Greenwood.
Q But my question -- I'll move on.
You had occasion to download the website; is that not true?
A That's correct.
Q And you downloaded it when?
A Specifically, which we just discussed, was December 12, 2001, and then again on January 11, 2002, specifically.
Q So you specifically remember the date December 12th and what was the other date?
A I believe -- I would have to look at something to clarify that, but I believe it was January 11, 2002.
Q What initially caused you to download the website on

December 12, 2001?
A I had periodically been checking the website for its content. However, on that date I remember seeing a large list of what I believed to be social security numbers and people's names. I felt that was significant, so I did download it that day.
Q To your knowledge -- do you have any background in law?
A I'm not sure what you are asking, sir.
Q Do you have a background in law?
A I have a master's degree in Criminal Justice.
Q So is it fair to say you have a background in law?
THE COURT: Do you mean did he go to law school?
MR. SUTCLIFFE: Yes.
Q Do you know criminal law? Civil law?
THE COURT: Wait. Those are different questions.
Do you mean does he have a degree that was conferred by a law school?
MR. SUTCLIFFE: Yes.
THE WITNESS: No, I don't.
BY MR. SUTCLIFFE:
Q Now, you say you saw these social security numbers, dates of birth. And this was on 12-12?
A No, sir. I said there were social security numbers and names, the large ones that we discussed earlier.
Q Social security numbers and names?

A Yes, sir.
Q No dates of birth went with them?
A Not for the webpages that we were discussing, but there were dates of birth throughout the webpages.
Q And you said you were viewing the website periodically?
A Yes, sir.
Q Could you define "periodically"? During this time frame, from November sometime -- you don't remember when in November that you started off -- up to 12-12, how many times, periodically, had you viewed the website between early November and 12-12?
A I couldn't give you a number, sir.
Q Could you guesstimate?
A I don't believe I could, sir. Not accurately.
Q That's a six-week period. Six times; is that a fair statement?

MS. DUARTE: Objection. Asked and answered.

THE COURT: Sustained.

BY MR. SUTCLIFFE:
Q After you downloaded the website on 12-12, you reviewed the website?
A I reviewed the website, and then I had made my download preservation of the website.
Q And then did you have occasion to refresh the download as far as you looked at it after-hours or took it home -- or what

did you do with it?
A It was placed into the file, sir. However, I didn't view it until later.
Q So you were notified, is that not correct, that there was something amiss? You went there on 12-12, and you felt so concerned about what you saw, that you decided you better download this and preserve it?
A I wasn't made aware of that date, sir. I said that I was viewing it that day, and then when I saw those social security numbers, or what I believe to be social security numbers, that's when I then made my preservation.
Q What did you believe required you to preserve this website that was -- what crime do you believe was happening?
MS. DUARTE: Objection, Your Honor. Calls for a legal --
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Do you surf the Internet and download websites without -- is that part of your job to surf the Internet and download -- preserve websites?
A I'm assigned to the Computer Fraud Squad, sir, so I do visit the Internet quite a bit.
Q My question is, How often do you download websites that you visit daily?
MS. DUARTE: Objection to relevance.

THE COURT: It's irrelevant. Sustained.

BY MR. SUTCLIFFE:

Q Seeing these social security numbers, were you alarmed?

A Yes, sir.

Q Considerably alarmed?

A Yes, sir.

Q Extremely alarmed?

MS. DUARTE: Objection, Your Honor.

THE COURT: It's getting argumentative, Mr. Sutcliffe. Please move on.

BY MR. SUTCLIFFE:

Q You were pretty worried?

A I was concerned.

Q Very concerned?

THE COURT: Mr. Sutcliffe, we are not here to dance on the head of a pin. All right? Now, move on and ask another question, please. Make it appropriate.

BY MR. SUTCLIFFE:

Q Did you notify anybody, Hey, these are social security numbers on this website?

A I believe I spoke with Special Agent Harrill about it.

Q Did you speak to anybody in the U.S. Attorney's office?

A I may have. I don't have a specific recollection about that.

Q When you see something you believe might be criminal, is

it procedure -- is it the normal procedure of the FBI to notify somebody in the U.S. Attorney's office?

MS. DUARTE: Objection. Irrelevant.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q So let's switch channels here.

You said that your background is computer repair; is that correct?

A No, sir. I said that was one of my jobs.

Q Right. That was one of your jobs.

You were repairing computers within the FBI offices; right?

A That's correct.

Q The defendant had the same type of job at Global Crossing; isn't that true?

A That's correct.

Q And so do you have a pretty good background in computers?

A Not really, sir. I did work for the Bureau, and I was taught in some of that maintenance and repair, but I wouldn't say that's -- I'm not an expert.

Q Did you not say you were a specialist?

A Yes, sir.

Q So it's a matter of semantics as to the adjective, expert versus specialist?

A I think it's my comfort level with the description, sir.

Q Okay. Do special agents prefer to be called specialists in computers as opposed to experts in computers?

MS. DUARTE: Objection to relevance.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Now, could you tell the jury, What's your background as far as computer networking?

A There is some -- just like any large corporation, there are networks that are involved. The network -- the computer networks, which I believe you are speaking about, are groups of computers that are linked together for any variety of reasons. There are different specialties within the Bureau. That wasn't necessarily my specialty. As I described before, I was involved in database design and some graphical design, which included the wanted posters.

Q To become a computer specialist in -- you work in the Cyber Crimes Division?

A Now I do, sir.

Q To become a specialist in the Cyber Crimes Division, you have to have some type of background, correct me if I'm wrong, in networking; is that a fair statement?

MS. DUARTE: Objection to the relevance of this line. This witness is not an expert.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Do you know what an IP address is?
A Yes, sir.
Q Would you tell the jury what an IP address is?
MS. DUARTE: Objection, Your Honor. We've already heard testimony on this.
THE COURT: He's entitled to inquire about that.
Objection overruled.
THE WITNESS: An IP address, which has been previously described to you, are a set of numbers that are separated by a decimal point, and that generally refers to the physical location of a computer and it's unique to that computer during a time period.
BY MR. SUTCLIFFE:
Q And it's a lot more technical than that; correct? That's a brief --
A You asked for my understanding. That was it. Yes.
Q If we want to break it down so they can understand a little more simpler, there is dynamic and then there is static; is that not true?
THE COURT: I'll permit an answer. We'll see how far this is going to lead -- or what this may lead to.
THE WITNESS: Yes, sir. There are two separate types of IP addresses.
BY MR. SUTCLIFFE:
Q And could you explain to the jury the difference, real

simple, like, between dynamic and static?

A Certainly.

Q Thank you.

A A dynamic IP address is one that is -- stays constant with the user. If you were to log onto this computer and access the Internet, you would be assigned an IP address. If it was a dynamic IP address, it would stay with you throughout the duration of your session.

However, as soon as you were to log off, typically, you would then lose that IP address, and the provider that maintained that IP address would reassign it to another user who is requesting an IP address for access to the Internet.

A static IP address, similar to the nature of the word, it stays constant with that person. Sometimes your cable modems or your DSL, those are constant for that IP address and specific for that location and generally will not go away, but there are exceptions.

Q I think -- correct me. Maybe I heard you wrong there.

Did you say static stays or changes?

A Generally, a static IP address will maintain itself.

Q And dynamic changes?

A Dynamic can change, yes.

Q I thought you said dynamic stays and static changes.

So dynamic changes and static stays?

A Generally speaking.

Q Generally.

So can you give somebody an example of what is a company that might provide a static IP address, such as -- I'll let you --

MS. DUARTE: Objection to the relevance.

THE COURT: Sustained.

You don't have to answer that.

BY MR. SUTCLIFFE:

Q Are you familiar with broadband?

A As far as IP addresses?

Q Yes.

A I guess I'll have to wait to hear how you describe it, sir.

Q You are familiar with broadband. Yes?

MS. DUARTE: Objection, Your Honor. It's vague and --

THE COURT: Sustained.

MS. DUARTE: -- irrelevant.

BY MR. SUTCLIFFE:

Q What is broadband?

MS. DUARTE: Same objection, Your Honor.

THE COURT: I'll permit an answer.

MR. SUTCLIFFE: Thank you, Your Honor.

THE WITNESS: I'm not sure what you are referring to, sir.

BY MR. SUTCLIFFE:

Q Have you ever heard the term "broadband"?

A I have. I'm just not sure in which context you are referring.

Q I'm referring to Internet -- in the context of the Internet.

A As far as a company or as far as the actual term?

Q The actual term "broadband."

A I believe so.

Q Could you tell us what broadband is in that context?

A As far as Internet connectivity?

Q Yes, please.

A I believe broadband would be similar to the DSL or a T1 line.

Q Like a cable modem --

A Like a cable modem, yes.

Q So you would call up, like, your cable company and say, Hey, I would like high-speed Internet service. Is that a fair statement, that's what broadband is? It's high speed? It's not dial-up, slow modem, like those commercials we see on TV?

A That's correct.

Q And when you get the broadband service, they give you this IP address; is that correct?

A I believe so.

Q And this IP address is static; is that not true?

A I believe so. I personally do not have it, so I can't say as to whether or not you are assigned one right there at that point. I believe that's true, that you are then assigned an IP address.

Q That IP address is yours for quite a while? It's not going to disappear; it's a fixed IP?

A I believe so, but I think there are some exceptions.

Q But generally, that IP -- when you see a broadband IP address, it's not going to change for a while?

A I don't believe so.

Q Right. Let's talk a little bit about emails.

Can anybody from this jury go to "hotmail.com" or "broadband.com"? It's not against the law, is it?

MS. DUARTE: Objection, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Have you ever gone to "hotmail.com" or Yahoo! and registered a free e-mail account?

MS. DUARTE: Objection to relevance.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q To your knowledge, is it against the law to -- I see the prosecutor rising before I even finish my question.

THE COURT: Finish your question.

MR. SUTCLIFFE: She's already objected. I didn't

finish it.

THE COURT: Try again, Mr. Sutcliffe.

BY MR. SUTCLIFFE:

Q Is part of your job to track e-mail addresses?

A Sometimes.

Q Is that a "yes"?

A Sometimes, sir.

THE COURT: Mr. Sutcliffe, he said "sometimes."

Now, follow up with another question, please. Don't argue with him.

MR. SUTCLIFFE: I'm not trying to argue, Your Honor. I'm just trying to understand this man.

Q Is that something you do on a regular basis?

A It depends.

Q On?

A On a given investigation.

Q In this given investigation, did you happen to see an e-mail address within the "evilgx" website?

A I saw several.

Q Do you recall what the first one you saw was?

A I do not.

Q Could it happen to have been "evilgxhr@yahoo.com"?

A I already said, sir, I don't remember which one that I saw first.

Q But was that one of them?

A That was one of the e-mail addresses that I did see on the website.

Q And did you happen to issue a subpoena or investigate further that e-mail address?

A I did.

Q And did you believe that the owner of that address was sending or receiving or corresponding in some type of illegal fashion?

MS. DUARTE: Objection to that question, Your Honor, to the relevance of whether he thought that correspondence was illegal.

THE COURT: Sustained.

Are we talking about "evilgxhr.com"?

MR. SUTCLIFFE: "hr@yahoo.com".

THE COURT: Do you understand that?

THE WITNESS: I do not, sir.

THE COURT: You didn't realize that that's what he was asking you about?

THE WITNESS: I didn't know what he was asking.

THE COURT: If you don't know, then you have to say, "Please clarify." Don't answer questions that you don't understand what they are addressing.

THE WITNESS: Yes, sir.

THE COURT: You may start again if you want.

MR. SUTCLIFFE: I have forgotten the question.

Q You said you examined this website, periodically?
A That's correct.
THE COURT: Wait. We've been hearing about more than one website. Could you please clarify which one you are referring to.
MR. SUTCLIFFE: Excuse me.
Q You said you examined the website "evilgx.com" as part of an ongoing investigation as you were passed the ball from another senior agent and you were to take over; correct?
A Correct.
Q Did he happen to give you a download of his and say, Hey, look at this?
A I believe he did.
Q And did you look at it?
A I did.
Q It was in CD-ROM format or PDF or some type of electronic format?
A It was an electronic format. I do not recall what was the media.
Q This format was static? I mean, it wasn't going to change; it was, like, a CD-ROM?
A Again, sir, I don't remember which the media was, if it was a CD-ROM or a floppy disk or --
Q Do you recall how many pages were in the website "evilgx.com" contained within the CD-ROM, or whatever

electronic format you were given, when you examined it the first time?

A There were multiple pages. I couldn't give you a count.

Q You couldn't give me any count? You couldn't say one or you couldn't say four hundred or a thousand?

A I think it would be unfair for me to speculate as to how many numbers, sir.

Q You are being given a new assignment; correct?

A Correct.

Q And is Mr. Harrill your boss?

A He's my supervisor.

Q He comes up to you and says, Hey, Special Agent Cugno, I've got a job for you here. I believe crime might be afoot. Here's what I've got.

Was it more than one CD-ROM that he gave you?

A Again, I didn't say it was actually a CD-ROM. I didn't remember the media, but I remember I was discussing the website over a several-month period.

Q You heard him testify that he had downloaded the website on October 6th or -- and 11-7; correct?

A There were several other dates, too, as I remember.

Q I heard him testify that he --

THE COURT: Recollections may not be the same, but the jury can sort that out and they are entitled to their own recollection.

Please ask another question.
BY MR. SUTCLIFFE:
Q Did you hear your supervisor testify that he had downloaded the website on 11-7?
A Yes.
Q Could that have been the date he came to you and said, Here, take over?
MS. DUARTE: Asked and answered, Your Honor.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Did you happen to view --
THE COURT: Mr. Sutcliffe, the precise day really doesn't matter. In any event, this witness has told you several times he can't recall, so move on to whatever it is you are driving at and get there as quickly as you can, please.
MR. SUTCLIFFE: Thank you, Your Honor.
Q Did you review that electronic format that he had downloaded somewhere in early November?
A Again, I don't remember the media, but I remember viewing it, yes.
Q While you were viewing it, we saw -- we have seen testimony that when you view these pages, there is hyperlinks; correct?
A Correct.
Q And those hyperlinks could be like little secret

surprises; right? There might be something at the end of the hyperlink that you might want to follow; right?

A I don't know if I would characterize them as surprises, but they were hypertext links.

Q Isn't it fair to state that Mr. Harrill said that he updated that file that he downloaded on because it took him, I believe, several weeks just to find that hyperlink that was behind that social security card?

MS. DUARTE: Objection to the relevance of this witness's testimony at this point.

THE COURT: Of which witness?

MS. DUARTE: I'm sorry, Special Agent Harrill's testimony.

THE COURT: It's an improper question as to -- to ask a witness what somebody else testified to is objectionable.

I sustain the objection.

BY MR. SUTCLIFFE:

Q Mr. Cugno, if you were going to a webpage and you saw these social security numbers and you saw a little graphic at the top of that page, normally, a hyperlink will be like -- it will change color or it will go all caps or do something; right?

A It depends on the hypertext.

Q Right. For instance, it might not do anything, but the mouse that you move across the screen, which is normally in the

form of an arrow, might change to a finger, indicating a hyperlink?

A It can.

Q Right. And is that possibly why he did not see -- or you might miss a link if you don't go over every hyperlink?

A I'm sorry, that I might miss a link or that Mr. Harrill?

Q The special agent who was investigating Cyber crimes might miss a hyperlink because the way a designer of a page can design the web -- you can make a hyperlink out of almost anything; isn't that a fair statement?

A That's correct.

Q It would be conducive of a good FBI agent to move that mouse around the page to see if it turns into a hand from an arrow or highlights or changes some kind of text or picture -- right? -- as an indication that something more is going on, which would be a hyperlink; fair?

MS. DUARTE: Objection. The form of the question is compound.

THE COURT: Do you understand the question?

THE WITNESS: Not really.

THE COURT: Please reframe it.

BY MR. SUTCLIFFE:

Q Isn't it fair to say that we've established that a hyperlink can be anything on a page?

A Yes, sir.

Q There is no way of -- sometimes you can miss those hyperlinks unless you put the mouse over the hyperlink and then something will happen?
A That's correct.
Q Either to the cursor itself or down at the bottom of the browser that you are viewing will show the actual address to the link?
A Yes, sir. We saw that earlier this morning.
Q That's a fair statement?
A Correct.
Q Isn't it also a fair statement that if you are going to be investigating links which might go outside or might go inside of this domain, pointing to potential evidence, you would want to, very carefully, analyze the pages that you were viewing; is that a fair statement?
A Yes, you would want to analyze those pages.
Q Very carefully so you don't miss anything?
A Correct.
Q Right.

Now, in your analysis of these pages, did you go over each hyperlink?
A To the best of my ability, I did.
Q Some pages had maybe one hyperlink; is that a fair statement?
A That is a fair statement.

Q Some pages might have had a hundred hyperlinks; is that also a fair statement?
A Some had quite a few, yes.
Q So while you are going over these hyperlinks, do you take notes? Do you write them down? Do you think you need to come back later and follow up on them?
THE COURT: Wait. Those are several different questions. Ask them one at a time.
MR. SUTCLIFFE: Excuse me, Your Honor.
Q While you are analyzing these sites, do you take notes as you are analyzing them?
A I don't remember if I actually was taking notes. I remember I was printing pages periodically, specific pages, but I don't remember necessarily if I was taking notes or not.
Q In analyzing these pages very carefully, when you would run across a word that might say -- it might be a red herring, for instance, like, "I'm going to go to the store." That's a link. But if you click on it, it's really an e-mail address. It's not even talking about a store. It's actually an indication of an e-mail. You would jot that down or print that out, would you not?
A I'm sorry. Would I print out or write down what, sir?
Q The e-mail address to follow up on.
A Yes.
Q Okay. Then when you follow up on these e-mail addresses,

would you explain to the jury, What's the significance of following up on an e-mail address?

MS. DUARTE: Objection to relevance as phrased.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Why would you go and investigate an e-mail address?

MS. DUARTE: Same Objection, Your Honor, unless --

THE COURT: Sustained.

MS. DUARTE: -- it's this case.

BY MR. SUTCLIFFE:

Q Does an e-mail address have significance if you are conducting a criminal investigation?

MS. DUARTE: Same objection.

THE COURT: Mr. Sutcliffe, if you want to ask whether a given e-mail address had significance as to this investigation, which is the only one that matters in this trial, you may do so. But we are not here to explore the general abstract significance or absence of significance of other investigations. So with that guidance, limit your questions accordingly, please.

MR. SUTCLIFFE: Thank you, Your Honor. I wish to assure the Court I'm not trying to prolong or drag this out unnecessarily.

THE COURT: I understand you are not.

BY MR. SUTCLIFFE:

Q Regarding this current investigation, were e-mail addresses important to you?
A Yes.
Q And you happened to run across one or more, you testified?
A That's correct.
Q And do you recall the first one that you happened to run across?
A I believe I already answered, sir, that I do not remember which one I first came across.
Q When you start investigating a website, what's the first thing you do?
MS. DUARTE: Objection. Relevance.
THE COURT: What is the first thing you did in this case?
That's the only question you are permitted to ask.
THE WITNESS: The first thing I did regarding the website?
BY MR. SUTCLIFFE:
Q Yes.
A Probably speak to Special Agent Harrill.
Q As part of your investigation, did you happen to ever use the application "WHOIS"?
A Yes, I did.
Q I think we've already heard testimony that, correct me if I'm wrong, "WHOIS" is like "Who is that?"

A Correct.
Q And then "WHOIS" will tell you, well, this is who that website is. So if you type in, "WHOIS 'evilgx.com'?" you are going to get this is who it's registered to and this is who owns it; right?
A You can.
Q Right.
And your initial investigation determined that the information on this website was published?
Let me rephrase that question. The "WHOIS" inquiry showed that the information on who owned this website was published; is that not correct? It wasn't blank?
A Are you asking when I did "WHOIS" on this website?
Q No. I'm asking, You looked at the "WHOIS" information, did you not, as part of your investigation?
A I did.
Q And what did you see when you looked at this "WHOIS" report?
A I believe it showed you as the administrative contact and I think maybe the owner. I don't remember the other -- there were several listings, but I remember your name being listed. I think it was S. Sutcliffe.
Q And there was also another name at one point, wasn't there?
A I think there was at one point, yes.

Q Do you recall that name?
A I believe it was Richard Weatherman.
Q Was there also a mailing address in Burbank?
A Yes.
Q There was a mailing address in Burbank. And wasn't there also a local (818) phone number?
A Yes, there was.
Q And wasn't there also an e-mail address?
A Yes. I believe it changed a couple of times, if I'm remembering correctly. I remember there was an e-mail address.
Q Do you remember the original e-mail address that was on there?
A No, sir.
Q If I showed you a document, would it refresh your recollection?
A I'll look at it. I don't recall if it will.
Q Does the name "rampartscandal@europe.com" refresh your memory at all?
A I remember the occurrence of that e-mail address. I don't remember when I first saw it.
Q But you remember the e-mail address "rampartscandal@europe.com"?
A I do remember it.
Q So that's one e-mail you do remember?
A Yes, sir.

Q Just give me a second to write my notes here. I'm trying to move along, Your Honor.

Now, other than "rampartscandal@europe.com", do you recall any other emails you said you saw on the "WHOIS" reports?

A No, sir, not sitting up here. I cannot.

Q So the only recollection that you have under the "WHOIS" inquiry into "Who is this guy?" is "rampartscandal@europe.com"?

A To the best of my recollection, I believe that was one of them.

THE COURT: Okay. Ladies and gentlemen, we will take a break here. It will be a 20-minute break.

I have to make some rulings on certain matters. So please remember the admonition during the break. We will resume at 12:30. We'll break for the day and for the week at 1:30.

THE CLERK: All rise, please.

(Jury out.)

THE COURT: You may step down, Agent Cugno.

I've been handed certain documents in a sealed envelope that were brought back by Mr. Wright. I'll look those over during the break. I'll be out at twenty-five after to make my rulings.

We are adjourned until then.

(Recess taken at 12:09 p.m. to 12:32 p.m.)

(Jury out.)

THE COURT: Okay. I have looked over the documents that Mr. Wright -- is he here?

MS. DUARTE: I don't believe he's here, Your Honor. Do you want me to check outside?

THE CLERK: I believe he left, Your Honor.

THE COURT: It's not really necessary that he's here anyway.

There may be one, but only one, that is properly discoverable. But I will cause these to be placed under seal and made a part of the court record in the event there is an issue that someone wishes to raise on appeal.

I will make a brief record. There is a document from Greenwood to Labaton dated April 2, 2002, relating to a fee retainer agreement. That's after the defendant's arrest. It's not discoverable.

There is a document from -- when I say "discoverable," I'm not using the precise language. It's not within the proper scope of a 17(c) subpoena.

There is a document, in October, preceding the first inquiries to the FBI, that I recall, but that's not relevant. It has to do with the civil litigation involving the acquisition of an original agreement with the consulting firm that originally placed Mr. Sutcliffe at GC, and is beyond the scope of 17(c).

Now, the one document that I think may be within the scope, I think, is in evidence.

Here's something I want to ask you. I think it's already been displayed, but my memory could be wrong. It is an item from Greenwood to M. Block, a lawyer at the Christensen firm. And the only relevance is that it encloses a page from the "evilgx" website that I think has been already displayed.

It's the message that says, "Thomas, what if I told you I know a way to save your company millions of dollars? Contact me. We can do lunch. PS: Here is a freebie. Double-check your Internet walls and don't worry so much about the physical ones at 360 North Crescent. We figure an eye for an eye and a tooth for a tooth is fair."

Hasn't that been part of one of the websites that has been displayed?

MS. DUARTE: The Goff reference is not. The Thomas Goff reference was not displayed, at least not by the government.

THE COURT: There is nothing -- what did I say about Thomas Goff?

MS. DUARTE: I thought you said -- was it Mark Block? I'm sorry.

THE COURT: Mark Block, no. It's just a transmittal of something that comes off of the "evilgx" website.

Now, does any of the evidence in this case that was

derived from the "evilgx" website consist of a message from the sender to Thomas Casey, which begins with the phrase, "Thomas, what if I told you I know a way to save your company?"

MS. DUARTE: I don't think that's an exhibit.

THE COURT: That's something I will turn over to Mr. Sutcliffe. There is no -- I don't think the claim of privilege would attach to it.

And even if it did, I would find that although this is -- I don't think something that is -- I'm not sure what its relevance would be in the context of this trial, but it's relevant to the information that was put on the "evilgx" website.

If anything, I think it hurts the defendant if it comes before the jury's attention, but I am going to make that available.

We will have to have copies made. There is no Bates stamp on it. It's a two-page document. It says page 1 and page 2. At the very top it says, "Mark Block-FW: Evilgx website posting." I'm handing it to the clerk for transmission to Mr. Sutcliffe.

The next item is a September communication from Greenwood to somebody at that firm concerning proposed language to settle the employment dispute issue.

It says nothing at all about "evilgx". It's not relevant and I'm not turning it over.

The last is a one-sentence letter, referring to a draft that's not enclosed, also early on in the story, September. It has nothing to do with "evilgx" and is not even referenced. It's not relevant and not within the scope of 17(c). It's not being produced.

Those are my rulings.

With that, the subpoena can be deemed satisfied and you can so inform the Christensen, Miller firm, Mr. Reed.

Let's bring the jury in and finish up with this witness, if we can.

I think the government is entitled to get a copy. You better keep a copy for the court records, too.

First, bring in the jury.

(Jury in.)

THE COURT: Welcome back. We'll proceed straight on until 1:30.

You may continue, Mr. Sutcliffe.

CROSS-EXAMINATION (Resumed)

BY MR. SUTCLIFFE:

Q Good afternoon, Special Agent Cugno.

A Good afternoon.

Q How are you doing today?

When we left off, we were basically talking about "WHOIS" and e-mail addresses. I'd like to continue a little bit on that line of questioning.

Now, the head of the FBI is Mr. Robert Mueller; am I correct?

A That's correct.

Q Now, if I sent an e-mail to Mr. Mueller, the head of the FBI of the United States of America, and said, "Mr. Mueller, I hear your agents have been investigating my website "evilgx.com". If you don't stop investigating my website, I'm personally going to kick your ass," that would cause Mr. Mueller to say, "Go find whoever sent that e-mail to me"; wouldn't you agree?

MS. DUARTE: Objection. Irrelevant.

THE COURT: Sustained.

MR. SUTCLIFFE: Your Honor, Sidebar?

THE COURT: No. I know that it is totally irrelevant.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: And it calls for speculation.

Now, move on to something else. Not a follow-up question, but something else, please.

BY MR. SUTCLIFFE:

Q Now, how long did your initial investigation go? You said you started off around sometime in November; correct?

A Well, the entire investigation has continued until today.

Q Do you ever stop?

A I imagine if there is a prosecution, it would -- that

would be it.

Q So in other words, once you start an investigation, it goes until there is a prosecution?

THE COURT: No, no. Mr. Sutcliffe, I'm trying for the last time to tell you that we are not here to find out standard operating procedures that apply in all cases or any case other than this case.

He's going to answer questions about the investigation in this case, and that's what you are going to ask him. Now, please proceed on that basis.

BY MR. SUTCLIFFE:

Q As part of your duties as a special agent doing investigations, are you required to fill out forms?

MS. DUARTE: Objection. Irrelevant.

THE COURT: Sustained.

Unless you show him a form that you wish him to testify about, then you are welcome to pursue that.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Have you ever filled out an FD-272 form?

A I would have to look at the document to refresh my recollection.

THE COURT: Show it on the screen, please.

Enable the proper port, please.

BY MR. SUTCLIFFE:

Q Do you see in the left-hand corner right there -- I'll

zoom it in for you. Do you see that form marked FD-272?
A I do.
THE COURT: Let me look over the form.
MR. SUTCLIFFE: I'm going to zoom it out, Your Honor.
THE COURT: If you want to ask him whether he filled out that form, go ahead and ask him.
MR. SUTCLIFFE: Thank you, Your Honor.
Q Special Agent Cugno, did you ever fill out this form?
A Yes. This appears to be my form.
MR. SUTCLIFFE: Your Honor, defense would like to have this entered in as an exhibit.
MS. DUARTE: Objection. There is no basis for this document's admission. It's hearsay. It's not for impeachment purposes.
THE COURT: The proper foundation hasn't been laid, so I'll sustain the objection.
MR. SUTCLIFFE: Your Honor, clarify?
THE COURT: No. I'm not in a position to do that, Mr. Sutcliffe. You can ask about what he did in this investigation. If everything that involves the creation of paperwork is your plan, that would not be appropriate.
MR. SUTCLIFFE: That is not my plan.
THE COURT: You can show paperwork if he gives you testimony inconsistent with evidence that you think you have that establishes that he did something differently.

Now, please proceed on that basis.

MR. SUTCLIFFE: Thank you, Your Honor.

Q This FD-272 form, can you explain to the jury what that type of form is?

A That's basically a case summary form.

Q So when you want to summarize your investigation, you use this form; is that a fair statement?

A To the date on which it's created, that would be the summary of the case to that date.

Q And in there -- does it have a caption within there, investigative period, like a period of time?

A I believe it did show that.

Q Did it start off -- when you filled out this form, did you put the date 11-7-2001?

A That's what it appeared to be.

Q So that would be November 7, 2001.

That was in the beginning of the investigative period. Then to the right, did you put in 12-31-2001 as the end of the investigative period?

A That was the day it looked like it was created. So, yes.

THE COURT: No, you are not going to ask him what he did on that document. I have already ruled about that. Ask him what he did in the investigation and see if you need to use a document to follow up on an answer he gives you.

You are not to read the document in question and then

ask him did he put this and put that, because the document itself is not admissible.

MR. SUTCLIFFE: I'm never going to get this in as an exhibit?

THE COURT: Correct --

MR. SUTCLIFFE: I'll move on.

THE COURT: -- unless you establish a proper basis to do so, and that you haven't done, Mr. Sutcliffe.

Now, please proceed.

BY MR. SUTCLIFFE:

Q Who is the victim that you listed in this investigative period of 11-7 to 12-31?

MS. DUARTE: Objection, Your Honor, reference to the document.

THE COURT: Sustained.

Mr. Sutcliffe, the way you might be able to ask a question like that -- and I'm giving this to you as a point of guidance so that there is no basis to take any other action in this case -- is to say "As of December 31st, 2001, who did you consider to be the victims?"

Now, that's the way you do it, and you don't do it by reference to a particular document.

MR. SUTCLIFFE: Thank you, Your Honor.

Q As of December 31, 2001, who did you consider to be the victim?

A There were multiple victims. However, I encapsulated them as Global Crossing, I believe.

THE COURT: You don't have to refer to that particular document. He's asking you, "Who did you consider to be a victim as of December 31st, 2001?"

BY MR. SUTCLIFFE:

Q Your answer is you considered Global Crossing Development Corporation to be the victim?

A I thought you were referring to that document, so I was trying to speak to that, sir.

Q I'm just saying -- I'll move on, Your Honor.

Now, we talked a little bit about "WHOIS". Are you familiar with the website "networksolutions.com"?

A I am.

Q Can you tell the jury what "networksolutions.com" provides or does?

A They have a presence on the Internet, meaning there is a website "networksolutions.com". And when you visit that site on the Internet, you can type in a website address, "evilgx.com", and then it will bring up what we were talking about, the subscriber information.

Q Did you happen to inquire -- make an inquiry of "networksolutions.com"?

A I did.

Q And do you recall when you made that inquiry of

"networksolutions.com"?
A I believe it was shortly after my December 12, 2001 preservation.
Q Why did you go to "networksolutions.com" shortly after December 12, 2001?
A To verify the owner of that domain name.
Q Why did you want to go and verify the owner of that domain name?
A I thought that was the prudent thing to do.
Q Because you believed there was victims?
A It was part of my investigation.
Q For the victims that you believed were within "globalcrossing.com"?
A Within "evilgx.com"?
Q No. You said there was victims.
You testified that you believed that -- during the investigative period of 11-7-2001 and 12-31-2001, you listed potential victims as Global Crossing Development or Global Crossing Corporation; correct?
THE COURT: You are getting back to what I already prohibited you from doing.
You don't have to answer that question.
He's told you he went to "networksolutions.com" because it was part of his investigation.
Please frame another question.

BY MR. SUTCLIFFE:

Q On that FD-272 form --

MS. DUARTE: Objection.

THE COURT: You may not inquire about the form, Mr. Sutcliffe. You may ask a question about what happened and what he did, and we will see if it's an appropriate question.

BY MR. SUTCLIFFE:

Q Did you happen to fill out a form and summarize the character of the case during your investigation?

MS. DUARTE: Objection --

THE COURT: Sustained.

MS. DUARTE: -- referring to the same form.

BY MR. SUTCLIFFE:

Q Okay. So you went to "networksolutions.com" and you wanted to find out who was the owner of this website. What were you able to find out?

A Without having that document in front of me, sir, I don't know if I could specifically speak to it.

THE COURT: Do you remember who you found out was the owner of the website?

THE WITNESS: I believe it was S. Sutcliffe.

THE COURT: If you have a basis to answer, you can give an answer and spare us a lot of confusion and maybe waste of time.

THE WITNESS: Yes, sir.

THE COURT: Now you have gotten your answer, S. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Now, you were aware that Global Crossing was seeking a Temporary Restraining Order to prevent the dissemination of information published on this website, were you not?

MS. DUARTE: Objection. Irrelevant.

THE COURT: I overruled the basis for that objection, but you have to lay a foundation for when. The testimony is that one was issued in October. So are you asking him about what was he aware of in October before he took over the assignment?

MR. SUTCLIFFE: Yes.

Q Did anybody from Global Crossing inform you that they had sought a Temporary Restraining Order to prevent the dissemination of information published on "evilgx.com"?

MS. DUARTE: Objection. Irrelevant, Your Honor.

THE COURT: I'll permit an answer.

MR. SUTCLIFFE: Thank you, Your Honor.

THE WITNESS: Yes.

BY MR. SUTCLIFFE:

Q And what did they tell you that this Temporary Restraining Order prevented?

THE COURT: That's irrelevant.

MS. DUARTE: Objection.

THE COURT: The objection is sustained.

BY MR. SUTCLIFFE:

Q Did they tell you that it only prevented dissemination of information that was taken from within the company while the defendant was employed there?

MS. DUARTE: Same objection.

THE COURT: Sustained.

Mr. Sutcliffe, if you continue to ask questions on something that I've already ruled is inappropriate and about which you may not ask questions, you will force me to take other action that I won't get into now, and I do not want that to happen. Now, listen carefully to my rulings.

Please proceed with your next question.

MR. SUTCLIFFE: Whatever Your Honor just implied, I don't want to have happen, either. I assure you I'm trying to do the best I can with the limited resources I've been given.

Q Special Agent Cugno, when you -- you said that you filled out a form in which -- excuse me. I'm going to withdraw that question.

During this investigative period between 11-7 and 12-31, did you happen to surmise what crimes that you believe could be possibly being broken?

MS. DUARTE: Objection. Calls for a legal conclusion.

THE COURT: No, it doesn't. Not as framed. And I'll

permit an answer.

MR. SUTCLIFFE: Thank you, Your Honor.

THE WITNESS: I believe at the time we were looking into the posting of the social security numbers.

BY MR. SUTCLIFFE:

Q Okay. But no threats at this point from 11-7 to 12-31-2001?

THE COURT: Do you understand the question?

THE WITNESS: I don't.

THE COURT: If you don't understand the question, you are entitled to say so.

Reframe the question, please.

BY MR. SUTCLIFFE:

Q Between the period of 11-7-2001 and 12-31-2001, did you ever summarize in any form of report or documentation that you believe that threats had been published to anybody within "evilgx.com"?

A I don't recall all the documents I created during that time period, so I would not be able to answer that.

Q Did you ever type up a report that stated that Sutcliffe's illegal activities could be addressed by Title 18, U.S.C. 1028(a)(7)?

A Without seeing it, sir, I don't know if I could answer that question.

THE COURT: What reports this witness compiled,

unless they reflect something about his credibility, are largely irrelevant.

So I sustain the objection that the prosecutor was rising to make.

MR. SUTCLIFFE: Permission to show the document to the witness, Your Honor?

MS. DUARTE: Objection.

THE COURT: No.

BY MR. SUTCLIFFE:

Q Did you happen to run a -- you said you determined that an S. Sutcliffe was listed as the administrative contact and possible owner of this website; that's correct?

A That's correct.

Q And we discussed earlier that you had seen a mailing address also --

A That's also correct.

Q -- in Burbank?

A Correct.

Q And a phone number?

A Correct.

Q And an e-mail address, which we determined was "rampartscandal@europe.com"?

A I remember at one point that was.

Q That's correct.

You believe at a later point it might have changed?

A I believe so.
Q Okay. Did you run a check on "rampartscandal@europe.com"?
A I don't remember doing that.
Q Did you issue a subpoena for "rampartscandal@europe.com"?
A I don't believe I did.
Q Did you -- when you want to ascertain an e-mail address, what's the first step you take?
MS. DUARTE: Objection. Irrelevant.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q If you are investigating somebody who you believe is using an e-mail address to hide behind to commit a crime, isn't the first thing that you are taught to do is find out who owns that e-mail address?
MS. DUARTE: Irrelevant, Your Honor. Objection.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Did you ever happen to go and find out who owned an e-mail address related to this website?
THE COURT: Which website?
MR. SUTCLIFFE: "evilgx.com".
THE WITNESS: I'm afraid I don't understand the question.
BY MR. SUTCLIFFE:
Q Did you ever see an e-mail address within the website

"evilgx.com?

A Yes. I said that I did.

Q I'm not talking about outside the -- the list "WHOIS" and tells about the owner. I'm talking about, within the website, you said you saw an e-mail address in there and you went to investigate it; correct?

A I said I saw several.

Q Did you ever investigate any of the several that you saw?

A Yes, I did.

Q What's the first thing you did?

A Probably take note and then possibly serve a subpoena for that information.

Q Exactly.

So can you tell me why you go to find out who owns this website that you believe that criminal activity has taken place upon, or might be, and there might be victims, or potential victims, and you find an e-mail address, "rampartscandal@europe.com", you find a phone number, you find a mailing address -- did you ever subpoena "rampartscandal@europe.com"?

THE COURT: He already answered that question. You asked it and he answered it.

MR. SUTCLIFFE: I misunderstood.

Q Did you call the phone number?

A I don't believe I did.

Q Why did you serve a subpoena on e-mail addresses within "evilgx.com" but not on who owns the website? Wouldn't you want to know who owns this website if you believe they are stealing and committing -- aiding and abetting identity theft?

MS. DUARTE: Objection. That was a compound question.

THE COURT: Sustained.

MR. SUTCLIFFE: I'll rephrase the question.

Q If you believe somebody is committing identity theft --

THE COURT: No, no. Not abstract questions about what might happen under some circumstances that might or might not ever occur. Questions are only appropriate about what he did or did not do in this case.

BY MR. SUTCLIFFE:

Q Why did you not issue a subpoena for the owner of this website from the "WHOIS" information that I believe you heard Special Agent Harrill testify in the beginning he found and then now later you found?

A There were several investigative leads that probably were not followed up that probably should have been.

Q Okay. Why should they have been?

I'll rephrase the question. Why weren't they?

MS. DUARTE: Objection. Irrelevant.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Aren't you taught to follow leads?

MS. DUARTE: Objection. Irrelevant.

THE COURT: Mr. Sutcliffe, the investigation culminated in circumstances that led us to this trial.

Please focus on those circumstances.

MR. SUTCLIFFE: Okay.

THE COURT: We are not here, ladies and gentlemen of the jury, because there is some claim that the FBI committed malpractice or negligence and it's important to understand whether they adhered to a reasonable standard of care.

That is not what this case is about. And whether somebody thinks that the investigation could have been conducted differently or should have been conducted differently or had somebody else been in charge, would have been conducted differently, is totally irrelevant.

Please proceed, Mr. Sutcliffe.

BY MR. SUTCLIFFE:

Q During your initial investigative period, between 11-7-2001 and 12-31-2001, did anybody from Global Crossing inform you that anybody had been the victim of identity theft?

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: Overruled.

THE WITNESS: I don't believe so. I believe there were some speculation that some people may have been victims. I don't know if anybody in particular had been an actual

can question about this document.

MR. SUTCLIFFE: Thank you, Your Honor.

Permission to publish?

MS. DUARTE: Your Honor, I object and ask that the witness be asked if this document refreshes his recollection. He said, "I don't believe so" earlier.

THE COURT: That's the way to do it, Mr. Sutcliffe. That's just what I was going to say.

MS. DUARTE: Thank you.

THE COURT: That's why I said the testimony was a little bit different.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: The simple question is whether this refreshes the witness's recollection as to whether somebody said that a particular individual had been the victim of identity theft.

You may answer that question, Agent Cugno.

THE WITNESS: This does now refresh my memory.

MR. SUTCLIFFE: Thank you.

May we publish?

THE COURT: No. That's not the way it's done.

BY MR. SUTCLIFFE:

Q So is it fair, then, to say that prior to 12-31-2001, you believe that individuals within Global Crossing were potential and/or victims of identity theft?

A There was the potential for that.
Q And based on information that was published within "evilgx.com"?
A Potentially.
Q Potentially.
And did you follow up on that lead?
A On which lead, sir?
Q Anybody that you believe you were told was a potential victim of identity theft between the period of 11-7-2001 and 12-31-2001.
A I remember following up on some. I don't remember what the time period was.
Q And what did your follow-up -- what were you able to find? Were you able to find that there was a link -- a definitive link between this alleged identity theft or credit card theft, or however it's spelled, and the actual website "evilgx.com"?
MS. DUARTE: Objection.
THE COURT: Do you understand the question?
THE WITNESS: No, sir.
THE COURT: There is no allegation of credit card theft in this case, ladies and gentlemen.
Reframe your question.
BY MR. SUTCLIFFE:
Q Were you ever notified that any alleged victim, or potential victim, within Global Crossing who was alleged to be

a victim of identity theft had used any of that victim's credit cards?

MS. DUARTE: Objection. Irrelevant.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q You said you found several e-mail addresses and several owners were listed as owners/administrators of the website based on "WHOIS" investigations; correct?

A I don't believe I said several.

Q You mentioned Richard Weatherman?

A Correct.

Q And you mentioned myself?

A That's two.

Q I meant a couple. Excuse me. A couple.

You also mentioned that you found different e-mail addresses within the website; correct?

A Correct.

Q And was one of those that you found a "richardleeweatherman@hotmail.com"?

A I can't recall if it was within the website, but I remember that e-mail address.

Q Was that listed on one of the "WHOISs", like "Who is..." and then --

A I don't remember.

Q You don't recall.

But you said that, initially, the website listed the owner as Richard Lee Weatherman?

A I believe -- from one of the "WHOIS", I believe that was correct.

THE COURT: We've gone through that now three times in the last ten minutes. Don't ask that question again.

BY MR. SUTCLIFFE:

Q Did you issue a subpoena for the e-mail address "richardleeweatherman@hotmail.com"?

A I believe I did. I'm not sure.

Q What was the purpose of issuing the subpoena for "richardleeweatherman@hotmail.com"?

A To obtain the subscriber information.

Q Anything else besides subscriber information?

A I believe as part of the subpoena there are several things that are listed there.

Q When you get the subscriber information on an e-mail, isn't part of what you glean from that investigation an IP address as to who registered that e-mail address?

A Sometimes, yes, I believe that is included.

Q You were present when Mrs. Isley came in from Yahoo! and was showed certain exhibits and who the registered owner of those e-mail addresses were; correct?

MS. DUARTE: Objection to the reference to another witness's testimony.

THE COURT: I'll let the witness answer.

Overruled.

MR. SUTCLIFFE: Thank you.

THE WITNESS: Yes.

BY MR. SUTCLIFFE:

Q So it tells -- someone registers the site, this e-mail address, and here's the auto capture of the IP address that it was registered by; right?

A Correct.

Q And those IPs, they could be static or dynamic. If it was a static, it's a fixed location?

THE COURT: We have been through that.

MS. DUARTE: Objection. Asked and answered.

THE COURT: It's asked and answered. Objection sustained.

BY MR. SUTCLIFFE:

Q Isn't it true that part of the purpose of issuing a search warrant is to get that IP so that you can locate a potential suspect?

MS. DUARTE: Objection, Your Honor. Irrelevant and asked and answered.

THE COURT: Okay. And I don't think there has been any testimony that this witness issued a search warrant.

BY MR. SUTCLIFFE:

Q Agent Cugno, is it your testimony that you believe that

the defendant owning this website was up to no good between --

MS. DUARTE: Objection.

MR. SUTCLIFFE: Can I finish my question?

THE COURT: Finish your question so at least it's in the record.

BY MR. SUTCLIFFE:

Q Do you believe the defendant was up to some type of criminal activity between the investigative period of 11-7 and 12-31?

MS. DUARTE: Objection.

THE COURT: Okay. Sustained.

Ladies and gentlemen, what this witness believed and whether the witness was right and whether there was any basis to support what he believed at any given time is totally irrelevant.

What is relevant in this case is whether the government meets its burden of proofing, beyond a reasonable doubt, what the indictment alleges as to the posting of social security numbers and alleged threats. So disregard the questions.

And you listen and obey what I just said. Don't ask further questions about what he believed and why he didn't believe something else and why he didn't do something else. Ask questions about the evidence that is coming into this case and about the issues of guilt or innocence.

MR. SUTCLIFFE: I apologize. I will do that, Your Honor. Thank you.

THE COURT: Okay.

BY MR. SUTCLIFFE:

Q Agent Cugno, did you -- I'm sorry. This subpoena that you issued for "richardleeweatherman@hotmail.com", were you able to ascertain any information out of that subpoena?

A I believe we did receive a response from that service provider.

Q Was one of the pieces of evidence an IP address?

A I believe so.

Q And was that IP address 24.160.57.210?

A I wouldn't be able to say, sir.

MR. SUTCLIFFE: Permission to refresh the witness's recollection, Your Honor?

THE COURT: Yes, you may.

MR. SUTCLIFFE: Thank you.

THE COURT: What are you showing? Is it in evidence?

MR. SUTCLIFFE: I'm showing him a report that I believe he typed up that goes with this.

THE COURT: What is the Bates number?

MR. SUTCLIFFE: It's Bates 00008.

THE COURT: Show the full page to the witness.

Let the record reflect that the jury monitors have been removed.

Do you recognize that document, Mr. Cugno?

THE WITNESS: Vaguely, sir, yes.

THE COURT: You can ask him whatever you need to to see if his recollection is refreshed.

BY MR. SUTCLIFFE:

Q Did you type up this document, Special Agent Cugno, as part of your report?

A It appears similar to something I typed up. Without seeing it in its entirety, I don't believe I could say so, but I believe it is.

Q When you say "in its entirety," could you tell me what you mean by that?

A I don't believe this document alone stands by itself.

THE COURT: Let the record reflect that there is nothing on this document that contains any Internet Protocol -- IP -- address information. It does show that there was a contact with Network Solutions.

If you want to find out whether they got the precise IP address that you gave on the record a few questions ago, you may need to show him another document.

MR. SUTCLIFFE: Your Honor --

THE COURT: Please move on.

MR. SUTCLIFFE: Respectfully, Your Honor, and I mean very respectfully, I would point the Court's attention to No. 7 on this document and No. 8 that we are looking at and direct

the Court's attention to 24.160.57.210.

THE COURT: I am incorrect. You are correct.

Does that refresh your recollection?

THE WITNESS: It appears to be a document I created.

MR. SUTCLIFFE: The defense would like to enter this as an exhibit next in order, Your Honor.

THE COURT: Okay. It will be received. It will be Exhibit -- I think we are up to 232.

MR. REED: Your Honor, 234, I believe.

(Defendant's Exhibit 234 received.)

THE COURT: We have a little bit of confusion here. We'll have to go back over the record.

What do your notes show, Ms. Duarte?

MS. DUARTE: Your Honor, I don't have the last few exhibits in. I apologize. I can check Special Agent Cugno's notes. He's my primary note-taker as to these matters.

Your Honor, we go through 232 only.

THE COURT: What is 233, Mr. Reed?

MR. REED: It's Bates 1692.

Could the clerk simply show me the last exhibit that I gave her? If it's not there, then I might be mistaken.

THE COURT: There was a Bates number that wasn't given an identification number.

To save time, given my concern about avoiding a waste of time, we are going to assign 234 to this. If the record

ultimately shows there was no 233, that's okay. There will be a gap.

This is Exhibit 234. You may display it. I'll let the jury see it.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Special Agent Cugno, bringing your attention now to the top of this document, entitled "Reports", and then it starts off with 1 and then it says FD-302. What is an FD-302?

A It's a report.

Q Is it a standard form that you use within the FBI?

A Yes.

Q And what does an FD-302 contain as far as the document itself?

MS. DUARTE: Objection. Irrelevant.

THE COURT: Sustained.

Ask him about the ones that you care about involving these IP addresses, please.

MR. SUTCLIFFE: Could I have a sidebar, please?

THE COURT: No. Get to the point, please.

BY MR. SUTCLIFFE:

Q So, basically, what this document is purporting to say is, you filled out something called an FD-302 form; right? And you were -- and in this, you detailed subscriber information about this e-mail address "richardleeweatherman@hotmail.com" from MSN Hotmail on 11-14-2001; correct?

A That's what it says.
Q So approximately seven days after you had taken over the investigation, you have found this e-mail address, and you want some information on it.
Now, I asked you earlier about an IP address at 24.160.57.210. Was that information you were able to glean from the "richardleeweatherman@hotmail.com"?
A Again, without seeing that document, I wouldn't be able to say with certainty.
Q There is another FD right below it, which says No. 2 here, detailing subscriber information about "evilgxhr@yahoo.com" from Yahoo! on 11-14 as well. Do you see that?
A I see that.
Q Now, do you see down here, there is another static -- excuse me, another IP 24.167.143.139.
Is this IP address the IP you were able to glean from information on a subpoena issued to this address, "evilgxhr@yahoo.com"?
A Again, without seeing some other document, I wouldn't be able to say with any certainty.
Q We see something here that says -- an insert from a request to the Postal Police.
Is that something that, when you are looking for someone, you would go to the Postal Police and say, Hey, got any information on this guy?

MS. DUARTE: Objection. Irrelevant.

THE COURT: It is irrelevant.

Ladies and gentlemen -- I won't say it again. It's irrelevant.

Move on, Mr. Sutcliffe. No sidebars, period. Zero, none. Move on.

MR. SUTCLIFFE: Thank you, Your Honor.

Q I notice down here, No. 9, there is a detailed interview with Bruce Wieseltier on 11-30.

Did Mr. Wieseltier provide you any documents?

A I don't have any specific recollection whether he did or did not.

Q Did he ever tell you that he believed that Mr. Sutcliffe had stolen this information that was being published on the website?

MS. DUARTE: Objection. Irrelevant and hearsay.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Now, it appears that you have done other FD-302s within this report that you typed up.

Now, this one detailing an interview with a Frank Chandler on 12-17, can you tell the jury what that's regarding?

MS. DUARTE: Objection. Irrelevant --

THE COURT: Sustained.

MS. DUARTE: -- and lacks foundation.

BY MR. SUTCLIFFE:

Q Do you know who Frank Chandler is?

MS. DUARTE: Same objection.

THE COURT: Objection sustained.

Move on to something different.

BY MR. SUTCLIFFE:

Q This FD-302, at No. 5, detailing information obtained about Steven William Sutcliffe on 11-19 from "choicepointonline.com", and above that, detailing information from Richard Lee Weatherman 11-15 from "choicepointonline.com", can you tell us what those two investigations were?

MS. DUARTE: Objection. Lacks foundation. It's irrelevant.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Can you tell us what "choicepointonline.com" is?

MS. DUARTE: Same objection.

THE COURT: Ladies and gentlemen, I am now instructing Mr. Sutcliffe that if he continues to ask questions of the type that he just did, that I specifically told him not to ask, I will be holding him in contempt and taking other measures.

Please proceed, Mr. Sutcliffe.

Ladies and gentlemen, take a brief break -- let's not. Let's take advantage of the 15 minutes. I doubt if

Mr. Sutcliffe will have finished with Mr. Cugno, so I'll go over this matter with him later. I want to take as much opportunity to complete the examination as we can to use these precious moments.

Take that document off the screen and move on to something else, please.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Agent Cugno, did you ever investigate a "Joe Shmoe"?

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Have you ever heard the name "Joe Shmoe"?

MS. DUARTE: Same objection.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Did you happen to have an interview with Mrs. Greenwood at any time within your office?

A I don't recall within my office or if it was telephonic.

Q Prior to this interview with her, had she sent you any emails?

A Prior to which interview?

Q Any telephonic interview.

A I don't recall the chronology of those interactions.

Q Did you have an interview with Mrs. Greenwood on 12-28 of 2001, a telephonic interview?

A I believe we heard testimony about that.
Q Prior to --
THE COURT: The answer is "yes"?
THE WITNESS: "Yes." I'm sorry.
BY MR. SUTCLIFFE:
Q Prior to that 12-28-2001 telephonic interview with Mrs. Greenwood, isn't it a fact that she had been sending you files?
A I don't know if that's correct to say.
Q Had she?
A I don't have any specific recollection.
Q Had she sent you pages, electronically, by e-mail?
MS. DUARTE: Asked and answered, Your Honor.
THE COURT: Overruled.
THE WITNESS: I don't remember the time frame in which she was sending me. I remember it was a several-month period.
BY MR. SUTCLIFFE:
Q Did she inform you that she had somebody working within Global Crossing Internet Security Department?
A Yes, she did.
Q Do you remember who that was?
A Andrew Ramsey.
Q Did you ever have any opportunity to speak via e-mail to Mr. Ramsey?

A I can't recall if it was e-mail or if it was telephonic or both.
Q It might have been both?
A It might have been.
Q When Mr. Ramsey would -- let me rephrase that question.
If Mr. Ramsey concluded that there was something that you should be -- should be brought to your attention, how would he bring it to your attention?
A I don't recall if he ever actually called me to bring anything to my attention. I don't recall that.
Q Why would you talk to him? What were you talking about when you would talk to him? You said sometimes by e-mail, sometimes by phone.
A I don't know if I said sometimes. There was possible interaction with us, both telephonic and e-mail. I don't remember how many times it was.
THE COURT: The question, Agent Cugno, as best as you can remember, general speaking, what topics did you discuss with Mr. Ramsey from time to time? I think that's what Mr. Sutcliffe wants to know.
MR. SUTCLIFFE: Yes. Thank you, Your Honor.
THE WITNESS: Specifically, I remember discussing his downloads.
BY MR. SUTCLIFFE:
Q Is it your understanding that he was -- the Internet

security specialist who was taking care of just -- he was the only one doing the downloads within Global Crossing?

A I can't say with certainty if he was the only one making those downloads.

Q Is it not true that Mrs. Greenwood would receive a copy of those downloads and then would occasionally forward them to you for review?

A I don't know if -- where she was receiving them from necessarily, but I remember she was forwarding them to me.

Q When someone forwards an e-mail, doesn't it usually show who it is forwarded from?

A Generally, yes.

Q So if Andrew forwarded something to -- or sent something to Mrs. Greenwood -- if Andrew Ramsey sent something to Mrs. Greenwood and Mrs. Greenwood then forwarded it to you, you would see who it was forwarded from?

A Correct.

Q So did you ever happen to see a forwarding e-mail with a date of 12-20-2001 from Mrs. Greenwood where she believed that she could locate -- or that Andrew, excuse me, could locate the whereabouts of Steven Sutcliffe in Manchester, New Hampshire?

MS. DUARTE: Objection. Irrelevant.

THE COURT: Overruled.

THE WITNESS: Not that I recall.

THE COURT: I don't, by my overruling, signal to any

party in this case that I think there is a relevant issue as to the capacity of Global Crossing to effectuate service on Mr. Sutcliffe. I'm not going to permit inquiry into that.

You've got your answer, so please proceed.

BY MR. SUTCLIFFE:

Q Were you actively seeking the location of Mr. Sutcliffe during the period of 2001?

A Yes, I was.

Q So if somebody brought to your attention, Hey, he's in New Hampshire, wouldn't that be something you would want to follow up on?

A Correct.

Q And isn't it a fact that somebody from within Global Crossing sent you an e-mail saying, "Mr. Sutcliffe is in Manchester, New Hampshire"?

A I don't specifically remember what the e-mail did or did not say.

Q Do you recall that Andrew Ramsey ever pointed out in an e-mail to Elizabeth Greenwood, who then forwarded the e-mail to you, that an e-mail had been traced which was tracked from an e-mail that was within the website -- or excuse me. I'll rephrase that question, Your Honor.

Isn't it a fact that Mrs. Greenwood forwarded to you an e-mail on December 20th, that was received from Andrew Ramsey, of an e-mail listing a Joe Shmoe, saying, "I'm going to

personally kick your ass" to the owner of an e-mail address called "evilgxhr@yahoo.com", which, correct me if I'm wrong, you were investigating that e-mail address?

MS. DUARTE: Your Honor, objection to that question. It was compound.

MR. SUTCLIFFE: I'm sorry. You are right.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q You were investigating "evilgxhr@yahoo.com"; correct?

A Among other things.

Q If you saw an e-mail from Andrew Ramsey sent to Elizabeth Greenwood, which was then forwarded to you, which had another e-mail address from a Joe Shmoe, with the words, "I'm going to personally kick your ass if you don't stop publishing this information," and then Andrew believed he had been able to reverse engine or track that e-mail back to an address in Manchester, New Hampshire, and then they informed you that "We believe Mr. Sutcliffe is in Manchester, New Hampshire," wouldn't you have followed up on that?

MS. DUARTE: Objection, Your Honor, as to form.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Between the period of 11-7 and 12-31-2001, did you ever sit down at your computer and say, "Give me anybody named Steven Sutcliffe in Manchester, New Hampshire"?

A I don't know if I did that.
Q Is that something you would have done if you were looking for the defendant?
A I don't know if I have the capability of running such a search.
Q Is it your testimony, as an FBI agent, you don't have the capability to say, Gee, I think this guy is in New Hampshire. I can call or I can get on my computer or I can get on my phone and say, Hey, run a Steven Sutcliffe in Manchester, New Hampshire?
A Okay. I didn't have a specific location of where you were.
Q But if you thought the defendant was in Manchester, New Hampshire, couldn't you just get on the phone and call another agent, like the lady who was in here earlier, and say, Hey, do me a favor and run a public utilities check on Steven Sutcliffe and see if he's listed in Manchester, New Hampshire? You could do that; right?
A Yes, I could do that.
Q Fairly simple for an FBI agent; correct?
A It's something we could do.
Q Did you do that between the period of 11-7-2001 and 12-31-2001?
A I don't believe that was during the time period that I requested that information.

Q We talked a little bit earlier about the website, and it was your testimony that this website was moving from host to host, or maybe I might be mistaken.

People have testified that this website was moving around; correct?

A That's been the testimony.

Q Global Crossing's goal was to stop it?

A That's what they were trying to do.

Q So the countergoal of the website host apparently was to keep it up and move it around, prevent it from being stopped?

A I don't know what your goal was, sir.

Q Okay. My goal was to keep it up.

MS. DUARTE: Objection, Your Honor.

THE COURT: Sustained.

Ladies and gentlemen, it is totally inappropriate for a person asking questions to try to sneak in information by making volunteered statements. So disregard Mr. Sutcliffe's last volunteered statement.

BY MR. SUTCLIFFE:

Q Now, did you ever have the time to interview a Gary Carr of Carolina Online?

A Yes.

Q Who is Gary Carr of Carolina Online?

A I believe he's the president.

Q And where is he located?

A I believe in Lumberton, North Carolina.
Q He's an ISP -- is he an ISP provider?
A I believe ISP or Web host.
Q Was the "evilgx.com" website hosted within this website -- excuse me. That's a bad question. Let me rephrase that.
Was the "evilgx.com" website hosted on one of his servers?
A Yes.
Q And did you contact Mr. Carr?
A I did.
Q And what did Mr. Carr tell you?
MS. DUARTE: Objection. Hearsay.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Did you interview Mr. Carr?
A Yes, I did.
Q Do you recall when you interviewed Mr. Carr?
A I do not.
Q Did Mr. Carr inform you when the website was hosted within "carolina.net", the time frame?
A I believe he did.
Q Do you recall what those dates were?
MS. DUARTE: Objection. Hearsay. It's for the truth.
THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Did Mr. Carr tell you that he couldn't give you any subscriber information, which would have been the owner of the website?

A I don't recall what he told me.

MR. SUTCLIFFE: Permission to refresh the witness's recollection, Your Honor?

THE COURT: All right.

MR. SUTCLIFFE: Thank you.

THE WITNESS: (Witness reading document.)

Okay. That does refresh my memory.

BY MR. SUTCLIFFE:

Q Did Mr. Carr tell you that he couldn't give you any subscriber information on this website?

MS. DUARTE: Same objection to hearsay, Your Honor.

THE COURT: Sustained.

Okay. Ladies and gentlemen, I'm going to excuse you for the -- are you finished with the inquiry about Carr?

MR. SUTCLIFFE: I would like this document entered as an exhibit next in order.

MS. DUARTE: Object to that.

THE COURT: It's not admissible. It won't be admitted.

You can recite what the Bates number is on it if you want the record to show that.

MR. SUTCLIFFE: 00012.

THE COURT: Okay. Ladies and gentlemen, you are excused until Monday. I want to explain to you that it's only because I'm required to carry out obligations for a committee -- I'll tell you more about that later when we get into jury instructions -- that I'm unable to continue with the trial Thursday and Friday. I hope it's not an inconvenience to you.

We are going to resume on Monday at 8:30. It's a long time until -- between now and then. So during that interval, please remember to abide by the admonition. Have a good weekend. We'll see you on Monday.

THE CLERK: All rise.

(Jury excused at 1:28 p.m. and the following proceedings had.)

THE COURT: What were the matters you wanted to bring up at sidebar, Mr. Sutcliffe?

MR. SUTCLIFFE: I've forgotten. It's been so long, Your Honor, it totally slipped my mind. I'm trying to follow several different orders of the Court and I apologize. I'm sure the Court is well aware, I'm not a skilled, trained lawyer and this is all new to me.

THE COURT: That I understand, but I also think you are a very smart guy, Mr. Sutcliffe. And you like a language, and so do I, and the language I use when I speak to you and to the jurors is plain and simple.

It's very apparent to me that you are full of smiles -- and I like that -- but totally intent on disregarding the instructions I'm giving you. When I tell you to stop inquiring into something, there can't be anything clearer than that. When I tell you that something is not relevant or I make rulings sustaining objections based on the claim that it's not relevant, I am sure, a hundred percent sure, that you understand what it means for me to say, "It's not relevant."

You may not agree. You clearly don't agree. But that is my ruling.

I have been attempting to give you every right that you enjoy. It's not that I'm giving you a gift. You have a right to it, and I will protect that right, to explore relevant information.

You have no right to explore irrelevant information, and you have no right to disregard my rulings. And with contempt -- and contempt may not be the -- you don't have to have personal bias against me or hatred for me to be guilty of contempt.

But when you persistently and flagrantly disregard rulings I make, ask questions that I've precluded you from asking, volunteer statements -- and you have done it probably 20 times during this trial, including probably five or six minutes ago -- when you just took the opportunity, because you couldn't resist it, to tell the jury you wanted to keep the

website up, which we all know you did -- this jury isn't stupid, Mr. Sutcliffe, and I hope it's the case that the judge isn't stupid, either -- that's contempt. And I don't intend to permit it to happen again.

Now, I want you to understand something else, because I think it may assist you to avoid what you say you want to avoid.

There is no basis whatsoever for you to engage in inquiries that are part of what you think is evidence that would support a claim of selective prosecution.

No matter what you think the FBI could have or should have done about other people, like Weatherman or Joe Shmoe or anybody else, has no bearing on this trial unless you are in a position to try to establish and, in good faith, argue to the jury that you didn't do all the things that you have been proudly trying to explain that you did do and haven't backed away from acknowledging you did.

If your defense was that Weatherman did it and you were on a long hibernation like a polar bear, that would be one thing. If your defense was that Joe Shmoe did it, you didn't post the threats, it wasn't your website, you had nothing to do with this, somebody brought you here from Mars, then I would have to make a different ruling.

But those inquiries, based upon a failure of the FBI to follow up on other leads about other people and why they

didn't look into this and do that, are irrelevant to this case.

Do you want to respond?

MR. SUTCLIFFE: Yes. Thank you, Your Honor.

First off, I would object to the legal language as plain and simple. It's very complex. And I've never experienced this type of -- the record clearly reflects I don't want to be here representing myself.

So, first off, while the language might be plain and simple to Your Honor, I respectfully argue that it's not. I could sit here and speak, if Andrew Ramsey was back up on the stand, computer language and I could say the same thing. "Hey, it's plain and simple." To me, it's plain and simple. To anybody else hearing it, it's gobbledegook and complicated and very heavy.

While I do appreciate the Court's indulgence in occasional slips, I am bending over backwards trying to oblige the Court and not upset the Court. I'm working on -- I don't get home -- excuse me. I don't get back to my prison cell -- I want the record to clearly reflect this. Although everybody goes home at 1:30 here, I don't get transported back to my cell until 8:00, 7:00 at night. I'm given one piece of cake and two sandwiches all day long to sustain myself on.

THE COURT: That is not relevant, Mr. Sutcliffe.

MR. SUTCLIFFE: I'm tired, Your Honor. I am exhausted. I'm working out of boxes here that I can't take

back to my office to study, which would help expedite this case, so that I could be up to par when these witnesses come on the stand. I'm ending up flying by the seat of my pants. So if I make an occasional mistake, I assure the Court I'm not trying to do that.

As to the relevance of what the FBI agents did or did not do in this investigation, I believe it's very relevant, Your Honor.

I believe that that "rampartscandal@europe.com" is very relevant to this case. When I was arrested in New Hampshire, everybody was running around "killercop.com", "killercop.com".

The Court issued a subpoena to the FBI on Wilshire. The U.S. Attorney came back and said, "Oh, there is just a little script."

And you ordered --

THE COURT: Mr. Sutcliffe, excuse me. We have to get to the point here. "killercop.com", the government represented they are not going to call the witnesses. They didn't move into evidence the document. It isn't at all relevant what happened with agents, as you perceive it or characterize it, running around.

The record has to reflect a number of things, Mr. Sutcliffe. I don't want silence to allow for a wrong inference. You are proceeding without counsel because your

conduct, although not your lips and your words, clearly and persistently reflected a refusal to be represented by counsel. And that's why I made the ruling that I did.

So the choice for you to be laboring under the handicaps that you've been describing was your choice. And after six lawyers, the record is very clear that you are required to live with that choice.

Now, we don't have to explore any further what may be your subjective beliefs and attempts. I'll accept you at your word that you don't feel, inside your mind or in your heart, a desire to display contempt. I have just told you why it nevertheless can be and would be. And once I make the finding, it will be contempt for somebody to disregard rulings that are clear.

There may be a lot about what goes on in this trial that you, as a layman, are unfamiliar with, do not understand, and have no experience in addressing. That's true. It's not even a hypothetical possibility.

But you understand, when I say "move on; objection sustained, irrelevant," you know what I'm talking about.

Now, we will resume this trial at 8:30 on Monday morning, but we'll have to be available at 8:00. If you need to stay in the courtroom to be able to take some documents with you back to the MDC, as I think you did yesterday, you are welcome to do it this afternoon, but I have to be out of here

at 3:00.

MR. SUTCLIFFE: Your Honor, with all due respect, may I finish what I -- where you interrupted me?

THE COURT: Very efficiently, you may.

MR. SUTCLIFFE: Thank you, Your Honor.

A subpoena was issued to the FBI office on Wilshire Boulevard in Los Angeles. The Court spoke to the government, and the government represented that somebody within the FBI office had only seen one little script, from years ago, related to "killercop.com".

I believe the Court's order was, you wanted some kind of certification --

MS. DUARTE: I can speak to that, Your Honor.

MR. SUTCLIFFE: -- of this statement, correct me if I'm wrong. And it was thereafter that all of a sudden, "Okay, 'killercop.com' is no longer an issue, but we never got a certification," and I believe that "killercop.com" is very relevant to this case.

THE COURT: If you make it relevant, you are opening the door to a whole lot of inquiry.

I'll permit you to make it relevant. What's your response?

MR. SUTCLIFFE: Your Honor, with all due respect --

THE COURT: Mr. Sutcliffe, I'm speaking to the prosecutor at the moment.

MS. DUARTE: Regarding the declaration that I believe Mr. Sutcliffe is referencing, I do have that prepared for the Court. I brought it in this morning. However, your clerk, I think, quite correctly, requested that I caption it slightly differently for filing, so I will have that for the Court as soon as possible.

THE COURT: Did you bring in a copy for Mr. Sutcliffe?

MS. DUARTE: I did.

THE COURT: You can give him the copy so he can be at least aware over the weekend of whatever it is you are going to file on Monday.

MS. DUARTE: It's an unfiled copy, but I'll give it to him.

THE COURT: Okay.

MS. DUARTE: Nothing else, Your Honor.

THE COURT: Okay. All right.

I think that addresses everything, including what I think is a nonissue concerning "killercop.com".

See you all on Monday.

MR. SUTCLIFFE: Thank you, Your Honor.

(Adjourned at 1:38 p.m., to be resumed on Monday, November, 24, 2003, at 8:00 a.m.)

C E R T I F I C A T E

I certify that the foregoing is a true and correct transcript from the stenographic record of the jury trial proceedings in the foregoing matter.

Karen R. Pihn, RPR, CSR 5574
Court Reporter

September 20, 2004

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE A. HOWARD MATZ, JUDGE PRESIDING

UNITED STATES OF AMERICA, Plaintiff, vs. STEVEN WILLIAM SUTCLIFFE, Defendant.	Case No. CR 02-350(A)-AHM

CERTIFIED COPY

REPORTER'S TRANSCRIPT OF JURY TRIAL PROCEEDINGS

Los Angeles, California

Monday, November 24, 2003

DAY 7

(Pages 1218-1386)

KAREN R. PINN, RPR, CSR 5574
Court Reporter

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I N D E X

GOVERNMENT'S WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
CARR, Gary				
By Ms. Duarte	1238		1256	
By Mr. Sutcliffe		1243		1259
JOHNSON, David				
By Ms. Duarte	1264			
By Mr. Sutcliffe		1279		
BISHOP, Mark				
By Ms. Duarte	1282			
By Mr. Sutcliffe		1294		
WHITE, Monte				
By Ms. Duarte	1298			
By Mr. Sutcliffe		1313		
HALL-FRASER, Tracy				
By Ms. Duarte	1321			
By Mr. Sutcliffe		1341		

GOVERNMENT'S EXHIBITS	FOR IDENTIFICATION	RECEIVED
32		1269
31		1275
37		1285
38		1288
39		1290
40		1292
41		1293
42		1302
43		1307

DEFENDANT'S EXHIBITS	FOR IDENTIFICATION	RECEIVED
235		1252

LOS ANGELES, CALIFORNIA;

MONDAY, NOVEMBER 24, 2003; 8:18 A.M.

(Jury out.)

THE CLERK: Calling item No. 1, CR 02-350(A)-AHM, U.S.A. v. Steven William Sutcliffe.

Counsel, state your appearances, please.

MS. DUARTE: Good morning, Your Honor.

Elena Duarte for the United States, with case agent Frank Harrill substituting for Jeff Cugno.

THE COURT: Good morning.

MR. SUTCLIFFE: Good morning, Your Honor.

Steven William Sutcliffe, accused, appearing.

THE COURT: Good morning to you.

MR. REED: David Reed, advisory counsel.

THE COURT: Good morning to you.

Mr. Reed, when you bring back copies of exhibits that have been received at a previous session that Mr. Sutcliffe offered, will you make sure that there is a copy made for me personally to keep up here and not just for the clerk?

MR. REED: I did. I always do, Your Honor.

THE COURT: You have been doing that?

MR. REED: Yes, every time. There should have been two copies up there.

THE COURT: Maybe last week I wasn't getting them.

MR. REED: Should there be one copy for the -- there

should be an original, and then I always make a copy for you. Should there also be another copy for the clerk?

THE COURT: No. That will be sufficient, as long as there is one for the prosecutor. Somehow they haven't been getting to me. I'll look into that.

Okay. Somebody wants to be heard?

MS. DUARTE: I do, Your Honor.

Your Honor, last week witness David Chavarri, C-h-a-v-a-r-r-i, was here and we didn't get to him and I had to send him back. He's a custodian of records only for Intercosmos, a Web hosting group. He had a house closing this weekend and was unable to come back out. There were no reports or anything generated under his name. He's not the main person that we talked to at the company.

And I would ask leave of the Court to substitute in an alternate custodian, who is here ready to testify, from the company, has the same degree of knowledge, and his name is Monte, M-o-n-t-e, White.

THE COURT: Okay.

MS. DUARTE: He's not on the witness list, but he would be substituting in as a custodian only.

THE COURT: Well, that's a perfectly appropriate request and that request is granted.

MS. DUARTE: The second thing, Your Honor, is, I have a witness taking the stand, I believe, first thing this morning

by the name of Gary Carr, C-a-r-r. He's from the Web hosting group as well, but he has personal knowledge about hosting Mr. Sutcliffe's website. He's not a custodian.

I discovered to Mr. Sutcliffe, when I found out approximately two weeks ago, that he has a 1985 felony possession of marijuana, a marijuana conviction. At the time that I told Mr. Sutcliffe about it, I wrote to him that it was my opinion that it was time-barred from admission for impeachment purposes, as it was suffered in 1985.

I just wanted to make sure that comes up, given Mr. Sutcliffe's asking last week about Mr. Gilmer's conviction, so that if the Court agrees that it is indeed time-barred, we can make an advance ruling that that is not admissible.

THE COURT: It clearly is time-barred under the applicable rule, and it's not a crime that involves an act of dishonesty that goes to the issue of credibility. So I think there is no basis whatsoever to inquire.

Do you want to be heard about that, Mr. Sutcliffe?

MR. SUTCLIFFE: No, Your Honor.

THE COURT: So that's to be construed as a motion in limine that the prosecutor has made that I've granted. That means, Mr. Sutcliffe, that you are not permitted to inquire about that marijuana conviction.

Do you understand that?

MR. SUTCLIFFE: I understand, Your Honor.

When the government is finished, I'd like to also be heard on some issues.

MS. DUARTE: And the last thing. I have taken out a page from Exhibit 43, renumbered them, and submitted a new copy for all the binders, so the Court should have its copy.

THE COURT: That's up here. Did you give one to Mr. Sutcliffe?

MS. DUARTE: I did and Mr. Reed.

That will come in, I expect, today. It hasn't been mentioned yet.

THE COURT: It hasn't what?

MS. DUARTE: It hasn't even come up yet, the exhibit itself, and I think it will come in today.

THE COURT: The one that was previously placed in the binder should be discarded?

MS. DUARTE: Correct.

THE COURT: Anything else?

MS. DUARTE: That's all, Your Honor. Thank you.

THE COURT: Mr. Sutcliffe?

MR. SUTCLIFFE: Your Honor, I had just spoken briefly, before you came in, regarding an issue in Bates 1656 where Mr. Cugno had noted that, on various days, he had received "numerous electronic e-mail messages from Elizabeth Greenwood from 12-7-2001 until 5-9-2002," and that these e-mails have been saved on a CD-RW -- or a rewrite electronic

CD-ROM disk.

I've requested a copy of that disk, as I told the prosecutor I had not received a copy of this disk in my discovery. I had requested all electronic copies of everything.

The prosecutor informed me that she would not provide a copy of this disk to me.

THE COURT: Could you display the document on the screen so I know what you are referring to, please?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: This is a 302 dated -- the transcription date is August 8, 2002.

MR. SUTCLIFFE: I'll show the bottom, if you'd like.

THE COURT: Okay. Please show the bottom. It's Bates stamped 01656.

And you are representing that the government has declined to give you the disk containing what? Containing these e-mail messages?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: Do you want to be heard?

MS. DUARTE: Yes, Your Honor.

This just came up this morning. It's true that I did not turn over the CD itself. I did, however, print out all of the e-mail messages, as the Court has seen, that came in through, a lot of them, Elizabeth Greenwood.

All the e-mail messages that even were arguably relevant -- Brady, Giglio, any of that -- I turned them over long ago. I did that in printout form, mostly because I wanted to be able to selectively redact them, as necessary, which I did, for personal information, and also because there was no need to turn over the CD because all it had on it were copies of what I turned over in printed form.

So it's already been discovered to him. It's just that today he --

THE COURT: Are you representing to me, Ms. Duarte, that whatever e-mails are referred to on this 302, which says, "These e-mails have been saved to a CD-RW," that all of those e-mails have been provided in document form to Mr. Sutcliffe?

MS. DUARTE: Yes.

THE COURT: All right.

MR. SUTCLIFFE: Your Honor --

THE COURT: If you've gotten the underlying contents and you have gotten the 302 confirming what was done, what more do you need, Mr. Sutcliffe?

MR. SUTCLIFFE: Your Honor, Mrs. Duarte just represented to me, not ten minutes ago, that she didn't give me all of those printed-out e-mails that are on that CD-RW.

I don't know what she's holding back. I could have used something maybe -- who knows what I could have used in there to impeach Mrs. Greenwood further in her testimony?

She's already shown a propensity to want to create threats out of unwhole cloth. She could come up with all kinds of things. Who knows what else she said in these messages to Mr. Cugno?

THE COURT: Let's make this very clear and methodical.

Mr. Sutcliffe is representing that you told him something different than you told me. I know you are an officer of the court, and I have no reason whatsoever to question your veracity. I want you to make it very clear, so I'll ask you again.

This document that Mr. Sutcliffe has displayed says that Elizabeth Greenwood sent numerous electronic mail -- or e-mail -- messages to Agent Cugno between certain dates which were saved on a CD-ROM.

Have you turned over all of those e-mails to Mr. Sutcliffe in documentary form?

MS. DUARTE: I should qualify that, Your Honor.

I am not standing here absolutely positive that every single e-mail on that CD-ROM has gone over to Mr. Sutcliffe in documentary form. The reason I am not positive of that is because this came up this morning and I couldn't review it.

Knowing the way that I did this at the time that I turned it over, what I would have done is, unless it was purely logistical, like "What time are we meeting?" or completely irrelevant -- and I'm not even sure there were any of those on

there -- but to the extent that there were, I may not have provided a copy to him of that.

THE COURT: The way we need to proceed, then, is for you to compare what you turned over with what's in the file. If there is anything that's in the file that you didn't turn over, bring it to court tomorrow morning, hand it to me, have copies available for me to give to Mr. Sutcliffe in the event that I consider any of them to be relevant. That's the way we'll handle it.

MS. DUARTE: I will do that, Your Honor.

THE COURT: I'm not going to require that the CD-ROM be turned over because you'll otherwise have everything to which you would otherwise be entitled, Mr. Sutcliffe.

Tomorrow morning I'll see if there is anything further to which you are entitled. If there is, you'll get it.

MR. SUTCLIFFE: Also, Your Honor -- thank you, by the way -- the defense has never received copies in either format, electronic or printed, of all of the subpoenas that were issued by Agent Cugno. And the defense would request that the government turn over to me today copies, in either electronic format or in printed format, of these subpoenas that were issued.

I have no idea what was issued and when and how and by who.

THE COURT: Your response?

MS. DUARTE: It's not my practice to turn over copies of grand jury subpoenas themselves. I provide any and all results of those subpoenas.

THE COURT: I think he's referring to trial subpoenas.

MS. DUARTE: Trial subpoenas?

MR. SUTCLIFFE: No. I'm referring to grand jury subpoenas.

THE COURT: Oh, you are?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: Okay. Those are not discoverable, Mr. Sutcliffe. There is no obligation that the government has to turn those over to you. And I'm not going to order the government to do so at this stage.

MR. SUTCLIFFE: Could I get a printed list, then, of the dates, Your Honor, that these subpoenas were issued?

THE COURT: No. I don't think those are discoverable or relevant.

What specific --

MR. SUTCLIFFE: It goes to impeachment of one of -- the witness who was requesting -- Agent Cugno. I'm trying to impeach his testimony. I believe he's committed perjury in one or more affidavits and in testimony under oath. And I believe that -- interrupt!

THE COURT: When you have that belief and you think

that that belief entitles you to additional evidence of some form, whether it's before the indictment was returned, when the grand jury was functioning, or otherwise, you need to be more specific and clear.

Based simply on a desire to impeach a witness, which is your right to do if you are engaged in what the law considers impeachment, you are entitled to impeach. But you are not entitled to a fishing expedition just by reciting the words that you need it for impeachment.

I haven't heard anything from you, not this morning nor previously, that tells me what it is about what Cugno did that you think the fair scope of impeachment would require you to have in the way of a list of grand jury subpoenas.

And absent such a showing, I'm not going to order it. Even if there were such a showing, I would have to look into the law about it.

That's my ruling on the subpoenas and on the list.

MR. SUTCLIFFE: Okay. Your Honor, defense would also request at this time that the government provide a copy in electronic format of the remainder of the Bates material.

I was originally provided a CD-ROM, which was marked originally as No. 13, and then somebody else stuck another stamp on it, which says CDLA313 aka Discovery Bates 1 through 1036. This does contain a copy of Bates 1 through 1036. The defense would like a copy of 1037 up to the present.

MS. DUARTE: I can speak to that, Your Honor.

I do not actually have any of the Bates-stamped discovery in electronic form unless it was previously that way.

I think what Mr. Sutcliffe is referring to is a disk that was actually made by the Federal Defender's office when they first represented him, and apparently they had scanned in some of the discovery.

When I saw it, I did not review it because I was concerned it may have some attorney work product in it. But I think that's what it is. But we never did scan in any discovery. That's not ours.

THE COURT: Okay. That's -- given that representation, there is nothing further to be done about that.

MR. SUTCLIFFE: True.

Yes, Your Honor. I submitted a discovery letter also earlier, before trial, a couple of weeks before trial, to the government, and I requested that the government turn over any proof that the -- that they had sent to me that they had notified previous counsel that the SCSI drive, which is known as SCSI No. 2, had been wiped.

I represented to her that I had never been told that it had been wiped and shown that it had been wiped, and no previous counsel ever represented that it had been -- that they had been notified that it had been wiped.

This was something anew, and I wanted proof since the

government was representing, in her letter to me, that she had informed previous counsel that --

THE COURT: You are not entitled to such additional proof or corroboration. There is no basis to go beyond the representation.

MR. SUTCLIFFE: I'm not asking for proof of corroboration, Your Honor. I'm requesting for discovery.

THE COURT: That's what you seem to be asking for, though, Mr. Sutcliffe.

I don't understand even what "wiping" is. But if the government told your previous counsel something, you don't have a right to demand further corroboration of that or evidence of it.

MR. SUTCLIFFE: Well, I'll review my records --

THE COURT: I won't say that as a general, broad proposition of law, but absent any additional showing that anything relevant or anything prejudicial, either or both, arises out of the government's representation -- you are constantly seeking more and more information.

There has been a continuing flow of discovery in this case from prior lawyers to you. I won't review all that's been said, and I don't wish to raise any hackles by referring to it. But a great deal of time has been consumed by the Court making sure that you've gotten everything to which you are entitled.

So I deny that request.

MR. SUTCLIFFE: Okay. Also, I would like the Court to request the government -- tell the government to explain to this Court why is it that the government represented, when a subpoena was issued by the defense to the FBI office on Wilshire, that, correct me if I'm wrong, she represented that somebody within the FBI office on Wilshire had said there was nothing there, insignificant little tiny pieces of code, little tiny -- fingers together like this, little tiny pieces of code. And then the next day was, "Oh, well, never mind. We are not going to use 'killercop.com'" --

THE COURT: We've been through this, too. I'm sorry to interrupt, Mr. Sutcliffe. I don't have unlimited time to keep going back over ground that's been carefully trod.

On November 20th, the government filed a declaration of Kenneth McGuire. Did you get a copy of it?

Did you serve a copy on Mr. Sutcliffe?

MS. DUARTE: Yes, Your Honor.

MR. SUTCLIFFE: The way -- I didn't catch that. McGuire? That was on the following day, before we broke for court last week -- correct? -- the two reports? The small piece of code has now turned into two reports.

THE COURT: Okay. Mr. Sutcliffe, Mr. McGuire's declaration speaks for itself. There is no issue about the investigations about "killercop.com".

The government complied with my order and my order

has been satisfied.

I'm not going to go over all of this ground. You don't have any right to know why an assertion that's made on one day is clarified or expanded the next day. That is not the way the system works, Mr. Sutcliffe.

MR. SUTCLIFFE: I understand, Your Honor. But I do have a right to make a defense and I do have a right for discovery and I do have a right, I believe, to an explanation as to why the representation that "it was just a small, insignificant, tiny little piece of code, computer code" has now turned into two reports. What else -- that's a misrepresentation, Your Honor. That's a flagrant misrepresentation. What else are they hiding?

THE COURT: Mr. Sutcliffe, I'm not going to characterize what it is in the eyes of other people. But I am going to tell you -- and this is for the last time -- that there is no -- you are chasing a ghost when you are making an issue out of either the reference to the "code" or to the representation of the agent.

What you were given finally and conclusively puts to rest any permissible inquiry. I don't even think there was one that was required, but I nevertheless ordered McGuire, not knowing it was McGuire or the FBI, to file a declaration.

That's it. We are not going into the circumstances under which this material was found, in your view, that it

differs from the prior representation.

MR. SUTCLIFFE: Your Honor --

THE COURT: No. Please don't argue that point. If you have another point, I'm happy to hear it.

MR. SUTCLIFFE: I'm just asking, did you read those reports, Your Honor?

THE COURT: I looked at those reports.

MR. SUTCLIFFE: Did you note that in those reports they were referring to "interstate" threats, and there was also the word "murder" in there? Did you see that, Your Honor?

THE COURT: Yes, I saw it.

MR. SUTCLIFFE: Is it the Court's representation to me that the local jurisdiction of the L.A.P.D. handles "interstate" threats alleging a murder or the FBI?

THE COURT: Mr. Sutcliffe, that's not an issue that I have to address and it's not a question I'm required to answer, so I decline to do so.

MR. SUTCLIFFE: Thank you, Your Honor.

One last point not related to this at all. I would like the Court -- the Court has admonished the jury in the past that they are to give no regard to the defense that I've been raising that I didn't steal any of this information that's being published on the Internet.

I would like the Court to clarify to the jury that it is relevant because -- and I make that point because part of

1028(a)(7) says that "whoever knowingly transfers without lawful authority." That would imply, I believe, to a layman, that if I had lawful authority, then I can transfer it. If it's my property, I can transfer it.

So there is an inference there that there is a difference between lawful authority in a transfer and unlawful authority in a transfer.

THE COURT: I think you are right to recite the elements of the crime. I think you have misconstrued or misstated what I've told the jury.

I said that the government is not required to prove that you stole this information. That's not inconsistent with what the government is required to do.

I don't think I've, in any way, encroached upon or limited -- if it is your defense that you acquired this information lawfully, you'll be entitled to establish that defense, including by examination of witnesses.

The authority that would be at issue, I think, would be the authority of the persons who are mentioned or whose social security numbers are referred to in the indictment.

Are those people going to testify?

MS. DUARTE: Well, Your Honor, Elizabeth Greenwood has and -- no, the remainder of the people are not going to testify.

THE COURT: Okay.

MS. DUARTE: We've heard testimony from Richard Saly, who was in charge of the numbers at Global Crossing, saying that Global Crossing did not give anyone authority to publish those numbers.

THE COURT: If you think that that satisfies your burden of proof, then you can proceed on that basis. I'm not making a ruling one way or the other.

I'm also not precluding Mr. Sutcliffe from establishing a gap in your evidence or affirmatively establishing how he got this information, if he got it at all.

I think you said that was the last point, because I'm anxious to bring the jury in.

MR. SUTCLIFFE: Yes.

THE COURT: I'm going to instruct the clerk to bring the jury in. I'm going to go back into chambers.

Put the jury in the box. I'll be out in a minute.

THE CLERK: All rise.

(Jury in.)

THE COURT: Welcome back to the members of the jury. I hope each of you had a good weekend.

I was terrified this weekend that some of you may be USC fans and others may be UCLA fans. I didn't hear any shouting and blows through the door of the jury room, so I trust that it all worked out fine.

We are ready to proceed. I think the government

needs to call its next witness.

MS. DUARTE: The government calls Mr. Gary Carr to the stand.

GARY CARR, GOVERNMENT'S WITNESS, SWORN

THE CLERK: Please state your full name for the record.

THE WITNESS: Gary Allen Carr.

THE CLERK: Spell your last name.

THE WITNESS: C-a-r-r.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MS. DUARTE:

Q Good morning, Mr. Carr.

A Good morning.

Q Where do you work?

A I work for COL Networks.

Q What's COL stand for?

A It stands for Carolina Online.

Q What kind of a company is Carolina Online?

A An ISP -- Internet Service Provider.

Q What do you do there at Carolina Online?

A I'm the president and CEO.

Q What kind of services does Carolina Online provide?

A Dial-up services, high-speed Internet services, and Web hosting.

Q And who are Carolina Online's customers, in general, what types of customers?
A Individuals and businesses.
Q Now, when you say "businesses," what kind of businesses would Carolina Online provide service for?
A Small corporations, small businesses, corporations overseas.
Q Does Carolina Online also provide service for other Internet Service Providers?
A Yes, they do.
Q Could you explain how that works, just briefly?
A We do it on a wholesale or resale basis. They use our facilities to resell our services to their customers.
Q When you say "our facilities," what is it that you mean?
A Our codication (phon) room, our servers, our Internet bandwidth.
Q Do you rent some other company's bandwidth for use on your server?
A Yes, I do.
Q And where would the websites hosted by your company be physically located?
A In Lumberton, North Carolina.
Q Is it also true for websites that may be hosted by companies that rent bandwidth from yours?
A Correct.

THE COURT: What is also true?

MS. DUARTE: That they would be hosted in North Carolina.

THE WITNESS: Yes.

BY MS. DUARTE:

Q Do you charge for your hosting service?

A Yes.

Q How much do you charge?

A We have different price levels, beginning at $9.95 up to $549.95.

Q That's per month?

A Yes.

Q At some point, Mr. Carr, did you become aware of a website called "evilgx.com"?

A Yes.

Q Approximately when was this?

A That was around December 6, 2001.

Q How did you become aware of the website?

A We started receiving calls from Global Crossing employees complaining about their social security numbers being on this website, so we investigated and found the website.

Q When you say "investigated," did you check to see whether or not that website was actually on your bandwidth or your server?

A Yes, I did.

Q Did you confirm that it was?
A Yes.
Q You said that you received calls. Is there any way for you to estimate the number of calls that you received?
A Upwards of 50 calls, I would assume.
Q In what time period are we talking here?
A Over the course of probably six or seven hours.
Q So these calls just kind of hit?
A Yes, there was a mass flood of calls.
Q You said that these calls were complaints?
A Yes.
Q After you determined that the website "evilgx.com" did reside on your servers, what, if anything, did you do after that?
A I disabled the website and then contacted the reseller, HostOnce, about terminating the account and taking the site off the server.
Q When you say "reseller," what is it that you mean?
A It's one of the customers that we have that resell our services.
Q But you yourself disabled the website?
A Yes, I did.
Q And approximately how long -- for what period of time was "evilgx.com" on your servers in North Carolina?
A It was, I would say, a couple of weeks, you know, in the

beginning of December.
Q Did you yourself look at the website before you disabled it?
A Yes, I did.
Q What, in general, did you see?
A It was, in general, complaints about Global Crossing and the way this guy had been treated and the social security numbers.
Q So you saw the social security numbers on the website?
A Yes, I did.
Q Approximately when did you cause the website to be removed from your servers, do you remember?
A It was in the beginning of December. I don't have an exact date. Somewhere -- I think I determined it had been on there maybe two weeks or so.
Q That was beginning when?
A I determined it was beginning December 6th.
Q From December 6th to approximately two weeks after that?
A That would be accurate.
THE COURT: That's in what year?
THE WITNESS: 2001.
MS. DUARTE: I have nothing further, Your Honor.
THE COURT: All right. Thank you.
Cross-examination, Mr. Sutcliffe?
MR. SUTCLIFFE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SUTCLIFFE:

Q Good morning, Mr. Carr. How are you doing today?

A Good morning. Just fine. How are you?

Q Good, thank you. Just a couple of questions, Mr. Carr.

You said that the server was hosting the website "evilgx.com" from what dates, approximately?

A I think it was like December -- the beginning of December to the middle of December.

Q The beginning of December, that would be like December 1?

A I think it was around December 6th.

Q Until what date?

A I don't have an exact date, but it was somewhere towards the middle or the latter part of the month.

Q Middle or latter.

The 15th through the 30th, somewhere around there?

A Maybe to the 20th.

Q To the 20th.

Now, that's an interesting date. Why would you say the 20th?

A It wasn't the end of the month because that was Christmas.

Q Have you had a chance to discuss your testimony with the government prior to coming in here today?

A Yes, I have.

Q Has the government asked you to say that date, the 20th?

A Not that I know of.
Q Not that you know of?
A No.
Q "No" or "not that you know of"?
A I'm not sure what you are asking me.
Q I'm asking you, prior to your coming into court today, did the government ask you to specifically say the date of December 20th?
A No.
Q "No," okay.

Now, did you ever send an e-mail to the government, Mr. Scott Wanamaker, or "swana@fbi.gov" on April 23rd of 2002?
A Not to my knowledge.
Q Refresh the -- if I showed you a document, would that refresh your recollection?
A I suppose it would.

THE COURT: You may.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Why don't you show it on the screen, please. Activate the appropriate ports, please. Maybe you can make that a little clearer, if possible.

MR. SUTCLIFFE: Yes, Your Honor.

Q Is that your e-mail, Mr. Carr?
A Yes, sir, that's an e-mail I forwarded from HostOnce.
Q So I'll ask you again. Did you send an e-mail to the

government, the FBI, on April 23, 2002, which said, "Here is a message from HostOnce"?

A Yes. I didn't see the date on it, but that is the message I sent.

Q I'll be glad to put it back up there for you, if you'd like.

Do you see this message from HostOnce that you forwarded to them?

A Yes, I do.

Q And can you tell -- does that say, "The domain was on our servers" -- "evilgx was on our servers from October 2, 2001, and it was removed approximately the 30th of December"?

A Yes, sir.

Q So is it a fair statement that -- the man who was leasing this bandwidth from you, who was actually hosting the website, informed you that this website "evilgx.com" had actually been hosted on this server from October 2nd, not December 6th, up until the 30th of December and not December 20th; is that a fair statement?

A I think there was a discrepancy because they were a reseller that came to us in that month, so if they were hosting it prior to coming to us.

Q But they were the host, so they would be in a better position to know when this website was being hosted on their server; right?

A "evilgx.com" was their customer.
Q Right. It was their customer?
A Yes.
Q You requested them -- didn't the FBI request information from you as to when this was hosted?
A Yes.
Q And is this not the information you forwarded to the FBI?
A Yes.
Q Does it not say that the website was put on the servers on the 2nd of October 2001?
A Yes, sir.
Q Does it not say that it was removed approximately December 30th?
A Yes.
Q Okay. Now, you testified that you got a flood of calls; is that correct?
A Yes.
Q And these all came in in one-day between a six- and seven-hour period; is that your testimony?
A As far as I can remember, yes.
Q Do you recall what day that was?
A No, I do not.
Q All these employees, were they the same voice?
A Same voice?
Q Same -- did they sound like repeat calls?

A No.
Q Did you take the calls?
A Yes.
Q And did you write down what they were complaining about for notes for yourself?
A Yes.
Q Did they only complain about the social security numbers?
A That was the complaint I remember.
Q Did you -- were you interviewed by the FBI on December 28th?
A Of 2001?
Q Yes.
A You mean over the phone or in person?
Q Either.
A Not that I can remember. Definitely not in person. Maybe over the phone.
Q Maybe over the phone?
A Yes.
Q Do you recall a conversation you had over the phone with the FBI?
A No, sir. Not specifically, no.
Q No recollection, okay.
If I showed you a document, would it refresh your recollection?
A It's very possible.

Q Okay. Do you recall this interview?

THE COURT: Wait. Make sure he finishes reading it, please.

MR. SUTCLIFFE: Excuse me.

THE COURT: Ask him if he's finished reading it, and then you can question him.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Are you finished reading that?

A Just a second, please.

Q Sure. Take your time.

A Okay. I see down to sub two.

Q I'll show you the second part.

A Okay.

Q Do you recall this conversation now?

A Yes.

Q In this interview with the FBI on December 28th, you noted that the -- you testified -- excuse me. Did you say to the FBI agent that the website had been removed prior to the service of a subpoena?

A Yes.

Q When was the service of that subpoena?

A I don't remember the exact date.

Q Could it have been December 20th?

A I do not remember.

Q Now, Mr. Carr, after this interview, you responded to the

subpoena, I assume?
A Yes.
Q And did you provide information on the owner of the website "evilgx.com"?
A I supplied the information I had, and that's where the request to HostOnce for the subscriber information came from.
Q You said you had no information on the owner or the owners of the website, so you contacted HostOnce; is that correct?
A Yes.
Q Then what did you do with that information once you received it?
A I forwarded it to the FBI.
Q Do you remember the date that you forwarded it to the FBI?
A No, sir.
Q If I showed you a document, would that refresh your recollection?
A I think it was just the one you just showed me.
Q No. That was an interview on 12-28.
A Prior to that?
Q I'm asking about, after the interview on 12-28, you provided the government, the FBI, with more information on the --
A Okay. I'll have to see.
THE COURT: Is there a Bates number on this for purposes of --

MR. SUTCLIFFE: Yes, Your Honor. 00129.

THE COURT: Mr. Sutcliffe is displaying on the ELMO machine a document with that Bates number to see if it refreshes the witness's recollection.

You can ask the witness now.

BY MR. SUTCLIFFE:

Q Do you recall sending this e-mail to the FBI?

A Yes, I believe I do.

Q And in this e-mail to the FBI -- it was dated January 4th; is that correct?

A I believe that was the date I saw on there.

Q In this e-mail, it listed the name Steven William Sutcliffe; is that not correct?

A Yes, that's what I saw.

Q And it listed the e-mail address "evilgxhr@yahoo.com"?

A I'm sorry, I didn't see that part of it.

Yes, I see that circled.

Q Okay. And it listed a phone number of 818-566-1986; is that not correct?

A I'm sorry. I couldn't capture all of that in my memory.

Q Sure. I'll show you again. Let me zoom it in for you.

Do you see the phone number right below the name Steven William Sutcliffe "evilgxhr@yahoo.com", and then it lists an address in Burbank, California, and then it has a phone number 818-566-1986. Do you see that?

A Yes.
Q Did you send that?
A Yes. That is more information that I forwarded from HostOnce.
Q Did you again send -- I'm going to show you another document, and I'm going to ask you if you sent this document.

Did you send this, an e-mail to the FBI agent in charge, on April 23rd? Again, it's a request for information, and you said "Here is the contact info" for that account, and then again it lists Steven William Sutcliffe.

MS. DUARTE: Your Honor, I object to the reading of the document. I'll --

THE COURT: Let's break down the questions.

To a limited extent, the government's objection is sustained.

He's told you that he sent the document. Do you wish to offer it into evidence?

MR. SUTCLIFFE: Yes. I'd like to offer Bates 00129 -- I'm trying to print out a copy of it right now, Your Honor.

THE COURT: That's a different document, Mr. Sutcliffe, 00129.

MR. SUTCLIFFE: I'd like them both entered, Your Honor, as --

THE COURT: Mr. Sutcliffe, on this document, there are apparently Post-it notes in someone's handwriting. That's

not part of the document. That's not part of the evidence. That can't be introduced. That can't be shown to the witness. You have to remove the Post-it notes.

MR. SUTCLIFFE: Okay.

Actually, I would rather just go with Bates 00129, Your Honor. But, for some reason, my printer is not printing here.

THE COURT: You've already showed that.

MR. SUTCLIFFE: It also had handwritten notes on it, Your Honor.

MS. DUARTE: I think he's offering it, Your Honor.

Your Honor, I don't have any objection to admission of a clean copy of 00129.

THE COURT: Okay. 00129 will be received, but it has to be a copy without your notes -- without your writings on it.

MR. SUTCLIFFE: I just ran out of paper.

So this will be next in defense order?

THE COURT: I think the next one is 235.

Is that correct, Mr. Reed?

MR. REED: Yes, Your Honor.

THE COURT: That will be received. Bates No. 00129, Exhibit 235, is received in evidence.

(Defendant's Exhibit 235 received.)

THE COURT: If you want to inquire about that, I suggest you wait for a minute while we reload the printer with

paper.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Members of the jury, I don't know if you've met Mr. Montes. He is the courtroom deputy who typically works with me in this courtroom. He was enjoying the delights of our nation's capitol recently, and it's a pleasure to have him back with us.

Now, print out the document, please.

MR. SUTCLIFFE: It's coming, Your Honor. It's blinking and flashing.

THE COURT: Mr. Clerk, Exhibit 235 has been received in evidence for your records. That's a document previously Bates stamped as 00129. It's in evidence. 235, Defendant's Exhibit.

MR. SUTCLIFFE: There you go, Your Honor.

THE COURT: You can show it now to the witness and to the jury. It's in evidence.

MR. SUTCLIFFE: Thank you.

THE COURT: It will be marked later.

Hold on a minute, please, Mr. Sutcliffe.

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: Off the record.

(Brief recess.)

THE COURT: It's now visible to the jury. You can inquire. The jury has it on its screen.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Mr. Carr, as we were discussing this e-mail that was requested -- now, this information was requested by the FBI.

Do you recall when in December that they requested this information?

A No, I don't.

Q We've heard the date December 20th. Could it have been December 20th?

A I don't have an exact date. Sorry.

Q And you don't recall the exact dates that all of these phone calls came in, either?

A No.

THE COURT: Asked and answered.

BY MR. SUTCLIFFE:

Q Now, this information here, this is what is known as subscriber information; is that correct?

A Yes.

Q So when somebody subscribes to the website, they are requested to provide information?

A I don't know that specifically. This is an e-mail that I forwarded to the government from HostOnce.

Q And these are all the details that were included, such as the name, the e-mail address "evilgxhr" belonging to this name and this mailing address and this phone number; right?

A Yes, that's the information that I forwarded.

Q The last question I have for you is -- I'd like to show the -- we can take this off the screen, Your Honor.

I'd like to show you a document, and I'd like to ask you a question about this document. I'd like to know if you've ever seen this document prior to today?

THE COURT: Show it to him.

MR. SUTCLIFFE: Thank you.

Q Have you ever seen this document, or anything similar to this document, a stipulation from the government requesting you to enter into a stipulation to certain facts?

A Not that I recall.

Q Have you ever been faxed a stipulation from the government that asked you to testify that between December 6th --

MS. DUARTE: Objection to reading this.

BY MR. SUTCLIFFE:

Q -- and December 20th --

MS. DUARTE: Asked and answered.

BY MR. SUTCLIFFE:

Q -- you were hosting --

THE COURT: Okay.

MR. SUTCLIFFE: Your Honor, I'd like to be able to finish my question.

THE COURT: Sometimes a question is so facially improper, that the person asking the question is not entitled to complete it.

This is not even what you purported it to be. He wasn't asked anything in this stipulation. It's improper to read its contents into the record by framing them as part of a question.

So the government's objection is sustained.

MR. SUTCLIFFE: Your Honor, his name is right there on the stipulation.

THE COURT: It is not a stipulation that he was asked to sign, Mr. Sutcliffe.

BY MR. SUTCLIFFE:

Q Have you ever been asked to enter into any stipulation by the government that the website was hosted only up until December 20th?

A No.

MR. SUTCLIFFE: Nothing further, Your Honor.

THE COURT: Any redirect, Ms. Duarte?

MS. DUARTE: Briefly, Your Honor.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MS. DUARTE:

Q Mr. Carr, could you explain, if you can, why the HostOnce record that we saw, which I believe is now Defendant's Exhibit 235, indicates that HostOnce actually hosted "evilgx.com" prior to the December date that you remember?

A Yes. They hosted the site prior to becoming a reseller of

our facilities and our services. So they had it prior to coming to us in December.

Q So does that mean that they actually hosted the site, but they were not renting bandwidth or room on your server from you?

A Correct.

Q So at some point did HostOnce come over and start using your server in North Carolina?

A Yes.

Q And you said that that was around the beginning of December --

A To my recollection, yes.

Q -- that they started using the bandwidth?

A Yes.

Q Prior to that time, Carolina Online was not actually supplying the bandwidth, the server to "evilgx.com"; is that your understanding?

A Prior to December, correct.

Q Although HostOnce, the company in Australia that we saw in the e-mail, they may well have been supplying that bandwidth through another provider; is that right?

A Yes, ma'am.

MS. DUARTE: If I could have just a moment, Your Honor.

Q Mr. Carr, you've testified that you don't remember

A Yes.
Q Does that help refresh your memory as to approximately when you removed "evilgx.com" from your servers?
A Yes.
Q Approximately when was that?
A Around December 20th.

MS. DUARTE: I have nothing further, Your Honor.

THE COURT: Okay. Any recross, Mr. Sutcliffe?

MR. SUTCLIFFE: Yes. Thank you.

RECROSS-EXAMINATION

BY MR. SUTCLIFFE:
Q You just examined a document, did you not?
A Yes. I read the first part.
Q You don't have any recall, is it not true, of the date that the website was removed?
A The exact date, no.
Q But you believe that it had been removed just prior to the service of the subpoena; is that not true?
A Yes. We removed it based off the complaints, not the subpoena.
Q But you don't recall when it was -- but you weren't hosting it; isn't that true?
A I'm sorry?
Q You weren't hosting the website?
A Yes. The website was on our servers and our bandwidth.

Q It was on your bandwidth, but was it on your physical servers in North Carolina?
A Yes.
Q Why were you contacting Mr. Kontos in -- I believe he was in Australia; correct?
A To obtain the subscriber information.
Q So the subscriber information was all the way out in Australia?
A I don't know where the subscriber information was based. I just know they were our point of contact.
Q Correct me if I'm wrong, but when someone subscribes to your servers, they have to provide subscriber information; correct?
A We have subscriber information for HostOnce.
Q So you have copies of the information on your Web server.

Why did you have to contact Mr. Kontos in Australia to get the dates when the website was hosted?

A "evilgx.com" was a HostOnce customer.
Q And they are located in Australia?
A The company is.
Q Right.

So my question is, if you didn't recall what date you removed the website -- how could you not recall the date you removed the website if the website -- if you removed it based on all of these calls?

MS. DUARTE: Objection, Your Honor. That's been asked and answered.

THE COURT: Overruled.

He wants to know how could it possibly be that you forgot something.

Is that what you want to know?

MR. SUTCLIFFE: Not quite in that term, but the gist of it, yes.

THE COURT: Well, answer that question.

THE WITNESS: I'm sorry. I'm not quite clear what the question is.

THE COURT: Reframe your question, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

Q You testified that you got a flood of calls on one particular day; right?

A Yes.

Q You also testified that you had to send an e-mail to Australia to get information from a Mr. Kontos as to the subscriber information; correct?

A Yes.

Q And you asked him to turn off the site; correct?

A I know I asked him to remove the site.

Q Can you tell me -- did you have to go to Australia to have him remove the site? Did you have to contact Australia to have him remove the site on your server in North Carolina?

A Yes. "evilgx.com" was their customer.
Q But it's your server.
A Yes. "hostonce.com" is our customer.
Q But it's your server in North Carolina.
You have no control over your own servers?
A Yes.
Q You can't just flip the switch and say "off"?
A I guess I could. I just felt it was proper to contact them.
Q But you are getting a flood of calls, personal information and possible, you know, crime amiss, the FBI is calling, I mean, but you just send an e-mail saying, "Hey, you know, get back to me when you can"? You don't recall when he got back to you?
Was it pressing or not?
A The site had already been disabled. No one could view it after I disabled it.
Q So you disabled it?
A Yes, sir.
Q Okay. But you don't recall when you disabled it?
THE COURT: Mr. Sutcliffe, we have been through that multiple times. Don't keep repeating questions that have been answered, including the questions that have been answered that "I don't recall."
MR. SUTCLIFFE: One minute, Your Honor.

Q Now, Mr. Kontos said that the website was posted from approximately October 2nd to December 30th -- correct? -- in his e-mail to you which you forwarded to the FBI?
A I think that's right.
Q Do you send e-mails to Mr. Kontos regularly to see --
A Yes, I -- yes.
Q Now, between October 2nd and this day of the flood of calls, had Mr. Kontos ever said, "Hey, gettin' all kinds of complaints about this website"? Has he ever sent you an e-mail saying that?
A No, not to my knowledge.
Q Did he ever send an e-mail saying, you know, "I got a call from the FBI today," prior to this flood of calls?
A Mr. Kontos?
Q Yes.
A No.

MR. SUTCLIFFE: Nothing further, Your Honor.

MS. DUARTE: Nothing further.

THE COURT: Thank you, Mr. Carr. You are excused. You may go about your business.

Please call your next witness.

MS. DUARTE: Your Honor, the government calls Mr. David Johnson to the stand.

DAVID JOHNSON, GOVERNMENT'S WITNESS, SWORN

THE CLERK: Please state your full name for the

record.

THE WITNESS: David Johnson.

THE CLERK: Thank you.

THE COURT: Spell your last name, please.

THE WITNESS: J-o-h-n-s-o-n.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MS. DUARTE:

Q Good morning, Mr. Johnson.

A Good morning.

Q Where do you work?

A I work for Comcast Cable.

Q How long have you been with Comcast Cable?

A I've been there for about five years.

Q Before Comcast Cable, was there another company you worked for?

A Yes. It was AT&T Broadband.

Q And what happened between AT&T Broadband and Comcast Cable?

A There was a merger. Comcast actually bought AT&T Broadband.

Q If you could just speak up a little bit.

A Sorry. I've got a cold.

Comcast bought AT&T Broadband.

Q Approximately when was that purchased, do you know?

A That was, I think, about a year ago. About November 2002 that it was actually completed.
Q So now AT&T Broadband is a part of Comcast?
A Uh-huh.
Q Before you worked for Comcast, did you work for AT&T Broadband?
A Yes.
Q What is it that you do with Comcast?
A I'm a team lead for the Network Abuse Team.
Q What does a team lead for that team do?
A We perform functions of monitoring and observing and enforcing the "acceptable use" policy, assisting law enforcement agencies, responding to legal requests. Essentially, those kinds of things.
Q All right. And what kinds of services does Comcast provide?
A Comcast provides cable TV, high-speed Internet, and telephony services.
Q Does your job as a team leader, in doing what you have just described that you do, cause you to be familiar with the records generated and kept by Comcast?
A Yes.
Q Does this include the records that were generated and kept by AT&T Broadband?
A Yes.

Q Are you familiar with the Internet access aspects of Comcast service?
A Yes.
Q Are you familiar with the records associated with that access?
A Yes.
Q Are you familiar with the term "IP address"?
A Yes.
Q Are you familiar with records that contain IP addresses?
A Yes.
Q When a user initially signed up for AT&T cable modem service, and let's talk about the time period back in early 2002, did it assign the user a particular IP address?
A Yes.
Q Would you explain that just a little bit?
A When a customer comes aboard or signs up for a service and they bring their computer online and register it, the modem and the computer behind the modem obtain an IP address.
Q Does that IP address change?
A It can.
Q Could you explain what you mean by that, just briefly?
A Okay. They -- we assign IP addresses using DHCP.
THE COURT: Using what?
THE WITNESS: A protocol called "Dynamic Host Configuration Protocol."

BY MS. DUARTE:

Q That's also known as DHCP?

A DHCP.

Q Okay. So you assign an IP address. And then under what circumstances might that IP address change?

A If the computer is turned off for a length of time, the IP address could then go back to be freed up and leased to another device.

Q By "computer being turned off," do you mean the high-speed Internet connection would then be severed?

A Essentially, between the computer and the service, yes.

Q Now, what if a computer user uses his computer or her computer fairly regularly, like three times a week?

A The likelihood of them keeping the same address is very high.

Q What about more often, like every day?

A Very, very likely.

Q So it's likely that that user would be assigned, initially, an IP address and then maintain the same IP address throughout the period of their use?

A Yes.

Q In back of you, there is a big binder. If you could pull that binder out, I'm going to ask you to take a look at Government's Exhibit 32, first.

Let me know if you have seen those documents before.

A Yes.
Q Just, in general, what are the documents in Exhibit 32? What do they show?
A These are screen shots of our customer billing system.
Q By "our customer billing system," do you mean Comcast's?
A Yes.
Q Are these documents that are pages 1 through 4 of Exhibit 32 made in the ordinary course of Comcast's business?
A Yes.
Q Who creates these documents that are pages 1 through 4?
A Mostly technical support reps or customer service representatives.
Q Technical support representatives or customer service representatives?
A Same difference. Yes.
Q That work for the company Comcast?
A Uh-huh.
THE COURT: Does that mean "yes"?
THE WITNESS: "Yes."
BY MS. DUARTE:
Q When are these documents created, in general?
A Usually, in the course of creating or working on an account, if there is an issue that's been reported.
Q So if something happens, it gets noted on this document?
A It could be, yes.

Q Is it right about the same time that it happened?
A Yes.
Q Is it regular practice of Comcast to maintain records such as you see in Exhibit 32?
A Yes.
MS. DUARTE: Your Honor, move to admit Exhibit 32.
THE COURT: Okay. 32 will be received. It's in evidence.
(Government's Exhibit 32 received.)
BY MS. DUARTE:
Q I ask that port 1 be enabled.
Let's take a look at this record. Let's zero in on it just a little bit. Now, that's in front of you in printed form and it should also be on your monitor.
What kind of a record is page 1 that's on the monitor now?
A This is standard customer account information.
Q Does this record indicate who the account holder is?
A Yes.
Q Up there where I have underlined on the screen, is that where it indicates it?
A Yes, it does.
Q Who is the account holder for this account?
A Orly Mann.
Q Does this document indicate where the account is

physically located?
A Yes.
Q Is that the area I've circled on the screen?
A Yes, it is.
Q Where is this area -- where is this account physically located?
A 315 East High Street, Apartment 3, Manchester, New Hampshire.
Q Is there a connection date or a start-up-of-service date on this document?
A Yes.
Q Is that in the portion that I've indicated on the screen?
A Yes.
Q What does that -- what is the date on here?
A 11-29-01.
Q November 29, 2001?
A Uh-huh.
Q What is that date? What does that mean?
A That shows the date that the call was made and the customer was connected for service.
Q I'm sorry. What was connected for service?
A The customer was connected for service.
Q What type of service does this speak to?
A High-speed Internet and cable TV.
Q But also high-speed Internet access?

A Yes, high-speed Internet access.
Q Directing your attention to page 3 of this same record, Exhibit 32 -- I'm not seeing this very clearly, I know.
Directing your attention to page 3 at entry 13 -- and I'm going to circle it up here in case anybody can actually see this -- what does entry 13 indicate?
A That actually looks like entry 15, according to what I am seeing.
Q Let's start with entry 13, what I have circled on the screen.
What does entry 13 indicate?
A Entry 13 indicates that this customer had a video and DHSD two months free, plus some additional items set up and added to his service or installed.
Q Is there a date on that?
A Yes. November 29, 2001.
Q Does that date also speak to the cable modem connection?
A Yes.
Q Now entry 15. I apologize. If you could look at entry 15.
Does that indicate when the service was disconnected?
A Yes.
Q When was that?
A March 29, 2002.
Q Directing your attention to Exhibit 31, which should be in

that binder also, if you'd look through it and tell me if you recognize it.
A Yes.
Q In looking, initially, at the first page of this document, what is the first -- what is the document that is the first page of Government's Exhibit 31?
A The first page is a screen shot from our customer provisioning system.
Q What, in general, does the screen shot show?
A This is the general customer information, and the second piece down below shows notes from a technician.
Q Is this information the same information -- or I should say, is this information here in Exhibit 31 for the same account as we just looked at in Exhibit 32?
A Yes.
Q Okay. And is page 1 a document that's kept in the ordinary course of Comcast's business?
A Yes.
Q Who would create this document that is page 1?
A A customer service representative or technician.
Q When would they create it?
A Typically, in the course of working with the customer or providing troubleshooting assistance.
Q While that was going on?
A Uh-huh.

Q Is it the regular --

THE COURT: You have to say "yes" or "no." You can't say "uh-huh."

THE WITNESS: "Yes."

Sorry about that.

BY MS. DUARTE:

Q Is it the regular practice of Comcast to keep records such as this one on page 1?

A Yes.

Q What about pages 2 through the end here of the exhibit, which actually has a 3130 notation in the right-hand corner?

What are pages 2 through the end of the exhibit?

A These are all portions of DHCP logs.

Q Now, DHCP logs, without getting too technical on us here, what do these show, in general?

A These show leases of an IP address to a specific customer.

Q These would show an IP address that was being used for this account?

A Yes.

Q Is that a fair statement?

A Yes.

Q Feel free to correct me if I'm wrong.

These logs that are pages 2 through the end, are these logs kept in the ordinary course of Comcast's business?

A Yes, for --

Q Go ahead.
A -- for a short amount of time. Yes.
Q For how long are these logs kept?
A At the time, they were kept for up to six months.
Q By "at the time," do you mean at the time that the information on this account was acquired?
A Usually, yes.
Q After they are kept for a limited amount of time, are they purged?
A Yes.
Q They are not recoverable?
A Right.
Q Is that a regular thing that Comcast does, the purging of these logs?
A Yes.
Q Let's go back to my question here.

These logs, pages 2 through the end of Exhibit 31, were kept in the ordinary course of business for a limited amount of time; is that right?
A Yes.
Q And was it the regular practice of Comcast to generate records such as these?
A Yes.
Q This is 2 through the end.

How were they generated, just in general?

A The DHCP server that issues the IP address will maintain the logs or create these logs, at which point they will be stored on another server for up to six months, at that time, and then purged.

Q So the computer actually generates these, makes these logs?

A Correct.

Q Does it make them in realtime?

A Yes.

MS. DUARTE: Your Honor, move to admit Exhibit 31.

THE COURT: 31 will be received. It's in evidence.

(Government's Exhibit 31 received.)

MS. DUARTE: Your Honor, may I have Special Agent Harrill see if he can lighten up the ELMO a little bit? I'm having some trouble with this.

THE COURT: Yes. If the clerk can help, I would authorize him to do so.

MS. DUARTE: It's not critical, Your Honor. If it takes more than another minute, I'll just talk through them.

Q I've put up on the screen the first page of Exhibit 31, and you can follow along on your printed version if it's easier.

What does this first page show? Does it show an account holder again?

A Yes.

Q And this is the Orly Mann that we have seen previously on this account?
A Yes.
Q Does this also show any kind of an identifying feature or address for the computer?
Let me go ahead and move it up a little bit here.
A On the bottom portion of the page, it shows the MAC address of the computer.
THE COURT: The which address?
THE WITNESS: The MAC address.
BY MS. DUARTE:
Q MAC, M-A-C?
A Yes.
Q All caps?
A Yes.
Q I won't ask you what that stands for.
A Okay.
Q Without getting too technical, what is the purpose of assigning a MAC address to this account?
A The MAC address actually is the single identifier for a PC or a computer device, and that is essentially what ties a computer to an IP address at a given time.
Q Does that MAC address actually correspond to hardware in the user's computer?
A It does.

Q So this would be the identifier for the computer that was now signed up with your service?
A Exactly.
Q And looking at the second page here of Exhibit 31, we see a whole bunch of numbers and things.

What, if anything, does page 2 tell you about the IP address assigned for this particular MAC address?
A It correlates the two. It says that the hardware address of the device is -- correlates with the IP address that was given to it of 24.61.143.206.
Q 24.61.143.206?
A Yes.
Q That's the address I've circled up on the screen?
A Yes.
Q Now, pages 3 to the end of this exhibit contain a number of entries. I'll go ahead and zero in on a little bit of it here.

We see with some consistency this IP address here that I'm underlining. What does that indicate? Are these numbers all the same?
A Yes, they are all the same.
Q What does that mean?
A It indicates that the device with the same hardware address requested and received the same IP address throughout these time frames that are recorded in the logs.

Q What time do these -- what time frame do these records cover, these records that are Exhibit 31, the remaining pages?
A They cover the period of February 1, 2002, to March 22, 2002.
Q Do they show that this computer identified by this MAC address and this subscriber information was consistently assigned the same IP address that we see throughout the records?
A Yes.
Q Now, you said that the time period that the records show begins in February 2002?
A Yes.
Q And were there any records available before that time for this computer and this IP address?
A No.
Q Was that per the regular purging of the records?
A Yes.
Q So do you know whether or not -- this same IP address that was originally assigned in November and that we see being used from February on, do you know whether or not for sure that was the same IP address being used in the interim?
A No.
Q Could it have been the same?
A It could have been the same.
Q Could it have been different?

A It could have been different.

MS. DUARTE: Could I have just a moment, Your Honor?

I have nothing further at this time, Your Honor. Thank you.

THE COURT: All right. Your turn, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SUTCLIFFE:

Q Good morning, Mr. Johnson. How are you doing today?

A All right.

Q Just a couple of questions, Mr. Johnson.

24.61.143.206 is what we've been discussing, that IP; correct?

A Yes.

Q 24.X.X.X, in computer lingo, meaning -- the "24," the first series of numbers on an IP, that belongs to a block of IPs; right?

A Uh-huh. That's correct.

Q So that block of IPs would belong to, in this case, AT&T?

A Correct.

Q So anything with "24-dot" is AT&T?

A Essentially, yes.

Q Okay, good enough.

Now, we also talked a little bit about logs. And in the course of these logs, the government touched upon the fact

that every six months or so they are purged; correct?
A Right.
Q To your knowledge, do you have -- does AT&T or Comcast have any knowledge of any logs available for any dates between January and March 29th of disconnect and connect times from that cable modem?
A Not to my knowledge.
Q To your knowledge, does Comcast or AT&T have any logs available for locations of that cable modem between January and March of 2002?
A Locations of the actual cable modem device as to who -- which customer may have had it at that time?
Q Well, the IP address. I'm speaking specifically to the IP address.
A Okay. To the IP address, not to my knowledge.
Q And are you familiar with SpamCop?
A Yes.
Q Can you tell the jury what SpamCop is?
A SpamCop is one of the companies that is used for locating and identifying persons who are sending spam. They are an anti-spam measure, essentially.
Q Correct me if I'm wrong, basically, if someone sends you an e-mail and says, "Hey, I'm going to kick your ass, personally," you could put that e-mail into SpamCop and SpamCop would trace it back from where it came; correct?

A Theoretically, yes.
Q If somebody from a 24-dot IP address sent an e-mail to the president of AT&T and said, "Hey, AT&T, if you don't lower your rates, I'm personally going to kick your ass," part of your job would be to utilize SpamCop and trace that IP back -- right? -- and see if it's one of your users?
A You could.
Q That's right. Okay.
And you said you also enforced the "acceptable use" policy; is that correct?
A Yes.
Q That's like a terms of service?
A Yes.
Q If you come there and you don't agree to your terms of service, you are out; right?
A Essentially.
MR. SUTCLIFFE: Nothing further, Your Honor.
THE COURT: Anything further?
MS. DUARTE: No, Your Honor.
THE COURT: All right. Thank you, Mr. Johnson. You are excused. Hope your cold gets better real quick.
THE WITNESS: Thank you.
THE COURT: Please call your next witness.
MS. DUARTE: The government calls Mark Bishop to the stand.

MARK BISHOP, GOVERNMENT'S WITNESS, SWORN

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Mark Robert Bishop, B-i-s-h-o-p.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MS. DUARTE:

Q Good morning, Mr. Bishop.

A Good morning.

Q Mr. Bishop, where do you work?

A About Web Services in Orem, Utah.

Q About Web Services?

A Yes.

Q That's in Utah?

A That's right.

Q How long have you been with About Web Services?

A Going on four years.

Q What is it that you do with About Web Services?

A I'm the vice president of operations and network.

Q What kind of company is About Web Services?

A We are a hosting provider. We host over 3 million websites.

Q Has your job, which you've described as the vice president of -- of what?

A Operations.

Q -- of operations at About Web Services, caused you to be familiar with the records kept and generated by that company?
A Absolutely.
Q If you will look in the binder right in back of you at Exhibit 37, first. I'm going to ask you if you recognize that.
A The big one here?
Q Yes. Thank you. It should be a blue tab.
A Yes.
Q Have you seen those documents before?
A Absolutely.
Q Specifically, as to pages 1 and 2 of Exhibit 37, what type of document is this?
A This is -- we call it like a sign-up screen. It's the information that is given to our system as people sign up. We collect everything, from the user name and the e-mail address provided and the IP address of where they are coming from, the name of the site that they are building.
Q So pages 1 and 2 contain information collected by About Web Services?
A Yes.
Q Who inputs the information?
A The person signing up for the site gives us most of the information. Some of this stuff is generated by the computer, like the time and date that the site was set up.
Q And that information comes in at the same time that the

site is being set up?
A That's right.
Q And pages 1 and 2, is this a record that you recognize from your work with About Web Services?
A Yes.
Q And is it kept as part of the normal practice of About Web Services --
A Yes.
Q -- in the ordinary course of business?
A Yes.
Q Turning your attention to page 3, what is page 3 of this exhibit?
A This is what we call a "brimstone" -- or a site that's been removed from public access. The top line is a query we run just to find out if this site was on our system and why it was removed.
Q Does this record, which is page 3, contain the information about the removal of the site?
A Yes. It was noted here by --
Q Without actually telling me yet what's in the record -- because we are going to do that in a minute -- is this a record that's kept by About Web Services in the ordinary course of its business?
A Yes.
Q And you are familiar with this record?

A Yes.
Q And this record that is page 3, does this record go to the same account as pages 1 and 2?
A Yes.
Q Who creates this record that is page 3, just in general?
A Our abuse clerk. When a site is removed, a record is made automatically in the system as to why it was removed.
Q And that information is input by the clerk?
A Yes.
MS. DUARTE: Your Honor, move to admit Exhibit 37.
THE COURT: Okay. 37 will be received. It's admitted.
(Government's Exhibit 37 received.)
MS. DUARTE: Thank you.
Q I'm going to look at this record for just a minute. First, I'm going to focus you in on the top here.
What website or site is this record for, Mr. Bishop?
A The website is called "evilgx.freeservers.com".
Q What's the significance of the "freeservers"?
A Freeservers is a domain that we own, and then we sell or -- most of them are free sites that we allow people to sign up for so they can append their own name to the front of ours, basically.
Q Are these sites -- these freeserver sites, are they bannered?

A Yes. If they are free, they are bannered.
Q What does "bannered" mean, just briefly?
A It means that we present advertising on those pages, a little box at the top that says, you know, "Come buy something" or "click here," that type of thing.
Q Might it also say "freeservers" on it?
A Yes. We also have "banner treatment," we call them, that says "freeservers" on it.
Q And the banner "freeservers" would indicate to you that that Web host -- excuse me, that that website that bore the banner was hosted by your service?
A Yes.
Q Moving a little further down in this record and zeroing out a little bit, we see some information.

This user name here I'm circling on the screen, who inputs this information?
A The e-mail user name is inputted by the person signing up for the account.
Q Okay. Is this information checked or verified in any way by About Web Services?
A No.
Q What about here, "name: Gary," what is that?
A That's just the name that people -- somebody puts in that field. So, once again, it's an unverified field that somebody -- the user signing up for just puts that name in

there.
Q Then a little bit below it, "password: Greenwood," is that also chosen by the user?
A Yes.
Q All right. Then looking at the setup date here, what does that represent that I've circled on the screen, "2002 2-25"?
A That would be February 25, 2002, at 3:14 p.m.
Q That would be when the site was set up?
A That's right.
Q Directing your attention to page 2 of this exhibit here, at the top, what does -- this information up here that I have circled, "set up IP," what does that indicate?
A That's the IP address of where the person was coming from that set up the site.
Q How is that IP address captured? Is that manually inputted or is that captured by your computer system?
A It's captured by the computer system.
Q Now, on page 3 of this same record -- what did you call this record again that is page 3?
A I call it a "brimstone" record.
Q What does this indicate about the date the site was removed?
A It was removed on the 28th of February 2002.
Q Now, Exhibit 38, which should also be in front of you and should be the next exhibit, do you recognize this exhibit, 38?

A Yes. It's a sign-up.
Q Pages 1 and 2, are they similar to pages 1 and 2 of 37 that we just saw?
A They are similar.
Q By "similar," I should ask you, are they also a business record such as the kind you've talked about in Exhibit 37?
A Yes.
Q What -- and page 3 -- is that similar to page 3 in Exhibit 37 that you've discussed?
A Yes.
Q Is that also a "brimstone" record --
A Yes, it is.
Q -- like you've talked about?
A Uh-huh.
Q Pages 1 through 3, do you recognize them as business records of About Web Services, Inc.?
A Yes.

MS. DUARTE: Your Honor, move to admit Exhibit 38.

THE COURT: All right. 38 will be received. It's in evidence.

(Government's Exhibit 38 received.)

THE COURT: When you refer to the pages, like pages 1, 2, and 3, you are referring to the handwritten entries on the bottom right-hand side?

MS. DUARTE: Correct.

THE COURT: Because there are others as well.

MS. DUARTE: Yes. The handwritten entries, bottom right.

THE COURT: Okay. Exhibit 38 is in evidence.

BY MS. DUARTE:

Q We see here on the screen page 1. Again, this speaks to -- is this the website name?

A Yes.

Q Who picks that name?

A The person signing up for the site.

Q Moving down a bit, we have the "password: Greenwood" again for this account.

What is the setup date?

A That would be March 3rd of 2003 -- 2002, excuse me.

Q March 3rd of 2002?

A That's right.

Q On page 2, at the top, there is a setup IP address indicated for this account.

A That's right.

Q What is that setup IP address?

A 24.61.143.206.

Q Page 3 of Exhibit 38, what does page 3 show about this site?

A It was removed on March 4th of 2002.

Q Look, if you will, at the next exhibit. That is

Exhibit 39. Have you seen that exhibit before?
A Yes. It's the same as the previous two -- or similar to the previous two.
Q By "similar," do you mean that these are also business records maintained by About Web Services, Inc.?
A Yes.
Q What is the site that -- these records contained in Exhibit 39, pages 1 through 3, what is the site that these records are for?
A "evilgxhr.freeservers.com".
MS. DUARTE: Move to admit Exhibit 39.
THE COURT: Okay. 39 will be received. It's in evidence.
(Government's Exhibit 39 received.)
BY MS. DUARTE:
Q Exhibit 39, page 1 is up.
Is this the Web address that you just read to us, "evilgxhr.freeservers.com"?
A It is.
Q And we go down here to the user name, "Richard Saly." Now, this name wouldn't have been verified; correct?
A No, it would not have been.
Q And then the same, "password: Greenwood."
And directing your attention all the way to the bottom here, we've got a setup date.

A Right. That's --
Q Go ahead. What's the setup date on that?
A March 4th of 2002.
Q On page 2 of Exhibit 39, is there a setup IP address?
A Yes.
Q What is that IP address?
A 24.61.143.206.
Q Page 3 of this exhibit, Exhibit 39, what does this page 3 show about when this site was removed?
A It shows that it was removed on March 4th of 2002.
Q Exhibit 40 is also up there in front of you.
What is Exhibit 40?
A It's similar to the other three we've talked about.
Q Is it also a business record maintained by Above Net?
A About Web Services. Yes.
Q About Web services.
Did you also, at one time, go by "Above"?
A Our equipment is hosted in a facility in San Jose, and the company name is About -- excuse me. The company name is Above Net.
Q So Above Net hosts -- as long as we are on that topic -- Above Net hosts your server?
A Yes. They are the building providers.
Q That's located where?
A San Jose.

Q California?
A Uh-huh.
Q So when you host -- when About Web Services, Inc., hosts a website, where is that website physically located?
A It's physically located in San Jose, California.
Q Exhibit 40 again you said is a business record.
What is this record to, what website?
A "thisistooeasy.freeservers.com".
Q "thisistooeasy" -- all one word -- ".freeservers.com"?
A Yes.
Q And do you also recognize these pages, 1 through 3, of Exhibit 40 as business records similar to the manner in which you recognized the earlier exhibits?
A Yes, I do.
MS. DUARTE: Move to admit Exhibit 40.
THE COURT: All right. 40 will be received. It's in evidence.
(Government's Exhibit 40 received.)
BY MS. DUARTE:
Q We're looking at the top again of page 1 of Exhibit 40, and I've circled "thisistooeasy.freeservers.com".
Is that the name that you just read?
A Yes, it is.
Q What is the setup date?
A The setup date is March 4, 2002.

Q If you could turn to page 2 and read what the setup IP address is for this account.
A 24.61.143.206.
Q Page 3, when was this site removed?
A This one was removed April 1st of 2002.
Q Lastly, drawing your attention in front of you to Exhibit 41, have you seen Exhibit 41 before?
A I have.
Q What is Exhibit 41?
A These are records kept in the normal course of business describing a site on our system called "evilgx.cyberbree.com".

MS. DUARTE: Your Honor, move to admit Exhibit 41.

THE COURT: 41 will be received. It's in evidence.

MS. DUARTE: Thank you.

(Government's Exhibit 41 received.)

BY MS. DUARTE:
Q I've put page 1 of the record that you just described on the screen. This is Exhibit 41. I'm going to go down to the bottom and ask you what the setup date is on this website.
A It's March 4, 2002.
Q From what IP address was this website set up?
A 24.61.143.206.
Q Last of all, on page 3, when was this website removed from your servers?
A April 1st of 2002.

MS. DUARTE: May I have just a moment, Your Honor?

THE COURT: Yes.

MS. DUARTE: I have nothing further at this time, Your Honor. Thank you.

THE COURT: All right. Thank you.

Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SUTCLIFFE:

Q Good morning, Mr. Bishop. How are you doing today?

A I'm good. Thank you.

Q I have just a couple of questions for you.

These exhibits you have just been shown regarding these sites and there was some talk about this IP address 24.61.143.206, can you tell the jury where this IP address was located when the accounts were set up?

A I would have to look it up. I don't know.

Q What do you mean you would have to look it up? How would that tell you where the computer was located?

A There is a service on the Internet called ARIN, A-R-I-N, dot-com -- or dot-net, excuse me. It's the -- I think it's the American Registry for Internet Numbers. And that is a U.S. registry of all IP addresses, who owns them, who is responsible for them.

Q For instance, the "24-dot," whatever, would tell you that

this block of IPs belongs to, like, AT&T?
A Correct.
Q Okay. But my question is, how would you go about -- my original question was, how could you tell where the computer or the user of that IP address was located when these accounts were set up?
A As a provider, I couldn't.
Q It could be anywhere?
A Sure.
Q Also, you testified something about an "abuse clerk." That's a bad title; that's a rough title.

What kind of abuse -- you don't abuse them, I assume. They handle abuse complaints, things of that nature?
A Yes.
Q Now, in these exhibits, I'd like to show you -- you were talking about Exhibit 37. I'm going to show you specifically page 3 that the government has entered.

Would you enable that port, please. Thank you.

Do you recognize -- this is page 3 of the exhibit you were just shown?
A Yes.
Q And could you tell -- what is the reason that the website was removed?
A It says this was removed for copyright violations.
Q It wasn't a threat or any fraud or anything like that;

right? No complaints about that?
A I don't think the reason is conclusive. But, yes, that's --
Q That was the official reason --
A Yes.
Q -- some kind of alleged copyright violation?
A Yes.
Q And Exhibit 38 -- I'll show you the same page -- "winnick.servers", and the reason it was removed again?
A It's listed as "Copyright, Global Crossing."
Q Right. So there was an allegation of copyright violation. Okay.
Exhibit 39, was that also --
A The same, copyright violation.
Q And Exhibit 40, under this "freeserver," it was listed as -- what was the reason it was removed?
A Copyright violation.
Q Again, for the "cyberbree" on April 1st?
A A copyright violation.
Q This time it says "copyright" and then it says "FBI." That's the only difference that I've seen. Okay.
These fields that people fill out when they register these freeservers, they could pick anything they want; right?
A Yes.
Q There is no law in America against picking -- I could be

the Honorable A. Howard Matz if I wanted to; isn't that correct?

A Yes.

MS. DUARTE: Objection. Irrelevant.

THE COURT: Overruled.

BY MR. SUTCLIFFE:

Q I could register the website as the Honorable A. Howard Matz dot-freeservers dot-com; correct?

A You could.

Q It's not against the law in America, is it?

MS. DUARTE: Objection, Your Honor.

THE WITNESS: I don't know about the law.

BY MR. SUTCLIFFE:

Q It's not against the law --

A I mean, to be truthful --

THE COURT: Wait, wait. Please let the party, Mr. Sutcliffe, finish his question before you begin to answer. If he's begun to answer, don't interrupt him.

Now, start again, please.

BY MR. SUTCLIFFE:

Q It's not against your terms of service to use that name; right?

A No.

Q Or your "acceptable use" policy?

A No.

MR. SUTCLIFFE: I have nothing further, Your Honor.

THE COURT: Anything further, Ms. Duarte?

MS. DUARTE: No questions, Your Honor.

THE COURT: Okay. Please call your next witness.

MS. DUARTE: The government calls Mr. Monte White to the stand.

THE COURT: Members of the jury, do you want me to see if I can raise the temperature a little in the courtroom? Some of you seem to be a little uncomfortable. Am I correct?

I'm getting affirmative answers.

MONTE WHITE, GOVERNMENT'S WITNESS, SWORN

THE CLERK: Please state your full name for the record and spell your last name.

THE WITNESS: Monte White. The last name is spelled, W-h-i-t-e.

DIRECT EXAMINATION

BY MS. DUARTE:

Q Good morning, Mr. White.

A Good morning.

Q Mr. White, where do you work?

A I work for Intercosmos Media Group and we are the owners of "directNIC.com" in New Orleans, Louisiana.

Q What do you do with that company? What is your job?

A Customer support manager.

Q What kind of company is directNIC?

A DirectNIC is a domain registrar. We register domain names and also provide hosting and e-mail hosting websites.
Q By "domain name," you mean the name of the website?
A Correct. Something dot-com.
Q So you also provide -- in addition to registration, you provide Web hosting services?
A Correct. We offer free Web hosting with ads that we place on there, and we also offer paid banner-free hosting.
Q By "banner-free," you mean without the ads?
A Correct.
Q What service -- as a registrar of domain names, what service do you provide? What is that?
A As far as the actual registration, if someone wants to register their domain name, they come to us and they pay for it, $15 per domain per year.
Q That's fine.
So the registration goes for about a year?
A Yes. You can get it from one to ten years.
Q And you charge a fee for your services?
A Correct. $15 per domain per year.
Q Now, if a website is registered with directNIC, must it also be hosted by your company?
A No. You can host it with whoever you want. You just have to change the name servers. A lot of people will host it with us, but it's not required. They can host it wherever they

want.
Q In your capacity with doing what you do at directNIC, are you familiar with the records kept and generated by that company?
A Yes. That's one of the things that I deal with quite a bit is, when people have problems, they call our support department, so we have to know pretty much what the records are for the domains.
Q So you spent a lot of time with the records?
A Yes.
Q Directing your attention to that binder behind you, it's kind of a fat black binder. If you could pull that. If you look at the blue tabs, I'm going to be asking you to look at Exhibits 42 and 43 this morning.
If you could first look at Exhibit 42.
A Okay.
Q Take your time. Take a look at it.
A All right.
Q There are four pages to this exhibit; is that correct?
A Yes.
Q Do you recognize these four pages?
A Yes. The first page is the "WHOIS" information records that are listed with the domain. Pages 2 and 3 are records that we keep in our back-end system, meaning that the general public doesn't have access to it. That would just be in our

database that we have access to. And then the fourth page would be an invoice for banner-free hosting.

Q What website or what domain name are these records for?

A "evilgx.com".

Q Is that true for all four pages of the record?

A Yes.

Q Are these records kept in the ordinary course of directNIC's business?

A Yes. We would keep records such as this on all domains that are in our system.

Q Is that a regular practice to keep these records?

A Yes.

Q Who creates these records?

A The information that is listed here would have to be entered by the customer or the account owner, someone with access to that account. They would have to be the ones that would put in the information.

Q Would that information be input at or near the time that the service being sought was requested?

A More than likely. It depends -- over a period of time, I mean, we would keep that information in there, but usually it's entered around the time when that service is purchased.

MS. DUARTE: Your Honor, move to admit Exhibit 42.

THE COURT: All right. 42 will be received. It's admitted.

(Government's Exhibit 42 received.)

BY MS. DUARTE:

Q Look at pages 2 and 3, first, of this exhibit.

A Okay.

Q Tell me what these pages are, 2 and 3.

A Okay. Pages 2 and 3, this is the information that we have in our back-end system that we use. As I mentioned before, this would be information that just we see as the registrar.

Q Let me stop you for a minute and ask that port 1 be enabled, please.

Now, we have on the monitor page 2 of this exhibit that you are looking at, which is Exhibit 42.

Now, you were saying that these records go to the sign-up for the domain name; is that right?

A This would be the account sign-up. This information would have been entered when the account was actually established.

Q Does this record indicate when that was, when the account was established? You may have to look at page --

A I believe it's on page 3. The registration information was -- this was on 9-20-2001.

Q Let me just pull it up here on the monitor and circle it so we can all look at that here.

So this information that we're looking at, which is page 3 of Exhibit 42, this indicates -- what was the -- I'm sorry, what was the registration date for this account?

A 9-20-2001.
Q When did it expire?
A 9-20-2002.
Q As long as we are on this page, just look a little bit further down here. These registration contacts, "Owner: S. Sutcliffe, Admin: S. Sutcliffe," who would this information have been entered by again?
A It would have had to have been entered by someone who has access to the account, meaning the user name and password.
Q At the time of the sign-up?
A It could have been entered at the time of the sign-up. It could have been entered later than that. We allow people to set up different contacts within a single account.
Q Those would be reflected on the same record?
A Correct.
Q Here, the owner information, "Richard L. Weatherman," this also would have been input by one of your customers?
A Yes. It would have been input by someone who has access to the user name and password.
Q Now, page 1 of this record, which is Exhibit 42, what is this record that we're looking at here?
A This is the "WHOIS" information, which is with that domain, all the contact information, the name server information, the creation date, the expiration date. And this is required by iCan!. All domains have to have this

information.
Q When was this record last updated? I'm drawing your attention to the bottom of the screen.
A On -- for this, it says it was last updated on February 20, 2002.
Q And again we see the created date. That's actually the date that the site was signed up with you; correct?
A Correct.
Q But this is the February 20, 2002, update?
A Yes.
Q Let's go back up here at the top.
Here we have the registrant, "Law offices in Burbank"?
A Correct.
Q And for administrative contact, we see "S. Sutcliffe"?
A Correct.
Q Page 4 of this record -- what is page 4 of this record now on the screen?
A This would be an invoice for banner-free hosting that would have been set up by someone that has access to the account.
Q By "banner-free hosting," does that indicate that directNIC was actually hosting this website?
A Yes. It would have to be on our name servers for it to -- to purchase banner-free hosting.

Q Drawing your attention to the date up here, "10-10-2001," what does that date represent as to this record?
A That represents the date that the banner-free hosting was purchased. So the domain would have had to have been on our name servers on 10-10-2001. That's the date that the banner-free hosting was purchased.
Q And the "Richard Lee Weatherman" is the billing?
A That is the account holder -- or the account that it was set up under.
Q This remote IP address here, what is that? That's 24.160.57.210. What does that represent?
A That is the IP address that the banner-free hosting was purchased from.
Q Was there a fee charged for this banner-free hosting?
A $15.
Q Exhibit 43, which is also in front of you, I'll have you take a look at that. I'm going to ask you if you have seen it before?
A Yes, I have.
Q What is in Exhibit 43, just in general?
A These are records that we keep for our in-house use. These will show problems that a customer may have had. These are upload records, for the most part, it looks like. You can -- once you pull it up -- it's FTP records.
Q Are these logs of activity --

A Yes.
Q -- on a website?
A Yes. These are logs that we keep that help us diagnose problems. If someone would call and they are having problems with their website, these are records we keep where we can kind of figure out what has gone wrong.
Q And what records -- these records in Exhibit 43, what website are these for? Is that the same website as Exhibit 42?
A Yes. "evilgx.com".
Q Are these records that are Exhibit 43 kept in the ordinary course of directNIC's business?
A Yes.
Q Is it the regular practice to keep records like this?
A Yes.
Q Who inputs them?
A They get kept by our system. So if someone is attempting to upload to our servers, to their website, and they have problems, our system automatically keeps a record of those problems that they've had. So it's just an in-house thing we do.
Q Is it made in realtime?
A Yes.

MS. DUARTE: Your Honor, move to admit Exhibit 43.

THE COURT: Okay. Exhibit 43 will be received. It's in evidence.

(Government's Exhibit 43 received.)

BY MS. DUARTE:

Q Putting up page 1 of this exhibit so we can see what it looks like, here we have a series of code and this is accompanied by dates, which is the second column over on the monitor?

What do these dates represent?

A Those would be the dates where there were attempts to upload to the site. Those would have been the actual time that these problems were encountered.

Q Does directNIC keep logs such as this? In other words, do these logs reflect the successful uploads to the website?

A No.

Q Would you explain that to me, please?

A Okay. The amount of traffic we have for us to keep actual data on all successful ones would be enormous, so we only keep the ones where there is failures. And the reason we do that is so if people have problems, it's easier for us to diagnose what the problem is.

Q Okay. So these logs that are Exhibit 43, these are a record of failed uploads; is that right?

A Correct.

Q And this column here, under account, "FTP" is indicated numerous times.

A Yes.

Q Is that the manner in which these failed attempts were being uploaded?
A Yes. It is a -- File Transfer Protocol is what "FTP" stands for. That is how data gets moved from the hard drive to our servers.
Q So data would be moved by FTP from the user's computer to your servers?
A Correct.
Q And where are your servers located?
A New Orleans, Louisiana.
Q Were they located in that same state, Louisiana, back in 2001?
A Yes.
Q And they've been consistently located there?
A To start with, they were in Phoenix, Arizona, at one point and then they were moved to New Orleans, Louisiana.
Q My fault. I should said since 2001.
A Yes. Since 2001, they have been.
Q Been in Louisiana?
A Yes.
Q We looked at this "dates" column, the FTP, and then the date. I'm going to move this over so that we could see the rest of this list. It looks like we have a column to the far right, on page 1, which contains a great deal of writing here.
What do these notations that I'm putting marks next

to represent?
A Those would be the actual problems that were encountered. It's a comments field that lets us know that there was a problem.
In this case, the file size was bigger than we allow for our regular free hosting.
Q I've circled several examples of this where it says, "Exceeds user's maximum file size." Is that the column you are referring to?
A Yes. You can see -- if you look even farther to the right, you can see the actual file size. You'll see, for example, at the top, the -- or the one that you just circled, the 980 and 956 bytes, is bigger than the allowed file size, which is just over 200,000 -- 200K.
Q Is there a reason that that file size was limited? In other words, are there ways to allow bigger files to be uploaded to the server?
A If you purchase banner-free hosting, then the file size, we allow much bigger files.
Q Is that banner-free hosting that you described similar to what we saw was purchased in the previous record --
A It's exactly what was purchased, yes.
Q -- on October 10th?
A Yes.
Q All right. Now, directing your attention to the same

records on page 3, I'm going to put these up so we can see them.

Here, we have yet another page of what we saw in page 1; correct?

A Right.

Q Now, the dates here, we see the last two -- we see the last two dates at the top -- and I'm drawing them in this column over -- to be 10-10-2001.

A Correct.

Q Are these also failed uploads?

A Yes.

Q And then we skip to 10-25-2001. Do you see that?

A Yes.

Q Now, by these records which are Exhibit 43, are you able to tell during what time period directNIC hosted the website "evilgx.com"?

A Yes. Because of the failed FTP, you can tell that it was hosted there during -- let's see. Where does it start? It looks like 10-1-2001 is the first record we have.

Q Let me just go back to page 1.

When you say "10-1-2001" --

A That's the very first one.

Q This would be the first record of a failed upload; correct?

A Correct.

Q So from at least that time period you were hosting?
A Correct.
Q What about the end? What do these records indicate about the time that the hosting was stopped?
A On 10-25-2001, it would have been hosted with us and it would have been deactivated because of a temporary restraining order.
Q I'm going to go back to page 3 so we can see what you are looking at here.
A Okay.
Q From these records, you can tell that the site was deactivated on 10-25 --
A Right.
Q -- October 25th.

And was there a time when it was reactivated?

A Yes. Let's see. It looks like it was changed from TOS back to active on --
Q Does that -- go ahead.
A -- 11-7 is when it was turned back on.
Q So according to your records, service was maintained from at least through October 1st through October 25th of 2001; is that right?
A Yes. And then on October 25th, it was deactivated.
Q When did it come back up?
A 11-7-2001.

Q Until when was the service maintained?
A Until 11-12-2001.
Q What happened on November 12, 2001?
A It was deactivated once again by our CEO.
MS. DUARTE: Could I have just a moment, Your Honor?
THE COURT: Yes.
MS. DUARTE: I have nothing further at this time, Your Honor.
THE COURT: We'll take a 20-minute break now, ladies and gentlemen. That will be our only break this morning. When we resume, we'll go right through to 12:30 and then we will break for the day.
Please remember the admonition during the break.
(Jury out.)
THE COURT: Mr. Sutcliffe, long ago, I think an issue arose, but I could be wrong, about the availability of a transcript for the September 26th proceedings, long before this trial began.
MR. SUTCLIFFE: Yes, Your Honor.
THE COURT: Do you have that transcript?
MR. SUTCLIFFE: No, I never received it, Your Honor.
THE COURT: Here's a copy for you. I have it and I'm making it available. We'll be back in 20 minutes.
MR. SUTCLIFFE: Thank you.
(Recess taken at 10:27 a.m. to 10:54 a.m.)

(Jury in.)

THE COURT: Mr. Sutcliffe, your turn.

MR. SUTCLIFFE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SUTCLIFFE:

Q Good morning, Mr. White. How are you doing?

A Good morning. Fine.

Q Just a couple of questions on Exhibit 42 that you testified about earlier.

A Okay.

Q I'm going to put the page up here on the monitor so you can see that.

A Okay.

Q Do you recall this document from Exhibit 42?

A Yes.

Q This is what is known as a "WHOIS" query?

A Correct.

Q It tells you who is the owner of the domain?

A Correct.

Q And I draw your attention to -- you don't maintain these records, do you?

A Yes. We keep them locally in our database.

Q I'm talking about directNic?

A As far as?

Q You are not associated with directNic?

A Yes, we are.
Q You are?
A Yes.
Q So anybody who wants to register a domain goes to directNic or yourself and says, "I want to register this site and I'm going to put this information up here"; right?
A That is correct.
Q And when they do that, they enter usually a mailing address if you want to correspond with them?
A Correct.
Q And an e-mail address?
A Yes.
Q This was entered -- do you recall the first date that the website was hosted on your servers?
A Let me check.
Q Thank you.
A As far as being hosted on our servers or when it was registered?
Q Either or.
A It was registered on 9-20-2001.
Q That would be September 20th --
A Yes.
Q -- 2001?
And that was the first occurrence that it was seen?
A Yes. That's when it was created.

Q You testified that it went on until approximately when?
A The final record of it being on our server, when it was finally -- or the last time it was taken down was on 11-12-2001, so November 12th.
Q That was in -- Exhibit 43 are you looking at?
A Correct. That is on page 3 of Exhibit 43.
Q Page 3, you said?
A Yes.
Q Hang on one second. Let me catch up with you here.
You are referring to --
A It would be the one where it says, "Sigmund Solares."
Q Right there; right?
A Yes.
Q Sigmund Solares, that's the owner?
A Yes. He's the CEO of Intercosmos Media.
Q Do you talk to Mr. Solares at all?
A On a daily basis, yes.
Q Were you employed back in this period of time?
A Yes.
Q Do you recall Mr. Solares discussing this restraining order?
A That was something that was discussed between Mr. Solares and Mr. Vinterella, who is our in-house counsel.
Q There was some contention as to the legality of this restraining order, was there not?

A I have no knowledge of that.
Q Now, you said it was taken -- it was taken off the air on 10-25; is that correct?
A That would have been the first time, yes.
Q And then the status changed again on 11-7?
A Correct.
Q And what is this "TSC remote account manager"? What does that mean?
A "TSC" is Tiger Shark Central. That is the name of our hosting server.

And the "remote account manager," that means that's how it was accessed. That's how the status was changed.

Q Does it identify within this document why this account was changed in this period of time here?
A From?
Q On the right-hand side, "see injunction."
A Correct. It says -- "The TRO" -- which would be temporary restraining order -- "filed to have site deactivated" and that was good until 11-6-2001. And it says, "Absent an injunction, scheduled for 11-6, we will remove the TOS," which means the terms of service violation.
Q So the "terms of service," that's like "acceptable use"?
A Correct.
Q A TRO was filed to have the site deactivated. The site is good until 11-6. And then "Absent an injunction, scheduled for

11-6, we will remove the TOS."

My question to you is, after this period of time, do you know if the owner of the website voluntarily just said, "Hey, you know what? It's too much hassle. I'm out of here. I can move it to another site"?

Did anybody send you an e-mail saying, "You know what? It's too much of a problem. We are going to just move it"?

A I have no knowledge of that.

Q But anybody can just move it; right?

A If they have access to the account, yes.

Q So they can just -- anybody can host the website?

A They can change the name servers, yes.

Q Going back to this "WHOIS" document, the first time this site was registered, it provided a valid e-mail address, "rampartscandal@europe.com", it provided a mailing address, and a name and a phone number; correct?

A Correct.

Q Now, we talked about -- the government talked about, in Exhibit 42 -- I'm going to show you Exhibit 42 here.

Do you see this name, next to the "evilgx.com", Richard L. Weatherman?

A Yes.

Q Could you tell the jury who Richard L. Weatherman is?

A That is the name that was provided when the account was

set up.
Q And that would be his account -- I'm going to try to zoom in for you here. This would be the owner's info?
A Correct.
Q And that's his account ID --
A Yes.
Q -- 50940?
A Yes.
Q He's a customer?
A Yes.
Q And that's his user name?
A Correct.
Q You have to have a user name and a password to get into this place; right?
A Yes.
Q Okay. Then once the user gets into there, he can register domain names for somebody else?
A That is correct.
Q If Richard went in there and said, "I am going to set up an account here for Mr. Sutcliffe," he can do that; right?
A Yes.
Q It's not against the law?
A No.
Q He can set up one for the Honorable A. Howard Matz as well, too, so Mr. Matz could log into this website, too;

correct?
A Correct, if he has the user name and password.
Q It's unlimited; he could set up as many accounts as he wants?
A Correct.
Q He also provides -- that's his password, I assume?
A Correct.
Q And this would have been his e-mail address for you to correspond with him?
A Correct.
Q "richardleeweatherman@hotmail.com"?
A Yes.
Q And Hotmail is also a free service that you can register an e-mail address to; right?
A Correct.
Q Did you ever send correspondence to Mr. Weatherman at Hotmail dot-com?
A I didn't personally.
Q And these are the names -- these are the servers that the website was hosted on?
A At this point, yes.
Q And these are, if you want to contact them, that would go back to the "WHOIS" stuff; right?
A Correct.
Q Okay. And if you have a problem with billing, this is the

guy you want to contact; right?
A That was the contact that was used for that purchase.
Q Right.
And here's his IP address?
A Correct.
Q And that was captured by your computers?
A That was the IP address that this transaction was made from.
Q So Richard Lee Weatherman, you want to bill me, here's where my address is, here's my phone number, and the computer snagged his IP as 24.160.57.210?
A Correct.

MR. SUTCLIFFE: Nothing further, Your Honor.

MS. DUARTE: No further questions, Your Honor.

THE COURT: Okay. Thank you, Mr. White. You may step down. You are excused.

THE WITNESS: Thank you.

THE COURT: Please call your next witness.

MS. DUARTE: The government calls Ms. Tracy Hall-Fraser to the stand.

TRACY HALL-FRASER, GOVERNMENT'S WITNESS, SWORN

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Tracy Hall-Fraser, H-a-l-l, hyphen, F-r-a-s-e-r.

DIRECT EXAMINATION

BY MS. DUARTE:

Q Good morning.

A Good morning.

Q Ms. Hall, have you ever been to 1054 South Bedford Street in Los Angeles?

A Yes.

Q When did you go to that address?

A Approximately October 16th and October 17th of 2001.

Q And what were you there for?

A To serve a temporary restraining order on Mr. Sutcliffe.

Q Had you served papers before?

A Yes.

Q What types of cases do you serve?

A All types. I usually handle the hard-to-serve cases.

Q Have you ever been accused of any offense in connection with your work?

A Yes.

Q What was that?

A That would have been dissuading a witness in August of this year.

Q Did you plead no contest to that charge?

A Yes, I did.

Q Was that a felony charge?

A Yes.

Q That charge that you pled no contest to, did that have anything to do with the facts of the instant case that you are going to testify to?
A No.
Q Did that arise far later than the facts that you are talking about today in October 2001?
A Much further.
Q Now, back on October 16, 2001, when you went to serve papers, who were you serving papers on?
A On Steven Sutcliffe.
Q Had you seen Mr. Sutcliffe before the date that you went to serve the papers?
A Only in pictures.
Q Were you given anything to help you identify him?
A Yes, I was.
Q What was that?
A I was given a physical description as well as two pictures.
Q And at some point did you see him?
A Yes.
Q Was that on the first day that you were there?
A No.
Q On the first day, did you see him at all?
A No, I did not.
Q So, then, did you go back the next day?

A Yes.
Q That was, you said, approximately October 17, 2001?
A Yes.
Q Did you see him on that day?
A Yes, I did.
Q Where was he when you first saw him, if you remember?
A He was standing in what would be considered his living and/or dining room in the apartment, and I saw him through a sliding glass door or a large sliding glass window.
Q Did you try to communicate with him?
A Yes.
Q Did you actually reach or speak with him?
A No.
Q What did you end up doing with the papers that you had?
A I put them in front of his door and I telephoned his apartment, the phone number I was given, and I informed him that he was served, that I had physically seen him.
Q When you say "informed him," did you actually receive an answer to that phone call?
A No.
Q Did you leave a message?
A Oh, yes.
Q Now, at some point after that, did you leave the apartment area?
A Yes.

Q Did you go back to -- did you drive a car that day?
A Yes, I did. I drove a van.
Q Did you go back to the van that you had driven?
A Yes, I did.
Q What kind of a -- excuse me. You said that you were driving a van?
A Yes.
Q Do you remember what license plate that van had on it? Not necessarily the number, but the type and state.
A They were from South Dakota.
Q What, if anything, happened when you got back to the van?
A As I was putting my paperwork away and getting on my cell phone, I saw in the rear-view -- or actually the side mirror somebody standing out by the pool area of the middle alcove of the apartment complex. And as I turned to look, it was Mr. Sutcliffe.
Q Did you recognize him when you saw him?
A Instantly.
Q Did anything else happen while you were there at your van?
A He was writing something down and I immediately departed.
Q Now, that was approximately October 17th; correct?
A Yes. That was my son's birthday, so it was very memorable.
Q At some point later that same day, did you access the Internet?

A Yes, I did.
Q And why was that?
A Because I had received a telephone call from one of the attorneys at Christensen, Miller that my license plate had now been posted with some words to me.
Q Did you -- what website did you access on the Internet?
A It was called "evilgx.com".
Q Who had given you the name of that website? In other words, how did you know to look at that website?
A I'd been told by different parties: My immediate supervisor as well as Mark Labaton.
Q So you had heard of the website before that evening?
A Yes. That was what I was serving the papers regarding.
Q But that evening you actually accessed it; right?
A Yes.
Q And what, if anything, did you see that struck you as relating to you?
A My name and my plate number had been posted.
Q On the Internet --
A Yes.
Q -- on that website?
Do you remember what it said about your name and your plate number back at that time on October 17th?
A There were so many times. I don't remember exactly which one that was. I would have to look at it to refresh my memory.

There were so many different ones. I'm sorry.
Q By "so many different ones," do you mean so many different times that you were addressed on the website?
A Yes.
Q But this was the first time that you were looking at it now?
A Yes.
Q That you knew of; right?
A Yes.
Q We are going to look at the site in a minute. Let me ask you this, first:

What did you do when you saw the reference to your license plate?
A I called up some of my attorney friends and some of my police friends at home and asked them what I needed to do that evening, late that evening.
Q Were you worried?
A I started to worry, yes.
Q In reference to the South Dakota residence and plates, did you do anything in reference to those plates actually being on the Internet? Did you call anyone in South Dakota?
A Yes, I did.
Q Tell me about that.
A The first phone call was just to let him know that somebody had gotten the plate number, and this person would

possibly be quite capable of running the plate and getting the address information.

Q Now, was that an acquaintance of yours in South Dakota?

A Yes.

Q Whose car you were driving are the plates?

A It was our car at that point. We hadn't gotten different plates yet.

Q Now, after October 17th, which you've described, did you ever personally see Mr. Sutcliffe again?

A No.

Q If you saw him again, would you recognize him?

A Yes.

Q Do you see him today?

A Yes.

Q Could you point him out and identify an article of clothing he is wearing, please?

A He's wearing a blue shirt with a white collar, a multicolored tie, his hair is a little bit grayer than when I saw him.

THE COURT: Let the record reflect that the witness has identified the defendant.

BY MS. DUARTE:

Q Between October 17th and today, had you seen Mr. Sutcliffe at all?

A Only through the windows.

Q That was actually on the 17th -- right? -- October 17th?
A Yes.
Q The next day, after you first saw your information on the Internet, did you do anything connected with the Sutcliffe assignment?
A Yes, I did.
Q What did you do?
A I was informed by the attorney at the time to bring a copy of the service to Mr. Sutcliffe's attorney in Burbank and to give him a copy of the service. And on my own, I also asked him to please ask Mr. Sutcliffe to take my information down, that I was only the messenger, and I quoted Shakespeare to him.
Q Which Shakespeare did you quote?
A "Please don't kill the messenger...."
Q Let's back it up for just a minute and break that answer down.

Now, you were asked to go to his lawyer's office -- to Mr. Sutcliffe's lawyer's office?
A Yes.
Q Do you remember the name of that attorney?
A Mr. McAfee.
Q McAfee.

And did you actually end up going to those offices?
A Yes, I did.
Q And that was in Burbank?

A Yes.
Q And then when you got there, did you deliver a copy of the papers?
A Yes, I did.
Q And you said, when you got there, you had a conversation with Mr. McAfee?
A Yes.
Q And did you let him know that you were serving the papers?
A I let him know that the papers were served and this was a courtesy copy to him.
Q And you asked him not to kill the messenger?
A I asked him to please have Mr. Sutcliffe take down my information from the website, that I was only the messenger. And I said, as Shakespeare said, "Please don't kill the messenger...."
Q What was his response to that, do you remember?
A He was fine at first.
Q Now, at some point during your visit with Mr. McAfee, did you see anything related to the website "evilgx.com"?
A Instantly.
Q What was that?
A As soon as I walked in his office with him, he had the "evilgx.com" up on his computer.
Q Was he looking at the Internet with you?
A He had just looked at it and said, "You point out where

your information is. There is nothing illegal about it."
Q Did you point it out to him?
A No. At that point, he was getting upset and quoting the First Amendment to me. I thought it best that I just leave.
Q When you were at Mr. McAfee's office that day that you are describing, was Mr. Sutcliffe there?
A No.
Q Did you continue to check the website "evilgx.com" back in October of 2001 after the incidents you have described?
A Yes, I did.
Q Just, in general, what did you see in relation to you?
A That eventually he was going to kill me if I came near his family.
Q Had you continued to try to serve him or served him with any process?
A No.
Q Had you done any additional work in relation to the case?
A I did do some additional work. They finally had to hire two L.A.P.D. officers, off-duty, to attempt to serve him with more papers because --
Q Let's not get into the service anymore.
Let me ask you this: You were looking at the website and did it seem to you to change?
A Yes.
Q And you said before there were lots of versions?

A Yes. There has been approximately five or six versions regarding me.
Q If we could look now at Exhibit 14, which is already in evidence.
I'm going to ask that port 5 be enabled, please.
Can you see that on the monitor in front of you?
A Yes, I can.
Q If you can't see it, I also have a printed version. Are you okay with the monitor?
A Uh-huh.
Q Do you recognize this, which is the first page of Exhibit 14, which is an electronic exhibit?
A Yes.
Q Have you seen this address before?
A I'm sorry, the address?
Q Have you seen yourself addressed in this way before?
A Yes, I have.
Q Approximately how long after you first saw the reference to your license plate did you see this, which we're looking at in Exhibit 14, on the Internet, if you remember?
A This was one of the first ones. So if I were to take an educated guess, it was within October.
Q Of 2001?
A Yes.
Q And then here, "If you don't like seeing your license

plate on the website," is that a reference to the license plate that you said was previously posted?

A Yes. The 44H669, that was the South Dakota plate that was on our van.

Q I have circled, in the left-hand corner of the monitor -- it's very small -- but it appears, as the title of the page, "Tracy 44H669." Is that the number that you recognize?

A Yes.

Q Was that the number that was your license plate number?

A Yes.

Q And then do you remember seeing this down here, "By the way, I was planning on taking a trip to South Dakota real soon"?

A Yes. "So that we can hook up."

Q "So that we can hook up" -- "Maybe." I should say, it says, "Maybe we can hook up."

Do you remember seeing this on the Internet in approximately October of 2001?

A I would say it was approximately October, yes.

Q How did you feel when you saw that reference to South Dakota and Mount Rushmore?

A I then called the person in South Dakota who we had obtained the van from and told him that things had seemed to escalate and to please be careful, in which he contacted the local police department there.

Q At that time did you have any fear for your own personal safety?
A I did, but I was more fearful of his because that was the plate number that was put up there.
Q And then down here, this reference here, starting with, "You think seeing that number is bad, trust us when we say it will get much, much worse," do you remember seeing that reference?
A Oh, yes.
Q Why don't we go ahead and click on, "You think seeing that number is bad." We'll see where that goes.

Do you remember seeing this link that went to a number of other information?
A Yes. Do you want me to say who this is?
Q Yes.
A This is one of the partners of Christensen, Miller who was the counsel for Global Crossing who were ultimately our client.
Q Did -- the fact that this link contained a great deal more personal information than just a license plate, did that mean anything to you?
A It scared me greatly.
Q What were you scared of at that point, just from this reference?
A That that was going to be my next punishment.
Q Was having your personal information on the site?

A Yes, which would --
Q If we could go back to page 1 from this link and we could go to the, "It can get much, much worse" link. We'll access that and have you take a look at that.
Now, we've accessed the "much, much worse" link and we see an article. Do you remember seeing that article linked to the website?
A Yes, I do.
Q Did you look at that article back at the time you were seeing it?
A Yes, I did.
Q What, if anything, did it indicate to you about the message in that Webpage?
A It was on the second page, towards the bottom, that I felt was directed towards me, the second page of this.
Q Why don't we go ahead and scroll down and go to the second page. Towards the bottom, you said?
A Yes.
Q Do you see it yet on your monitor?
A No -- wait. Hold on. "To help prevent other individuals from suffering the same tragic fate as Amy Boyer, we include a new provision that prohibits a person from obtaining or using another person's social security number in order to locate that individual with the intent to physically injure or harm the individual with the use of their identity for an illegal

purpose."
Q So reading that portion of the article gave you concern?
A Yes. I could not understand why he would want to steal my identity and use my social security number for credit cards. That was the only thing that made sense, in my mind.
Q Your own interpretation of this page with the links?
A Yes.
Q If we could go back. I think that's fine, actually, as to that exhibit, but we'll keep it up for a minute.
Did you continue to monitor or did you continue to look at, periodically, the website?
A Yes, I did.
Q Let me just draw your attention to one more thing in Exhibit 14. I went through the middle. Take a look at the bottom here. This is on page 1, the original page.
Why don't you go ahead and read that last paragraph, if you will.
A "To close, Tracy Hall, if you call this house again and threaten me or my family or ever appear near me or my family, I will personally send you back to the hell from where you came."
Q Do you remember reading this reference to you on the website?
A Yes.
Q How did that make you feel?
A It scared me.

Q All right. Let's look at Exhibit 16 next, if we can.

I ask that port 4 be enabled.

While we are accessing that exhibit, I'll just ask you a couple of questions, Ms. Hall-Fraser.

You said that you continued to look at the website. Did there come a time when you saw yourself addressed in a different context than we have just looked at with Exhibit 14?

A Yes. It seemed that each time it was escalating a little bit worse, in my opinion, as to his reference to me.

Q And had you had any contact with Mr. Sutcliffe or Mr. McAfee directly during the time that this was escalating?

A None. I had been told to step down and back away.

Q Now, we have Exhibit 16 on the monitor. If we could refresh the sound on that.

(Playing audio.)

BY MS. DUARTE:

Q Do you remember seeing and hearing this page, which is page 1 of Exhibit 16, on the Internet?

A Yes.

Q Approximately when? Do you remember when this was?

A I think this may have been approximately in January of 2002.

Q Let's just take a look at what's on the monitor here.

Starting with "Tracy, have you ever been stabbed with a knife?" had you ever had a conversation with Mr. Sutcliffe

about being stabbed or knives or anything of that nature?
A No. I had never spoken with Mr. Sutcliffe.
Q How did you interpret this address to you that begins, "Tracy, have you ever been stabbed with a knife"?
A It was a preview of things to come.
Q That's how you interpreted it?
A Absolutely.
Q Did it scare you?
A Very much. This was the icing on the cake for me.
Q And down here, directing your attention to the bottom, the second paragraph up, "Our paths are now crossed and we are forever joined," do you know what that reference was to?

How did you interpret that?

You are shaking your head "no." Is that a "no"?

A I'm sorry. It's just disgust.

I interpreted that as I'm stuck with him for the rest of my life, which, unfortunately, I am. That's how I interpreted it.

Q Down here at the bottom, "If I ever see you near my family again, and I know how to stalk, too, I will kill you. That's my offer."

Do you remember reading that on the Internet?

A Yes.
Q How did that make you feel when you read that?
A I think I need to explain what had just transpired when

this had come up.
Q Okay. Go ahead.
A I had just been informed that they were looking to arrest him and that he was familiar with them looking to arrest him.
Q So you had had a conversation -- let's not get into the substance of that conversation.
But when you were addressed with "I will kill you" --
A That was telling me I better not be here or anywhere to do with this.
Q So you interpreted that as speaking towards your possible testimony?
A Yes.
Q Did you take it literally, the "kill" part?
A Yes. I was planning on moving out of state. I had just dropped everything.
Q If we could look at the link that goes to "Tracy" up at the top. Go ahead and click on that.
(Playing audio.)
BY MS. DUARTE:
Q Now, we see here what appears to be another version of an address to you.
Do you remember seeing that on the Internet as well?
A Yes.
Q It's slightly different, is it not, than the one we looked at in Exhibit 14?

A Yes.
Q If we could go back.
(Playing audio.)
BY MS. DUARTE:
Q We're going to look at the link, "Add you to my domain list."
Do you remember that domain list?
A Yes.
Q Why don't we go ahead and click on that link.
(Playing audio.)
BY MS. DUARTE:
Q And those names you recognize?
A Yes, I do.
Q And then click on the link "death," if you will.
(Playing audio.)
BY MS. DUARTE:
Q And that goes back to the reference to killing you?
A Yes.
Q Now, you mentioned that you had changed your lifestyle slightly as a result of seeing these things on the Internet?
A It wasn't slightly, Ms. Duarte. I had to completely change a lot of lifestyle for myself and my family.
Q And you planned on moving?
A Yes.
Q Did you contact law enforcement about these statements

made to you on the Internet?
A I had prior, yes. I had contacted the Santa Clarita Valley Sheriff's Department as well as the Beverly Hills Police Department. Eventually, I dealt with Mr. Harrill. And my final call to Mr. Harrill was --
Q You don't need to get into that.
A Okay.
Q But you had contact with law enforcement?
A Oh, yes.
Q And this was from way back in October of 2001?
A Yes.
Q Did there come a time when you learned that Mr. Sutcliffe might have left California during all of this?
A Yes.
Q Did hearing that cause you to feel less afraid?
A No.
Q Why was that?
A Because nobody knew where he was at.
MS. DUARTE: If I could have just a moment, Your Honor.
I have nothing further at this time, Your Honor.
THE COURT: Thank you.
Your turn, Mr. Sutcliffe.
MR. SUTCLIFFE: Thank you, Your Honor.
May I have one minute to prepare?

THE COURT: Yes.

MR. SUTCLIFFE: Thank you, Your Honor. I was in the middle of something.

CROSS-EXAMINATION

BY MR. SUTCLIFFE:

Q Good morning, Ms. Hall. How are you doing today?

A Just fine. Thank you.

Q Now, you testified that you were hired to become a process server to serve a temporary restraining order; is that correct?

A No.

Q I'm sorry.

A I was hired as an investigator to serve you a restraining order.

Q And are you a private investigator?

A I worked with a private investigation agency, which made me an investigator under their license.

Q My question is, so you are a private investigator?

A That's what I worked as, yes.

Q Were you a licensed private investigator in the State of California?

A No.

Q Did you ever tell anybody that you were a licensed private investigator?

A I was licensed under my company, as stated in the Business and Professions Code.

Q But to be a licensed private investigator, correct me if I'm wrong, you have to register with the California Department of Consumer Affairs, Bureau of Collections, the department which licenses private investigators; correct?

MS. DUARTE: Objection, Your Honor. Irrelevant.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q So your job was to serve a temporary restraining order on the defendant; is that correct?

A On you, yes.

Q Right.

And you were hired, you said, for "the hard to serve." Can you explain what that means to the jury? What does that mean, "the hard to serve"?

A That means when either other law enforcement or other investigators and/or process servers had attempted to serve the subject prior.

Q So when the cops can't do it, they call in you?

A The companies or the person who wants to serve the restraining order or the papers, yes.

Q So when they can't get -- when the police can't even serve somebody, they call in Tracy Hall?

A At times, yes.

Q Your last name is Fraser?

A Hall-Fraser.

Q Can you tell me, who is Tracy Grundy?
A I don't know a Grundy.
Q Have you ever used the name Tracy Grundy?
MS. DUARTE: Objection to relevance, Your Honor.
THE WITNESS: No.
BY MR. SUTCLIFFE:
Q Never?
A Never.
THE COURT: All right. The objection is overruled.
BY MR. SUTCLIFFE:
Q Have you ever used the name Tracy Hall-Grundy?
A No, I haven't.
Q Have you ever used the name Tracy Grundy-Fraser?
A If you look at that more carefully, if it says Gundy, I was born with that name prior to being adopted. But it's Gundy, not Grundy.
Q Who is Tracy Denise Gundy? Excuse me for the mispronunciation.
A As I just said, that was my birth name before being adopted.
Q Who is Tracy Fraser-Gundy? Did you ever use that name?
A No.
Q Have you ever used the name Tracy Hall-Terry?
MS. DUARTE: Your Honor, renew the objection to relevance.

THE COURT: Sustained.

THE WITNESS: I have used the names Tracy Hall, Tracy Fraser and Tracy Hall-Fraser.

THE COURT: Okay. Move on to another subject, please, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

Q You said that you were hired by this law firm and you were shown a picture of the defendant; correct?

A Yes.

Q And that's the only picture -- that's the only time you had ever seen him when they showed you this picture and they said, "Go serve this guy"?

A They asked me to serve a temporary restraining order and gave me the pictures of you and a physical description of you.

Q You are given a picture and a description and told to go find this person and serve them.

You said you went to the place where the defendant lived and you only saw him through the windows; correct?

A Yes.

Q Can you tell the jury what kind of building this is, how many floors?

A Three stories.

Q Do you know what floor the defendant lived on?

A The third.

Q Was there a balcony on that third floor?

A I believe there was.
Q Is that where the sliding glass windows you were referring to were?
A Yes.
Q Below that, there was a pool area; correct?
A On the ground level, there was a pool area and below that, there was a parking structure.
Q Around the pool area, there is a gate --
A Yes.
Q -- for safety?
It's not for public entrance?
A I don't know if it's for public entrance or not.
Q Okay. So you said you looked up and saw on the third floor --
A No. I said I looked over.
Q You looked over and you saw through these glass windows, on the third floor, somebody who you believed to be Mr. Sutcliffe; correct?
A Yes.
Q What did you do then?
A I contacted my immediate supervisor and said I had a visual of you. And he told me that I was to put the service in front of your door and call you on your telephone at your home number and leave a message, if you would not answer, that you had, in fact, been served.

Q But correct me if I'm wrong, but the restraining order said, "physically served," did it not?

MS. DUARTE: Objection to relevance.

THE WITNESS: The judge said you were physically served.

THE COURT: All right.

BY MR. SUTCLIFFE:

Q I'm asking you --

THE COURT: Excuse me one minute. Ms. Hall, if you see the prosecutor standing or rising to stand, please don't give an answer until she's had an opportunity to make an objection and I have had an opportunity to rule on it.

THE WITNESS: Yes, Your Honor.

THE COURT: I don't think there is a question pending. And if there was one, then you can repeat the question, just to save time, and I'll entertain any objection if there is one.

What's your question, then, please?

BY MR. SUTCLIFFE:

Q My question was, the restraining order -- the orders of the judge in the restraining order said you had to physically serve Mr. Sutcliffe; correct?

MS. DUARTE: Objection to relevance.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q You testified you only saw him through the windows; correct?
A Yes.
Q How could you see him as you are driving away?
A I said, at that point, I looked in my mirror and somebody was standing by the pool. As I turned around, I saw you.
Q The government asked you -- you said you only saw him through the windows after the fact, after the government -- after you had testified that you were driving away and you saw him in your rear-view mirror.
MS. DUARTE: Objection. That's misquoting the witness.
THE COURT: It does. It misstates the evidence and misstates the witness's testimony.
Objection sustained.
BY MR. SUTCLIFFE:
Q So you are driving away and you claim you now see him, the defendant; correct?
A Prior to driving away, I saw you. And then I hightailed it out of there.
MR. SUTCLIFFE: Your Honor, can you instruct the witness to refer to me as "the defendant" instead of in the first person?
THE COURT: If you can remember to refer to him as "the defendant," that would be helpful.

THE WITNESS: Okay.

MR. SUTCLIFFE: Thank you. Just for the record.

Q So you see someone driving -- you are driving away and you saw somebody in your rear-view mirror.

How far were you from this person?

A I wasn't driving away when I saw you, the defendant. I was still sitting in my car, putting away papers and trying to get my cell phone and making a telephone call. I was not driving away when I initially saw you, the defendant.

Q You started to say rear-view and then said side-view; correct?

A I corrected myself. I believe I did.

Q So you are sitting in your car.

Where was your car parked, how close to the house? Adjacent to the house?

A To the apartment?

Q To the apartment.

Adjacent to the apartment?

A It was on the same street, on the same side of the street, approximately maybe one car length in front of the pool area.

Q Okay. So you were sitting in the car. And now you testified, is it, that you weren't driving away, but you were just sitting there and you looked in your side mirror?

A That's what I testified to earlier, yes.

Q And you saw the defendant?

A I saw you, the defendant, yes.
Q Did you get out of the car and say, "Hey, you've been served"? or "Hey, I've served you"? or "Here's another copy now that you are physically served"?
A No.
Q Okay. So you just drove away. And you testified you saw someone writing down something; is that your testimony?
A Yes. I saw you, the defendant, writing down something.
Q And so you said -- you claim you saw this number -- your license plate?
A That night.
Q Okay. And you got a call from an attorney first?
A Yes.
Q Who was the attorney?
A Mark Labaton.
Q And he calls you up at your home?
A He called me up on my cell phone.
Q And he says, "Hey, go check out this website"?
A I don't remember exactly what he said.
Q Did you go to a computer at that point?
A Yes, I did.
Q Where were you when you went to this computer?
A At my home.
Q You were in your home.
And you typed in "www.evilgx.com"?

A Yes, I did.
Q Nobody forced you to go there; right?
A No.
Q And when you got there, what did you see? What's the first thing you saw?
A It changed so many times. I can't remember the first page to the website.
Q "It" meaning -- now you are speaking of --
A The website.
Q -- the website in general, right.
So how did you get to the page that had this license plate number?
A I had -- I do remember I had to look for a while and go through different parts of this website before I was able to find mine.
Q For quite a while?
A I don't remember how long.
Q But it was awhile. Okay.
Now, you go there and you see your license plate; right?
A Yes.
Q You said that you started to worry because you saw the license plate; right?
A Yes.
Q So you called police friends and attorney friends?

A Not at that point, no.
Q I thought that's what you said. You saw this plate, you started to worry, and then you called your police friends and attorney friends. Maybe I'm mistaken.
Then you said you called somebody in South Dakota?
A That night I called somebody in South Dakota, yes.
Q And you said, "Hey, someone's got our plate"; right?
A I said, "Somebody has your plate."
Q Is it against the law to take down someone's plate number?
MS. DUARTE: Objection. Irrelevant.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Is a license plate public information or private information?
MS. DUARTE: Same objection, Your Honor.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Do you live in a vacuum?
MS. DUARTE: Objection.
THE COURT: Don't argue with the witness, Mr. Sutcliffe.
The objection is sustained.
BY MR. SUTCLIFFE:
Q So you go to this website, you look through it for a while, and then you find your license plate number?

A Yes.
Q Were there any direct threats to you at this point?
A Not at that point, I don't -- they weren't as bad.
Q Can you recall the -- any other words on there besides your plate?
A You mean as toward -- as to when you were going to kill me or when you were going to visit South Dakota and hook up with me?
Q No. I'm talking about, you went there and you saw the license plate.

Do you recall any words on that date that you first went there that said, "Hey" -- you know, anything threatening?
A I would have to look.
Q Okay. You said afterwards you went to see the defendant's attorney located in Burbank; correct?
A I went to go see you -- the defendant's attorney in Burbank the next day, I believe, yes.
Q Why did you do that?
A To ask him, as one professional to another, to have you please remove my information.
Q And "as one professional to another," he basically asked you to leave at some point, didn't he?
A I opted to leave.
Q After he asked you to leave; correct?
A No. I left. And then he started going off about the

First Amendment and some -- a client, a Hispanic male, had come in.

Q This is after you left? You said you left and then he started going off. So he followed you outside and then started going off?

A He was at the front door. He shared an office that you had to walk through another office.

Q Did you take notes of this meeting -- I believe it was Mr. McAfee; correct?

A I didn't take notes while we are at the meeting, no.

Q Did you write some notes afterwards about this meeting?

A Yes, I did.

Q Do you recall those notes? Are they still fresh in your mind?

A No, they are not. I would have to look at them.

MR. SUTCLIFFE: Your Honor, may I refresh the witness's recollection?

THE COURT: Yes, you may.

MR. SUTCLIFFE: Thank you, Your Honor.

MS. DUARTE: Your Honor, I don't have it on my monitor.

MR. SUTCLIFFE: I don't have it over here, either.

MS. DUARTE: Thank you.

THE COURT: Please enlarge it. You need to enlarge the type size. It will be necessary -- you can scroll down

when you are asked. Zoom in. Just get a full line available from left to right on the page so the reader can see the full -- yes. Okay.

THE WITNESS: I can read the top portion. I can't read the bottom portion.

THE COURT: Scroll down, please.

THE WITNESS: Okay.

BY MR. SUTCLIFFE:

Q Do you recall that document?

A Yes, I do.

Q Did you type up that document?

A Yes, I did.

MR. SUTCLIFFE: Defense would like to enter this as the next exhibit in order, Your Honor.

MS. DUARTE: Objection, Your Honor. It refreshed the witness's memory. She can testify about it. It's hearsay.

THE COURT: You can follow-up with questions that are designed, if you think you need to, to impeach the witness.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Let's see how far you get.

If you need to, you may be able to renew your motion.

At this time, it's denied.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Do you recall -- you said that -- did you say to Mr. McAfee, when you went into his office, that you didn't want

to be in the middle of this battle?
A That's correct.
Q And do you recall Mr. McAfee saying to you, "You put yourself in the middle of it by working for these attorneys"?
A I do now.
Q Did you then tell Mr. McAfee that you didn't want your information -- your license plate on the Internet?
A Basically, that's what I told him.
Q Did Mr. McAfee tell you that he wasn't able to bring up the website on his -- he couldn't bring up the page you were talking about at that time?
A He just kept demanding that I better point and show him where it was.
Q That's not my question.

Did he ever tell you, "I can't get the website up"?

A No, he never told me that.
Q Did he ever ask you the question, "Do you have a private license plate?"
A Yes.
Q Do you have a private license plate?

MS. DUARTE: Objection. Irrelevant, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:
Q Did you ever make the statement that if Mr. McAfee's client didn't take this personal information off the Internet,

that you would "make his client's life miserable"?
A No.
Q Did you ever make the statement that you'd "make his client's legal life miserable"?
A That's what it says, yes.
Q So it's legal to make someone's life miserable, legally; is that correct?
MS. DUARTE: Objection, Your Honor. Irrelevant.
THE COURT: It's irrelevant and it misstates what the witness just said she said.
BY MR. SUTCLIFFE:
Q What did you mean when you said that you'll "make his client's legal life miserable"?
A You, the defendant.
Q What does that mean?
A That means that I would personally get a temporary restraining order and have it, too, served upon you, the defendant.
Q And sue me?
A I guess that could have been a possibility.
Q And call Child Protective Services on my wife and make allegations of beating the child?
MS. DUARTE: Objection, Your Honor. Relevance.
THE COURT: I'll permit an answer.
Is that what it meant?

THE WITNESS: No.

BY MR. SUTCLIFFE:

Q Did you ever call Child Protective Services and make an allegation that my wife was beating my two-year-old daughter?

A No.

Q Did you ever tell anybody that you had called Child Protective Services, that you had witnessed, outside my house that day you were serving papers, that my wife was beating my two-year-old daughter?

A No.

Q Do you know why Mr. Labaton, your boss, would --

A He was not my boss.

Q Your employer.

A He was -- okay.

Q He did --

A He was the counsel. He employed our firm.

Q Do you know why Mr. Labaton would tell Mrs. Greenwood that you had told him, and she then told the FBI, that you had claimed that you saw my wife beating my two-year-old daughter outside the house the day that you were sent there to serve the restraining order?

THE COURT: There is a lawyer rising. Don't answer until the objection is voiced.

MS. DUARTE: Your Honor, that misstates the evidence, first of all. It wasn't Mr. Labaton. Second of all, the

question is compound and it's irrelevant.

THE COURT: Third, it calls for speculation. It's inherently impossible for this witness to answer. Fourth, it contains multiple hearsay.

For all of those reasons, the objection is sustained.

BY MR. SUTCLIFFE:

Q Ms. Hall, did you have an interview with FBI Agent Cugno?

A Yes.

Q Did you tell him that your real name, your true name, was Tracy Hall?

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: I will permit an answer to that question.

THE WITNESS: I was never asked if that was my real true name.

BY MR. SUTCLIFFE:

Q But you remember meeting with -- or talking with the FBI agent -- Special Agent Cugno; correct?

A Yes.

Q Did you do it more than one time?

A I spoke with him many times.

Q Did you tell him that your name was Tracy Hall each time?

A I don't remember.

Q Did you ever tell him that your name was Tracy Hall-Fraser?

THE COURT: All right. We've been through what

iterations of her name she's used. It's irrelevant.

Please move on.

Please move on, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Now, at the beginning of your testimony, you were speaking with the United States Government, and I remember one of the first questions that you were asked was about dissuading a witness and you pled guilty to dissuading a witness; correct?

A No. I pled no contest. There is a big difference.

Q Explain to the jury the difference, please.

MS. DUARTE: Objection. Relevance and calls for a legal conclusion.

THE COURT: Overruled.

If you understand and think you know what the difference is between pleading no contest and pleading not guilty in the context of whatever happened to you and whatever you did, you may answer.

THE WITNESS: A no contest plea is basically a guilty plea that cannot be used in any civil trials thereafter or any civil matters that arise after the no contest plea is put in.

Generally, it also states you do not have to admit innocence or guilt in the matter.

BY MR. SUTCLIFFE:

Q Okay. So as in your own words, a guilty plea? It's basically a guilty plea?

MS. DUARTE: Asked and answered, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q And this is a felony --

A Yes.

Q -- this dissuading a witness?

A For now, it's a felony.

Q It's also known as witness intimidation; correct?

MS. DUARTE: Objection. Witness tampering.

BY MR. SUTCLIFFE:

Q Witness tampering, intimidation, take your pick. Correct?

A As far as I know, it was dissuading a witness. That's what I pled to.

Q Felony dissuading a witness.

Now, in this witness intimidation, Ms. Hall -- hang on one second.

THE COURT: Mr. Sutcliffe, perhaps you inadvertently did it, but there is no evidence in the record of witness intimidation. So reframe your question if you are going to continue with it, please.

MR. SUTCLIFFE: Thank you, Your Honor.

Q After this conviction of witness tampering, this felony conviction -- now, you've been involved or engaged in other dishonest conduct, haven't you?

MS. DUARTE: Objection.

MR. SUTCLIFFE: Your Honor, sidebar?

THE COURT: No sidebar. I've issued rulings about this general matter before.

Objection sustained.

MR. SUTCLIFFE: This is a different matter, Your Honor.

THE COURT: Objection sustained.

MR. SUTCLIFFE: Sidebar, please?

THE COURT: No sidebar. Continue with your examination. At an appropriate time, I'll let you be heard.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Going back to Mr. McAfee's office and "You are going to make my legal life miserable," did you ever see your -- any other personal information about you on this website?

A Eventually, my last name was put on. My first and last name was put on by the person who designed this website.

Q Your first and last name, that would be Tracy Fraser?

A As it's stated on the website, you quoted it -- you, the defendant, quoted it as Tracy Hall.

Q But your last name is Fraser.

MS. DUARTE: Objection, Your Honor. Asked and answered.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q My question now again is, did you ever see any personal

information, other than a name, which we've been arguing over, and a license plate number?

A No other personal information.

Q No home address?

A Not as of that time, no.

Q As of that time? You saw personal information of your home address on this website at another time?

A No. You, the defendant, were arrested right after this last one that you had insinuated my personal information was going to go there.

Q Okay. So if you insinuate that you are going to publish information, that's grounds to arrest an American; is this what you are referring to?

MS. DUARTE: Objection, Your Honor.

THE COURT: Sustained.

Mr. Sutcliffe, we've been -- don't ask questions that call for answers to ideological questions or legal questions that have nothing to do with this case. She is not a lawyer. That's an irrelevant question. No one has made that assertion and that's not what this case is about.

Now, please move on.

MR. SUTCLIFFE: Would you also instruct the witness to listen very carefully to the questions so she doesn't have to go off on a tangent which leads to another question?

THE COURT: Mr. Sutcliffe, I will instruct witnesses

to do their duty whenever the occasion sees fit. She's doing her duty. No instruction is necessary.

BY MR. SUTCLIFFE:

Q Mrs. Fraser, did you ever tell Mr. Labaton or Mrs. Greenwood that you had seen your personal picture posted on this website?

A No.

Q Do you know why Mr. Labaton would tell Mrs. Greenwood that your personal picture and a picture of your vehicle were posted on the website?

MS. DUARTE: Objection. Calls for speculation. It's hearsay.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q I'd like to show you a photograph, and I want you to tell me if this is your picture. It's within the website on 02-01. That would be February 1, 2002.

THE COURT: Mr. Sutcliffe, would you be good enough to say which exhibit this comes from?

MR. SUTCLIFFE: Yes, Your Honor.

It's from the Andrew Ramsey downloads.

MS. DUARTE: That is Exhibit 24, Your Honor.

THE COURT: All right. Thank you.

MS. DUARTE: Your Honor, I would ask how Mr. Sutcliffe is able to access that without actually having

the exhibit, which he does not have, I don't believe, at this time?

MR. SUTCLIFFE: I believe the government provided copies of it to me in discovery.

THE COURT: I'll take that up at another time.

MR. SUTCLIFFE: Okay.

(Playing audio.)

MR. SUTCLIFFE: Your Honor, can this be published so the jury can also see? This has already been entered as an exhibit.

THE COURT: I don't know if this is all part of Exhibit 24 or not. Since the question has been raised about what it is that you have and how you got it, I can't make a ruling on that.

MR. SUTCLIFFE: Can we address that, then, before we move on?

THE COURT: Why don't you save that for later. I don't think it's likely this witness will finish before the end of the day.

And before the end of the day and before 12:30, I'll take up certain matters outside the presence of the jury.

MR. SUTCLIFFE: There are certain other information on this page, Your Honor, that I need to question this witness about.

THE COURT: Then we'll take it up later, so why don't

you turn to a different subject. I'm not saying you can't. I'll reserve a ruling.

Let's move on, please.

MR. SUTCLIFFE: Okay.

Q Mrs. Fraser, you testified that you're a private investigator, but you are not a licensed private investigator, but you believe you were licensed through the company.

What does a private investigator do?

A The definition of a private investigator is a person that gathers information.

Q Any information?

A It depends on the case. Not just any information, no. There are certain limits.

Q Right. Could you tell us, what are those limits?

MS. DUARTE: Objection to relevance.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q In the course of your private investigations, did you ever try to locate somebody?

A Yes.

Q Are you good at it?

A I was sufficient at it.

Q When they can't call the cops, they call Tracy Fraser; right?

MS. DUARTE: Objection, Your Honor. Asked and

answered.

THE COURT: It misstates the evidence. I don't think the witness ever said when the cops can't do something, she's called. She said when service couldn't be effectuated, she was asked to try. She didn't say who had been unable to effectuate it.

I think the question misstates the evidence, and I sustain the objection.

MR. SUTCLIFFE: Okay.

Q You've located people before; right?

A Yes.

Q That's something you do on a regular basis?

A At times.

Q Did you ever try to locate the defendant?

A Try to locate you, the defendant?

Q Yes.

A Oh, yes.

Q Were you successful?

A I believe I may have been successful. I still don't know.

Q When did you first start trying to locate the defendant?

A After I called Agent Harrill and told him that I was leaving the state, and I had attempted to locate you because nobody else could, and I was afraid for my life. And I gave the information to agent -- to the FBI, I should say.

Q Do you recall when this was?

A Approximately in January or February of 2002.
Q Correct me if I'm wrong, Mr. Sutcliffe had -- the defendant had left the state prior to that; correct?
A I didn't know that. I had never physically seen you, the defendant, leave anywhere.
Q Up until January or February, you had no knowledge that the defendant was not still within California?
A That's correct.
Q Okay. Did you tell the FBI during this time frame, "Hey, I feel threatened"? Did you have a conversation with the FBI prior to January?
A Yes.
Q You did?
A Yes.
Q Okay. And they didn't tell you, "He's not in the state. We're looking for him"?
A Because nobody knew where you --
MR. SUTCLIFFE: Your Honor, would you instruct the witness to answer "yes" or "no," please?
THE COURT: He didn't ask you why something happened. He just asked you whether it happened. Try to limit your answers to just the question that is asked.
THE WITNESS: Please repeat the question.
BY MR. SUTCLIFFE:
Q My question was -- you admitted that you had an interview

with the FBI prior to January and February.

My question is, did they tell you that he was no longer in the state, that they were looking for him?

A Prior to January or February, I don't believe so.

Q Okay. So you weren't worried?

A I was very worried.

Q You were very worried.

You didn't know he's missing; you thought he's in California --

A The fact was, I didn't know where you, the defendant, was.

Q Who told you he was missing?

A I was told that you had left your apartment building in the middle of the night.

Q Who told you that?

A I believe Mark Labaton.

Q When did he tell you this?

A I believe that may have been in November of 2001, somewhere around that time. I can't pinpoint it.

Q So November 2001, you are aware that the defendant is now gone from his home?

A Yes.

Q Okay. Is that when you started first trying to locate him?

A I don't recall.

Q How did you try to locate him?

A By doing database searches.
Q What kind of database searches were these?
A These are database searches that are generally used by private investigation firms.
Q What kind of information do they access?
A I'm trying to remember the one I used. It usually gives past addresses. That's when I came up with two addresses back East.
Q This thing accesses like a public database?
A I don't recall if it's public. I know a lot of information is purchased or rented through other companies, through other parties.
Q You can purchase or buy private information on people, their home addresses; is that what you are saying?
A I have never personally purchased or bought private information databases. So you are asking me something I really don't know about.
Q You said this database is generally used in the PI business; right?
A Yes.
Q But you don't have any knowledge of what it goes out and finds, locates, where it pulls the information from?
THE COURT: Those are different questions. Please break them down.
BY MR. SUTCLIFFE:

Q This database program that you access information on where you are trying to find the defendant -- sometime in November; correct? -- what's the name of this program?
A I don't recall.
Q But it's generally used by you and other PIs; right?
A There are thousands of different databases that can be used.
Q Say, you are hot on the trail. You are looking for somebody really, really bad. You got a big client who is going to pay you a million bucks. Okay? "Hey, Tracy Fraser, find this guy, here's a million."

What do you do if you can't find him in this database?

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: Sustained.

This case, ladies and gentlemen of the jury, is not about the means and methods available to private investigators to carry out their business. There is no issue remotely related to that in this case.

Please move on to a different inquiry, Mr. Sutcliffe.

BY MR. SUTCLIFFE:
Q You testified that you have lots of police friends and attorney friends who you called after you started to worry; correct?
A Correct.

Q Did you ask them, "Hey, call some other friends, send out the -- call everybody you know, find this guy"?

MS. DUARTE: Objection to relevance.

THE COURT: For a different reason, it's not irrelevant. I'll permit an answer.

Did you call those people?

THE WITNESS: I called those people. But the second portion of his question, absolutely not.

BY MR. SUTCLIFFE:

Q So the answer is "no."

When you are investigating somebody, don't you usually call other sources?

THE COURT: That's irrelevant. We are not going to permit inquiry into what usually happens under other circumstances having nothing to do with this case.

BY MR. SUTCLIFFE:

Q Do you know who Bob Muelh is? That's spelled M-u-e-l-h.

A Yes.

Q Who is Bob?

A He's an investigator.

Q What's his relation to you?

A He does a lot of work with the firm that I worked with.

Q Does he work in the same firm or a different firm?

A From time to time, yes, he does.

Q Maybe you didn't understand my question.

Does he work in your firm or does he work with a different firm?

THE COURT: You are asking about what he does now?

MR. SUTCLIFFE: No. I'm trying to establish whether he's employed by that firm or is her boss or is he separate.

THE WITNESS: He is a contractor, as a lot of investigators do contracting work for numerous firms.

BY MR. SUTCLIFFE:

Q Do you know his professional background?

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Does he work for Pinkerton Investigations?

THE COURT: It's irrelevant.

THE WITNESS: I don't --

THE COURT: You don't have to answer.

Move on, please.

BY MR. SUTCLIFFE:

Q Now, you testified that you saw this page that said, "I'm going to kill you."

A Which time?

Q The first time.

THE COURT: Okay. Now you directed her attention to what you are about to ask her, so --

BY MR. SUTCLIFFE:

Q Was the first time that you saw this page in January?
A I don't know. I would have to look at the page.
You, the defendant, the person who published this Internet, changed -- &&
MR. SUTCLIFFE: She's already answered the question.
THE COURT: Yes. There is no question pending, so don't volunteer information.
MR. SUTCLIFFE: Thank you, Your Honor.
Q Now, do you recall if it was February that you first saw this?
A I don't recall.
Q You are telling me you see the words, "I'm going to kill you," and you don't recall when that was?
A I don't recall the first time you wrote it.
Q You don't recall the first time you saw someone saying they are going to kill you?
MS. DUARTE: Objection. Asked and answered.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Did you ever have a conversation with Mrs. Greenwood about this page?
A No -- yes, I did.
Q You did. Okay.
Did she ever say, "Hey, let's say he's trying to murder you"?

MS. DUARTE: Objection, Your Honor. Irrelevant.

THE COURT: Sustained.

It's all right. There is no question pending.

Mr. Sutcliffe, I have issued rulings.

MR. SUTCLIFFE: I understand, Your Honor.

THE COURT: Well, if you understand, then you are required to comply as any advocate would be.

Now, move on.

MR. SUTCLIFFE: Thank you, Your Honor.

Q How did you first learn about this page that says, "I'm going to kill you"?

A When Mr. Labaton called me and informed me that you, the defendant, had now added me and you were pretty adamant in your words.

Q He said I added you.

So what did you do? Did you go to the computer?

A When?

Q When he called you.

He calls you up and says, "Hey, he's added you. He's pretty adamant." What did you do? Did you go to your computer?

A Yes, I did.

Q Were you at home?

A Yes, I was.

Q Okay. So you sit down and you type in "www.evilgx.com"?

A Yes.
Q And --
(Playing audio.)
BY MR. SUTCLIFFE:
Q This is the download from Andrew Ramsey. This is February '02.
THE COURT: Don't show that yet until I sort this out. Please move on to a different question. I'm not saying you can't, but not right now.
MR. SUTCLIFFE: Well, Your Honor, again --
THE COURT: Not right now. If there is a different inquiry, fine. If you have no other questions, then tell me that and I'll excuse the jury for the day.
MR. SUTCLIFFE: No. I'm trying to establish, Your Honor --
THE COURT: You don't have to tell me what you are trying to establish. Just move on to a different inquiry until I sort this out.
BY MR. SUTCLIFFE:
Q Now, you said you had said to Mr. McAfee, when you first went to his office, you were only the messenger; "Don't worry, you don't have to kill me." Is that a figure of speech?
A Is that what it says there, "You, the defendant"?
Q These are your words; correct?
A I don't believe that's what it said.

Q What did you say to Mr. McAfee when you walked into his office?
A What it says on that paper.
Q What does it say on the paper? These are your notes.
A I think you just misread what was written there.
THE COURT: Just say, as best you can remember, what you said to Mr. McAfee.
THE WITNESS: "To please not kill the messenger."
BY MR. SUTCLIFFE:
Q And you were referring --
A And I believe I was referring to myself.
Q Now, when you say, "Please don't kill the messenger," you are speaking figuratively; correct?
A It depends on how you look at it.
Q Do you understand what a "figure of speech" is?
A Yes, I do.
Q When you said "Hey, I'm just the messenger; don't kill me," you weren't speaking, "Hey, you are not really going to shoot me or hit me in the head with a rock," or something like that; right?
A That's correct.
Q So you are using this figure of speech, you didn't want him to kill you.
Now, did Mr. McAfee -- you spoke about a Spanish man. Do you recall -- was there anybody else in the office besides

this Spanish man?
A The Spanish man didn't come until I was on my way out.
Q Did you ever apologize to the Spanish man?
A I believe I did.
Q Why did you apologize to him?
A Because he was coming in the door and I was going out and it was a small door.
Q Did Mr. McAfee say to you, "I want you to leave. You are now trespassing"?
A I don't recall if those were his exact words.
Q Do you recall any words to that effect?
A As I was walking out, there were words similar to that. I don't remember if those were his exact words.
Q This was after you threatened to make his client's legal life miserable -- or before?
A It would have been after.
Q It would have been after. Okay.

Now, did you file a declaration with Global Crossing at any time during your employment there or working with them?
A I believe I had, yes.
Q Do you recall when this declaration was that you filed?
A If it's what I'm thinking of, it would have been filed the day after I served you, the defendant.
Q The day you served the defendant was what day?
A October 17th.

Q And it would have been the next day?
A Somewhere in that time period, yes.
Q Now, I'd like to show you a document to refresh your recollection.
May I, Your Honor?
THE COURT: You may.
MR. SUTCLIFFE: Thank you, Your Honor.
THE COURT: Show it on the projector, please.
Is there a Bates stamp attached to this?
MR. SUTCLIFFE: No, Your Honor, there is not.
I'm going to enter this as defense exhibit next in order.
MS. DUARTE: First of all, Your Honor, I do have a Bates stamp. It's 319, if it's what I think it is, which it appears to be.
And second of all, I object to the entry of this document into evidence. It's hearsay and that would be an improper purpose at this point.
MR. SUTCLIFFE: Your Honor --
THE COURT: It's not being admitted right now. Mr. Sutcliffe has a right to refresh the witness's recollection with it, if that's what he is trying to do.
MR. SUTCLIFFE: Yes, Your Honor.
THE COURT: So you can ask the question.
BY MR. SUTCLIFFE:

Q Does this refresh your recollection, Mrs. Fraser?
A I'm -- I'm only looking at the very top of it. There were a few things --
Q I'll zoom it out so you can see the entire document.
A Can you please go up a little bit further. There you go.
MS. DUARTE: Just for the record, Your Honor, that appears to be page 1 of a six-page document. So if he's going to ask a lot of questions about it, I can supply her with --
THE COURT: Right now he's not asking and he's not being permitted to ask.
The only question is, does that refresh your recollection as to whether, at some point, you executed a declaration?
Why don't you zoom down to the signature line, if that will help. That's all you need to do.
MR. SUTCLIFFE: Thank you.
THE WITNESS: Yes.
BY MR. SUTCLIFFE:
Q Do you recall signing this document on October 21, 2001?
A Yes.
Q Is that your signature?
A Yes.
MR. SUTCLIFFE: Your Honor, the defense would like to enter this next as an exhibit.
THE COURT: No. It's not being offered for any

admissible purpose, but you can question -- ask another question.

You just found out that she signed the declaration.

MR. SUTCLIFFE: I'm heading there, Your Honor. Thank you.

Q Now, did you make this declaration on the first page?

A Yes.

Q Did you say that your name was Tracy Hall?

A Yes.

Q And that you're employed as a private investigator?

A Yes.

Q And in this document that you filed, did you discuss the meeting with Mr. McAfee in Mr. McAfee's office at all?

A You just took the document away, so I don't know. I would have to look at it to refresh my memory.

Q You have no recollection of what you said in this document?

A There were a lot of documents about you, the defendant, that I had to go over, so --

MR. SUTCLIFFE: Your Honor, would you instruct the witness --

THE COURT: Here's what we'll do, to save time, which is something I've been trying hard to do, I'm going to excuse the jury today, now.

We will resume tomorrow at 8:30, and we will go

tomorrow until 12:00. Then we'll break for 75 minutes. So plan on acquiring or purchasing lunch here. I will resume at 1:15 and continue to 4:30.

Please remember the admonition until then. Thank you very much for your attentiveness, and we'll see you tomorrow morning.

(Jury excused at 12:23 p.m. and the following proceedings had.)

THE COURT: Now, Ms. Duarte, give the witness this declaration, since you have a copy of it, so she can review it overnight. She doesn't have to take time reading it up here. And then we'll see how far we get with permissible inquiry about it tomorrow.

You can step down, Ms. Hall. You can leave.

MS. DUARTE: Mr. Montes is coming right back with a copy of that, Your Honor.

THE COURT: All right.

Just wait outside, please, Ms. Hall.

Ms. Duarte, what's the concern that you have about Mr. Sutcliffe's showing Exhibit 24, I think it is?

MS. DUARTE: He said that he was showing Exhibit 24. However, I have Exhibit 24 right here. If he's going to operate off of the exhibits that are entered into evidence, obviously, the permissible practice would be to actually operate off of the exhibit itself.

I don't know if he's trying to use a copy that he

thinks he has or if he exported files to his hard drive. I don't know, but I know it wasn't from this physical exhibit. Because this physical --

THE COURT: Isn't it correct that the government has turned over duplicate copies of that drive?

MS. DUARTE: That is correct.

THE COURT: So there is no issue about Mr. Sutcliffe being authorized and in good faith possession of a duplicate copy of what has been used and marked in this case as Exhibit 24; correct?

MS. DUARTE: No, there is no issue about that.

THE COURT: All right. Until there is any basis to question whether what he is using has been in some way compromised, changed, distorted, eliminated, added to, or otherwise tampered with, and I don't see there is any basis, he's entitled to use his version of 24 just by putting it on the screen.

That's what an opposing lawyer would be able to do with his own copy of something that's been previously admitted, so your objection is overruled. He will be permitted to use that exhibit when we resume tomorrow.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: What was the other issue I said I would rule on?

MR. SUTCLIFFE: Yes, Your Honor. I asked the

question of the witness, "You've been involved or engaged in other dishonest conduct, haven't you?"

THE COURT: That's right. Now, this witness, as transcripts of earlier rulings and plenty of orders I issued will reflect, was convicted, I believe, of two misdemeanors -- or at least one misdemeanor a long time ago.

I entertained, considered, and ruled upon the government's motion in limine to preclude examination into those misdemeanors. They were in 1988, 15 years ago.

On or about January 13th of 2003, almost a year ago, I granted that motion and specifically said that the defendant may not inquire into Ms. Hall's 1988 misdemeanor convictions.

MR. SUTCLIFFE: Correct.

THE COURT: So what are you attempting to do now that doesn't contravene and violate that previous ruling?

MR. SUTCLIFFE: I'm not asking her about those convictions, Your Honor. If you recall my words, it was, "You've been involved, engaged, in other dishonest conduct, haven't you?" I didn't mention anything about the 1988 convictions.

THE COURT: Where are you heading with this?

MR. SUTCLIFFE: To the credibility of the witness, Your Honor. She can answer --

THE COURT: What kind of conduct are -- you tell me who in this courtroom hasn't at some time told a fib and done

worse? That's an open-ended question that's improper. Where are you heading with it? is the question.

MR. SUTCLIFFE: Actually, it goes to the credibility of the witness.

THE COURT: I know, Mr. Sutcliffe.

MR. SUTCLIFFE: The jury has a right to see how she reacts to an open-ended question like that. It goes to her credibility, Your Honor, and her veracity. Her testimony is crucial to the defense that I need to impeach this witness for lies and as to, did she reasonably have a fear that she thought I was going to kill her.

The only way the jury can ascertain that is by watching this witness as she's testifying.

THE COURT: Which they have been doing very intently. And if you were watching the jury, you might be realizing what their body language seems to be suggesting.

Now, it is true that you have a right to probe for issues of credibility, as does any examiner. But that right is not unlimited and it doesn't include the right to ask open-ended questions like, "Have you ever done anything dishonest?"

And in light of the prior rulings and in light of what the record reflects about this witness, I sustain the government's objection.

If you want to ask about some other inconsistency

between what she's told the jury now and what your evidence suggests, on something that's not collateral, is an inconsistent statement that she's made, that would be something to which you would be entitled to pursue.

But to simply ask that question and expect an answer and work off of that as some kind of claimed effort to probe credibility violates the rules, and I specifically disallow it.

MR. SUTCLIFFE: Your Honor, I want the record to clearly reflect that I object to that. This question goes to impeach her because she's committed perjury. It goes to her truthfulness, it goes to her veracity, and as to her reasonable apprehension of fear.

And if the jury can't see how she responds to a simple question, of which we both know the answer, she can answer, "Yes." Great. It stops. It goes no further. I move on. But I should at least have the opportunity to hear her say "yes" or "no."

THE COURT: Okay. I understand your position, and you have reserved and noted your objection in the record, which would be there in any event.

MR. SUTCLIFFE: Thank you.

THE COURT: That's my ruling.

All right. We will resume tomorrow at 8:00.

(Adjournment at 12:30 p.m., to resume on Tuesday, November 25, 2003, at 8:00 a.m.)

C E R T I F I C A T E

I certify that the foregoing is a true and correct transcript from the stenographic record of the jury trial proceedings in the foregoing matter.

Karen R. Pinn, RPR, CSR 5574
Court Reporter

September 29, 2004

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE A. HOWARD MATZ, JUDGE PRESIDING

UNITED STATES OF AMERICA, Plaintiff, vs. STEVEN WILLIAM SUTCLIFFE, Defendant.	Case No. CR 02-350(A)-AHM

CERTIFIED COPY

REPORTER'S TRANSCRIPT OF JURY TRIAL PROCEEDINGS

Los Angeles, California

Tuesday, November 25, 2003

DAY 8

(Pages 1387-1648)

KAREN R. PINN, RPR, CSR 5574
Court Reporter

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I N D E X

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GOVERNMENT'S WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
HALL-FRASER, Tracy				
By Ms. Duarte			1499	
By Mr. Sutcliffe		1401 (Resumed)		1502
DURIE, James				
By Ms. Duarte	1503, 1522 (Resumed)			
By Mr. Sutcliffe		1525		
MEDEIROS, John				
By Ms. Duarte	1527			
By Mr. Sutcliffe		1532		
SCHMIDT, Donald				
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By Mr. Sutcliffe		1537		
SIEBERT, William				
By Ms. Duarte	1538		1607	
By Mr. Sutcliffe		1593		1609

DEFENSE WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
McAFEE, Leslie				
By Mr. Sutcliffe	1630			

GOVERNMENT'S EXHIBITS	FOR IDENTIFICATION	RECEIVED
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56,68		1566
57,69		1567
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I N D E X (Continued)

DEFENDANT'S EXHIBITS	FOR IDENTIFICATION	RECEIVED
236	1424	1429
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LOS ANGELES, CALIFORNIA;

TUESDAY, NOVEMBER 25, 2003; 8:15 A.M.

(Jury out.)

THE CLERK: Calling item No. 1, CR 02-350(A)-AHM, U.S.A. v. Steven William Sutcliffe.

Counsel, state your appearances, please.

MS. DUARTE: Good morning, Your Honor.

Elena Duarte with Case Agent Frank Harrill for the United States.

THE COURT: Good morning.

MR. SUTCLIFFE: Good morning, Your Honor.

Steven William Sutcliffe, accused, present.

MR. REED: David Reed, advisory counsel.

THE COURT: Good morning.

I understand both sides need to raise certain issues. Let's start with the prosecution.

MS. DUARTE: Your Honor, I have a scheduling issue. I have a witness waiting to testify next after this cross-examination ends. He is also needed today, I was informed last night, in front of Judge Cooper. She's got an ongoing trial, and he's needed today, preferably this morning.

I was wondering if I could inquire and ask the Court to ask Mr. Sutcliffe if he has some kind of estimate on the remaining cross-examination for the witness on the stand.

THE COURT: Which witness are you talking about?

MS. DUARTE: I'm talking about James Durie, who is an FBI special agent, who I have slated to go next. It's not absolutely necessary, but it's fairly important that he go next in our case.

THE COURT: James who?

MS. DUARTE: Durie, D-u-r-i-e.

THE COURT: Oh, I thought it was Dune. Okay. I see his name here.

MS. DUARTE: Sorry. That's my printing.

THE COURT: How much more time do you estimate you need with Tracy Hall?

MR. SUTCLIFFE: I couldn't even begin to tell you, Your Honor. It depends on the veracity and truthfulness of this witness.

THE COURT: Mr. Sutcliffe, are you more than halfway finished?

MR. SUTCLIFFE: No.

THE COURT: Well, you are going to have to make sure that you pursue relevant things and do them once, because I'm going to very careful to enforce both sides' rights to have this case proceed on a proper basis.

So I can't know where you are heading, but you have spent a lot of time with her already.

Do you want to place him out of order? What time is he expected to testify before Judge Cooper?

MS. DUARTE: They can break and put him in at any time after 8:00. He's supposed to testify for 45 minutes to an hour, including cross there. So I'm told if I release him now, he could go over to Roybal. They would break --

THE COURT: Why don't you do that and bring him back.

MS. DUARTE: If I have to, I could always skip and go to the next witness, but I would have to ask the Court's indulgence because it would be a little bit out of order, but we can do that. We can break now.

THE COURT: So you tell this witness to go over to Judge Cooper's court.

MS. DUARTE: The second scheduling issue I have is just to let the Court and opposing parties know that I only have four witnesses left that I plan to present in my case-in-chief.

I anticipate there is a possibility I may rest today.

THE COURT: Okay.

MS. DUARTE: I don't know about cross-exam, obviously, being a factor. There is a possibility --

THE COURT: You need to be ready to proceed with your case tomorrow, then, Mr. Sutcliffe.

MR. SUTCLIFFE: Your Honor, just for clarification -- excuse me, I'm sorry.

MS. DUARTE: Was there a question?

THE COURT: No, no. You finish.

MS. DUARTE: I have another issue, Your Honor, and that is in response to the Court's request yesterday that I go compare the e-mails and the disk --

THE COURT: That you what?

MS. DUARTE: That I compare the e-mails -- remember that discovery issue?

THE COURT: Yes.

MS. DUARTE: Your Honor, I did go back and do that. I want to put a few things on the record in that respect, if it's all right with the Court.

First of all, the 302 that Mr. Sutcliffe referred to yesterday, wherein I discovered to him that there was a disk containing e-mail, was discovered to him over a year ago. And that was a fact that was out there.

I had never before yesterday received any request for an electronic copy of those particular e-mails.

Last night I went back to my office. I printed out those e-mails on the disk. I compared them, per the Court's order, to all the Bates-stamped e-mails that I could locate -- and I think there are some that I cannot, but that's neither here nor there -- and I did find six e-mails that I cannot locate a Bates-stamped version, which indicates to me I cannot prove that I turned those over. I'm ready to turn those over today.

In addition, Your Honor, in reviewing all the

e-mails, which I had to do, because I had them all printed out and was comparing them, I realized that the redaction that I performed over a year ago, which led to my turning over printouts instead of the real thing, was fairly minimal and most of that information, over the course of the last year, year and a half, is now out.

Therefore, I withdraw my objection to turning over a copy of that disk, and I have brought a copy for the defendant, together with the six e-mails that I located that I'm unable to match to Bates-stamped copies.

If the Court wants to be heard further, I can go through those e-mails one by one, or I can just give it all to defendant now.

THE COURT: Did you bring a copy for the Court?

MS. DUARTE: I did.

THE COURT: You don't have to get into it any further. Just give a copy to the clerk. Give the six e-mails in printout form and the -- is it on a disk?

MS. DUARTE: Printout and a disk.

THE COURT: Give those both to Mr. Reed to give to Mr. Sutcliffe.

MS. DUARTE: Your Honor, I also want to put on the record that in going over all of the e-mails that I could locate that have been turned over, there are approximately 70 e-mails on the disk alone, and there are also a large number of

e-mails that were turned over that I do not have in electronic form, that are additional written copies.

So I've now given him a full copy of the disk, but there were more than the 70 e-mails on the disk that I did turn over. So there were substantial e-mails.

I did check all of those on the disk, and I did find those six that I was unable to match, at least as of last night.

THE COURT: Okay. Thank you very much. Anything else?

MS. DUARTE: Your Honor, I don't have anything else.

THE COURT: Okay. Mr. Sutcliffe?

MR. SUTCLIFFE: Yes. Thank you, Your Honor.

I'm in shock. The government has put on one of their star witnesses and has withheld discovery material that I requested, in numerous correspondences, from the government to impeach these witnesses. And now, after the witnesses have come and gone, "Whoops, sorry, six we didn't turn over to you."

I am prejudiced by this. I move for an immediate dismissal of the charges.

THE COURT: Have you even looked at these e-mails?

MR. SUTCLIFFE: Yes.

THE COURT: Tell me which e-mails you need to explore with which witnesses that you haven't already explored?

MR. SUTCLIFFE: Elizabeth Greenwood, she's sending an

e-mail to the government and Mr. Labaton on December 14, 2001. How am I supposed to not cross-examine her regarding this conversation?

THE COURT: Let's read into the record what the e-mail says.

MR. SUTCLIFFE: Can we answer my question?

THE COURT: Your motion is denied. Now move on to the next thing.

MR. SUTCLIFFE: Thank you, Your Honor.

As you've said, I've spent enough time with Tracy Hall. I think that was your comments earlier, so you want to move this --

THE COURT: I said you spent a lot of time with her. I don't know what is enough yet.

MR. SUTCLIFFE: Could you define for the record what was a lot of time, in your mind, yesterday?

THE COURT: No.

MR. SUTCLIFFE: Was it maybe a couple of hours?

THE COURT: I don't know how many hours on the clock passed, but it was repetitive, it was irrelevant, it was harassing, and it was lengthy.

MR. SUTCLIFFE: And I object to that clarification of cross-examining my -- an adverse witness.

In terms of moving this case along, as you seem to be hinting that -- you've made promises to the jury that you are

going to quickly expedite this trial and -- so I have to suffer for that, can we -- the defense would like to make a motion in limine at this point as to my cross-examination of Mrs. Fraser, also known as Tracy Hall.

As to her previous conviction, the terms of her sentence, I would like to inquire into the part of the condition of the Court that was imposed upon her to, quote, use your true name.

Would the Court allow me to quickly indulge conversation from the witness about only being told to use her true name?

THE COURT: No.

MR. SUTCLIFFE: No? Well, Your Honor --

THE COURT: It's beyond the scope of proper -- let me finish, Mr. Sutcliffe. It's beyond the scope of proper cross-examination. It's irrelevant.

You've already spent, and I think unnecessarily spent, a great deal of time exploring what names she's used and she's explained that to you. So that request is denied.

MR. SUTCLIFFE: Can I explain -- can I cross-examine her about the part about dissuading a witness from testifying to elicit the fact that this, basically, is causing someone to not file a Complaint, an indictment and information, or to be sought and prosecuted, if that's what it means?

THE COURT: No. I said that you can only inquire

further than I already authorized you to, if you have a good faith reason, supported by something you can proffer to me, that establishes that whatever was involved in that no contest plea involved efforts to suppress negative information about her personally or that was in a manner involved factually in the disputes between Global Crossing and you or between the United States and you.

If they are not in those categories, then you have explored fully all that you are entitled to explore as to that no contest plea.

MR. SUTCLIFFE: May the defense inquire as to part of her conditions of her sentence not to engage in any civil investigations?

THE COURT: No.

MR. SUTCLIFFE: May the defense inquire into any admissions of her, or can I delve into the fact that she might have an alcoholic disorder or --

THE COURT: No.

MR. SUTCLIFFE: -- or a drug abuse problem?

THE COURT: Absolutely not.

MR. SUTCLIFFE: Your Honor, doesn't that go to the state of mind if, at the time that this witness was going to this website, she was in a full-blown alcoholic state at this time or suffering from drug abuse, that would, I would imagine the Court would agree, tend to enhance and distort one's

MR. SUTCLIFFE: That will do it for me.

THE COURT: That's it?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: Well, let's bring the jury out now if they are ready and we can get a little jump-start.

MR. SUTCLIFFE: Could I have five minutes just to prepare here?

THE COURT: All right. We'll bring out the jury in five minutes.

MR. SUTCLIFFE: Thank you, Your Honor.

(Recess taken at 8:27 a.m. to 8:34 a.m.)

THE COURT: All right. Welcome again. Please be seated. Let's bring in the jurors.

(Jury in.)

THE COURT: Welcome back, members of the jury. Everyone is present and accounted for. We are ready to proceed.

Continue, please, with your cross-examination, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

CROSS-EXAMINATION (Resumed)

BY MR. SUTCLIFFE:

Q Good morning, ladies and gentlemen of the jury. Good morning, Mrs. Fraser. How are you doing today?

A Good morning.

Q When we left off yesterday, we were briefly discussing service of process that you were hired to serve on me, and then a meeting that you had subsequently, the next day, at the Law Offices of Leslie McAfee.

Do you recall that?

A Yes.

Q I'd like to pick up a little on that and then we'll move on.

Now, you stated that your true name is Tracy Hall-Fraser?

A Yes.

Q Isn't it true, Mrs. Fraser, that you used Tracy Hall instead of your true name so that the U.S. Attorney could, in fact, make a connection between this website and you instead of saying that your name was really Tracy Fraser and not Tracy Hall?

A No.

Q No? Okay.

Did you have an interview with the FBI on 5-8-2002?

A I probably did.

Q You probably did. Okay.

Did you have more than one interview with the FBI?

A Yes.

Q Each time that you met with the FBI, did you ever tell them that your last name was Fraser?

A I don't recall.
Q Now, what time of the day did you attempt to serve this temporary restraining order on December 17th? Do you remember what time you started?
A Approximately 5:30 or 6:00 in the morning.
Q And this was the second day that you had been there --
A Yes.
Q -- to the defendant's home at about 6:00 in the morning? Okay.

Now, this temporary restraining order -- had you seen a copy of it before? You were given a copy of it, I assume; right?

A Yes.
Q Did you read it?
A No.
Q You never read it?
A I may have read bits and pieces of it after the fact.
Q One of those bits and pieces was that this document that you were given to serve had to be served by December 17th, the second day you were at the defendant's home?
A I didn't know that.
Q You didn't know that?
A No.
Q Isn't it also a fact that this document had to be served by 4:00 on that day?

A I didn't know that.
Q You didn't know that at all?
A No.
Q Okay. So you get there at 6:00 a.m. the second day. You weren't able to serve the defendant the first day, so now it's the second day. You are sitting there from 6:00 a.m.

Do you recall what time of the day that you first saw the defendant?

A Approximately 1:30.
Q Approximately 1:30 p.m.

So you had been sitting there six and a half, seven and a half hours, approximately.

Had you gotten out of your car or did you see him from your car where you were sitting?

A No, I was not in my car.
Q You were out walking around?
A No.
Q Where were you when you first saw the defendant?
A I was up on the third floor.
Q You were up on the third floor the first time you saw the defendant?
A Uh-huh.

THE COURT: Is that a "yes"?

THE WITNESS: "Yes."

BY MR. SUTCLIFFE:

Q And you were where on the third floor?
A I would have been directly across the alcove from his sliding glass window.
Q I thought you said that the first time you saw him you were down by the pool area.
A No.
Q Okay. So you see the defendant in there.
How far away were you from this -- where you were standing from this sliding glass window?
A Maybe from here to where the gentleman is sitting with the thing around his neck and his hand up by his face.
Q Just for the record, that's about how many feet, approximately?
A I couldn't tell you.
MR. SUTCLIFFE: Okay. Does the Court know?
Q 30 feet? 40 feet? Is that a fair guess?
A I'm not going to guess. That's an estimate.
Q That is a guess, an estimate. Okay.
So you see the defendant and -- you clearly saw him?
A Oh, yes.
Q And then what did you do?
A I went up to his door.
Q Okay.
A I put the papers down. I knocked on his door.
Q You put the papers down and knocked on his door.

A I heard a woman.
Q You heard a woman.
A Exchanged a few words.
Q You say "exchanged a few words." Could you just briefly elaborate what words?
A I asked for you. I asked for the defendant.
Q Did she say, "Hold on. I'll get him"?
A No. She said she had never heard of the defendant.
Q So you knock on the door and you say, "Is Steven Sutcliffe here?" and someone says, "I never heard of the guy"?
A Basically.
Q Basically. Okay.

Your Honor, should I use this as a reference?

THE COURT: Right now, no. Do your best to answer questions if you have a memory that's independent of the document.

THE WITNESS: Yes, sir.

BY MR. SUTCLIFFE:

Q So you knock on this door. You say, "Hello. Is Steven there?"

"Sorry. I don't know nobody by the name of Steven"; right?

A Yes.
Q And then what did you do?
A I departed. I went and --

Q Where did you go?
A I went to the same vantage point, the same area that I had seen him from in the beginning. And I watched the defendant and his wife walk towards the kitchen area of the apartment as I was calling the telephone.
Q Okay. Now, in this conversation through the door -- I assume that nobody opened the door?
A No.
Q Were you screaming through the door?
A No.
Q Were you yelling?
A No.
Q Were you shouting?
MS. DUARTE: Objection. Asked and answered, Your Honor.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Okay. In your declaration that you filed on October 17th, did you say that "Although the woman refused to open the front door during the period while I talked to this woman, we spoke loud enough so that anybody in the apartment would, in my opinion, have heard our entire conversation"?
A I don't recall if those were the exact words.
MR. SUTCLIFFE: May I show this document to refresh the witness's recollection, Your Honor?

THE COURT: No. Because it's entirely irrelevant. Her recollection, even if it's refreshed, doesn't get to any issue that's got any relevance whatsoever to this case.

Please move on to your next question.

MR. SUTCLIFFE: Yes, Your Honor. I'll get the relevance in right now. Thank you.

Q You testified you went back and you saw -- had you ever been in the defendant's home?

A No.

Q Had you ever met the defendant before?

A No.

Q Had you ever been in his apartment building before?

A No.

Q Okay. How is it that -- you said you went back to the window, from your vantage point, and you see through these sliding glass windows approximately 40, 50 feet away?

A Uh-huh.

Q And you said you see the defendant go to his kitchen?

A Towards his kitchen, yes.

Q So you can see a kitchen from that vantage point?

MS. DUARTE: Objection. Irrelevant, Your Honor.

THE COURT: Sustained.

Ladies and gentleman, this case is not about the validity of the service of the TRO. The merits of the lawsuit that Global Crossing brought against Mr. Sutcliffe, any claims

or basis Mr. Sutcliffe may have against Global Crossing, any claims he may have against Tracy Hall, for whatever he thinks were the manner in which she effectuated service of the TRO, those are not issues relevant to this lawsuit.

Any examiner is allowed to pursue a witness to establish bias. And that is Mr. Sutcliffe's right, and I will be vigilant in preserving that. But no examiner is permitted to go over ground previously asked repeatedly. And no examiner, even in the pursuit of evidence of bias, is permitted to get into something that is collateral or irrelevant.

With those reminders, Mr. Sutcliffe, please proceed.

MR. SUTCLIFFE: I'm kind of flabbergasted, Your Honor.

Q You testified you've never been in the defendant's apartment.

How do you know he was going into the kitchen?

A The manager had given me the layout of the defendant's apartment prior.

Q Really?

But you didn't note that anywhere in your records; you didn't mention that until just now?

A (No response.)

Q Are all these apartments the same layout?

A I had only inquired about the defendant's apartment.

Q And had she ever been in the defendant's apartment prior

-- do you have any facts -- any knowledge that she had ever been in the defendant's apartment?

A I could only assume she was because she was a manager.

Q How long had she been the manager?

MS. DUARTE: Objection, Your Honor. Irrelevant.

THE COURT: Sustained. It's irrelevant.

Mr. Sutcliffe, I've ruled. Now, move on to something that matters.

How long somebody was the manager of the apartment where this service was effectuated is absolutely, flagrantly irrelevant. Now, move on.

MR. SUTCLIFFE: I believe it's not, Your Honor, but I'll move on. Thank you.

Q Mrs. Fraser, you said that after you allegedly served the defendant -- and that was the purpose of your employment -- right? -- to serve the defendant?

A Yes.

Q That's what you were hired to do?

A Yes.

Q Were you hired to serve anybody else that day?

MS. DUARTE: Objection to relevance.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q What was the purpose of your visit to Mr. McAfee's office the following day?

THE COURT: That's been asked and answered three times.

MR. SUTCLIFFE: I don't believe so.

THE COURT: She told you yesterday and she told the jury yesterday she went over there in order to implore him, as your lawyer, to intercede to prevent her from being at risk. In one way or another, she said that three times. And also to give a courtesy copy of the subpoena to your lawyer.

Now, move on. It's been asked and answered.

MR. SUTCLIFFE: Your Honor, the witness has testified that she was hired --

THE COURT: Move on. Asked and answered. That's my ruling. You are welcome to ask a new question.

Please proceed.

MR. SUTCLIFFE: I recognize this is a very hostile witness to the defendant.

THE COURT: I have authorized you to ask questions that you are entitled to ask.

Now, please proceed.

BY MR. SUTCLIFFE:

Q Mrs. Fraser, when you went to Mr. McAfee's office and you wrote -- you testified that you had written notes immediately afterwards; correct?

A Yes.

Q Now, in these notes, you say you told Mr. McAfee that you

didn't appreciate having your license plate on that website, "yes" or "no"?

A Yes.

MS. DUARTE: Objection. It's been asked and answered, Your Honor.

BY MR. SUTCLIFFE:

Q Did you also write in your notes here that you asked him how would he feel if his personal information, such as his address, his home telephone number, and his personal social security number, were put on an Internet site? Did you ask him that?

A I don't remember the exact words, but that was the context.

MR. SUTCLIFFE: May I show the witness her own notes, Your Honor?

THE COURT: She has acknowledged that those were the contents. I think you have gotten the answer you wanted. She's acknowledged that she asked him something to that effect.

BY MR. SUTCLIFFE:

Q I'm going to read you your notes, Mrs. Fraser.

THE COURT: No, you are not, Mr. Sutcliffe. I have already explained that that's not appropriate.

MR. SUTCLIFFE: I'd like a "yes" or "no."

THE COURT: Move on to your next question.

BY MR. SUTCLIFFE:

Q Mrs. Fraser --

THE COURT: Mr. Sutcliffe --

MR. SUTCLIFFE: I am, Your Honor.

THE COURT: -- I have instructed you not to read the notes.

MR. SUTCLIFFE: I am not reading the notes, Your Honor. I'm moving on to my question.

THE COURT: Then ask your question.

MR. SUTCLIFFE: I would like the record to reflect I don't like the tone that you just took with me, Your Honor. I'm just trying to make my defense here.

THE COURT: You are being permitted to make your defense, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: No less so and no more so than any other examiner.

MR. SUTCLIFFE: I never asked for any more, Your Honor.

THE COURT: Please proceed.

MR. SUTCLIFFE: Thank you.

Q Mrs. Fraser, after asking this question, I have to ask you this: Was your home address ever published on this website?

A Not to my knowledge.

Q Was your telephone number ever published on this website?

A Not to my knowledge.

Q Was your social security number ever published on this website?
A Not to my knowledge.
Q Were you taking it personal when you saw -- what I'm trying to get at --
A I took it very personal.
Q I understand that. You saw your license plate and you took it personal.
A I saw my name and my license plate and you want to kill me. I took that very personal.
MS. DUARTE: Objection, Your Honor.
THE COURT: All right. Mr. Sutcliffe, let's back off. You don't interrupt him if he's asking a question and you don't interrupt her if she's answering.
Now, start again with a question in a civil tone of voice.
MR. SUTCLIFFE: Thank you, Your Honor.
THE COURT: Because if you object to voices being raised, then you have to maintain the same standard.
MR. SUTCLIFFE: Will you please instruct the witness not to interrupt until I have finished my question, Your Honor?
THE COURT: I already did.
MR. SUTCLIFFE: Thank you.
Q Mrs. Fraser, on 10-18, you testified that all you saw was the name Tracy and a license plate number.

Why are you going to Mr. McAfee's office, talking about social security numbers, home phone numbers and addresses which had nothing to do with you at all?

A Because you had done that to other people, many other people. I could only expect that you would potentially do the same to me.

Q You made that assumption?

A On very good grounds. Yes.

Q On what grounds was that?

A Ten years of experience.

Q In dealing with information?

A In dealing with subjects and dangerous people and information, yes.

Q And information is dangerous to you?

A Dangerous people are dangerous to me.

Q I can use a match to light a fire and cook a meal. I could also use it to burn down the courthouse. It depends --

MS. DUARTE: Objection, Your Honor. Argumentative.

BY MR. SUTCLIFFE:

Q -- on the intent of the possessor of the information; isn't that true?

THE COURT: Objection sustained.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Ask the question in a proper fashion.

BY MR. SUTCLIFFE:

Q Based on your experience, you see a license plate on the Internet site and you call that -- that became dangerous to?

MS. DUARTE: Asked and answered, Your Honor. Objection.

THE COURT: Overruled.

You can answer that question, if you can.

THE WITNESS: It had started to become worrisome at that point.

BY MR. SUTCLIFFE:

Q It had started to become worse at that point?

A Worrisome.

Q Worrisome. Okay.

And did it make you angry?

A Yes.

Q So you see your license plate and you got really angry.

And the reason you went to Mr. McAfee's office was not to really ask him to take off that license plate, but to dissuade him, like you've been convicted just recently, of publishing information on this website which, in its entirety, was also exposing crimes that were alleged to being committed by this company, Global Crossing; correct?

THE COURT: That's totally inappropriate. Objection sustained.

MS. DUARTE: Move to strike.

THE COURT: Let me finish.

Ladies and gentlemen, no person asking a question can slip into the question facts which are not in evidence and not even existing. And no examiner is entitled to ask a question that the law considers to be argumentative.

That question was defective on both grounds. Ask a proper question, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

I apologize if I asked that question incorrectly.

Q Mrs. Fraser, isn't it true that the reason you went there was to dissuade Mr. McAfee and the defendant from publishing this information that it was getting from other sources in the same manner that you've been convicted recently of dissuading another witness?

A No.

MS. DUARTE: Objection. That's compound and assumes facts not in evidence, Your Honor.

THE COURT: Okay. The objection is sustained.

You should disregard the question even though the answer was "no."

BY MR. SUTCLIFFE:

Q Did Mr. Labaton tell you to dissuade the witness or his attorney from publishing this information because he wanted his social security number, his home address, and his telephone number off this website?

MS. DUARTE: Objection. That's compound and

irrelevant and calls for speculation.

THE COURT: It is compound.

The objection is sustained on that basis.

MR. SUTCLIFFE: I'll rephrase the question.

Q Did Mr. Labaton ever tell you, "Look, go to this lawyer's office and dissuade this guy from publishing my social security number, my home address, and my phone number"? Did he, Mrs. Fraser?

A No, he did not.

Q Now, when you say, in this statement that you made to Mr. McAfee, that you are going to make his client's legal life miserable, isn't it a fact that you can make someone's legal life really miserable by making a false accusation against his wife for beating their child?

MS. DUARTE: Objection. Irrelevant.

THE COURT: It's not irrelevant.

Overruled.

BY MR. SUTCLIFFE:

Q Isn't that true -- you can make someone's legal life miserable by making a false accusation against their wife so that their child could be removed from their family; isn't that true? Isn't that?

A Are you asking if I did that?

Q I'm asking you, can you make someone's legal life miserable by making a false accusation that a man's wife is

beating their child so that the child can be taken away by Child Protective Services? Can you do that to make someone's legal life miserable?

A Yes.

Q Did you ever hear Mr. Labaton discuss with anybody the issue of Child Protective Services?

A No.

Q Did you ever hear Mr. Labaton make a statement that Tracy had told him that she had called Child Protective Services?

A No.

Q Let's move on.

Now, you say on December 17th you served the defendant and then on December 18th -- may I have a break?

THE COURT: Do you want a break?

MR. SUTCLIFFE: Please.

THE COURT: Okay. We'll take a short break, ladies and gentlemen. We'll call you in when we are ready to resume.

(Jury out.)

THE COURT: We are adjourned. Let me know when the proceedings are ready to resume.

(Recess taken at 8:56 a.m. to 9:05 a.m.)

(Jury out.)

THE COURT: Mr. Sutcliffe, are you ready to proceed?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: I think the ground you are covering is

difficult for all parties, you and the witness and perhaps a lot of other people as well, so I understand why it's difficult to cover it. There is water available at the table. If you need to proceed at a different pace, not a pace that the reporter is incapable of following, you are welcome to do so.

Shall I bring in the jury?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: Okay. Let's do that.

(Jury in.)

THE COURT: We are ready to resume.

Please proceed, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Mrs. Fraser, when we last left off, we were discussing whether you had ever seen your social security number or your date of birth or your home address on this website.

Now, to your knowledge, did you ever receive a letter from the defendant sent to your home?

A No.

Q Did you ever receive a phone call from the defendant to your home?

A No.

Q Did you ever receive an e-mail sent to your e-mail address?

A No.

Q Okay. Now, after this process of service on the 17th, you

then subsequently filed another declaration, did you not?
A Another declaration as opposed to?
Q To support Global Crossing and the Law Firm of Christensen, Miller, where Mr. Labaton works at, who was employing you.
A Yes.
Q And you executed this document with your signature on October 21st; is that correct?
A Approximately.
Q And you signed it Tracy Hall?
A Yes.
Q But at the time your name was Tracy Fraser?
A No.
Q Okay. Now, in this document -- this declaration that you filed, did you include in that your previous testimony from your original declaration of proof of service in this document?
MS. DUARTE: Your Honor, just a point of clarification. I only have one declaration, so I'm just not sure what he's referring to. If I could have a date or a Bates stamp.
MR. SUTCLIFFE: Neither of these have Bates, Your Honor. These were original court documents.
THE COURT: Please hand them to Mr. Reed so at least the prosecutor can see what they look like. Then I will allow you to continue in appropriate ways.

this?

THE COURT: I think it is.

MS. DUARTE: Apparently, there is one --

THE COURT: Bates stamped 00319 --

MS. DUARTE: That I have, Your Honor.

THE COURT: -- through 324.

MS. DUARTE: That I have.

It was my understanding that Mr. Sutcliffe was referencing a document with a filed stamp of October 24th.

MR. SUTCLIFFE: No.

MS. DUARTE: This one is stamped October 22nd.

MR. SUTCLIFFE: 22nd, correct.

MS. DUARTE: I do have a copy of this.

THE COURT: All right. So does the witness.

THE WITNESS: That's the one Your Honor asked to have copied for me yesterday.

THE COURT: Was this referred to yesterday?

MR. SUTCLIFFE: Yes. We briefly touched upon it.

MS. DUARTE: It was, Your Honor.

THE COURT: I see that, Bates 319. Okay. Same declaration. It's bearing an execution date of October 21, 2001, and a filed date of October 22, 2001. But it's not yet in evidence.

Do you have a question, Mr. Sutcliffe?

MR. SUTCLIFFE: Yes.

Q Do you recall filing this document, Mrs. Fraser?
A I did not file it.
Q Do you recall signing it and declaring everything --
A Yes.
Q -- in it as true?

Your Honor, defense would like this marked next in order as an exhibit.

THE COURT: I think it's 236; is that right?

MS. DUARTE: Yes, Your Honor.

THE COURT: This will be marked as 236.

(Defendant's Exhibit 236 marked for identification.)

THE WITNESS: Your Honor, may I have my copy back or can I refer to it?

THE COURT: Let's see what happens with respect to the next question.

BY MR. SUTCLIFFE:

Q This declaration, which has now been marked as an exhibit, "Declaration of Tracy Hall," who drafted this document up?
A Myself, Mark Labaton, another attorney -- I'm sorry, I don't remember her name -- and one of the paralegals.
Q Some female attorney.

This declaration that we were discussing earlier, your proof of support for serving the temporary restraining order, do you know who drafted this document?

A I'm confused. Are those two separate documents?

Q Yes. The first one is the proof of service.
A Okay.
Q The declaration that proves that you served the defendant, and you signed this October 17th, 2001.
MS. DUARTE: Your Honor, that one is the one I don't have a copy of, whatever he just referenced.
MR. SUTCLIFFE: I'll be glad to provide it.
THE WITNESS: That's the one I would need to look at as well to refresh my memory.
THE COURT: They are very closely similar, but I'm handing the witness a declaration appearing to contain an execution date of October 17th and a filed stamp of October 24th.
THE WITNESS: Thank you.
THE COURT: It's three pages.
THE WITNESS: (Witness reading document.)
BY MR. SUTCLIFFE:
Q Does that document refresh your recollection?
A Yes.
Q Did you, in fact, sign that document --
A Yes.
Q -- that declaration, a proof of service?
A Yes.
Q Do you know who prepared that document?
A I'm sorry, I don't.

Q You don't recall that document. Okay.

So someone just handed you that document and said, "Here, sign this proof of service"?

MS. DUARTE: I'm sorry, Your Honor. The referenced document I don't believe is marked for identification yet. Should it be Defense 237?

THE COURT: Do you want to have it marked?

MR. SUTCLIFFE: Yes, Your Honor, please.

THE COURT: Okay. We'll mark it as 237.

(Defendant's Exhibit 237 marked for identification.)

THE WITNESS: If memory serves me correct, this was being faxed back and forth from my home to Mark Labaton's office until we got it correct because it was imperative that this was to be filed in court.

BY MR. SUTCLIFFE:

Q I'll ask you again. How did that document get prepared? Did you type up the original and send it to the offices of Mr. Labaton?

A No.

Q Vice versa?

A Yes.

Q And did you relay the contents of -- how did you relay the contents to the office to have the original typed up if you were not there physically?

A I telephoned.

Q You served the defendant, and then you called him on the phone and said, "Hey, this is what happened. Write it up"?
A I went to their office first, I believe, to drop off the proof of service.
Q Okay.
A He gave me a short summary of what had happened and then I departed for my home.
Q Did anything else take place in that office when you went there?
MS. DUARTE: Objection. Vague.
BY MR. SUTCLIFFE:
Q Did you have any other discussions related to the defendant?
A Mr. Labaton told me that -- I believe that's the time Mr. Labaton told me that my plate had been put up for the first time --
Q Okay.
A -- hours after I served you -- or the defendant.
Q Okay. This second declaration that was filed -- now, I don't have my original proof of service, Your Honor, the one I just gave to the witness. Could I get that back?
THE COURT: Could you hand that back, please.
Why don't you put a filed -- it's not filed, but an identification marker on it as 237.
BY MR. SUTCLIFFE:

Q Mrs. Fraser, this second document I'm holding called "Declaration," which is Exhibit 236 for the defense, "Declaration of Tracy Hall, filed in support of Global Crossing Development Company" -- I hope I'm not speaking too fast -- and this other document in my left hand, "Declaration of Tracy Hall, filed in support of proof of service," were you present when this first document -- the "Declaration of Tracy Hall, filed in support of Global Crossing's opposition," were you present when this document was prepared?

A I believe I was.

Q Did you add or tell them, "Take that out, put that in," anything, in this document?

A I don't recall.

Q Okay. And you testified that Mr. Labaton was the one preparing this second declaration, Exhibit 236?

A I testified Mr. Labaton, another female attorney, and a paralegal.

Q Right.

Now, I'd like to show you, on the monitor, if I might -- I'm going to switch back and forth from one to the other and we are going to walk through this just briefly.

THE COURT: They are not in evidence, but I'm going to admit them into evidence, just to get through this faster.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: 236 and 237 are received.

hide anything related to your behavior in Mr. McAfee's office on October 18th?

MS. DUARTE: Objection. That's vague, Your Honor, and possibly irrelevant.

THE COURT: Do you understand the question?

THE WITNESS: Not really.

THE COURT: Could you reframe the question, please.

The objection is sustained.

MR. SUTCLIFFE: Thank you, Your Honor.

Q This document you are working off of -- you are working off of your notes here; correct?

THE COURT: Mr. Sutcliffe, to assist yourself, you should state on the record which one you are asking about by number.

BY MR. SUTCLIFFE:

Q Exhibit 236 for the defense, your "Declaration, filed in support of Global Crossing," executed on October 21st. You were working with Mr. Labaton to prepare this document and you were working from notes that you had prepared immediately after your meeting with the defendant, his wife, and Mr. McAfee; correct? Isn't that true?

A Can you repeat the question? I want to make sure I get this right.

MR. SUTCLIFFE: Can you read the question back, please.

(Record read as follows:

"QUESTION: Exhibit 236 for the defense, your "Declaration, filed in support of Global Crossing," executed on October 21st. You were working with Mr. Labaton to prepare this document and you were working from notes that you had prepared immediately after your meeting with the defendant, his wife, and Mr. McAfee; correct? Isn't that true?")

THE WITNESS: I don't know if it was his wife, so I would have to say no, that's not true.

BY MR. SUTCLIFFE:

Q Let's leave the wife out of it.

You were working from notes that you had prepared immediately after your meeting at Mr. McAfee's office; correct?

A Some of them -- I don't recall.

Q What do you mean by "some of them"?

A I don't know when I prepared the majority of my notes after I had served the defendant.

Q What about the notes of 10-18 that we've been discussing of your meeting with Mr. McAfee?

MS. DUARTE: Your Honor, I don't believe that that document is in evidence.

THE COURT: Okay. Take it off the screen and ask a question that's framed properly. That one is not.

BY MR. SUTCLIFFE:

Q Did you prepare notes immediately after your meeting in

Mr. McAfee's office on 10-18?

THE COURT: That's been asked and answered. She said when she prepared those notes yesterday.

MR. SUTCLIFFE: Defense would like the notes to be entered as exhibit next in order, please.

MS. DUARTE: Objection, Your Honor. There is no basis and it's hearsay.

THE COURT: Sustained.

MR. SUTCLIFFE: May I have a second, Your Honor?

THE COURT: Yes.

BY MR. SUTCLIFFE:

Q Mrs. Fraser, you went to Mr. Labaton's office -- correct? -- on October 21st to sign this declaration?

A I believe so, yes.

Q When you went there, did you -- you, obviously -- I assume you discussed your meeting with the defendant on the day that you attempted to serve him?

A I didn't have a meeting with the defendant on the day I served him.

Q You discussed your trying to serve the defendant on the 17th -- correct? -- with Mr. Labaton?

A Yes.

Q And I assume that you took, as a good private investigator, notes of what transpired that day; for instance, "I met with the landlady and she gave me the layout of the

joint"; right?
A Are you asking when I took those notes?
Q Sure.
A I actually wrote them down afterwards, not while I was present in the apartment complex.
Q How soon afterwards did you write down the notes of your meeting going to Mr. McAfee's office?
A I don't recall.
Q A day?
A I doubt it.
Q Did you ever make the statement, "I wrote down -- "I prepared these notes of my meeting at Mr. McAfee's office shortly after our meeting"?
THE COURT: Now you are asking about Mr. McAfee's office as opposed to the service?
BY MR. SUTCLIFFE:
Q I'm asking the witness if she ever made the statement that "I prepared my notes of my meeting at Mr. McAfee's office shortly after our meeting."
A Yes. It takes approximately 40 minutes to get to where my home was.
Q So you go home and you sit down and you prepare your notes of your best recollection of the events that took place at Mr. McAfee's office?
A Yes.

Q About 40 minutes afterwards; correct?
A I don't recall exactly.
Q Approximately 40 minutes? An hour?
A I don't recall exactly.
Q And these are your notes; correct?
A Again, yes.
MR. SUTCLIFFE: Defense would like these entered as next in order, Your Honor.
MS. DUARTE: Same Objection, Your Honor. There is no basis for admission.
THE COURT: You can have them marked, but I'm not going to receive them in evidence.
Do you want them marked?
MR. SUTCLIFFE: Yes, Your Honor.
THE COURT: They'll be marked as Exhibit 238.
(Defendant's Exhibit 238 marked for identification.)
BY MR. SUTCLIFFE:
Q Mrs. Fraser, did you take a copy of these notes with you to Mr. Labaton's office when you were preparing this declaration?
A I don't recall.
Q Did you send a copy of these notes to Mr. Labaton?
A I don't recall.
Q Can you explain how those notes would have gotten in verbatim to this declaration, then?

A I could have sent them via fax, I could have spoke of them over the telephone, or I could have brought them in. I don't recall.

Q Isn't it a fair statement to say that if these notes got in here verbatim -- word for word -- that you sent them to Mr. Labaton?

MS. DUARTE: Objection. That's been asked and answered and it's irrelevant.

THE COURT: Sustained on both grounds.

MR. SUTCLIFFE: May I show the witness a copy of her notes, Your Honor?

I'd like her to read along with me, just a brief part.

MS. DUARTE: Your Honor --

THE COURT: You've established that those notes are in the declaration. The declaration is in evidence. If you want to ask her about whatever the notes say, ask her about the declaration.

Let's move on, please.

She told you it's in the declaration. I don't see the relevance of this, but I'll give you a little bit more latitude.

MR. SUTCLIFFE: I'm getting there, Your Honor.

THE COURT: Please get there quickly.

BY MR. SUTCLIFFE:

Q Mrs. Fraser, we discussed -- I'm going to put for you this declaration again that was filed on October 21st, which is Defense Exhibit 236. I'm going to zoom in here so you can read this clearly.

For the record, it's on page 5, Section 19.

We were discussing how you had said, "I asked him" -- meaning Mr. McAfee -- "how he would feel if his personal information, such as his home address, home phone number, and social security number were put on the Internet site."

Do you remember that conversation and making those notes?

A I vaguely remember the conversation. I vaguely remember making the notes.

Q Do you see where it says, "I again told him I did not want to be in the middle of this mess and he said he was contesting the service"?

That's from your notes, too; isn't that correct?

THE COURT: Mr. Sutcliffe, it's been established that her notes, verbatim, are in this declaration. How many times do you want her to tell you that?

MR. SUTCLIFFE: I'm almost done, Your Honor.

THE COURT: Don't ask her that question again. The jury is well aware that the notes form part of the contents of this exhibit, which is a declaration.

Now ask a different question.

BY MR. SUTCLIFFE:

Q Now, do you see paragraph 20, Mrs. Fraser?

A Yes.

Q "I got up and I told him again that I did not want to be in the middle of it. And if his client kept my personal information on the Internet, I would talk to counsel."

Isn't it a fact that in your handwritten notes, it says -- it goes on. It says, "I got up and I told him again that I did not want to be in the middle of it. And if his client kept my personal information on the Internet, I would talk to counsel and make his client's life miserable"?

Why is that omitted from your notes?

A "Legal life miserable."

Q "Legal life miserable."

Why is that last part, "I'll make his legal life miserable" taken out of the declaration? Whose idea was that?

A You would have to ask Mr. Labaton or the other attorney or the paralegal who was typing it up.

Q Wouldn't you agree that that's an omission of a fact that would skew the perception of a judge if he didn't have all of the facts?

A You would have to ask His Honor.

MS. DUARTE: Objection. Speculation and lacking foundation.

BY MR. SUTCLIFFE:

Q You gave this declaration to him.

THE COURT: Mr. Sutcliffe, no examiner is permitted to argue with a witness. You may not like the witness's answer, but you don't have the right to argue with her.

The objection based upon it calling for speculation and lacking foundation is sustained.

This witness, as far as I know, is not a judge and can't speak for how a judge would consider it.

BY MR. SUTCLIFFE:

Q Did you ever make the statement, "Mr. Labaton, take out that one line"?

MS. DUARTE: Objection to relevance.

THE COURT: Overruled.

BY MR. SUTCLIFFE:

Q Did you ever tell Mr. Labaton to take out that one line to paint you in a better light?

A I don't --

MR. SUTCLIFFE: I'll withdraw that.

THE COURT: The question has been withdrawn.

MR. SUTCLIFFE: I'll move on, Your Honor.

Q Mrs. Fraser, in this declaration you also discussed a phrase off of the website that was, I believe, on page 4. It starts off, "Mr. Labaton, it shows you" -- Mr. Labaton had shown you a part of the website "evilgx.com"; right? As an exhibit that they attached to your declaration, "Mr. Labaton

showed me, in part, to date, Global Crossing has spent tens of thousands of dollars, as we predicted, to lose an ex parte lawsuit. They filed this lawsuit to try to silence this site."

Do you recall looking at that Webpage?

A Yes.

Q And was there anything else on that Webpage?

A My license plate number, I believe, had been put on.

Q Now, did you fax that page to any law enforcement officers?

A I may have. I don't recall.

MR. SUTCLIFFE: May I refresh the witness's recollection?

THE COURT: You may.

MR. SUTCLIFFE: Thank you.

THE COURT: Just put it on the screen.

MR. SUTCLIFFE: Thank you, Your Honor.

MS. DUARTE: Your Honor, may my monitor be enabled?

THE COURT: Yes.

MS. DUARTE: It may be here, Your Honor. Thank you.

THE COURT: You need to put the full text on the screen, please. Enlarge it a little bit, please.

MR. SUTCLIFFE: I don't know if you can note that right there. It says "LASD."

MS. DUARTE: I'm sorry, Your Honor, was there a question pending?

MR. SUTCLIFFE: No.

THE COURT: The question is whether this refreshes her recollection as to whether she sent some portion of the declaration to any law enforcement officer. I think that's the question. Right, Mr. Sutcliffe?

MR. SUTCLIFFE: Yes, Your Honor.

THE WITNESS: That refreshes my recollection, yes.

BY MR. SUTCLIFFE:

Q And did you send this document?

A Yes, I did.

MR. SUTCLIFFE: Defense would like this entered as the next exhibit in order.

THE COURT: No. That's an improper basis to receive evidence.

BY MR. SUTCLIFFE:

Q Why did you fax that to the -- who did you fax that to?

A The sheriff's department.

Q Okay. And the reason that you faxed that to the sheriff's department?

A Because of the threats the defendant had made of killing me.

Q Oh, okay.

Can you read the date up in the left-hand corner that you sent this fax?

A It looks like December 5th.

Q When did the defendant threaten to kill you?
A Which time?
Q Pick a time.
THE COURT: No. You have to --
BY MR. SUTCLIFFE:
Q When is the first time that you saw any threat to yourself on this website that said, "I'm going to kill you"?
A I don't recall.
Q Do you recall the year?
A 2001.
Q 2001. Okay.
Excuse me. I need a pen for this one, Your Honor.
Are you sure it's 2001?
A Yes.
Q Spring?
A I believe it would have been in approximately October or November of 2001, which would make it fall.
Q In the fall of 2001 you see a page that says, "I'm going to kill you."
Do you recall the name of the page?
A No, I don't.
Q Now, this fax is dated December 5th. So it would have predated this fax; is that correct?
A I believe so, yes.
Q Now, this document purports to say, "You can tell the lady

and the man," and it has a license plate. Is that the license plate of the car you were in when you were attempting to serve the defendant?

A Yes.

Q So you thought that was very relevant to this case -- correct? -- that you were attempting to work with Mr. Labaton to make against the defendant; correct?

A I'm sorry. I misunderstood the question.

Q You faxed this document on December 5th to the sheriff's department?

A Yes.

Q And you faxed it because you believed that there was something criminal about this document?

MS. DUARTE: Objection. Irrelevant.

THE COURT: Overruled.

THE WITNESS: It was all of the documents.

THE COURT: The question was already answered -- asked and answered. She said that she faxed the document, a portion of the declaration, to the sheriff's department, because she had been threatened.

BY MR. SUTCLIFFE:

Q So you had been threatened prior to this document that the defendant is going to kill you, so you faxed this document to the sheriff's department; correct?

A Yes.

MR. SUTCLIFFE: Your Honor, the defense would like to enter this as exhibit next in order, please.

THE COURT: You can have it marked. It will be marked Exhibit 239.

(Defendant's Exhibit 239 marked for identification.)

MR. SUTCLIFFE: Permission to publish this, Your Honor?

THE COURT: No. You need to lay a different foundation.

BY MR. SUTCLIFFE:

Q Mrs. Fraser, I'm showing you this document that you faxed on December 5th.

Can you please point out in this document here anywhere the words, on December 5th or prior, "I'm going to kill you"?

A They are not on that document.

Q Okay. They were on another document prior to -- during December 5th that you faxed?

A I believe those documents were included with my original complaint to the sheriff's department in which I brought them in hard copies.

Q On December 5th?

A I don't remember when I filed.

Q Do you see this date, December 5th, up here in the left-hand corner?

A That was the date I faxed it, yes.
Q Do you see the word "kill" on this document anywhere?
A No, I don't.
Q Do you see any threats on this document?
A No, I do not.

MR. SUTCLIFFE: Your Honor, defense would like this marked as an exhibit so we can publish this for the jury to see. It's relevant. She testified that this was the quote that she witnessed on the website in Mr. Labaton's office.

THE COURT: You've misstated her testimony. That's still not a sufficient basis to introduce it.

Now, you've just established that an item she sent didn't contain the language that had triggered the sending of the item.

Now, move on, please.

BY MR. SUTCLIFFE:

Q Going back to the original document we were discussing earlier, the declaration that you filed on October 21st, I'll read you the top again. "To date, Global Crossing has spent tens of thousands of dollars, as we predicted," and you said, in paragraph 11, that Mr. Labaton was showing you this website "evilgx.com"; is that not true?
A That is true.
Q This document that you faxed to the sheriff's department on December 5th -- do you see where I'm pointing, "To date,

Global Crossing has spent tens of thousands of dollars, as we predicted," and it goes on? Is this not the same page that you were looking at?

A It looks the same.

Q In fact, it is the same, isn't it?

But in this declaration, again, we've got an omission of what's above and what's below that statement -- isn't that true? -- that was printed in your declaration?

There is more on this document than was printed in your declaration; true? Isn't that true?

A I was not reading what the defendant had written in his website and paying close attention to that portion of it. So it appears that there is something missing.

Q You didn't read this one page, but you included part of it in your declaration; is that what you are testifying?

A No, that's not what I'm testifying.

Q Did you read the page?

A Yes.

Q Did you read it when you were in Mr. Labaton's office?

A Yes, I did.

MR. SUTCLIFFE: Now may I get it in, Your Honor, as next?

THE COURT: No. There is no evidentiary purpose for it.

MR. SUTCLIFFE: I believe there is, Your Honor. It

goes to --

THE COURT: You haven't established the foundation you need to. If you do, you'll have the right to have it admitted and it will be admitted.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Mrs. Fraser, I'm going to direct your attention to the bottom of this document that you faxed to the sheriff's department. It's right below where it says -- what you claim to be your license plate number.

Do you see the part I'm referring to right here?

A Yes.

Q It's talking about, "Check back here soon and see what else we've learned. GX has been" --

MS. DUARTE: Objection to reading the document, Your Honor.

BY MR. SUTCLIFFE:

Q -- breaking the law."

THE COURT: Don't read the document, Mr. Sutcliffe.

MR. SUTCLIFFE: Excuse me, Your Honor. Thank you.

Q Did you include that part in your declaration?

A I don't believe we did.

Q Can you tell the jury why you didn't include that part?

MS. DUARTE: Objection --

THE WITNESS: Because --

MS. DUARTE: -- it's irrelevant, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Reading this document, you were aware that the defendant was claiming on his website that he had evidence that Global Crossing was breaking the law; is that not true?

A I don't know if the defendant had evidence or not.

Q That's not my question.

My question is, reading that document, you were aware that the defendant was claiming that he had evidence that Global Crossing was breaking the law; is that not true?

A I see that here now. Yes.

Q Is that the reason why you didn't include that part --

A No.

Q -- in the declaration here?

A No.

Q Is that the reason why, after you read that on the 17th, when you were in his office, you went to Mr. McAfee's office to dissuade Mr. McAfee and the defendant from publishing this --

MS. DUARTE: Objection. That's asked and answered and it's argumentative.

THE COURT: No, no. Let him finish the question.

Start again, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

Q You read this document on the 17th in Mr. Labaton's office?

THE COURT: You were starting to ask whether the reason she went to McAfee's office had something to do with whether she thought or knew that you were claiming that Global Crossing was breaking the law. So ask the question the way you started out to.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Isn't it true, Mrs. Fraser, that after you and Mr. Labaton read this document in his office on October 17th, that the real reason you went -- or were instructed to go to Mr. McAfee's office was to dissuade him from reporting or publishing evidence of crimes that were being committed by Global Crossing --

A No.

Q -- that the defendant was announcing that he was going to publish?

A No.

Q Did Mr. Labaton ever tell you that he took this page to be threatening?

A Not to my recollection.

Q Okay. Did this mention the -- in here, did this mention you other than your license plate?

A In this document, no.

Q In the top section, which was not also included in this declaration, doesn't it also talk about, the defendant is requesting anybody to send him stuff? I'll direct your

attention to the top where it starts off, "This website openly invites any and all GX employees."

A Okay.

Q Isn't it a fair statement and a true statement that the editor of this website is asking anybody coming here, if you have -- if you want to talk about any dissatisfaction with the company or if you want to e-mail or post something yourself here, if you have evidence of fraud or any crimes, you've been deceived, talk to us.

Isn't that what that basically says?

A That's what it basically says. That's not word for word. Okay.

Q I understand. We haven't gotten it into evidence yet so I can show the jury exactly what it is word for word.

You didn't include that in this declaration, either?

A We didn't include the majority of the website or the declaration would have been 10-feet thick.

Q I'm talking about just this one page that you did include that had your license plate.

It had a lot more on here than just your license plate, didn't it?

A It appears so, yes.

Q It appears that it was soliciting for any kind of evidence about crimes that were being committed?

MS. DUARTE: Asked and answered, Your Honor, and

should know about?

MS. DUARTE: Objection. Irrelevant, Your Honor.

THE COURT: Sustained.

And vague and ambiguous as well.

BY MR. SUTCLIFFE:

Q Do you see the words "Law Offices of Leslie McAfee" on this document?

A Yes.

Q Okay. Do you see the word "home" down at the bottom?

A Yes.

Q And do you see the words "'www.evilgx.com' copyright"?

A Yes.

Q And do you see the "Revised, October 7, 2001"?

A Yes.

Q Do you see the page name at the bottom down here?

A Yes.

Q Could you read that page?

MS. DUARTE: Objection, Your Honor.

THE COURT: Sustained.

MR. SUTCLIFFE: It's a tiny phrase.

THE COURT: Whether she can read it is irrelevant.

Move on.

BY MR. SUTCLIFFE:

Q Is that not called "FAQ.HTM"?

A Yes.

Q Is it a fair statement to say that you read the "FAQ.HTM"?
A Yes.
Q And the date of this document on the right-hand lower corner is what?
A It appears to show 10-8-01.
Q So you were reading -- so this document, which is the "FAQ.HTM" that you sent to the sheriff's department on approximately 10-8, you felt it was important that they should see this page; correct?
MS. DUARTE: Objection. Asked and answered and irrelevant.
MR. SUTCLIFFE: I'd like to show --
THE COURT: Sustained.
MR. SUTCLIFFE: At this point, Your Honor, I'd like to show the -- I'd like to broadcast from Mr. Ramsey's downloads of 10-18-2001. That's the earliest one I have that he downloaded. And I'd like to broadcast this, if possible.
THE COURT: That's Exhibit 24, is it?
MS. DUARTE: Yes, Your Honor.
THE COURT: Go ahead. You may.
MR. SUTCLIFFE: Thank you, Your Honor.
May I sit down for this?
THE COURT: Yes.
MR. SUTCLIFFE: Thank you, Your Honor.
Q Mrs. Hall, I'll draw your attention to the words right up

here where it says "FAQ.HTM". This document was revised October 15th, which is approximately two days before you claim you served me and two days before you read this document in Mr. Labaton's office.

Now, we were discussing the words "Law Offices of Leslie McAfee." Do you recall looking at that from this document I just showed you?

A Yes.

Q It's pretty much verbatim there, isn't it?

A It appears to be, yes.

Q And you read this document, I assume?

A I don't recall.

Q Well, let me show --

THE COURT: Are you asking her if she read what was printed on the website?

BY MR. SUTCLIFFE:

Q You read what you faxed, I assume, to the sheriff's department?

A I faxed them every paper -- or I made sure that I gave them every paper that I had regarding you -- or the defendant.

Q Right. And you've testified that you viewed this website and you found it to be scary; correct?

A I viewed portions of it. And, yes, I found it to be very scary.

Q Did you ever view it in its entirety?

A I don't know if I ever got through the entire website.
Q Did you ever make the statement, "I viewed this website in its entirety"?
A I don't recall.
Q I'm going to direct your attention to above where it says, "What can we do to help?" And it lists the Law Offices of Leslie McAfee.

Do you see the statement right here, "Are you armed and dangerous?" And do you see what the response of the author of the website says to these frequently asked questions?
A Something -- with the knowledge. Okay.
Q It says, "Only with the knowledge of the company and some say this is dangerous. Time will tell."

Do you recall reading that?
A Just now, yes.
Q Did that ever make you afraid back then?
A I don't recall reading it back then.
Q You don't recall reading that, but you printed out this page and sent it to the sheriff's department which had Mr. McAfee's office?
A I don't know if I printed it out or if it had been given to me.
Q And then you faxed it to the sheriff's department?
A Yes.
Q So if somebody gives you something and says, "Fax this to

the sheriff's" -- who gave it to you?
A It's possible I had received copies from Mr. Labaton because I was -- I was warned that every time the site was accessed, it's more of a potential possibility that somebody could find my home. And I took those warnings very seriously.
Q Like you do for a living? You find people.
MS. DUARTE: Asked and answered, Your Honor.
THE COURT: Overruled.
MR. SUTCLIFFE: Is that overruled?
THE COURT: Overruled.
MR. SUTCLIFFE: Thank you.
THE COURT: You don't have to thank me for my rulings, Mr. Sutcliffe. That's not the way it's done.
You can answer the question.
THE WITNESS: I'm sorry, can you repeat the question?
THE COURT: He wants to know whether you're concerned about people finding home addresses like what you do when you serve or look for people.
THE WITNESS: Absolutely, I would be concerned.
BY MR. SUTCLIFFE:
Q Should I be concerned that you were out stomping around my house?
MS. DUARTE: Objection. Irrelevant.
THE COURT: Overruled.
THE WITNESS: Only you can answer that.

BY MR. SUTCLIFFE:
Q Should I be concerned that you have my home address?
A No.
Q Should I be concerned that you can get my social security number?
A I have no reason to get your social security number.
Q But if you wanted, you could get it; right?
A Through investigative means, yes, I could.
Q Isn't it a fact that any one of these members of the jury, with a little bit of instruction and a little bit of knowledge and a little bit of information, can go on the Internet and get the Honorable A. Howard Matz's social security number if they were persistent enough?
A I don't know. I'm not a computer expert.
Q Okay. But you know that you can get information on anybody pretty much; right?
MS. DUARTE: Objection to relevance, Your Honor.
THE COURT: Overruled.
BY MR. SUTCLIFFE:
Q Isn't that true?
A It depends on the information.
Q Right. But with time, persistence, and connections, you can know anything about anybody in today's information age; isn't that true?
A Not all information, no.

Q You can get anybody's social security number; correct?
A No.
THE COURT: She's answered that question already.
BY MR. SUTCLIFFE:
Q No?
A I can't get anybody's information.
Q Isn't that what you do for a living? You are a private investigator; correct?
A You are referring to anybody. There have been people I haven't been able to get information on.
Q If I told you, "Hey, I'd like the social security number of the head of..." some company, and "I'd like to know where he lives," could you go get that information?
A That depends if his information was available. Not everybody has information on themselves, Mr. Sutcliffe.
Q If they have a social security number, though, you could find it; right?
A A lot of the times, yes.
Q Now, back to this, "Are you armed and dangerous?" on this frequently asked questions page.
Do you recall reading at the top where it says that, "The site has been made available to those who request the opportunity to post information hereon and therefore the site makes no representation that any information herein is true or accurate unless the provider of the same makes such

representation"?
A I don't recall if I had read that before.
Q You didn't read that part. Okay.
How about, "How do I contact you?" Did you read that part?
A I don't recall.
Q October 17th, looking at the part of this page that you faxed to the sheriff's department, you don't recall reading, "How do I find this guy? How do I get ahold of him?"
A No.
Q Okay. Did you see anything funny on this page?
A I'm only seeing a portion of the page because it's over.
Q Did you see anything threatening on this page?
A No.
Q But you faxed it to the sheriff's anyway?
A Yes.
Q Okay. Let's move on.
Do you recall an interview with the FBI agents on May 8, 2002?
A I don't recall the exact dates.
Q Do you recall saying that you provided the FBI agents with a copy of your notes from the meeting in Mr. McAfee's office?
A I don't recall saying that.
Q If I showed you this document, would it refresh your recollection?

THE COURT: Show it on the screen.

MR. SUTCLIFFE: Thank you, Your Honor.

Q I'll direct your attention to it.

A I don't recall ever seeing this page, but that's basically the -- what happened.

Q Is it a fair statement to say that at this meeting, you provided the agents with a copy of your typed written notes made of your meeting on 10-18-2001 with Sutcliffe's attorney, Leslie McAfee?

A Yes.

Q And are these the notes that you -- a copy of the typed written notes dated 10-18 that you turned over to the FBI?

A I would assume those would be them, yes.

MR. SUTCLIFFE: Defense would like this marked next in order, Your Honor.

THE COURT: It's been marked. It's been marked as 238.

MR. SUTCLIFFE: Thank you.

Q Now, during this meeting with the FBI agents, did you or did you not make the statement, "After viewing the entire contents of the website, I definitely felt in fear for my life"?

A I don't recall.

Q Now, I'm going to take you to another version of the website. This one is dated -- give me one second here.

This one is dated January 25, 2002. This is a version of the website on January 25, 2002.

By the way, that date, January 25, 2002 -- do you recall on January 25, 2002, a phone call from Elizabeth Greenwood on that day?

A No.

Q Do you recall on January 25, 2002, an e-mail from Mrs. Greenwood or Mr. Labaton on that day?

A No.

Q On January 25th, do you recall any conversations with anybody from Global Crossing relating to any kind of a threat?

A I don't remember what I had for breakfast this morning. I don't recall that particular day. I'm sorry.

Q I'll move on.

If on January 25, 2002, somebody had sent you a notice saying, "Hey, this guy is threatening to kill me. On January 25th, we discovered this page," you would probably want to check this page out; correct?

A Yes.

(Playing audio.)

BY MR. SUTCLIFFE:

Q Can you see that screen?

A No, I can't.

MR. SUTCLIFFE: Can we broadcast this, Your Honor?

THE COURT: What are you broadcasting from,

Mr. Sutcliffe?

MR. SUTCLIFFE: I'm broadcasting from the Andrew Ramsey downloads.

THE COURT: Exhibit 24?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: Okay.

MR. SUTCLIFFE: The date of the Zip is 2002, January 25th.

THE COURT: Okay.

MR. SUTCLIFFE: Can the jury see this also?

THE COURT: It's been made available to them already.

MR. SUTCLIFFE: Thank you.

Q I'm going to refresh the screen. This is what the website would have looked like on January 25, 2002.

(Playing audio.)

BY MR. SUTCLIFFE:

Q Can you see that?

A Yes.

Q Now, I'm just going to scan down.

Does this page look scary at all to you?

A No.

Q Does that voice in the background, "I now have control of your TV set; are you receiving me?" is that kind of scary?

A It's not very pleasant.

Q That's a matter of taste, though -- right? -- personal

taste?

A Why do you ask?

Q I'm just asking your opinion.

Is it scary to you?

A No.

Q No. Okay. I'm going to turn it off. It's unpleasant to you.

Now, coming to this page, can you tell how -- we see down here two what are known as hyperlinks. There is an "enter" and there is an "exit."

Do you see those?

A Yes.

Q And then up here, there are also two more hyperlinks. One says, "Enron's financial graph looks a lot like GX's financial graph."

So it appears that the only way in is down here or two other links up there; is that a fair statement?

A I'm not a computer expert, but that appears so.

Q I want to draw your attention down to the bottom left-hand corner of your screen, down here, this little bar.

Do you see the bar moving the mouse over?

A Okay.

Q Now, when you click on -- if you wanted to click on "exit" here, do you see down in the left-hand corner, it says, "www.disney.com"?

A Okay.
Q If you didn't want to come in here, it offers you can go to Disneyland, Fantasyland. If you want to come on in, you can see, down in the left-hand corner, it now changes. The last words are "Terms_of_use." I'm going to click on that link.
(Playing audio.)
BY MR. SUTCLIFFE:
Q There is another voice.
Now, is that scary to you?
A No. It's unpleasant.
Q It's unpleasant.
So, at this point, if you've heard two unpleasant sounds, you have the freedom to just go, "You know what? I don't want to go in here. I think I'll just go watch some TV. I think I'll just go turn on the radio. I think I'll go take a walk"; correct?
A Those were not my thoughts.
Q I'm just asking you, you have the free choice, at this point, as an American citizen, to turn off your computer, to go do something else; correct?
A Of course, I did.
Q Okay. So you voluntarily would have to enter to go past that page. You would have to hear two scary -- unpleasant sounds, excuse me.
Now, this next --

A Sounds had nothing to do with it.
Q That's fair.
Now, the first page we see, "Come on in," it says something called "Terms_of_use."
Does that have any meaning to you? What does that statement mean "terms of use"?
A It means terms of use.
Q If you are going to use this -- if you are going to come in here, here's the terms; right? No one is forcing anybody -- no one is forcing anybody to agree to anything; if you don't want to agree, you can leave; right?
A If that's what you wanted to portray?
Q Right, that's exactly what I wanted.
I'm sorry, Your Honor. I withdraw that. I didn't mean to make a statement.
Now, it tells people right there, "Please review this carefully"; right?
When you filled out these documents, these legal declarations against the defendant, I assume that you reviewed those very carefully, didn't you?
A Yes, I did.
Q Now, it says here, "If you don't accept these terms and conditions, you'd be considered unlawfully trespassing."
Now, I want to direct your attention down here. It says, "This site and any related service are available to you

provided that you could perform legally binding agreements under applicable law."

These declarations that you signed against the defendant, those were legally binding documents, were they not? You signed under penalty of perjury. You are bound to that; right?

A I'm not an attorney. That sounds about right.

Q That's a fair statement.

Do you see where it says "User submissions" right there?

A Yes.

Q And it says, "This site provides a forum for you to express your view and your concerns about Global Crossing and its parent, its officers, its directors, its agents"; right?

A Yes.

MS. DUARTE: Your Honor, at this point I'll object to this coming in with this witness. There has been no evidence that she even saw this.

THE COURT: Overruled.

MR. SUTCLIFFE: Thank you.

Q Do you see where it says -- it's talking about Global Crossing, its agents, its affiliates? Do you see that?

A Again, yes.

Q Now, the Law Offices of Mark Labaton would be one of those affiliates and agents; correct?

A There is no Law Offices of Mark Labaton.
Q Mr. Labaton works in the Law Firm of Christensen, Miller, Fink and a bunch of other names; correct?
A Yes.
Q Okay. They would be considered affiliates or agents of Global Crossing if they were working on behalf of Global Crossing; correct?
A I would assume so, but that's an assumption on my part.
Q Now, we've already established that the website was looking for information of fraud and crime on the frequently-asked-questions page.

Did Mr. Labaton ever tell you, "Hey, this website is making us really, really nervous"?
A No, he never said that.
Q No. Okay.

Now, do you see this line right here below that where we were just looking at, which is the user submissions, that "You acknowledge and accept that evilgx is only a path of free expression of the speech and ideas forum for the users and that we receive submitted materials from unverifiable sources and we make no representation regarding accuracy, truthfulness, completeness, validity of any of the submitted materials"?
A I see that.
Q Okay. And do you see where it says that "Evilgx reserves the right at its sole discretion to delete, remove, refuse to

display or block any submitted materials"?
A I see that.
Q Now, down under the fifth paragraph, "General Prohibition" -- excuse me. I just lost myself there.
You also have to agree that if you come in here, you will not -- "You are not going to violate any state, local, federal rules, regulations, or statutes."
Do you see that?
A I see that.
Q Do you see where it says, "You are not to infringe upon anybody's intellectual property or privacy rights"? Do you see that?
A Yes.
Q That's not advocating death threats or crimes; correct? It's saying do the opposite, in fact; isn't that true? It's saying, "Obey the law. Don't break the law"?
THE COURT: Mr. Sutcliffe, limit your questions to one part of a question, not compound, without making political speeches about it.
MR. SUTCLIFFE: Excuse me, Your Honor.
Q The "General Prohibition" section of the "terms of use" says, "As an adult responsible person, when you come in here, don't go breaking any laws based on anything you read or see in here." Isn't that what that says, "don't violate"?
A You are asking me to interpret what you wanted it to say.

I'm reading it as it is. I'm not trying to interpret it.

THE COURT: Ladies and gentlemen, I'm going to give you a 20-minute break. The court reporter especially needs a break. There are a couple of things I want to explore in your absence. We'll be back in 20 minutes. Please remember the admonition during the break.

(Jury out.)

THE COURT: The indictment in this case alleges in Count One that the first threat of those that the government chose to allege was on October 24th of 2001, and the second one where the phrase "I will kill you" appeared was on January 31st.

Mr. Sutcliffe has represented that the portions of the website he's been questioning this witness about in the last few minutes were posted on January 25th, 2002.

Ms. Duarte objected, essentially, on the grounds that there had been no foundation that this witness had ever reviewed that website.

Are there any threats relating to this witness that are on that website that you are aware of?

MS. DUARTE: That are on the January 25th version that's on the screen?

THE COURT: That's on the screen, correct.

MS. DUARTE: Quite possibly, Your Honor. Because I have that it may have appeared as early as January 22nd in my

notes.

MR. SUTCLIFFE: That's correct.

MS. DUARTE: Even though it's charged January 31st.

THE COURT: Is that language that's charged for the 31st on the website as of January 25th or on January 25th?

MS. DUARTE: It could well be.

THE COURT: Do you know whether it is?

MR. SUTCLIFFE: I'm bringing it up right now, Your Honor.

(Playing audio.)

THE COURT: I think Mr. Sutcliffe, as I've already ruled, has the right to explore it because she has testified about seeing that language. So that's something I needed to confirm.

Now, Mr. Sutcliffe, it is unnecessary and inappropriate to continually ask any witness, "Isn't that what it says?"

A document that's in evidence is available to the jury. This document will be available to them in hard-bound copy. So they will have the right to take it into the jury room. They can read it. Every witness can read it.

You have some opportunities, some right -- and I'm permitting you to exercise it -- to ask whether the witness, particularly someone who is one of the alleged victims, found something frightening or threatening.

But to simply say, "Isn't that what it says? Isn't that what it says?" is going to waste a lot of time --

MR. SUTCLIFFE: I agree.

THE COURT: -- and I don't want you to do it. So I'm instructing you to ask substantive questions.

Do you understand that?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: We are in adjournment. We'll be back in 15 minutes.

(Recess taken at 10:19 a.m. to 10:50 a.m.)

(Jury in.)

THE COURT: You may resume your questioning, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Before we move ahead on this website, do you see the document marked 238 on the witness stand?

A Yes.

Q And those were purported to be your typewritten notes that you turned over to the FBI in approximately May of 2002?

A I know I turned them over to them.

Q You turned them over to the FBI because you felt it was important for the FBI to have those notes, didn't you?

A Yes.

MR. SUTCLIFFE: Your Honor, defense would like to move 238 into evidence at this point.

THE COURT: Nothing has changed since my earlier rulings. There is no basis yet for their admission.

MR. SUTCLIFFE: The defendant felt that it was important that --

THE COURT: I heard what she said.

MR. SUTCLIFFE: -- the facts contained in there.

THE COURT: If there is some impeachment value that you think exists, you have to lay the foundation and then they'll come in.

MR. SUTCLIFFE: Thank you, Your Honor.

Permission to sit down while I continue on with this?

THE COURT: Yes.

MR. SUTCLIFFE: Thank you, Your Honor.

Mr. Clerk, could we have that broadcast again?

(Playing audio.)

BY MR. SUTCLIFFE:

Q Just to move things along, Mrs. Fraser, I'm going to point out where we left off, which was somewhere up about "General prohibition and responsibilities," and it had a lot of stuff about links to other third sites. And it just went on and on and gave this big disclaimer and mentioned liabilities, another disclaimer, termination, and general. Then you hit the bottom of the document. Someone coming in here has read all of this.

Now, do you see the three links at the bottom of this document?

A Yes.
Q And one of them says, "I disagree." And again I'm pointing your attention to the left-hand corner. It will take you to "disney.com"?
A Yes.
Q And then you agree. There is another page that will say -- it's called "counter.html". I'll direct your attention down here. If you'll look when I hold the mouse over the hyperlink, do you see it?
A Yes.
Q Then there is something called the "Webmaster," which will send an e-mail to "evilgxhrdept@yahoo.com" and the "subject" line would be inserted as "Webmaster request"?
A Yes.
Q So anybody going in now has got to pretty much click on "I agree." I'm going to follow through now.

(Playing audio.)

BY MR. SUTCLIFFE:
Q We are hearing music in the background.

Would you constitute this as, in your opinion, scary music?
A It sounds evil so far. It's uncomfortable.
Q Would you like me to turn this off?

THE COURT: I'd like you to turn it off so we can hear the answers and the questions.

BY MR. SUTCLIFFE:

Q Now we find ourselves at a disclaimer, terms and conditions, and a licensing agreement.

Again, it's saying, before you come in here, you have to agree to these conditions; right? The first line up there.

A Okay.

Q Okay. Have you ever seen this page before? I'll show you from the top. I'm sorry, I moved down.

Have you ever seen this page before?

A I believe I had later on.

Q Had you seen the previous page?

A It looked familiar.

Q While we took a break, did you have a chance to discuss your testimony with anybody from the U.S. Attorney's Office or the FBI in the last 20 minutes that we took a break?

A Not my testimony, no.

Q Did you have a conversation with the government or the FBI at all?

A I don't know who I was speaking to.

Q Going back to this document right here, you said you've seen this document before.

So I would assume that you clicked on the "I agree"? It appears -- and tell me if I'm wrong, it appears to be the only other way, again, to get into this website.

A Most likely that's what I would have had to have clicked

onto.

Q Did anybody force you to go to this page?

A No.

Q Did anybody force you to click "I agree"?

A No.

(Playing audio.)

BY MR. SUTCLIFFE:

Q I clicked on "I agree." There is the same scary, uncomfortable music, you testified. I'm going to stop it so we can continue on. This seems to be a page called "Privacy Policy."

Now, you testified that this information that you saw of your license plate, you got worried, you got angry, you got upset.

Is privacy something that's very important to you?

A When somebody threatens to kill me, it's very important to me.

Q My question is, is privacy important to you, period, whether someone threatens to kill you or not?

A Generally, yes.

Q But you're in the business of digging into other people's information on their --

A For the right reasons, yes.

Q For the right reasons?

A For the right reasons, yes.

Q In other words, information can be used for good and it can be used for bad?
A That's not for me to decide.
Q Right. Me, neither.
Now, so is it a fair statement that every American and everybody on this jury here, they have the same rights that you do?
MS. DUARTE: Objection to relevance.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Is it a fair statement that you believe that you have the right to be left alone?
MS. DUARTE: Same Objection, Your Honor.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Is it a fair statement that you would not feel comfortable with someone coming to your house and entering your house without your permission?
A Yes. That would be trespassing. That's against the law.
Q Absolutely correct.
Did you --
THE COURT: All right. Mr. Sutcliffe, first of all, don't volunteer statements. Don't frown at the witness with your stamp of approval and don't testify. I've told you that many times.

Ladies and gentlemen, the charges in this case have to do with threats and have to do with the misuse or intended misuse with the intent to aid and abet the commission of fraud of social security numbers.

There is no allegation in this case, and you will not be asked to determine, whether obtaining social security numbers is legal or illegal, having them is legal or illegal, or even communicating them is legal or illegal.

There are certain elements that you will hear about at the time I charge you as to the posting of the social security numbers, which requires more than simply having them or getting them in order to have a crime committed.

The other part of the case involving threats contains different elements, which I'll charge you about, too. But those are the parameters of what these charges require evidence to be introduced about.

You may continue, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Mrs. Fraser, I'm going to divert your attention -- I'm going to go back to 10-18 again, the FAQ page. I'm going to bring your attention to the "How do I contact?" which is the first entry under the table of contents, "How do I contact you?"

Do you see at the bottom again, down in the left-hand corner, there is a -- when I hold the mouse over it, it says,

"trialattorney@hotmail.com"?
A Yes.
Q If I hold it over the next e-mail, it says, "evilgxhr@yahoo.com". Do you see that?
A Yes.
Q I'm going to show you Defense Exhibit 203. I'd like to ask you a question about Defense Exhibit 203.

Can we switch monitors here, briefly?

Defense Exhibit 203, I'm going to turn over to the second page of this document and I'll zoom in so you can see it a little better. It says, "This appears to be from the evilgx guy. What do we want to do with it?" Right below it, it says, "evilgxhr"@yahoo.com".

Do you recall seeing that address that we just looked at on the FAQ page?
A Yes.
Q I'm going to direct your attention also a little further down. Do you see where it says "trialattorney@hotmail.com" that's being carbon copied right there?
A Yes.
Q So this e-mail from "evilgxhr" is now being forwarded to "trialattorney@hotmail.com".

Now, I'd like you -- I'm going to show you the back page, which was the original e-mail, and I'm going to point out for you -- do you see the words "Joe Shmoe" --

A Yes.
Q -- and "your_a_real_jack_ass@yahoo.com"?
It says, "If you post my info again, I'm personally going to make sure you get your ass kicked."
A Yes.
Q Do you own an e-mail address called "your_a_real_jack_ass@yahoo.com"?
A No.
Q Do you know anybody who owns an e-mail address --
A No.
Q No. Okay.
We can go back to the website again. Thank you very much, Mr. Clerk.
Now, when we left off, we had hit several pages and then we ended up on a natural course of hitting this document which is called a privacy policy.
Have you looked at many websites over the Internet, Mrs. Fraser?
A Yes.
Q And a website is like a little virtual domain or a little home; right?
A No.
Q No?
A No.
Q How would you describe it?

MS. DUARTE: Objection to relevance, what is a website.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Okay. Are you familiar with the term "virtual"?

A Vaguely.

Q Vaguely.

How would you define "virtual"?

MS. DUARTE: Same Objection, Your Honor. It's irrelevant.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Okay. So there seems to be a bunch of -- a whole bunch of links on this page, "privacy policy." Do you see this link? They all have the same words, "Opt out program. Opt out program."

Do you see all of those?

A Yes.

Q Do you see what the e-mail address down below is, in the left-hand corner of your screen?

A Yes.

Q It looks like the "evilgxhr@yahoo.com", but instead it has the words "dept" after the word "evilgxhr" and that appears to be the only difference. Is that a fair statement?

A Yes.

Q Now, there is another link at the bottom. It says "Enter," so now you've got to enter. You've got to keep on going through this little maze, this labyrinth, to get into this website.

(Playing audio.)

BY MR. SUTCLIFFE:

Q Is that scary? Did you hear the "Ren & Stimpy" cartoon voices?

A Yes, I did.

Q Did you ever watch the "Ren & Stimpy" cartoon show for adults?

A I believe I've seen some episodes.

Q Did that voice scare you or was it annoying or --

A It's annoying.

Q It's annoying, too. Okay.

Now, where do you go from here if you want to steal somebody's social security number or you allege that someone is threatening to kill you? How do you find this page in here? We've just gone through a series of links and pages and --

THE COURT: Mr. Sutcliffe, I'm going to interrupt because you are speaking -- you are trying to ask a zillion different questions -- not a zillion. You asked three. It's inappropriate.

MR. SUTCLIFFE: I apologize.

THE COURT: Calm down and just ask a question that's

relevant to the issues in this case, please.

BY MR. SUTCLIFFE:

Q I'd like to turn over the mouse to you, Mrs. Fraser.

Would you please take me to the link or the page that threatens to kill you. Do you see the hyperlinks on these pages?

A I don't remember which hyperlink it was. This page, this whole thing, changed almost weekly. So I don't remember how to get to the next threat.

Are you referring to the one that starts out, "Tracy, have you ever been stabbed with a knife?"

Q Pick one. I don't care. Pick any statement that you felt was a threat and take me to this page from this website, right now. I'll follow any link.

MS. DUARTE: Your Honor, I object to this. She said she doesn't remember the link.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q You said that it changed weekly.

Did you view this website weekly?

A There were times that I did view it weekly, yes.

Q And do you recall those times?

A I don't recall the exact dates, no.

Q Do you recall the exact months?

A November, December, January, part of February.

Q And you saw the "kill" prior to December 5th and --
A I saw it after December 5th as well.
Q January 1st?
A I don't remember.
THE COURT: She told you she doesn't remember the dates. You can go through the entire calendar and you won't get a different answer, so move on to a different question, please.
BY MR. SUTCLIFFE:
Q But it was definitely prior to December 5th?
A Which time?
Q The "I will kill you." You said the, "I will kill you" was prior to December 5th.
MS. DUARTE: Objection. That's been asked and answered.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q So now we're into January 25th, 2002, which was downloaded by Andrew Ramsey at Global Crossing.
Do you see the beginning, "When networking-services provider Global Crossing forged its grand alliance with Web-hoster Exodus Communications, its chief executive, Leo Hindery, pledged allegiance to his new partner with words he may now regret: 'We live and die together'"?
MS. DUARTE: Your Honor, I object to reading of the

document. It speaks for itself.

THE COURT: He stopped at a point where I think I see why he is singling it out. I'll permit the inquiry.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Do you see that language?

A Yes, I see it.

Q And the link that's highlighted is the word "die"; right?

A It appears to be, yes.

Q Did you take that statement made by Leo Hindery, a chief executive of Exodus Communications, to be a threat?

A Not against me, no.

Q Against somebody else?

A I didn't take it as anything.

Q Were you ever told to come up with words that could be construed as threats by anybody?

A I was never told to come up with words for anything concerning this.

Q Right.

Since you say you can't really find your way through this place, I'm going to show you a page on this same day that we are looking at called "Shareholders money."

(Playing audio.)

BY MR. SUTCLIFFE:

Q Now, this is called "Shareholders money spent to date, and I'm just warming up." And the page is share, underscore,

holders, underscore, money, underscore, spent, underscore, to, underscore, date, dot-htm.

I'm going to bring your attention -- Mrs. Fraser, do you see the Christensen, Miller, Fink, Glaser, Weil & Shapiro, LLP?

A Yes.

Q That's the law firm that was employing you; is that correct?

A Yes.

Q And then you see the word "investment," and then down there it says, "Global Crossing hired some woman from South Dakota, Tracy, who forgot to take her medication"?

A Yes.

Q Do you see down at the bottom here, there is a big-old paragraph -- a bunch of paragraphs down here? Do you see that?

A Yes.

Q Do you see the line right here, "Hey, Marky Mark," to Mr. Mark Labaton or Mark -- there was another Mark involved, wasn't there?

A I don't know.

Q Well, the words here, "Marky Mark, before I let you kill me in a court with your $450 an hour friends," do you see that line right there?

A Yes.

Q And do you see what it points to?

A Yes.
Q It points to a file called "Tracy 44H669.htm"?
A Yes.
Q And you testified that the 44H669 is your license plate?
A Yes.
Q So did you feel that this statement, "Marky Mark, before I let you kill me in a court," was -- let me rephrase that question.

Isn't it true that when you saw the defendant's reference to Mr. Labaton's comments -- Mark Labaton's comments made to the defendant to kill him in a court of law, when you saw my statement referencing the same words, "I will kill you," you knew I meant the same as your employer, Mark Labaton, where he threatened and said, "I will kill you in a court of law, Mr. Sutcliffe"; isn't that true?

MS. DUARTE: Object to the form of the question. It's compound.

THE COURT: Overruled.

You understand the question, don't you?

THE WITNESS: Yes.

THE COURT: You can answer it.

THE WITNESS: I don't know how Mark Labaton wrote this in your Internet site to you. I don't know how he was able to gain access to your Internet site and write, "I will let you kill me." That doesn't --

BY MR. SUTCLIFFE:

Q Maybe you don't understand. Let me rephrase this.

This is a page that's talking about "Shareholders money, which has been spent to date," and it's written in the first person. It says, "And I'm just warming up."

Do you see that?

A Yes.

Q I'm going to take you back just for a second here to the FAQ from 10-18. I'm going to show you -- do you see right there, No. 3, "Aren't you hot?" The most frequently asked question, "Aren't you hot out there?" right below, "Aren't you going to picket?" do you see the question, "Aren't you hot in the sun?" and the answer, "I'm just warming up"?

A Yes, I see that.

Q Going back now to this page here, later on in January, "Shareholders money which has been spent to date and I'm just warming up."

Do you see what it's talking about here?

A No.

Q It's talking about the temporary restraining order, the ex parte lawsuit that's been filed.

A Yes.

MS. DUARTE: Objection to testifying within the question.

THE COURT: Just ask a question. If there is some

text in this website that you want to get her reaction to, say "What was your reaction to the text that I'm highlighting?" Don't just browse through the whole thing and say, "See this, see that, see this."

BY MR. SUTCLIFFE:

Q You reviewed this website with Mr. Labaton several times; correct?

A Correct.

Q Now, I'd like you to just read this paragraph right here that I've highlighted for you. If you can't see it, please let me know and I'll unhighlight it.

THE COURT: Do you want her to read it to herself? Go ahead.

THE WITNESS: Okay. You are unhighlighting. Do you want me to read all of this?

BY MR. SUTCLIFFE:

Q Read all the way down from here to right here.

THE COURT: You can read the full text of both paragraphs. Just read them to yourself, please.

THE WITNESS: (Witness reading document.)

BY MR. SUTCLIFFE:

Q Now, is it a fair statement to say that this article that we're reading, which is talking about you, Tracy, and the law firm Christensen, Miller, Fink, etc., is written by the author of the domain?

A I don't know who wrote it.
Q Is it a fair statement to say that Mr. Labaton didn't write this?
A Yes.
THE COURT: She doesn't know who wrote it.
MR. SUTCLIFFE: I believe she testified she thought it was Mr. Labaton. I was just trying to clear that up, Your Honor.
Q Do you see where it says, "You think you are going to threaten me and my family with death, sue me and my family for a hundred thousand dollars with your high-priced attorneys, and then censor the cover-up of your crimes and I'm supposed to sit back and do nothing"?
A Yes, I see that.
Q And then right below that --
THE COURT: She's read it. You asked her to read it. She's told you she read it, so she has seen it.
Now, ask her a question, please.
BY MR. SUTCLIFFE:
Q Reading the context of that, as I'd asked you to read the entire paragraph, where the author wrote the statement -- where the defendant wrote the statement, "Marky Mark, before I let you kill me in a court," do you see that statement?
A Yes.
Q Isn't it a fact -- isn't it true that when Mr. Labaton and

you saw this reference to Mr. Labaton's comments to the defendant to kill him in a court, when you saw my statement referencing "kill" on your page, which you can't seem to find, you knew that I meant the same as your employer, Mr. Labaton?

A Mr. Labaton never threatened to kill you or kill you in court, to my knowledge, to me.

Q But you are not answering my question.

THE COURT: I think he's right. You have to listen carefully to the question. If you understand the question, then please answer it responsively.

THE WITNESS: Please repeat the question.

THE COURT: Reframe your question, please.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Isn't it true that when you saw my reference to Mr. Labaton's comments that he would kill me in a court of law, when you saw my statement on your page referencing, "I will kill you," you knew I meant the same as your employer, Mr. Labaton?

A No.

Q Did Mr. Labaton ever tell you that if you said on your page that this scares you, that "We can make his legal life miserable"?

A No.

Q Isn't it true that your employer instructed you to be fearful because this would be a way to get this domain off the

air because it's not against the law to publish information?
A No.
Q Isn't it true that Mrs. Greenwood told you that if you felt fear from any statement, that you could make the defendant's life miserable?
A I never spoke with Ms. Greenwood prior to this trial.
Q Isn't it true, then, that Mr. Labaton, or one of the attorneys within that law firm, told you that if you felt fear from any statement and you testified to that, "We can get this website down because we can't do it any other way"?
A No, nobody ever told me that.
Q Now, did you ever make a statement to anybody, "I have the right to deceive witnesses"?
A No. To deceive witnesses?
Q Did you ever make the statement to anybody, "I have the right to deceive victims"?
A No.
MR. SUTCLIFFE: Your Honor, sidebar?
THE COURT: No.
MR. SUTCLIFFE: Your Honor, it goes to impeachment.
THE COURT: Then try to impeach her. There will be no sidebars.
MR. SUTCLIFFE: You have instructed me not to go where I want to go to impeach her, Your Honor.
THE COURT: Then we'll take it up later. There will

be no sidebars.

MR. SUTCLIFFE: I have nothing further.

I'd like to reserve the right to recall this witness in my case-in-chief. I would like to address the issue of perjury as soon as possible, Your Honor.

THE COURT: Ladies and gentlemen, please withdraw to the jury room for what may be just a very few minutes.

THE CLERK: All rise.

(Jury out.)

THE COURT: I'm speaking for the record to the witness, Ms. Hall. Everyone else may be seated.

(Ms. Hall-Fraser left the courtroom.)

THE COURT: The witness is out of the courtroom.

What's your proffer?

MR. SUTCLIFFE: Your Honor, I have a report. During the alleged victim's arrest, where she was arrested for dissuading witnesses from testifying, in there she gave an interview at 10:53 hours on 9-11-02 to a sheriff who was the arresting officer, I believe, and he put in this report that --

THE COURT: Please hand the report to the clerk. I'll read the report.

MR. SUTCLIFFE: Thank you, Your Honor.

MS. DUARTE: Could I have a Bates number?

MR. SUTCLIFFE: Yes. It's on page 7 of 11 pages. It's Bates 3040. I'm putting a green highlighter for the judge

to note where I've -- just above the green highlighter I've put on there.

THE COURT: Hand the courtroom deputy the full document in case I find it important to review the full document.

MR. SUTCLIFFE: Your Honor, the government will have to do it. I have just a nightmare of paperwork over here. And I apologize --

MS. DUARTE: I'm looking for it.

MR. SUTCLIFFE: -- I don't have the entire document.

THE COURT: Let's have the government do it.

MS. DUARTE: Do you want the full 11 pages, Your Honor?

THE COURT: I want the complete document.

MS. DUARTE: I've got it.

THE COURT: I'm not sure I need it, but just in case.

Okay. This document is entitled "County of Los Angeles Sheriff's Department Supplementary Report." That's the title on page 3034. It relates to a specific file number with lots of digits.

The page that Mr. Sutcliffe handed me, page 7, it's not clear who wrote it. It's not clear who the author is. But whoever wrote it, caused to be typed the following, among other things, quote, Tracy told me that she had every right to deceive witnesses and victims to obtain information while

working as an investigator.

Now, you have gotten a denial from this witness that she said those things. What is your purpose in showing her this document?

MR. SUTCLIFFE: Showing her that document?

THE COURT: Yes.

MR. SUTCLIFFE: I don't think I need to show her the document.

THE COURT: I don't think you need to, either.

MR. SUTCLIFFE: I think she clearly perjured herself when she said she never made the statement she had the right to deceive witnesses and she clearly answered "no," that she never made the statement to anybody.

THE COURT: I know that's your view. That doesn't mean that's a correct view. At most -- let me finish.

MR. SUTCLIFFE: I'm sorry, Your Honor. Excuse me.

THE COURT: There are a number of possibilities, including that whoever wrote this down, misunderstood or misreported whatever she said or failed to say. So there is no basis to find perjury.

You are very quick to allege perjury. If you want to establish that she lied in telling you "no," then there are certain ways you have a right to go about it.

She told you "no." You, if it's not collateral, have a way, and you can figure out the way, to demonstrate to the

jury that, in telling you "no, she didn't say it," she was lying. I'm not precluding you from doing that.

MR. SUTCLIFFE: Could I move the Court, under its inherent authority, under Rule 17, I believe it's (c), to, once I ascertain the writer of that document, subpoena that witness to come in to testify that he did, in fact, have an interview with Mrs. Hall and that she did, in fact, admit to saying that she had the right to deceive witnesses and the right to --

THE COURT: If you present me with the necessary information and certification, I would probably authorize the issuance of a subpoena.

That's not necessarily defined that I would permit examination of the witness, although there is a high likelihood I would. It depends upon my finding as to whether it's collateral. But that's the way you would have to go about it. So there is nothing further to question this witness about.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: She gave you an unequivocal answer.

You can return those documents to the prosecutor, except for the one that Mr. Sutcliffe handed me.

So you are finished questioning Tracy Hall?

MR. SUTCLIFFE: With the reservation of rights to return --

THE COURT: I don't know about those reservation of rights. If there is some area that you intend to pursue

further, why can you not do so now?

MR. SUTCLIFFE: Let me just check my notes, Your Honor.

THE COURT: I'd like the record to reflect this witness has understandably exhibited considerable anguish, under the circumstances and facts as alleged in this case and about which she testified, in having to respond to questions that the defendant has posed.

It would be perfectly permissible, and I would grant the defendant the right, to go beyond the scope of direct -- in fact, I have done that -- without any objection by the government, to elicit whatever the defendant has thought was important to his defense. That's why he has spent hours questioning this witness.

I don't intend to put her on call. If you have any additional areas that you want to pursue, you should do it now.

MR. SUTCLIFFE: Thank you, Your Honor. I will.

THE COURT: Do you want to continue questioning her?

MR. SUTCLIFFE: Yes. I have like two more questions and then I'll be done.

THE COURT: Then let's bring her back in, question her, and then I'm going to excuse her.

MS. DUARTE: I also have very limited redirect.

THE COURT: You have a right to redirect. You can exercise it at the appropriate time.

Call Ms. Hall in and have her take the stand while the jury is being brought in.

(Jury in.)

THE COURT: We are going to call back Ms. Hall for a few more questions.

MS. DUARTE: May I just have a moment, Your Honor?

THE COURT: Yes. Everyone may be seated.

MS. DUARTE: Right now we can't locate Ms. Hall, but we are looking for her.

THE COURT: Okay.

MS. DUARTE: Would you like me to go continue to look?

THE COURT: If there are places where you can go that someone else might not.

MS. DUARTE: There was, but I already went there, Your Honor.

THE COURT: I think that's a sufficient report. We don't need any further cross-examination of the prosecutor. Let's just wait and see.

Do you have one of the agents out there just to alert Ms. Hall that she is needed for a few more questions?

MS. DUARTE: Yes, we do. Special Agent Harrill is going to go out and take a look.

THE COURT: Please do that.

You can stand up and chat with each other, if you

want, and just move around in the jury box. Sometimes we call that a seventh inning stretch. Don't discuss the evidence or the trial issues and trial itself.

MS. DUARTE: Your Honor, Ms. Hall has returned to the courtroom.

THE COURT: Very good.

(Ms. Hall-Fraser entered the courtroom.)

THE COURT: Welcome back, Ms. Hall.

I remind you you are still under oath and you have the continuing obligation to testify truthfully.

Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Ms. Hall -- excuse me. Mrs. Fraser, we were discussing this page here, this "Shareholders money which has been spent to date."

Now, do you see again -- I'm going to direct your attention back to the left-hand bottom corner down here.

When I put the words over "kill me" and I was speaking of Mr. Labaton's comments that he would kill me in a court of law --

(Playing audio.)

BY MR. SUTCLIFFE:

Q That's again the "Ren & Stimpy" cartoon sound.

Do you see this last paragraph that, "You threaten my counsel, you call my home and threaten me and my family, I will

personally send you and the captains of the ship straight back to the hell from where you came"?

A Yes.

Q Are you familiar with the term "rhetoric"?

A Yes.

Q Would you agree that that statement is rhetoric?

A Yes.

Q And this, "Tell that to whoever is running the ship," that's more rhetoric? It's not speaking about a real ship?

A Yes.

Q And throughout this website --

(Playing audio.)

BY MR. SUTCLIFFE:

Q -- do you see lots of figures of speech, rhetoric, hyperbole?

A Yes.

Q Stories? Funny sounds?

A Yes.

MR. SUTCLIFFE: I have nothing further, Your Honor.

THE COURT: Okay. Redirect?

MS. DUARTE: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. DUARTE:

Q Ms. Hall, the first explicit threat against you that spoke of "sending you back to the hell from which you came," you just

saw a version of that; correct?

A Yes.

Q If we could look at Exhibit 24, I'm going to pull up a download from October 24th.

Is this around the time that you saw the threat against you that you saw earlier in Government's Exhibit 13?

If you need to take a look at that to refresh your memory, it's right there in the binder behind you.

THE COURT: What are you asking her to look at?

MS. DUARTE: Exhibit 13, page 1.

THE WITNESS: There are two binders.

BY MS. DUARTE:

Q The big one.

Go ahead and take a look at page 1 of Exhibit 13, and tell me if October 24th is right around the time you saw that threat against you.

A Approximately, yes.

Q If we could go ahead and access the 10-24 download on Exhibit 13 and we could enable port 5, please.

And is this the threat that you were looking at in Exhibit 13 right there --

A Yes.

Q -- not on the screen?

A Yes.

Q And the file name is "Tracy 44H669"?

A Yes.
Q Now, remember, Mr. Sutcliffe had you looking at a FAQ sheet?
A Yes.
Q And that was for October 18th, the one you looked at?
A Approximately, yes.
Q We are going to go ahead and look if there is a FAQ sheet for this date, October 24th. Go ahead and open that up.

Remember this format that you looked at earlier on another website?

A Yes.
Q Why don't we go ahead and scroll down. Put that in the center.

In the center there, do you see that, "Are you armed and dangerous?"

A Yes.
Q What's the response there?
A "After the recent threats on my life and the life of my family by an agent of Global Crossing, yes, I am armed."

MS. DUARTE: I have nothing further, Your Honor.

THE COURT: Okay. Anything further, Mr. Sutcliffe?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: You can only limit it to what the prosecutor just explored and nothing else.

MR. SUTCLIFFE: Yes.

RECROSS-EXAMINATION

BY MR. SUTCLIFFE:

Q I also have 10-24 from the downloads.

This is the part we were just discussing, "Are you armed and dangerous?"

Now, before, it said, "Yes, with the information on the company. Some say that's dangerous. Time will tell."

Now it's changed to "After the recent threats on my life and the life of my family by an agent of Global Crossing, yes, I am armed."

Is it not true that this statement -- I'm going to bring them both up so we can compare them side by side.

One second, if you will indulge me here.

I'm going to now tie these two horizontally so we can look at them side by side.

At the top, we have from 2001, 10-18. The bottom screen, which is split, is from 10-24. The first one says, "Only with the knowledge of the company. Some say this is dangerous. Time will tell. So knowledge, some might say that's dangerous."

Now we go to the bottom one, 10-24. "After the recent threats on my life, yes, I am now armed."

Does that say I'm armed with anything other than what I've already -- we've already established, which is knowledge?

A I took it as you were armed.

Q Isn't it a fact that you were told by Mrs. Greenwood that if you felt -- anything that you could find, if you could come up with anything on this website that you could reasonably say could be interpreted as you felt fear, that "We can make this guy's legal life miserable"?

MS. DUARTE: Objection. Asked and answered.

THE COURT: It's been asked and answered, very explicitly, and the answer was "no."

MR. SUTCLIFFE: I have nothing further, Your Honor.

THE COURT: Okay. You are excused, Ms. Hall. You have no obligation to remain at the trial. You can go about your business.

THE WITNESS: Thank you.

THE COURT: Please call your next witness.

MS. DUARTE: The government calls Special Agent James Durie to the stand.

SPECIAL AGENT JAMES DURIE, GOVERNMENT'S WITNESS, SWORN

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: James Robert Durie, D-u-r-i-e.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MS. DUARTE:

Q Good morning, Special Agent Durie.

A Good morning.

Q Where do you work?
A I work for the FBI in Los Angeles. I'm a special agent.
Q What do you do with the FBI in particular?
A I'm currently assigned to the Computer Analysis and Response Team, and that's the group of people in the FBI who are responsible for the forensic analysis of electronic media: Computers, anything that stores data, digitally.
Q Is the Computer Analysis and Response Team also known as CART?
A Yes.
Q How long have you been with CART?
A Three years.
Q Before that, did you work with the FBI as well?
A Yes.
Q What did you do with the FBI?
A I worked national security matters. I worked drug matters. I worked on applicants for a little while.
Q Are you currently, then, a computer specialist?
A No.
Q How would you describe yourself? How would you describe your specialty?
A I'm a certified field examiner for CART. I'm still an agent, just like any other investigator for the FBI, but now all my work is geared towards the analysis of evidence seized from computers.

Q Is the type of exam that you do on computers known as a forensic exam?
A Yes.
Q What is a forensic exam, just in general?
A Well, first, we collect and preserve the evidence, so we typically make copies of the -- forensic copies of the evidence. That gets us to a point where we can interact with the media without altering any of the original evidence. And then we use specialized software to break down, you know, the data on the drive into parts where we can understand what's going on. Because there can be evidence all over the hard drive, even space, that's there that you, as a user, wouldn't be aware that there is something on there.

So we have specialized software that looks at forensic copies of the original and breaks it down for us. Tells us where the data is located, you know, what files it may be in, what file it may be attached to, you know, it will recover deleted files, for example.

And then we have other tools that let us read, you know, Internet cache. There are all kinds of stuff that potentially could be of evidentiary value that we are equipped to deal with, beginning with making that forensic copy, because that's how we preserve the original stuff that was seized in the search.
Q Let me stop you and ask, you said "forensic copies"

several sometimes. What is a forensic copy?
A Well, I use the term "forensic copy" to describe a copy of the original evidence. We use tools that, in addition to the data on the original evidence, it's got some file markers in there that's not part of the original evidence, and it's got some integrity checks that are saved.

It's not part of the original evidence. Sometimes it may have a "validity hash save" that's not part of the evidence, but it's in that forensic copy, but it's not part of the evidence. And the forensic software knows that. It's just to make sure that there are no errors in that copying process.

So it would not be accurate to say I have a mirror copy or I just copied it or it's an exact copy because, while all the data is there and it's there in the exact order it's supposed to be, there are a few extra things that are there that the software uses to keep track of the integrity of the process that we use.
Q By the "integrity of the process," do you mean the accuracy of the copy, basically?
A Yes. There are possibilities, during the copying process, that -- you could have a power surge and it could alter the data stream. You could have just some corrupt data come across when you are making the copy.

So all of this software has an ability built into it to put up a flag that says, Hey, there is a problem here. This

doesn't match what I think it should match.

That's what I mean by "integrity of the image." That way we can come to you and say, "I made a forensic copy of X and it's Y, and I work from Y, and it was the same thing as X."

Now X is in evidence, and I've never changed it. I couldn't change it. The software I use didn't change it, because I worked from something that was the same.

Q Do you sometimes make forensic copies of pieces of digital evidence without actually going on and doing the forensic analysis of that evidence?

A Yes.

Q And were you involved in this case against Defendant Sutcliffe?

A Yes, I was.

Q How were you involved?

A Well, I received the evidence from our evidence facility. I took -- opened the boxes it was shipped to. I catalogued what I actually had there, and then I made the original forensic copies of the one computer, which contained four hard drives, and then I made copies of two hard drives that weren't attached to any computer. We'll just call them unattached drives.

And then there was a large amount of removable media, and that was CD-ROMs, CDRs or, you know, compact discs that you can record to, and Zip disks, which is removable media similar

to a floppy but holds a little bit more data and is a little bulkier, and then there were some floppy disks.

And those -- I didn't make copies of those since most of those you can actually write protect. You can prevent interaction with it that would change the data, for example, a CD.

I can look at the data on that CD without making a forensic copy of it. And, no, I'm not altering the original data.

Q Let me stop you right there and break your answer down a little.

You said that you received the evidence from the evidence room. What form was it in when you received it?

A It was shipped to us boxed up by FedEx, which is the standard way the FBI transports evidence. It's got a shipment number so we know, you know, what's coming and what's supposed to be in it. And it's shipped with a packing slip, and the packing slip that we use is a copy of the chain of custody so that we know, once we open the box, who packaged it up, who sent it to us, where did it come from, you know. It's the only carrier we use to mail evidence so that we can keep track of where evidence has been.

Q In addition to the paperwork you described, was this evidence also marked with a case number?

A Yes.

Q Okay. And where did this evidence come from that you received in this particular case?
A Well, I received it from our evidence control facility in Northridge. It actually originally came from the East Coast. I'm not sure off the top of my head, but I think it was New Hampshire or something like that.
Q Okay. It was marked with a case number when you received it?
A Yes.
Q Now, when you received it -- let's talk, first, about the computer. You said you received that separately from the remainder of the --
A Yes.
Q When you received the computer or -- is that the same as a CPU?
A No.
Q Okay. Then I won't use that term.
A Let me explain. A CPU is a chip. It's the chip that does all the work. And the computer is the box that contains the CPU, the hard drives, your floppy drive.

And so when you have your computer at home, what you see is the computer, and unless you are tinkering with the inside of it, you would never see the central processing unit.
Q When you received the computer and you opened up the FedEx box with the computer, what did you do then?

A I take a look at it, make some notes as to the condition that the box is in, and then I inventory it. So I open it up, and get -- in this case, there were several hard drives, so I make note of any distinguishing marks, names, case numbers, serial numbers of the case, and then I pull out the hard drives and write down the make, manufacturer, serial number --

Q Let me stop you --

A -- approximate size.

Q -- and ask you how many hard drives were in this particular computer in this case?

A Four.

Q Go ahead and describe what you did when you retrieved them from the computer. Did you assign them evidence numbers?

A Well, evidence is assigned an evidence number. And in this case -- typically, it's 1B, which is our category of seized evidence, and it had a 1B number. Then we get a number, and we call it, like, a lab number. So the computer would be like LA1. In this case, it was QLA1. And then each individual item we find in it is another subunit, which in this case each hard drive. There were three IDE hard drives.

An IDE is just an interface. It's how it's connected to the mother board. Those were LA1A, 1B, and 1C.

Then there was a SCSI drive. And SCSI is S-C-S-I, which stands for Small Computer System Interface. And that drive I designated QLA1S, you know, simple, SCSI, since that

was the only one in that box, and -- so I cataloged those.

Those are going to be the numbers I use for whatever I do from then on to keep track of what I'm doing to what, and so that another examiner, who had to look at it from the FBI, would go, oh, you know, when he sees something like QLA1A or QLA1A1, he knows that he's looking at a piece of evidence or a report about a piece of evidence that was found inside a box, you know, a computer, as opposed to the computer itself or an unattached hard drive.

Q Speaking of unattached hard drives, now, you mentioned that you had also received two of those for this case; right?

A Right.

Q Did those come in a separate box or a separate manner from the computer?

A They came in a separate box with all the rest of the removable media, the CDs, and there were two of those, an IDE drive, and then another SCSI hard drive.

Q Did you label or did you categorize or assign numbers to those two drives?

A They were -- I made them LA2 and LA3.

Q What about all the other removable media, the floppies, the CDs?

A I went through each one of the removable media and made a list of them: LA4, LA5, LA6, LA7, through, I don't know, 160 or some-odd.

In that list, I made a note -- a short physical description of it, and then a quick note as to what was actually on it and whether or not it was something that would be relevant in the future or something that pertained, you know, as opposed to something that didn't pertain to the case.

I did that for each of the items, and then, you know, I discussed that with the case agent later.

Q Now, as for the six hard drives that we've talked about, the four within the computer and the two outside, how did you go about copying these hard drives?

A Well, our practice at this time -- and this is a fairly standard forensic practice with hard drives -- the IDE drives, I put in one of my machines, and I had a tape drive hooked to the machine, and I used special software that one blocks write attempts. So I operated in the DOS environment, the most basic level I could operate with.

Q Let me stop you right there and ask, when you say "software that one blocks write attempts," what is it that you mean?

A Well, in order to save data onto the media, the computer has to write to it. Well, with Windows, when you turn on the machine, shortly after the power hits it, Windows is actually trying to change data. And when we say "write," it means the computer is trying to change some data on there.

We have hardware and software tools to prevent that

from happening. Again, what we want to do is, when we seize a computer, we want our copy to be a picture in time of the original, and we don't want to ever change the original.

And the way we do that is, when we make a copy of it, we either use software or hardware write blocks or a tool called a disk duplicator, which does not -- so long as you don't switch the drives and put them in the wrong place, because if you do that, you've got a nice copy of a blank drive; but if you set it up correctly, then the disk duplicator cannot write to your data drive. It is only going to make a copy to that blank drive you hooked up to it.

Q Thank you.

So you were describing how you made copies of the six hard drives, then?

A Right.

Q Go ahead and describe that.

A We use the software -- we put a software write block to it so the software we are going to use to make the copy will not inadvertently write to it.

Now, our headquarters has previously tested the software we use to make tape duplicates of drives to make forensic copies, and they know that that software does not write to our target -- to our source, rather.

Well, we still run with either hardware or software write protection because you never know what could happen, and

it has happened where just, you know, electrical surge, boom, the data's changed, because -- it just happens.

Q Beyond these safeguards that you are describing, why don't you go ahead and describe how you actually put the drives onto tape.

A We use software called "Safe Bet." Basically, what that does is forensic copy out to a 4-millimeter digital audiotape, just like they use in the music industry.

So we just sit and wait and watch it do its process, and it takes X number of tapes per, you know, size of drive, usually a tape for every 10 or 12 gigabytes.

And, then, we can't really work from the tape because it's just a stream of zeroes and ones with some checksums in it somewhere.

So we have a second piece of software that takes that data from the tape and creates files on our computer that our software reads and interprets as though it was that original drive, and that software knows exactly where that data is in relationship to the physical attributes of the original drive.

So we do that whether it's an IDE or a SCSI hard drive or a laptop hard drive. It's, essentially, the same thing. We put it on a machine that we have control of, our exam machine, use a special software to make a forensic copy of the tape. Then we take that tape and process it so we have files our computer can read and we can work with and do our

analysis.

Q Now, in this particular case, you had six hard drives. Did you put all those hard drives to tape?

A Yes. All of them were to tape.

Q What about the removable media, the other media? Was that actually transferred to the tape as well?

A No. The removable media is too small to do to tape. The tape is for large devices. So, typically, on stuff that we really need to make a copy of, we will make an actual forensic copy to a similar device. For example, if we have a CD-ROM -- you know, in my case, I skip that process. I just use the CD-ROM because I know I'm not going to write to it. I can't write to it anymore.

Q Let me stop you and ask you, sir, do you know in this particular case if you actually made a copy to copy of the smaller removable media?

A I did. I made image files of the stuff other than CD-ROM, so the Zip files, the Zip disk, and the floppies. We have software, you know, where we can put that into our machine and then it makes a file that our computer reads, and it thinks it's the floppy. And we do that for most removable media that we can't either physically protect or that there are some other concerns with.

And we have different environments, operating systems we can use, that allow us to, you know, write protect removable

media that doesn't have its own built-in write protection. So we'll create those image files for that.

So for the removable media, in this particular case, I created some image files. And that's what I looked at, to removable media, other than the CDs.

For the CDs, especially when there are a lot of them, I just throw them in my CD drive, look at it. If it looks good, I set it to one side. If it looks like it has nothing to do with the case -- and, for example, when I say "it has nothing to do with the case," it could be --

Q Let me stop you because we are going to get into that in a minute. Let me just go back to the copying of the data on the drives.

At the time that you transferred the data from the hard drives to the tape, were you able to ascertain at any point how much data there might be on any given drive?

A I don't stand there and watch it from beginning to end, but I pay attention to what's going on, because if there is an error in the process, I need to do something about it.

And so, yeah, you kind of get an idea. It keeps a running total of the data on the screen while it's doing its thing, and also timewise.

There is a direct correlation to the amount of data, other than zeroes, on a particular given media and how long it takes to image it.

So you can tell right away, you know, if it finishes -- if you've got a big hard drive and it finishes in two or three minutes, you know there is nothing there because the software we use compresses zeroes at a 512-to-1 ratio.

And so even a big hard drive, it copies really, really, really fast, and you know right away there is nothing on it.

Q Let me stop you and ask you, when you are saying "zeroes," is zeroes what the software will see on the drive when the drive is actually blank?

A I don't use the term "blank" because people think that when you say "blank," it means blank.

With a hard drive, when someone says it's been wiped or it's blank, what they mean is someone has gone to it and specifically written zeroes.

Frequently, new ones will come from the factory with nothing but zeroes on it, because all of the computer data, your Microsoft Windows Operating System, your digital photographs, the wallpaper, ultimately, is just a series of zeroes and ones that the operating system and the computer interpret to be a picture.

Well, we put -- write zeroes to it. It's really not no data. It's all data, but it's all the same data: Zeroes. And the computer can't read it. It doesn't mean anything. It's just ready there for something to be applied to it.

We use zeroes when we write and get -- prepare media for the forensic process, because it's easy to look and verify that it's all zeroes, either through something called "hash analysis" or by just taking the drive and putting it on a computer and using a diskette to physically look at it: Oh, zeroes run across here. There is no -- quote/unquote, no data on it.

Q If I look at a drive -- if I pop a drive and try to access it on my computer and it is all zeroes, would I be able to see anything that I would understand to be data without doing a forensic analysis of some sort?

A If you had a drive that was either brand-new or somebody has written all zeroes to and you put it on your computer, the computer will recognize that there is a drive there, assuming the hard drive works. Your operating system, whatever operating system you are using, won't recognize it as anything it can do something to.

Q For all intents and purposes, there is nothing for me to see; right --

A Right.

Q -- if I'm looking for data?

A Right.

Q Is that a fair statement?

A Yes. That's accurate.

THE COURT: Okay. Excuse me. I think, because there

is something I need to take up, and knowing that -- just thinking about all these zeroes and ones makes us very hungry, it's probably a good time to break for lunch.

We will resume pronto at 1:15. Please enjoy your lunch. See you back here at 1:15.

(Jury out.)

THE COURT: Everyone may be seated. What I wanted to bring up, thinking about the -- it's not necessary for the witness to leave the courtroom -- thinking about the pace of things and the possibility that you are going to rest today -- I think you said today; right?

MS. DUARTE: There was a possibility. It's getting dimmer.

THE COURT: But early tomorrow sometime. I would like -- what was the date that you told me that Agent Cugno would be available to resume his testimony?

MS. DUARTE: Your Honor, he is due to come back on the 4th, which is Thursday. I can have him back here earlier, if need be.

THE COURT: That's what I wanted to raise. Whatever it takes to have him in the courtroom on the 3rd.

MS. DUARTE: On Tuesday, not Monday the 2nd?

THE COURT: Monday is the 1st.

MS. DUARTE: I'm sorry.

THE COURT: Tuesday is the 2nd. I'd rather have him

here on Tuesday because I don't know what will happen. I think we could do without him -- is that your best estimate, Mr. Sutcliffe? If you start your case tomorrow, when will you need Cugno?

MR. SUTCLIFFE: I'd like Mr. Cugno before I start my case. I'd like to finish --

THE COURT: That's not going to be possible. You said that it would be during the course of your case. You already knew what his return date was. You are going to have to put on other witnesses long before Agent Cugno is back in the courtroom.

MR. SUTCLIFFE: I don't believe anybody ever told me when he was returning, Your Honor.

THE COURT: It was stated on the record.

MR. SUTCLIFFE: Okay.

THE COURT: And you were present.

MR. SUTCLIFFE: I'm not disputing that, Your Honor. I just don't recall anybody giving me a definitive date.

THE COURT: Let me put it this way. I don't know exactly what's going on with him. I would prefer him to be available on the 2nd.

MS. DUARTE: I can do that.

THE COURT: I will accept it, if he's not available, to the 3rd. I want him here not later than the morning of the 3rd.

MS. DUARTE: I can do that. I can have him here on the 2nd, Your Honor.

THE COURT: Then that's what we are going to do. We'll have him here on the 2nd and see what happens.

Mr. Reed?

MR. REED: Are we going to go on the 1st, on Monday?

THE COURT: No, we are not going next Monday.

MR. SUTCLIFFE: We'll pick up Tuesday, Your Honor?

THE COURT: Yes, we will pick up on the 2nd. I have too many things on my calendar Monday that I can't shift.

MS. DUARTE: Will Mr. Sutcliffe be required to start his other witnesses if Agent Cugno isn't back yet?

THE COURT: Yes. I just said that, and I'm saying it again. And that will mean tomorrow.

MR. SUTCLIFFE: Okay.

THE COURT: Okay. I think that takes care of what I needed to.

Enjoy your lunch and see you back here at 1:15.

(Lunch recess taken at 12:02 p.m. to 1:19 p.m.)

(Jury in.)

THE COURT: Agent Durie, I remind you that you are under oath, and you have the continuing obligation to testify truthfully.

We will be going until 4:30, with one break around the middle of that, a 15- or 20-minute break. So I hope to

make good use of the time in the courtroom until then.

You may proceed.

DIRECT EXAMINATION (Resumed)

BY MS. DUARTE:

Q Special Agent Durie, when we left off, we were discussing the copies that you made, or the copies that you caused to be made, to tape of LA2 and LA3, which were those external hard drives.

When you caused those copies to be made to tape, did you notice anything specific about the size or, I should say, the amount of data on those drives?

A Well, the SCSI drive had no usable data on it.

Q Was that LA3?

A Yes.

Q Okay.

A And the IDE drive, LA2, had only a small amount of data.

Q But despite this, did you go ahead and make copies of those drives?

A Yes.

Q Did there come a time when you were asked to provide copies of the electronic evidence that you made in this case, or caused to be made, to an outside expert?

A Yes.

Q How did you provide these copies?

A Well, we -- in the case of the two SCSI drives, we went

from tape to another SCSI drive, and in the case of the IDE drives, one of them was made from tape and the others a disk duplicator was used.

Q What about the removable media for the outside expert?

A They were all made with image files to yet another hard drive.

Q So all the removable media that you described previously -- floppy disks, CDs, Zip disks -- those were put on a single hard drive?

A Yes.

Q Did you make all of the copies yourself?

A No, I didn't.

Q Who helped you make them?

A Two other card examiners, John Medeiros and Don Schmidt.

Q Did you ask them to help you?

A Yes, I did.

Q Specifically, the hard drive -- well, in addition to copies for the outside forensic expert, did you make any other copies of these drives?

A We made copies also for the defense.

Q And, specifically, as to the copies of the hard drives that were provided to the outside expert, did you yourself make any of those copies?

A Some of them, yes.

Q Which one did you make, or which ones did you make?

A The ones that went to Guidance Software.
Q But, specifically, by evidence number, do you recall if you copied which ones?
A LA1A.
Q LA1A.
So did you go ahead and copy that for the outside expert?
A Yes.
Q How did you make that copy?
A I used the tape, the tape I had made previously, and did a restore to another hard drive.
Q When you say "restore," could you just briefly describe what you mean?
A That's the label for the process where you take the software that you made the copy with onto the tape, and it then reads the data on the tape and puts it in the right order to another hard drive.
Q And in addition to LA1A, did you make any other copies of hard drives for the outside forensic expert?
A I don't remember right off the top of my head.
Q What about the removable media? Did you copy that?
A Yes. I created image files of the media that the case agent had determined was significant.
Q All of the copies -- excuse me, all of the pieces of removable media were not copied?

A Right.
Q Do you know what was done with the originals that were not copied?
A As far as I know, it was returned to the defense.
Q After you made the copy of the hard drive and the copy of the removable media for the outside expert, what did you do with those copies?
A Well, I took the other copies that were prepared, with the help of John Medeiros and Don Schmidt, packaged them up and mailed them off to Mr. Siebert with Guidance Software.

MS. DUARTE: Could I have just a moment, Your Honor?

THE COURT: You may.

MS. DUARTE: I have nothing further at this time, Your Honor. Thank you.

THE COURT: All right.

Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SUTCLIFFE:
Q Good afternoon. How are you?
A I'm fine. How are you?
Q I'm fine, thank you.

You are a member of CART, the Computer Analysis and Response Team?
A Yes, I am.

Q You've been a member three years?
A Uh-huh.
Q Specifically, you make copies of evidence seized from someplace which is in electronic format?
A Yes.
Q And you preserve it so it's not damaged?
A Yes.
Q And if it's relevant, give it over to the FBI or whoever requests it -- analysis of it; correct --
A Correct.
Q -- in a nutshell?
A Yeah.
Q Okay. Now, if it's not relevant, what do you do with it?
A I return it to the case agent, tell them, as far as I can tell, it's not relevant.
Q Okay. As you are going through this stuff, if you determine it's not relevant, you don't make a copy of it?
A No.
Q You said "blank" doesn't mean blank.
A That's right.
Q In computer lingo, a lot of words mean other words --
A Right.
Q -- much like a lot of words in the English language?
A Sure.
Q Have you ever heard a computer joke, "I could delete you

with one finger"?

A No, I have never heard that joke.

MR. SUTCLIFFE: Okay. I have nothing further for the witness, Your Honor.

THE COURT: Nothing further?

MS. DUARTE: No, Your Honor.

THE COURT: You may step down.

Please call your next witness.

MS. DUARTE: The government calls Special Agent John Medeiros to the stand.

SPECIAL AGENT JOHN MEDEIROS, GOVERNMENT'S WITNESS, SWORN

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: John Medeiros, M-e-d-e-i-r-o-s.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MS. DUARTE:

Q Good afternoon, Special Agent Medeiros.

A Good afternoon.

Q Where do you work?

A I work for the FBI in the Los Angeles office.

Q What do you do with the FBI?

A I'm a member of the Computer Analysis and Response Team, also known as CART.

Q How long have you been a member of CART?

A For approximately 10 years from the period of 1992 through 2003.
Q Were you with the FBI before you were a member of CART?
A Yes, I was.
Q What did you do with the FBI before CART?
A I investigated general crimes and financial crimes.
Q For how long?
A For five years.
Q So how long have you been with the FBI, total?
A 16 years.
Q What did you do before joining the FBI?
A I was a police officer with the Honolulu Police Department.
Q For how long?
A For nine years.
Q Now, as a member of CART, do you do forensic computer examinations?
A Yes, I do.
Q How long have you been doing these examinations?
A For approximately 10 years.
Q Do you also make forensic copies of electronic evidence?
A Yes, I do.
Q Do you sometimes make forensic copies without necessarily performing a forensic analysis?
A Yes, I do.

Q Were you involved in this particular case against Steven Sutcliffe?
A I was.
Q How were you involved?
A I was requested by Special Agent Durie to assist in the production of forensically-sound copies for defense and for outside experts.
Q And specifically for the outside expert, the outside forensic analysis, how many hard drives did you copy?
A I believe I copied two.
Q Do you remember the drive numbers?
A I believe I copied LA1, Drive A, and LA2.
Q Now, this was for the outside forensic expert?
A I believe so.
May I refer to my notes?
Q Yes. Why don't you let us know what you are looking at so that we can follow along, if need be.
A It's just a simple spreadsheet, handwritten, of -- this was compiled from the actual notes.
Q "From the notes," you mean the notes that were turned over in discovery?
A That is correct.
Q So does that note itself have a Bates-stamp number on it?
A It does not.
MS. DUARTE: Your Honor, may I approach and show

defense the notes before he relies on them?

THE COURT: Yes.

BY MS. DUARTE:

Q Special Agent Medeiros, would -- referring to that single sheet of notes that's been shown to defendant, would that help you refresh your memory as to the drives copied?

A Yes, it would.

Q As to the drives that you copied for the outside forensic expert, could you tell me which drives you copied, please?

A Yes. I was mistaken. I copied LA1B, LA1C, and LA2 for the outside expert.

Q Okay. And LA1B, what type of a drive was that that you copied?

A LA1B was a -- the original drive was a Quantum Fireball 15 gigabyte IDE drive.

Q An IDE drive is a type of hard drive?

A That is correct. It's simply the format of the connection between the hard drive and the computer.

Q How did you make that copy?

A That copy was made using a small piece of equipment known as a Logic Cube.

Q Could you describe how you made the copy using the Logic Cube, just briefly?

A The Logic Cube is a very small device. It's not much bigger than the hard drive itself, and it's basically a

single-use computer.

Its only function is to get the bits off of one hard drive and write them to the next so that it, in fact, produces a working one-to-one copy of whatever hard drive you choose to duplicate.

Q Did you use that process you just described to duplicate drive LA1B?

A Yes.

Q What about drive LA1C? Did you also use the same process to duplicate that drive?

A Yes, I did.

Q LA2, what about LA2?

A That was also done on the Logic Cube.

Q What did you do with these copies that you prepared for the outside forensic expert after you made them?

A They were turned over to Special Agent Durie to be aggregated with everything else.

MS. DUARTE: Could I have just a moment, Your Honor?

THE COURT: Yes.

MS. DUARTE: I have nothing further at this time, Your Honor.

THE COURT: All right. Thank you.

Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SUTCLIFFE:

Q Good afternoon, Mr. Kendall (sic). How are you doing today?

A Very good.

THE COURT: Mister who? This is Mr. Medeiros.

MR. SUTCLIFFE: Mr. Medeiros. Excuse me, I'm sorry. I had written down some other names here.

Q Mr. Medeiros, I apologize for incorrectly stating your name. I was writing down some notes.

You said that you had made a mistake about something. Could you just briefly fill me in on what that mistake was again?

A I misspoke. I said I copied two drives for the outside expert, when, in actuality, I had copied three drives. I also misspoke as to the first of the drives. It was not LA1A. It was LA1B.

MR. SUTCLIFFE: I understand. We all make mistakes.

Nothing further, Your Honor.

THE COURT: All right. You may step down.

MS. DUARTE: The government calls Donald Schmidt to the stand.

DONALD SCHMIDT, JR., GOVERNMENT'S WITNESS, SWORN

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Donald Arthur Schmidt, Jr., S-c-h-m-i-d-t.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MS. DUARTE:

Q Good afternoon, Mr. Schmidt.

A Good afternoon.

Q Where do you work?

A With the FBI.

Q What do you do with the FBI?

A Work in CART.

Q The Computer Analysis and Response Team?

A That's correct.

Q Do you have a title at the FBI?

A Yes. IT specialist forensic examiner.

Q IT specialist forensic examiner?

A Yes.

Q What does IT stand for?

A Information technology.

Q When did you first join the FBI?

A 1996.

Q What did you do before joining the FBI?

A I was a contractor for the government, with the U.S. Air Force.

Q In the field of computer technology?

A Yes.
Q And after you joined the FBI, were you on CART at first?
A No.
Q What did you do with the FBI prior to joining CART?
A I was an electronics engineer working on the IAFIS Program.
Q I'm sorry, the --
A I-A-F-I-S Program.
Q What is the IAFIS Program?
A That was the -- now I forgot. Integrated Automated Fingerprint Identification System.
Q And you worked with that program how long?
A Three years.
Q In your current position on CART, do you do forensic computer examinations?
A Yes, I do.
Q And do you also make forensic copies of electronic evidence?
A Yes, I do.
Q Were you involved in this particular case against Steven Sutcliffe?
A Yes.
Q How were you involved?
A Special Agent Durie asked me to assist him in making some copies for defense and for an expert.

Q Did you assist?
A Yes, I did.
Q Specifically, for the outside expert witness, did you copy any hard drives for that?
A Yes, I did.
Q What hard drives did you copy?
A As I recall, it was the items tagged LA1-S and LA2.
Q Was it LA2?
A I would have to double-check my notes to see.
MS. DUARTE: Your Honor, permission to approach and refresh his memory?
THE COURT: With the notes?
MS. DUARTE: Yes.
THE COURT: Have they been already provided to the defendant?
MS. DUARTE: They have.
THE COURT: All right. What's the Bates number on it?
MS. DUARTE: Bates Nos. 3073 through and including 3117.
THE COURT: All right. You may approach.
BY MS. DUARTE:
Q Mr. Schmidt, go ahead and take a look through those notes -- take your time -- and let me know if those refresh your memory as to which drive you copied.

A I'm sorry. It was LA1-S and LA3.
Q Those notes refresh your memory?
A Yes.
Q Are you finished with them for the time being?
A Yes, I am.
Q You could just turn them over and set them right there beside you.

For the outside forensic expert, you copied which drives?

A That would have been the --
Q You just said it.
A I'm sorry. LA1-S and LA3.
Q And, specifically, as to drive LA1-S, how did you copy that drive?
A I restored an image from a tape.
Q How did you restore that?
A I connected the SCSI drive with a cable, a SCSI cable, to the computer, ran a software program that will then take the image from the tape and copy it through the cable over to the drive where it restores it.
Q What did you do with that restored drive LA1-S, the copy, after you made it?
A I gave it to Special Agent Durie.
Q What about LA3? How did you copy that drive?
A The same way.

Q Same process?
A Yes.
Q What did you do with the restored copy of LA3 after you had made it?
A I gave that to Special Agent Durie.
MS. DUARTE: If I could have just a minute, Your Honor. I have nothing further.
THE COURT: All right.
Mr. Sutcliffe.
MR. SUTCLIFFE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SUTCLIFFE:
Q Good afternoon, Mr. Schmidt. How are you doing?
A Good afternoon. Fine. Thank you.
Q In the beginning, we started talking about LA1 and LA2, and you said you made a mistake; is that correct?
A Not on copying the drives. I just make a mistake in identifying --
Q I'm not saying you did anything bad.
You made a mistake as to what -- your notes refreshed your recollection and you corrected yourself; right?
A Yes.
MR. SUTCLIFFE: Nothing further.
THE COURT: All right. You may step down. Thank you.

Call your next witness.

MS. DUARTE: The government calls William Siebert to the stand, Your Honor.

Your Honor, may I retrieve the notes up at the witness stand?

THE COURT: Yes.

WILLIAM SIEBERT, GOVERNMENT'S WITNESS, SWORN

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: My full name is William Charles Siebert, S-i-e-b-e-r-t.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MS. DUARTE:

Q Good afternoon, Mr. Siebert.

A Good afternoon.

Q Where do you work?

A I currently work at Guidance Software.

Q What kind of a company is Guidance Software?

A Guidance Software is a computer forensics software company.

Q How long have you been with Guidance Software?

A Almost three years.

Q What is it that you do there with Guidance Software?

A I'm currently the director of customer relations.

Q Have you always been the director of customer relations at Guidance?
A No. My previous position was the director of technical support and the director of computer investigative services.
Q As the director of customer relations, what is it that you do?
A My current position is to speak to the computer forensic community and find out whether our computer forensic software does what they need it to do, whether they want features added, whether they want features changed. And that's predominantly based on the relationship I had in the previous position, where I pretty much know almost all 11,000 of our customers.
Q Which previous position does that refer to?
A That was the director of technical support.
Q How long were you the director of technical support at Guidance?
A I was in that technical support position for the previous two and a half years.
Q Now, you mentioned that you go out and ask questions about the performance of your software.

What type of software is that?

A The software that we manufacture is called EnCase.
Q E-n-c-a-s-e?
A E-n-c-a-s-e. It's used by law enforcement, the military, and corporate security when they are investigating computer

media, that being hard drives, floppy disks, CD-ROMs, etc.
Q What does EnCase do, what's its function?
A What it does is, up until 1998, three years after the release of Windows 95, most computer forensic examinations were still being done with a boot disk from a floppy and these arcane, archaic command line utilities.
EnCase was the very first product that let's you look at all of the digital evidence at one time with one piece of media.
Q So you would use EnCase to actually capture the contents of a piece of electronic media?
A You would capture each and every hard drive, floppy disk, CD-ROM, etc., that was in your investigation and then examine all of that material all at one time.
Q Are you well versed in the use of this software, EnCase?
A Yes, I am. I was on the training staff, and I have testified in state and federal court in Daubert/Frye hearings on the EnCase software.
Q By "Daubert/Frye hearings," those are expert testimony hearings?
A Yes, they are.
Q Are you also -- in addition to your position at Guidance, are you also a computer forensics consultant?
A Yes.
Q As a computer forensics consultant, what is it that you

do?
A As a computer forensics consultant, I am asked to image, make copies of computer forensic media, analyze that media, and provide an opinion as to what the contents are or whether or not there is evidence on that media.
Q Before you worked for Guidance -- and you said you've been with Guidance Software for approximately three years?
A Uh-huh.
Q Before you worked with Guidance, what did you do?
A My previous employer was with the United States Customs Service.
Q What was your title with Customs?
A My title with Customs was, I was a senior special agent with the Office of Investigations.
Q How long were you with Customs?
A I was with Customs for 21 years.
Q As part of your work with Customs for 21 years, what is it that you did there?
A The first part of my career was predominantly in narcotics investigations, and the second half of my career was dealing with computer evidence and computer forensic examinations.
Q So did you do computer forensic examinations actually on behalf of or for the Customs Service?
A Yes. I did all of the computer forensic examinations for the Los Angeles Office of Investigations, predominantly from

1983 until my departure in December of 2000.
Q Before you went to Guidance -- I should say, also, before you departed Customs, did you also work with Guidance on a limited basis?
A Yes. Guidance Software employs law enforcement examiners for their training staff. I was a member of their training staff for my last two years with the Customs Service.
Q On what topics did you train?
A I trained on computer forensic procedures, how to handle digital evidence, and how to use the EnCase software.
Q Do you have an estimate as to how many computers you've examined, forensically examined, over your career?
A I have examined over thousands of pieces of media, and I've conducted over a thousand -- I've been involved in over a thousand investigations.
Q How long total have you been working with computers?
A Since 1987.
Q Now, besides EnCase -- besides teaching on the function of EnCase, do you do any other teaching?
A I've also taught on the U.S. Attorneys' Guidelines for seizing and handling computer evidence. I do public speaking on investigations, all kinds of different computer forensic aspects of different investigations, whether they be terrorism investigations, sexual exploitation of children, murder, narcotics. Anything that can have digital evidence

implication, I have done public speaking on.

Q Have you also taught as well as just done public speaking on those topics?

A Yes. I have taught a great number of law enforcement personnel around the world.

Q What training have you, rather than given, specifically received in this area?

A My initial training was with the International Association of Computer Investigative Specialists. The organization is called IACIS, I-A-C-I-S. That was my initial training in 1993. That's a two-week class.

Later on, I went through the SEARCH training on basic data evidence recovery. The actual name for SEARCH is The National Consortium for Justice Information and Statistics.

I've been through the federal law enforcement training center's four-week basic evidence recovery training, and I've been through the two-week advanced evidence recovery network training class.

Q Now, in addition to these trainings that lasted a substantial period of time, do you also take periodic refresher training?

A Yes. I --

Q Describe that type of training.

A Every year, I attend the High Technology Crime Investigation conference. And anytime I'm asked to speak at a

conference, I'm provided a pass to that conference so that I can take the training there. And I normally participate in two to three training events a year to stay up to date on what's going on.

Q These training events are all in the area of computer forensics?

A It's all digital evidence and computer forensics.

Q Do you have any professional degrees?

A I have a Bachelor of Science degree from Northeastern University in Boston.

Q When did you obtain that degree?

A 1979.

Q Are you a member of any professional organizations?

A I'm a member of the High-Tech Criminal Investigation Association, the International Association of Computer Investigative Specialists. I was previously a member of the Houston Area Technical Support Group and the Federal Computer Investigation Committee.

Q Have you ever testified in court as an expert witness?

A Yes. I have testified in both federal and state court as an expert.

Q How many times?

A Approximately three.

Q In what area?

A Having to do with digital evidence regarding if there was

evidence in a trade secrets theft case, in child pornography, in data regarding narcotics investigations. Predominantly, it was in the sexual exploitation of children.

Q And these were investigations where you testified as to the computer forensics aspect?

A Correct.

Q Are you familiar with the Internet?

A Yes, I am.

Q Has your familiarity been enhanced by the training that you've received?

A Yes. The Internet is just an integral part of the computer community, so you have to be cognizant of it.

Q Are you familiar with Internet use and the evidence of that use that may be recovered from computers through examination?

A Yes. I've recovered, in previous investigations, Webpages that were found to be evidentiary and Internet history dates and times which were found to be crucial in an investigation.

Q What about tools that may be used for exploring the Internet, have you recovered any of those?

A I have a keen understanding of Netscape and Internet Explorer, and I have built my own Webpages, so I know it is possible to either use Notepad, if you want to use that for HyperText Markup Language, or you can use Word or, if you want to, you can use a program like FrontPage.

Q I heard you say "HyperText Markup Language." Is that also known at HTML?
A Yes. That is the basic language of the Webpage.
Q So what would be the significance of an HTML file? What is that?
A An HTML file is normally the file that loads when you look at a Webpage.
Q Are you familiar with the types of software used for construction and publication of Webpages?
A Yes. As I previously stated, you can use simple Notepad if you know the HyperText Markup Language, or you can use a program like FrontPage, or there are a great number of other Webpage creation and publishing software.
Q Did you perform any forensic examinations in this case?
A Yes, I did.
Q Who hired you?
A I was hired by the United States Attorney's Office.
Q Do you charge?
A Yes, I do.
Q How much?
A In this instance, $225 an hour.
Q Do you guarantee any specific opinion for that price?
A Absolutely not.
Q What were you asked to do?
A My initial request was to make a determination as to

whether or not there were Webpages that were created on some computer media.

Q This computer media that you were asked to look at, under what circumstances did you receive it to look at it?

A I received copies that were FedEx'd to me from the Federal Bureau of Investigations.

Q Did you know that the copies were coming?

A Yes. We had a great number of conversations.

Q At the time that you received the copies, had you already been hired for the case?

A Yes, I had. I had also gotten copies of the reports of investigation, the 302s, from the FBI, and I had a copy of the criminal indictment so that I could review that prior to my examination.

Q Did you review those items?

A Yes, I did.

Q In what form did you -- just, in general, in what form did you receive the electronic evidence that you examined in this case?

A The electronic evidence arrived on computer hard disks.

Q Is hard disk the same as hard drive?

A Yes, they are.

Q Do you remember how many you received that had evidence related to the instant case?

A There were a total of six drives that were shipped to us.

One had removable media on it.
Q Now, there were a total of six drives, you said, or six plus one with removable media?
A Can I refer to my notes?
Q Just tell us what you are referring to.
A It's my report that I wrote when I did the initial examination.
MS. DUARTE: I'll get a Bates stamp number, Your Honor.
THE COURT: All right.
MS. DUARTE: Starting at 1501 and it goes through 1513.
THE COURT: Okay.
THE WITNESS: I have a note here that I wrote on my report here that says, "There were six physical copies with one removable media."
BY MS. DUARTE:
Q So that's a total of seven?
A Yes.
Q So you received seven hard drives to analyze?
A Yes.
Q And what did you do? What's the first thing that you did of significance with the hard drives when you received them?
A The very first thing, the most very important step in a computer forensic examination, is you make a copy of the hard

drive, that is, a copy of the hard drive from the very first sector, the very first starting point, of the hard drive, to the very end of the hard drive.

It's not a file copy. It is what I'd like to refer to as an "evidentiary copy" of the drive. That way you are getting the allocated files, the deleted files, and all of the unallocated space on the drive.

That image was made with the EnCase software which stop writes to the drive so you are not changing the evidence at all. It creates a copy of that drive, puts it into a proprietary file format which can be checked by the EnCase software and which assures that no changes are made to the copies.

Q That process that you described, using EnCase to copy the drive, did you do that for all seven drives that you received?

A Yes. All seven drives were -- well, actually, the six drives were done. The removable media drive, those "dd" images, which were made with Linux, were added straight to the EnCase software.

Q Is there a reason for that?

A There was -- each -- the removable media was the Zip disks, I believe the CDs and the floppies. And the easiest way to handle it was just to add it all in, individually, as images.

Q Does that separate imaging process also ensure that the

integrity of the data is maintained?
A Yes.
Q When you answered the question, you made a reference to "deleted files" and "unallocated space."
Could you describe the difference between those concepts?
A Okay. When Windows deletes a drive, it doesn't really delete -- when it deletes a file, it doesn't really delete the file. It just marks it for Windows to tell it, "If you need this space and you want to override it, you can override it when you need it." Those files are capable of being recovered until they are overwritten.
The "unallocated space" is what we used to call "free space" on the drive. The "unallocated space" or "free space" is where there are partially overwritten deleted files.
And, also, Windows itself requires what's called a swap file to be opened every time that Windows opens. And that "swap file" is opened on that space and closed on that space on shutdown. And that's what the "unallocated space" is.
Q And the EnCase program that you have described captures all the data from all that space?
A It captures all the data from all that space and gives you the ability to search it.
Q Were you able, then -- after you had completed your captures of the drives, were you able to search all seven hard

drives at the same time?
A Yes.
Q Now, this process that you've described, did you have anyone assisting you during this time?
A Yes, I have staff members.
Originally, when this case was set to go to trial a year ago, there was a very fast date approaching. And so --
THE COURT: You don't appear to be in the process of answering the question, so I'm going to interrupt you.
Reframe your next question and then see if what he's telling you would be responsive.
BY MS. DUARTE:
Q Did you have anyone assisting you, without telling me why, in --
A Yes, I did. I paid my staff overtime, around the clock, to image the drives as quickly as humanly possible.
Q Did you supervise and verify their work?
A Yes, I did.
Q Did you have anyone in particular assisting you with the analysis?
A The key person who assisted me during the investigation was Erin Soule.
Q Erin S-o-u-l-e?
A Correct.
Q Did you supervise and verify her work?

A Yes, I did.
Q When you performed this EnCase capture of the drives that you have described, did you look at the time to see whether or not there was data on the drives or the amount of that data?
A There was a large amount of data to be examined from all the media.
Q From all the media together?
A Correct.
Q Now, drive to drive, at the time that you imaged them with EnCase, did you actually check each drive for the amount of data?
A No. It's inconsequential.
Q After you captured these drives, these seven drives, with EnCase, did you examine them for any particular category of item?
A Yes. In providing an opinion, I figured there was four ways to attack the drive, and --
Q By "attack the drive," you mean approach the drive?
A Approach the drive and the amount of media there were.

The very first thing that I was asked to do was to provide an opinion as to whether or not the Webpages were created on those machines.
Q By "the Webpages," did you actually receive some Webpages to look for?
A Yes.

Q Tell me about that.
A The FBI provided me with CD-ROMs that were -- that were snapshots of the Webpages that had been on the Internet.
Q Did you understand these CD-ROMs to be downloads of the website at various dates?
A Through my examination, I found that there were a number of different methods that were used to create those snapshots.
Q Did you use these, what you are calling shapshots?
A Yes.
Q How did you use them?
A Some were flat files. They were -- they were Adobe PDF files that were created from the Webpages.

The one that was most successful for me was from Agent Harrill's use of Teleport Pro. Teleport Pro snakes down the entire Webpage and its contents. Those were the files that were the most productive to me.

Q So you worked on -- you used a CD that you had received from Special Agent Harrill that had a copy of the Website on it?
A Correct.
Q And when you were able to use that CD, what did you do with it in order to compare it to the contents of the computer?
A There is a mathematical algorithm called the MD5 algorithm. What that does is, you can take the data that's in a computer file and you can run it through it, and it gives you

a value for that file. Think of it as a digital fingerprint. No two files with different contents can have the same MD5 value.

So what I did was, I took the files that were downloaded by Mr. Harrill, and I fingerprinted all of them. I took those values and brought them into the EnCase software.

EnCase has the ability to fingerprint all of the files that are on the media, and then it's able to match up and tell me whether or not those files are on the machine.

And from that, I was able to find a number of files that were identical, that had been on the Webpage, and that were on the machine.

Q Just to get this straight, you actually were able to take signatures or fingerprints, if you will, of files from the CD and compare them to the data that was on the machine that you were looking at?

A That's correct.

Q Did you find, you said, a number of matches?

A Yes.

Q How many matches did you find, roughly?

A There were approximately 15,000.

Q 15,000 different matches?

A Yes.

Q Now, you said that you had also had other approaches of attacking the data.

Did you also look for key words as part of this approach?

A Yes. There were a number of key words from the indictment that seemed to be important. One was the full name Gary Winnick, the next was the full name Elizabeth Greenwood, the next was the word Tracy Hall, the next was the word "evilgx.com", and last was the word "Dead-icated," capital D-e-a-d, dash, i-c-a-t-e-d.

Q Did you perform a search of the computer media that you had imaged from the seized computer? Did you search that computer for those key words that you just told us?

A Yes, I did.

Q Before you tell me your results, let me ask, in searching for those key words, would your search also find permutations or variations of those terms?

A No. I only asked for those exact words, so that it would be Tracy and Hall together, Elizabeth and Greenwood together, and Gary and Winnick together.

Q So if it were just Winnick, it wouldn't register?

A No.

Q If it were just Greenwood, it wouldn't register?

A No.

Q Were you able to find instances or occurrences of the full name Gary Winnick on the seized media?

A Can I refer to my report?

you can tell it to look for particular names or permutations of numbers.

So what I asked for was, I asked for the social security number pattern and ran that across the drive.

Q Is that like three digits, dash, two digits, dash, three?

A Correct.

Q So you wrote, basically, a computer program that would look for those numbers?

A Correct.

Q In that form?

A Uh-huh.

Q And did you search the entirety of the seized media for --

A All of the media that was delivered to me by the FBI.

Q Did you find occurrences of what your script found to be as social security numbers or permutations of them?

A There were 104,000 instances of social security numbers on the machines -- on the media.

Q Does that include duplicate numbers?

A Yes, it includes a large number of duplicate numbers.

Q Were you also asked to look for specific files by name on the seized media?

A Yes. I was given a number of Webpages to look for, and I was -- there were files that were described to me that I was asked to look for.

Q I'm going to get to those in a minute. First, I'm going

to ask you if you also looked for wave files on the seized media?

A Correct. I did look for wave files.

Q What are wave files?

A Wave files are sound files. They can be a sound like a siren, a ball dropping. They can be a quote from a movie. They can be a piece of music.

Q Did you look for any wave files in particular on the seized media?

A There were two wave files -- or two quotes that were described in the reports and the indictment. And so I was asked to look, first, for a quote from the movie "Cape Fear."

Q What quote was that, do you remember?

A I don't know the entire quote. I've got it written in my report. I can read it.

Q Do you remember how it starts?

A "You can" -- I don't.

Q Why don't you take a minute and see if your report refreshes your memory as to the general nature only of the quote.

Is your memory refreshed?

A Yes.

Q Why don't you go ahead and tell me what that quote from "Cape Fear" was.

A "I can outrun you. I can outread you. I can outthink

you. And I can outphilosophize you. And I'm going to outlast you."

Q Did you find that quote contained in a wave file on the seized media?

A Yes. There was a file "capefear.WAV" that was on the machine.

Q Do you remember specifically how many there were?

A I don't recall how many there were.

Q Was there more than one?

A Yes.

Q Besides the "Cape Fear" wave file, were you asked to look for another wave file?

A Being a movie fan, the first one was familiar to me, the second one was not.

Q What was the second one?

A The second one was a quote, "This is all far from over." I didn't know what movie that was from. So what I did was, I ran a search across the Internet for that quote and discovered that was from a Kenneth Branagh movie called "Dead Again."

Q "Dead," D-e-a-d, "Again"?

A Correct.

Q Did you retrieve a wave file that actually had that sound on it?

A Yes. Once I knew what that wave file was commonly called off of the Internet, then I went looking for that file and

found a copy of that file on Mr. Sutcliffe's machines.
Q Did you find multiple copies?
A Yes, I did.
Q You said that you went out on the Internet to get the files. So I'm going to ask you, is it your experience that these wave files are commonly available on the Internet?
A Yes. Wave files are commonly downloadable and often used by people that have Webpages.
Q As well as finding the files on the Internet, did you also find them on the seized media?
A Yes, I did.
THE COURT: On the what media?
THE WITNESS: Seized media.
MS. DUARTE: Seized media.
Q Did you look for any picture files?
A Yes, I did.
I was described a picture of a woman and a child. I did not know what the name of the file was. Reviewing all the pictures on the drive, I found a picture on the drive of a woman and her child.
Q Do you remember what the label or the name of that photograph was?
A The name of -- that file was named "Liz.JPG".
Q What is the significance of the ".JPG"?
A JPG is the picture file format, and that was a JPEG file.

Q So is almost every picture file a JPEG file?
A Not every picture, but it is a common format often used with Webpages and digital cameras.
Q And this one was called "Liz"?
A "Liz.JPG".
Q Did you find multiple copies of that picture?
A Approximately 25 copies of that picture on the seized media.
Q Now, you said that you were also asked before to look for specific Webpages?
A Yes.
Q How did you go about looking for specific Webpages on the seized media?
A EnCase has the ability for you to sort all of the file names in alphabetical order. So all I asked it to do was to sort all of the files in alphabetical order, and then I asked it to sort by file extension. So once I had that done, it was easy for me to traverse through the HTML files.
Q By looking for a specific name, were you actually looking for -- like, for instance, could you give us an example of one of the specific names you were looking for?
A I was provided a list of Webpages to look for, such as "FBI.htm, DizzyLizzy.htm, RemoveThisSite.htm."
Q I'll stop you right there. Thank you for the examples.
When you did your search, then, was EnCase only

looking for that specific file name?
A Correct.
Q So rather than the contents of the file, it was actually only searching for the name?
A Correct.
Q Where did you get the names that you were looking for using this method of search?
A These were the names that were created when the document was created. So more than likely those file names would have been provided by Mr. Sutcliffe when he created those Webpages.
Q Who actually provided you with the list or the terms to look for?
A You and Jeff Cugno.
Q Did you find a certain number of files by name that you were looking for?
A Yes.
Q What did you do with these Webpages when you found them, the ones that you found according to file name?
A The ones that were of evidentiary value, which I believe were from the criminal indictment, we burned CDs of them.
Q By "burning CDs," do you mean you actually put them on a CD?
A Yes. We copied out all of the Webpages with those names and burned them to a CD.
Q Now, when you go through the process of copying to a CD,

does that change the data at all?
A No, it does not change the data. We had to change the format of the Webpages because the Webpages were meant to be in a certain folder structure on the drive or on the Internet.
Once we took them out to the Webpage, since you wished to have them loadable, we had to make minor changes to the code underneath the Webpage so that you could run them.
Q So this is basically a change in code that's needed in order to view them from a CD?
A Right. To view certain contents on the CD.
Q Do the contents that you view with the naked eye change at all from this process?
A No. You can't see the changes unless you look at the code underneath.
Q So the items that you downloaded to CD -- to compact disc -- are those the same items to the eye as were on the seized media that you then copied?
A Correct. The Webpages are the same as -- they would appear the same as they would on the seized media as they would appear on the Webpage itself.
Q And you said that you made a number of these CDs?
A Correct.
MS. DUARTE: Your Honor, permission to approach with Exhibits 55 through 59?
THE COURT: Yes, you may.

BY MS. DUARTE:

Q Mr. Siebert, I've provided you -- actually, Mr. Montes has provided you with Exhibits 55 through 59. I'm going to leave them up there with you for just a minute while we go through them.

I'm also going to refer you to, right behind you there is a small binder, not the big one, the small one. If you could grab that. We are also going to be looking at that binder.

Let's start, first, with Exhibit 55. I want you to take a look at it and tell me if you recognize it.

A Yes, I do.

Q What is Exhibit 55?

A 55 is a CD-ROM created by Guidance Software. It has the Guidance Software logo on it. It's marked "Disk 1 of 1" and it's marked "Boardlabels."

Q Does this CD, Exhibit 55, contain a number of the files called "Boardlabels"?

A Yes, it does.

Q Where did those files come from that are on that CD?

A The files on this CD came from Mr. Sutcliffe's computer.

Q If you could also take a look in that binder at Exhibit 67, and tell me if you recognize the contents of Exhibit 67. First, tell me, just in general, what it is.

A 67 is a Webpage with red text and black-and-white 0's and

1's in the background, and it is an exhibit that I created. I printed it. It is one of the "Boardlabels" Webpages that is from the CD-ROM.

Q So the contents of Exhibit 67 are printouts of a portion of Exhibit 55?

A Correct.

Q And you created both those exhibits at Guidance Software?

A Correct.

MS. DUARTE: Your Honor, move to admit Exhibits 55 and 67.

THE COURT: All right. 55 and 67 are both received and admitted.

(Government's Exhibits 55 and 67 received.)

BY MS. DUARTE:

Q Now, I'm going to ask you, Mr. Siebert, to go ahead and move on to Exhibit 56, which is also up there with you.

Tell me if you recognize Exhibit 56, please.

A 56 has the same type label that the previous one did. This one is marked "LettertotheOfficers."

Q Do you recognize that CD?

A Yes, I do.

Q Did you create it?

A Yes, I did.

Q Does it contain files on it that are entitled "LettertotheOfficers"?

A Yes. The "LettertotheOfficers" are the "LettertotheOfficers" Webpages which were copied off of Mr. Sutcliffe's computer.
Q Looking at Exhibit 68, which is in the binder in front of you, tell me if you recognize that exhibit, please.
A Yes, I do. This is one of the copies of the "LettertotheOfficers" Webpages that I printed.
Q Is the content -- the printout contained in Exhibit 68, is that a portion of the contents of the electronic copy, Exhibit 56?
A Yes, it is.
MS. DUARTE: Your Honor, move to admit Exhibits 56 and 68.
THE COURT: All right. 56 and 68 are admitted.
(Government's Exhibits 56 and 68 received.)
BY MS. DUARTE:
Q Now that we are getting good at this, we are going to move ahead to Exhibit 57.
Would you take a look at that, please. Do you recognize Exhibit 57?
A Yes. It's labeled similarly and the title of this one is "Tracy 44H669."
Q Who created Exhibit 57?
A This is one of the CDs that I copied.
Q Does that contain copies of the "Tracy 44H669" file?

A Correct.
Q Where are those files from?
A Those files were copied from Mr. Sutcliffe's computer.
Q If you'll look at Exhibit 69, which looks like you are already looking at in front of you, do you recognize Exhibit 69?
A Yes. 69 contains one of the Webpages from -- that are on the CD.
Q Actually, just, if you don't mind leafing through it, tell me if it actually contains more than one. I could be wrong.
A Yes. It's got No. 1 and No. 31.
Q So several of those that are in Exhibit 57?
A Correct.

MS. DUARTE: Move to admit Exhibits 57 and 69, Your Honor.

THE COURT: Okay. Both will be received. 57 and 69 are in evidence.

(Government's Exhibits 57 and 69 received.)

BY MS. DUARTE:
Q Now we are going to look at Exhibit 58, the second to the last one that's up there in front of you.

Do you recognize Exhibit 58?

A Yes.
Q What is it?
A This one is the one titled "GW."

BY MS. DUARTE:

Q And last, for the moment, looking at Exhibit 59, which is in front of you, do you recognize Exhibit 59? I'll give you a minute to sort through those.

A Yes.

Q How do you recognize Exhibit 59?

A Exhibit 59 is the CD entitled "Tracy Talk."

Q Did you create the CD "Tracy Talk"?

A I copied this CD.

Q What does that have on it?

A This CD has the "Tracy Talk" Webpages.

Q Were those seized from the computer?

A Yes. They contain the "Tracy Talk" Webpages from Mr. Sutcliffe's computer.

Q And Exhibit 70 (sic), in the binder, do you recognize that?

A Yes. It is a printed copy that I made from the CD-ROM.

Q Does it contain a portion of the files on the CD-ROM printed out?

A Yes.

MS. DUARTE: Move to admit Exhibits 59 and 71.

THE COURT: I think you first asked him about 70 --

MS. DUARTE: I'm sorry.

THE COURT: -- when you linked it to 59.

You meant to ask him about 71?

MS. DUARTE: I did.

THE COURT: 71 will be received.

(Government's Exhibit 71 received.)

BY MS. DUARTE:

Q Just to make sure --

THE COURT: So will 59.

(Government's Exhibit 59 received.)

BY MS. DUARTE:

Q Just to make sure it's correct, in front of you, Mr. Siebert, is it Exhibit 71 that has the "Tracy Talk" printouts?

A Yes, it is.

MS. DUARTE: May I retrieve the exhibits, Your Honor?

THE COURT: Yes.

BY MS. DUARTE:

Q Okay. Mr. Siebert, we're going to look, first, at Exhibit 55.

If we could have port 5 enabled.

While that's getting ready, Exhibit 55 has -- what's the title of the file on Exhibit 55, do you remember?

THE COURT: "Boardlabels."

MS. DUARTE: Thank you.

Q Can we go ahead and open up No. 1.

Why don't we go ahead and scroll down. We have Exhibit 55 open to "Boardlabels 1."

Is this an example of what you found on Mr. Sutcliffe's computer?

A Yes, it is.

Q How many copies of this "Boardlabels" file that's actually named "Boardlabels" did you find on the computer?

A I took the exhibits out of my folder and put them in my briefcase and just realized I do not have that spreadsheet with me.

Q Do you need to refer to that to refresh your memory?

A Yes. Because there are a great number of files on different -- if I can get that.

MS. DUARTE: Can we retrieve that for him, Your Honor?

THE COURT: Where is it?

MS. DUARTE: I believe it's in the back of the courtroom.

THE COURT: All right.

MS. DUARTE: Your Honor, for the record, the spreadsheets that Mr. Siebert is referring to and he's going to look at are also contained on these CDs that have been previously discovered to defendant.

THE COURT: Okay. Thank you.

THE WITNESS: Thank you very much.

There were seven copies of this particular named Webpage on three different hard drives.

BY MS. DUARTE:

Q So you were able -- in pulling these files, you were able to determine from which hard drives they came?

A Yes.

Q Okay. So there were seven copies over three different hard drives?

A Yes.

Q If we can look next at Exhibit 56.

While we are looking at that, Mr. Siebert, I'm going to ask you, does the fact that these documents have the same name and are spread out over different hard drives, have any significance to you?

A It just means they were saved in different places with the same name. I have no understanding of why.

Q Would that be something that would occur naturally or would that be intentionally saved in that way?

A That would be -- my opinion would be intentionally saved.

Q So is it a fact --

THE COURT: Hold on a minute. Have you requested to qualify him to provide opinions?

MS. DUARTE: No, Your Honor.

THE COURT: I think you have laid the basis for it, but you haven't gotten it done.

MS. DUARTE: I would request that at this time, Your Honor.

THE COURT: Okay. Any objection?

MR. SUTCLIFFE: No, Your Honor.

THE COURT: Okay. The witness is qualified as an expert to, and authorized to, express opinions.

When I give you the instructions at the end of the case, ladies and gentlemen, I will tell you, in essence, that although most witnesses are required to just state what they knew, people who have been qualified as experts are entitled to render their opinions.

This witness has been qualified and therefore is capable and authorized to answer questions like those that Ms. Duarte is now about to ask.

Go ahead.

MS. DUARTE: Thank you.

Q Now we have Exhibit 56 in, and these are copies of "LettertotheOfficers" that you found.

How many copies of this file did you find on the seized media, "LettertotheOfficers"?

A There were seven copies of file names having the same file name as this on three different hard drives.

Q Let's look at No. 1 only, if you will. Go ahead and scroll down. Keep going to the bottom, if you will.

That is one example that we're seeing of the files that you found entitled "LettertotheOfficers"?

A That's correct.

Q If we could look at Exhibit 57. If we could look from Exhibit 57 at No. 1, first.

Now, Exhibit 57 contains how many copies of the file "Tracy 44H669"?

A This time there were 34 copies of this file name across four drives.

Q If we could look at No. 31.

Now, were some of these -- we just saw two different copies and they appear slightly different.

Did you find a variety of these type of files that had the same name but that were different in appearance?

A For lack of a better term, they were permutations of similar files. Maybe the background was changed. Maybe there was a picture in one that wasn't in another. Maybe there was a slight difference in the wording on one page to another.

Q So you saw that words might come and go and backgrounds change in that light?

A Yes.

Q But these files had the same name?

A Correct.

Q Take a look at 58.

While we are getting that ready, in Exhibit 58, you said that there were copies of the file "GW"?

A Yes.

Q How many copies of the file "GW" did you find on the

seized media?
A There are 24 copies on four drives.
Q So from four different hard drives?
A Correct.
Q I think we are in "Officers." If we could look, first, at No. 1.

Is this one of the versions of the file name "GW" that you found?
A Correct.
Q Now, up here at the top, it says, "GW 1."

Did you actually name that file "GW 1"?
A Yes. Because of the number of -- because we were putting all of the files in the same folder, if we kept them all "GW," one would have overwritten the other one. So we had to number them to set them apart.
Q If we could scroll down on this. If we could look on this same CD at copy No. 2 -- file No. 2.

There, we see the same version with some changes?
A The background is a different color, and it looks as though some of the text is a different color.
Q Let's look at No. 10 from the same CD.

Here, we have what appears to be an abbreviated version of this file. If we could scroll down, if we even can.
A Yes. It would appear to be an edited version.
Q Yet this had the same file name?

A Correct.
Q If we could look at 14 and 17.
17 looks a bit different. Did you see that on the previous files we just looked at?
A Yes. The difference there is that the -- there is additional text on top and there is the picture of the signature underneath.
Q If we could just scroll down and see how far that goes.
Then let's take the next one. Which one is this?
If we could look at 18, please, and then 22, please.
Okay. We are done with 58.
Why don't we go ahead and put in 59. 59, you said, contains copies of the files "Tracy Talk"?
A That's correct.
Q And how many copies of the file named, specifically, "Tracy Talk" did you find on the seized media?
A 19 on four different drives.
Q If we could look at Nos. 12 and 13. If we could look at No. 12, first.
We have in No. 12 one of the versions of the "Tracy Talk" file that you found.
Is there a way to scroll down on that?
A That's the bottom.
Q If we could look at 13, please.
Here, we see similar text, but the background has

changed?
A Yes. It's got a different background.
Q If we could go to No. 18, please.
It's hard to tell on the screen, but does this background also appear different from the previous two we looked at?
A Yes. The first one was 0's and 1's. This is like a black/gray speckle that's on the back.
Q This changing of the background of these pages, is this something that -- how does one go about changing the background of a Webpage?
A It's really easy. You just set that as the background.
Q So at the time these Webpages were saved onto the drive, would they have had to be individually saved with each separate background in order to stay this way on the drive?
A Yes. Whatever settings you set for that Webpage, you save that to the file and that's the way it sits.
MS. DUARTE: Okay. Good. We could finish with Exhibit 59.
Your Honor, I was going to approach with a number of other exhibits, but I don't know if you wanted to take a break first.
THE COURT: I was hoping we could break at a quarter to 3:00.
MS. DUARTE: We can do that. I can get done.

THE COURT: That way we can resume at 3:00 and end at 4:30.

MS. DUARTE: Permission to approach with Exhibits 60 --

THE COURT: Would members of the jury prefer to break now? Because I can do it either way. It looks like the consensus is to continue.

Okay. Continue to a quarter to 3:00, please.

Which exhibits are you approaching with?

MS. DUARTE: 60, 61, 62, 63, and 65, Your Honor.

THE COURT: Okay. 60 through 63 and 65. You may approach.

BY MS. DUARTE:

Q Mr. Siebert, I'm also going to be referring you to your small binder up there again, starting with Exhibit 72, just so you are ready for that.

Beginning with Exhibit 60, which is in front of you, do you recognize Exhibit 60?

A Exhibit 60 has a similar Guidance Software label, and the title of this one is for the "DizzyLizzy" Webpages.

Q What does Exhibit 60 contain?

A 60 contains the "DizzyLizzy" Webpages that we copied off of Mr. Sutcliffe's machines.

Q What about the printout, which is in front of you, Exhibit 72?

A Exhibit 72 are the printed documents that I printed from this CD-ROM.
Q So does Exhibit 72 contain a portion, printed out, of what is on Exhibit 60, electronically?
A That is correct.
MS. DUARTE: Move to admit Exhibits 60 and 72.
THE COURT: Both are received. Both are in evidence, 60 and 72.
(Government's Exhibits 60 and 72 received.)
BY MS. DUARTE:
Q If you'll look at 61, which is also in front of you there, do you recognize Exhibit 61?
A Yes, I do.
Q What is Exhibit 61?
A It is the CD-ROM that contains the Webpages "Severancegx."
Q Where did Exhibit 61 come from?
A These are the "Severencegx" Webpages that were copied off of Mr. Sutcliffe's computer.
Q If you'll look at Exhibit 73, do you recognize that exhibit?
A These are the printouts that I made from the CD-ROM.
Q So does Exhibit 73 contain a portion of those pages, printed out, that are on Exhibit 61 in electronic form?
A Yes, they do.
MS. DUARTE: Move to admit Exhibits 61 and 73.

THE COURT: Both are received. 61 and 73 are in evidence.

(Government's Exhibits 61 and 73 received.)

BY MS. DUARTE:

Q Directing your attention next in line to Exhibit 62, tell me if you recognize that exhibit, if you will.

A Yes. That is the CD-ROM that contains the "Shipofthegx" Webpages which I copied from Mr. Sutcliffe's computer onto this CD-ROM.

Q Exhibit 74 in the binder, do you recognize that exhibit?

A 74 is the printouts of the Webpages.

Q Does Exhibit 74 contain a portion of those pages, printed out, that are contained electronically on Exhibit 62?

A Yes, they are.

MS. DUARTE: Your Honor, move to admit Exhibits 62 and 74, please.

THE COURT: Okay. Both will be received.

(Government's Exhibits 62 and 74 received.)

BY MS. DUARTE:

Q Exhibit 63 is also in front of you. Mr. Siebert, if I could get you to take a quick look at that exhibit.

Do you recognize Exhibit 63?

A Yes. Exhibit 63 is the CD-ROM marked "Mark Labaton." It is the Mark Labaton Webpages that were copied off of Mr. Sutcliffe's computer.

Q Also, in front of you, Exhibit 75, do you recognize that?
A Yes. Exhibit 75 is the printed Webpages that I printed from the CD-ROMs.
Q Does Exhibit 75 contain a portion of those Webpages that are contained in Exhibit 63?
A Correct.
MS. DUARTE: Move to admit Exhibits 63 and 75.
THE COURT: All right. Both will be received.
(Government's Exhibits 63 and 75 received.)
BY MS. DUARTE:
Q Lastly, you have Exhibit 65 in front of you. I want you take a look at it and tell me if you recognize that exhibit.
A Yes, I do.
Q What is Exhibit 65?
A Exhibit 65 is the "My Webs" CD. That is the CD that was created from the "My Webs" folder that was on Mr. Sutcliffe's computer.
Q So Exhibit 65 does not contain a series of files such as what we've been looking at; right?
A No.
Q Where did you find, again, the contents of Exhibit 65?
A 65 was found on Mr. Sutcliffe's computer.
Q What is the significance of the name "My Webs" and the fact that that file, in this form, was found on the computer?
A "My Webs" is the default folder in Microsoft FrontPage for

the creation of Webpages.
Q Microsoft FrontPage, what is that again?
A It's a piece of software for creating Webpages.
Q By "default folder," what is it that you mean?
A What it is, that's the folder that it, automatically, when you hit "save," saves to that folder.
Q So are there a number of Webpages contained in that "My Webs" CD that is Exhibit 65?
A Yes, there are a great number of Webpages on there.
Q Did those Webpages come from the contents of the seized computer?
A Yes.
Q If you will look at Exhibit 76, which is also in front of you. I believe it's only a few pages.

Do you recognize Exhibit 76?

A Yes, I do.
Q What is it?
A It is a Webpage that came off of the "My Webs" folder that was -- it was -- "2002 Jan" is the name of the folder that it sits in, and the name of the document is "Index.HTML."
Q So that's just a printout of one page from that CD that is Exhibit 65?
A Correct.

MS. DUARTE: Your Honor, move to admit Exhibits 65 and 76.

THE COURT: Okay. Both will be received.

(Government's Exhibits 65 and 76 received.)

MS. DUARTE: Permission to retrieve the exhibits?

THE COURT: Yes.

This is probably a good time to take a break. We will return at 3:00 and continue until 4:30.

Please remember the admonition. See you back at 3:00.

(Jury out.)

(Recess taken at 2:43 p.m. to 3:03 p.m.)

(Jury in.)

THE COURT: You may continue.

MS. DUARTE: Thank you, Your Honor.

Q Mr. Siebert, we were talking about Exhibit 60 -- or we were going to start to when we took the break.

Exhibit 60 I actually have now up on the screen, and I have No. 2 up on the screen.

Is this an example of the files from the "DizzyLizzy" CD that you created?

A Yes, it is.

Q Is that all there is to the screen what's on this one page?

A Yes, that is.

Q If we could go ahead and look at No. 6.

Here, we have what appears to be another version of

the same file?
A Yes.
Q If we could scroll down, actually.
Now, I'm looking at No. 7 in this same CD. Why don't we go ahead and scroll down. We are looking at another version of the same file. Stop right there. Look up at the top.
Now, here, we have a list that we did not see previously. Would you go ahead and read what that list says?
A That list says, "Social security, last name, and first name."
Q Actually, "SSN, last name, first name"?
A Yes. "SSN, last name, first name."
Q If we could scroll down.
This appears to be a list of numbers and names following it?
A That is correct.
Q All right. If we could go to No. 8 of that CD.
Here, we have a shorter version of the "DizzyLizzy" file?
A Correct.
Q And does that have any information, names and social security numbers, included with it?
A No, it does not.
Q Lastly, No. 9 on this CD.
Here, we have what appears to be the same fax

signature but in a different location; is that right?
A Yes.
Q Mr. Siebert, on this CD, which is Government's Exhibit 60, how many copies of the file named "DizzyLizzy" did you find?
A There were 24 on four drives.
Q Spread out over four separate hard drives?
A Correct.
Q If we could go to Exhibit 61 next.
While we are loading up Exhibit 61, what is the file name of Government's Exhibit 61?
A That's "Severencegx."
Q Were you able to find multiple copies of the file name "Severencegx"?
A Yes, I was.
Q How many copies did you find of this file name?
A There were 64 copies on four drives.
Q If we could look at No. 1 first.
Is what is on the screen an example of the "Severencegx" file?
A Yes.
Q If we could look at No. 11.
Now, No. 11, which is now on the screen, appears to be a very different file and format, does it not?
A Completely different.
Q Yet it has the same name?

A Yes, it does.
Q What does this exhibit, this number, which is No. 11, appear to be, if you could just read across the top?
A It appears to be a list of salary sev, which I'm imagining is a severance. Then it says, "Months of severance pay, salary, first name and last name."
Q Okay. If we could scroll down and look at the rest. It goes down for some time.

If we could look next at No. 17, "Severencegx". Here, we have yet a different version of this file; right?
A It looks more like the original one with a different background.
Q If we could scroll down.

And last, we'll look at No. 21 of this CD. Here, we have what appears to be another salary list?
A Correct.
Q If we could scroll down to the bottom of this one, we have a link here at the bottom. All right. Good.

So from the CD "Severencegx," No. 61, you said that you found 64 copies of that particular file?
A Right. There are 64 files named "Severencegx."
Q If we could look at Exhibit 62 next, please.

While we are loading up Exhibit 62, I want to ask you, Exhibit 62 contains the files for "Shipofthegx"; is that right?

A That is correct.
Q How many different files called "Shipofthegx" did you locate on the seized computer?
A 42 on four drives.
Q If we could look, first, when we have it ready, at No. 1.
On the screen now, is this an example of the "Shipofthegx" files that you found?
A Yes, it is.
Q If we scroll down, we see a story.
If we could back up and look next at No. 7 on Exhibit 62. Here, we have a slightly different color scheme than we just saw.
A Yes. It's the -- it's similar, but somewhat different.
Q What about the content? Does that appear to be similar? If we could scroll down.
A The content appears to be similar, but the color of the text is different.
Q Now, is that something -- color of the text, is that something that you change intentionally on a Webpage?
A Yes. It's very easy to do.
Q But if I went into this file to change the color of the text and I wanted to save that new color --
A You would have to save it as a new file name to a new location.
Q That's something that I would do intentionally in order to

keep both versions?
A Correct.
Q What would happen if I just decided a new color looked better and I hit "save"?
A You would overwrite a previous version that you had already saved.
Q And now if we could go back out and look at No. 13, please.
Here, we have, on No. 13 of Exhibit 62, a different version and we have no picture accompanying it; correct?
A That is correct.
Q Yet we have a similar story that follows?
A It looks as though the text is similar.
Q And a slightly different color concept here with the red links?
A That is correct. And it changed from the blue to the white.
Q Again, if I'm going to go in and play with the colors like that, would I then have to intentionally save this particular copy?
A Yes, you would have to save it to a different location so you didn't overwrite any changes you made previously.
Q Is that No. 39 that we are looking at now? Let's go down to 39 and we'll take a last look at that one.
We have what appears to be another version. The

picture is back; correct?
A The picture is back and now the text to the right of "Who is responsible for corporate conduct?" is now yellow as opposed to blue or white.
Q Again, saving that would require a separate function?
A Correct. It would require you to save it to a separate location or change the file name.
Q But in this case, the file name -- at least the basic file name was not changed; correct?
A Correct.
Q It was the path that it was saved to that was different?
A Correct.
Q And you said that you found 42 versions of this on four drives?
A 42 versions on four drives.
Q Next let's look at Exhibit 63, if we could.
While we are switching to Exhibit 63, I'm going to ask you about this CD. And this contains files named "Mark Labaton"?
A Correct.
Q Did you look for -- did you find a number of copies of these files named "Mark Labaton" on the seized computer?
A That is correct.
Q How many versions or how many different file names --
A There were 54 files called "Mark Labaton" on four drives.

Q If we could look, first, at No. 1 when we are ready.

Here, we have a Webpage that begins "In the honor of the deceased." Is this a Webpage, this No. 1, from these 54 versions?

A That is correct.

Q If we could go to No. 15, please, on the same CD, Exhibit 63.

Here, we have a slight change in color?

A A slight change in color and it looks like size of the font.

Q The font size has been changed?

A Yes. It looks like the "chief justice" quote on the bottom is a little larger.

Q This quote down here?

A Yes.

Q Okay. And looking, last, at No. 17 on the same CD. I don't see a 17.

Try 19. That looks to be about the same; right?

A Correct.

Q We'll just skip 17.

A That's 19. You haven't gotten to 17 yet.

Q Let's open up the CD again. We will see if we see a 17. I didn't see one.

Again, we're looking at Exhibit 63. There we go.

We've now opened up the file which you have marked as

No. 17?
A Correct.
Q And here we have a slightly different -- are we all the way up at the top there?
Here, we have no link up at the top and the bottom here is different?
A Correct.
Q That bottom portion, does that appear to contain information regarding Mark Labaton?
A Yes, it does.
Q If we could scroll down a little bit more. We see some addresses.
This information here, we didn't see that on the previous copies that we looked at; is that correct?
A No, we did not.
Q This file name here was saved as the same file name as the ones that we looked at on this CD?
A That's correct.
Q But in a different location?
A Correct.
Q Now, if we could look next and last at Exhibit 65.
You said that Exhibit 65 was slightly different in that this directory was actually from Mr. Sutcliffe's computer; is that right?
A Yes. This is from "My Webs."

Q I just want to draw your attention to one specific area within this CD. We are going to go ahead and look in the January -- or the "2002 January." There we go. It's right up here at the top, "2002 January." And then we'll look in the "Index" file for that.

A "Index.HTML."

Q Here, we have up on the screen -- and this corresponds with the printout that you've already identified; right?

A Correct.

Q Here, we have up on the screen a page that cannot be displayed, but I want to draw your attention over here to the left.

What is this section -- before we click on any links, what is this section of the page that I've drawn all over?

A The text, it says, "Threats of the death are hyperlinked to another page."

Q Does this list or this frame also contain other hyperlinks?

A Yes. It's got a hyperlink for "Ship of Fools, Issue with God, Censorship of the Site, Lies of the More" (phon), and it goes on and on.

Q The format that we see here on Exhibit 65 on the page I'm displaying, is that a typical format for an index page?

A It can be.

Q And that has a separate left frame here that I've drawn?

A Yes. Framing was very popular during the period that these Webpages were up. They have since fallen from favor.

Q If we could go ahead and click on the link "Threats" here.

Scroll down on the main body that's being displayed. We see a "Joe Shmoe threat"; correct?

A Yes.

Q Then if we could back out over here to the left frame and click on "Death," we go back to an address to Tracy Hall?

A Yes. You get sent to a different Webpage.

MS. DUARTE: I have nothing further, Your Honor.

THE COURT: Okay.

Any questions, Mr. Sutcliffe?

MR. SUTCLIFFE: Yes, Your Honor. Thank you.

CROSS-EXAMINATION

BY MR. SUTCLIFFE:

Q Good afternoon, Mr. Siebert. How are you doing today?

A Not too bad.

Q You are in the IT business -- Information Technology?

A Yeah.

Q I have a few IT questions for you, then.

Now, you talked about, earlier, how deleted doesn't mean deleted. Do you remember that?

A Correct.

Q So the word doesn't mean what it really means.

Now, we were just looking at a Webpage here. I'd ask

the clerk to enable my monitor, if we could.

I'm displaying now the "My Webs January 2002" index page, the one we were just looking at. It says, "The page cannot be displayed."

I'm going to refresh this.

(Playing audio.)

BY MR. SUTCLIFFE:

Q This page that was just pointed out, you said there is a lot of links on the left-hand side; right?

A Correct.

Q It looks like this page was in the process of being developed; is that a fair statement. There is no links here on these words down below?

A I have no idea why there is no links on there. They may be in development or maybe there was no intention of -- it may be.

Q Okay. Now, I'm going to direct your attention back to the word "Threats."

(Playing audio.)

BY MR. SUTCLIFFE:

Q Do you recognize that "Ren & Stimpy" sound effect there?

A I would not know where it came from, but now that you mention it, yes, it does sound like "Ren & Stimpy."

Q It's kind of like a parody spoof, you know? Could someone construe that to be, "Well, he said, 'You filthy swine, I will

kill you'"? I mean, could someone say, "Well, that could be a threat"? In other words, because -- let me rephrase the question.

Because the editor of this page put in the sound effect which says, "You filthy swine, I will kill you," couldn't somebody come up with a plausible explanation saying, "Well, he's threatening to kill Joe Shmoe"?

A I don't have an opinion on that.

Q Okay. We talked about the "GW" page -- do you remember that? -- the "Gary Winnick" page, I believe it was called, it was named "GW.HTM"?

A Uh-huh.

THE COURT: You have to say either "yes" or "no."

THE WITNESS: "Yes." I'm sorry.

BY MR. SUTCLIFFE:

Q And this is the page right here?

(Playing audio.)

BY MR. SUTCLIFFE:

Q Do you remember viewing that page?

A Yes.

Q Now, does this link right here -- "Maybe your friends have a better idea," did you ever review that page?

(Playing audio.)

THE WITNESS: Yes. I clicked through a number of the links.

BY MR. SUTCLIFFE:

Q And do you see this list right here, "Friends' last name, first name, company, title, address," and then if you scroll over, "Second address, city, state, ZIP, county, telephone, fax, cell, e-mail"?

A Uh-huh.

Q Down at the bottom of this list, do you see the name right there? I'm trying to highlight it for you. It says, "Parker Bowles, Camilla"?

A Yes.

Q It lists an address over -- I'm trying to scan over. This is a really big file and it moves really slow. Either that or my PC locked up.

Do you know who Camilla Parker Bowles is?

A I know that she is an individual in the U.K.

Q The girlfriend of Prince Charles?

A Yes.

Q And now -- it released.

So this file purportedly has the friends of GW and one of -- I don't know how many there are on this page -- it appears her address and phone number and some other information on there; is that correct?

A There is information on this page.

Q Okay. My program did lock up here. There we go.

Going back to where we were, at the bottom here, if

somebody wanted to get ahold of Camilla Parker Bowles, girlfriend of Prince Charles, they could call this number right here that's listed under "phone numbers" --

MS. DUARTE: Objection to relevance of this line, Your Honor.

THE COURT: Overruled.

BY MR. SUTCLIFFE:

Q -- correct?

A I guess so. I don't know what the -- I mean, I understand what the Webpage is called. Whether or not that is her information, I have no information on that.

Q Okay. And did you -- were you -- did you see this thing down at the bottom which says "Disclaimer"?

A Yes.

Q Did you ever follow that link?

A I have seen the disclaimer.

Q And now, this list of all these names of people, did you confirm whether this list was accurate?

A I was not asked to provide an opinion on the accuracy of the information.

Q Okay. Let's move on.

Now, we were just speaking about, also, the Mark Labaton page "In honor of the deceased," and do you see how the link turns a different color when you move your mouse over it?

A Correct.

Q Did you ever follow this link, "Global Crossing sinks into Chapter 11"?
A I may have. I don't recall now.
Q We talked about the sound, how you had searched the Internet for the meanings of these sounds that you heard; correct?
A Uh-huh.
Q People asked you -- did somebody from the government say, "Hey, we want you to follow this," or did you just do that on your own?
A No. I had a description of what the sound was, but I did not know what it was called, and therefore went out and looked to see what the name of the -- from the quote, what the movie was, to better easily identify what the name of that wave file was.
Q But just those two sounds?
A Those were the only two sounds I was asked to look for.
Q In analyzing this website, there was a lot of sounds on this website; correct?
A Yes, there were a great number of sounds on the website.
Q In that quote, "This is all far from over," there was other sounds within here that used the term, "This is not over"; isn't that correct?

I'll direct your attention to the screen right now. It's called "Germans.WAV." Do you see that file? It's a

pretty big wave file.

THE COURT: You have to speak up.

THE WITNESS: Yes.

BY MR. SUTCLIFFE:

Q I'm going to play that wave file for you, sir.

(Playing audio.)

BY MR. SUTCLIFFE:

Q Do you recognize that sound file?

A Yes, I do.

Q And that's from?

A "Animal House."

Q I'm going to play one more and then I'll be done on the sound thing. This one called "Strange.WAV, do you see what I'm highlighting right now called "Strange.WAV"?

A Yes.

(Playing audio.)

BY MR. SUTCLIFFE:

Q Do you hear that, sir?

A Yes.

Q Do you recognize that sound file?

A No.

Q But it basically says, "I'd like to take you on a strange journey"; right?

A Correct.

Q And you would agree that there is a lot of sounds that are

within this website?

(Playing audio.)

THE WITNESS: There are a lot of sounds on the website, but I was not asked to provide an opinion on the content of the website.

BY MR. SUTCLIFFE:

Q On any of these other sounds?

A Correct.

Q Right. Okay.

If you had been asked to offer an opinion on a site like this one here -- it looks like "YRdog2" -- can you tell me, in your best guesstimate, what would have been your opinion on this one?

THE COURT: Opinion as to what?

MR. SUTCLIFFE: As to this sound.

(Playing audio.)

THE COURT: You mean in the quality of the sound?

MR. SUTCLIFFE: No, the sound bite.

THE COURT: Do you understand the question?

THE WITNESS: No, I don't, Your Honor.

BY MR. SUTCLIFFE:

Q If you came to a Webpage and it was talking about a dog or a cat, okay, and when you opened up the page, it played this sound....

(Playing audio.)

BY MR. SUTCLIFFE:

Q Do you recognize that?

A Yes.

Q Okay. I'm just going to play this one last wave for you.

(Playing audio.)

BY MR. SUTCLIFFE:

Q These are -- a lot more wave sounds were on this website; right? And these pages can change every day?

A Correct.

Q And you testified that you found multiple instances of certain files that were pointed out to you by the government?

A Correct.

Q But there was literally hundreds and hundreds of other files within this domain and --

A There were hundreds of thousands of files on all of the media.

Q Right.

In other words, if somebody was in the computer field and they kept all of this stuff that they ever touched in computerland and backed up all of their messages from their friends, over years and years, and archived these, there would be hundreds of thousands and thousands of files; right?

A Correct.

Q Right.

When you go to a Webpage, if you are surfing on the

Internet or if any of this jury was going on the Internet and they were browsing around through the Internet, everything that they saw, everything that they heard, and everything that they -- pages they touched, a copy of that pretty much goes onto their computer; correct?

A The files that I have testified to were not in temporary Internet history files. They were data files that were saved to your machine.

Q That wasn't my question.

My question was, if one of these jury members, or anybody in this room, goes onto the Internet and they look at a Webpage, a copy of that goes into their computer; right?

A A copy is temporarily stored in the temporary Internet history folder on the drive.

Q Right. And you are familiar with what "cache" is?

A Correct.

Q What's "cache"?

A The reason the Webpage is stored on the drive is so that when you click back and forth, it's not reloading it off the Internet. It's reloading it off the page on your machine.

Q So an instance of that page would register as actually two if you were designing the page. You had a copy on your computer, you put it up on the Internet, you view it through your browser, and now you have multiple copies going at one time; right? True?

A Yeah.
Q Isn't it also a fact that in computerland, IT guys, we like to back up things in case our hard drives crash?
A That is true.
Q It's a common -- you are taught that in computer school to back up, back up, back up; right?
A That is correct.
Q Now, I'm going to direct your attention to -- we also discussed the "Shipofthegx." I'm going to bring up that page.
(Playing audio.)
BY MR. SUTCLIFFE:
Q Now, this link up here in the right-hand corner, it turns red when you move your mouse over it. Do you see that, "The devil's dictionary"?
A Correct.
Q Now, were you asked to analyze or research or follow up on what that is, "The devil's dictionary"?
A No, I was not.
Q Can you see the link that it is pointing to on the bottom left-hand corner of our screen? And I'll read it out loud, for the people who can't see it, on the record.
It's "http://www.alcyone.com/max/lit/devils/", which, since there is no other file name after that, I assume would take us to an index page; correct?
A Correct.

Q A dictionary is something that defines words; correct?
A Correct.
Q Now, "individual responsibility," do you see that highlight link?
A Yes.
Q That takes us --
(Playing audio.)
BY MR. SUTCLIFFE:
Q -- back to the "GW" page; right?
A Actually, it's to the "Officers 2000 GW", correct.
Q Did you read this story?
A No.
Q Have you ever -- did you ever have a chance to visit "www.evilgx.com"?
A No.
Q You never --
A Prior to this case, I had never heard anything about it.
Q So you've never seen these pages live on the Internet. Okay. I think I'm almost finished.
I'm going to direct your attention back to -- now, you see, this is another version of -- we were looking at the earlier one that had the "Threats," right there, "of the death." Do you see that?
A Yes.
Q So this is like another version that's been -- the links

have been added on the left-hand side now. Remember, we talked about that it had no links on the left, earlier?

A Right.

Q Just to confirm that that's the same....

(Playing audio.)

BY MR. SUTCLIFFE:

Q Now, if you click on "Threats," this time there is a different sound; right?

A That's correct.

Q Do you recognize that sound?

A Yes, I do.

Q Could you tell us where that sound is from?

A It's from -- I --

Q Would you like me to play it again?

A No. I know the motion picture, but I don't recall the title.

Q Now, do you see the hyperlink "Lies"?

A Yes.

Q Now, were you asked to check on any of these pages here?

A No.

Q Do you see this link called, "What folly is speculation in the face of the facts"?

A Yes.

Q Do you see the name of the page below, "Iamgoingtoplayagame.htm"?

A Yes.

(Playing audio.)

BY MR. SUTCLIFFE:

Q This link has how many -- this page, excuse me, has how many links, just a rough guesstimate?

A I wouldn't even begin to guess.

Q A whole bunch; wouldn't you agree?

A Yes.

Q On this left side, there is a whole bunch of links right here; right?

A That is correct.

Q If every one of these links had a page approximately the same size as this, how long, in your best guesstimate, as a computer IT guy, would it take to go through this website, reading in detail every page and following every link?

A I have no opinion.

Q A week?

A I'm sure you could read it sooner than a week.

Q Right.

And do you see these up at the top? This frame is not changing at all, is it, when we click on another one?

(Playing audio.)

BY MR. SUTCLIFFE:

Q None of this stuff is changing up here; right? So anybody who is coming into this website, these are in their face all

the time -- right? -- disclaimer, terms of service?

A I don't understand what you mean by "in their face." They are there.

Q If I click on one of these links --

(Playing audio.)

BY MR. SUTCLIFFE:

Q -- that link at the top, with the 0's and 1's in the background, is staying there; right? Correct?

A It's staying there.

Q Right.

Anywhere I click outside, it's not changing --

(Playing audio.)

BY MR. SUTCLIFFE:

Q -- right?

A Correct.

Q That's just another frame?

A That's correct.

MR. SUTCLIFFE: I have nothing further, Your Honor.

THE COURT: All right. Thank you.

Do you have anything further?

MS. DUARTE: Briefly.

REDIRECT EXAMINATION

BY MS. DUARTE:

Q Mr. Siebert, the files that you found on the seized media and that we've looked at in the exhibits, in your opinion,

could those be the product of random Internet browsing?
A No.
Q And how is that?
A They are in a format that is -- they are in a format that they can be loaded -- the Webpages can be loaded when Internet -- when you have the caching, as Mr. Sutcliffe talked about, that goes into a particular folder and all of the contents go into a particular -- one particular folder. They don't go into a structure such as Mr. Sutcliffe had on the Webpage.
Q So the area in which they were located would indicate to you, in your expert opinion, that those were not product of -- those were not contained in the cache?
A No, they were not -- they were not the product of visiting the site on the Internet.
Q In your opinion, were they the product of visiting a site, perhaps making a download or two, and then backing up that data?
A It is possible that that is the product of downloading a Webpage or an -- downloading the Webpage or actually creating it on his machine and uploading it back to the Internet.
Q In your examination of the seized media, were you able to form an opinion on who created -- I should say, on whether the website "evilgx.com" was created on the computer that you were examining?
A Yes. I would most definitely say that the "evilgx.com"

Not Transmitted From!

Webpages were built on the hardware seized from Mr. Sutcliffe.

MS. DUARTE: Nothing further, Your Honor.

THE COURT: Okay. Anything further?

MR. SUTCLIFFE: Yes, Your Honor, just one question.

RECROSS-EXAMINATION

BY MR. SUTCLIFFE:

Q Of these pages you talked about that were created -- on "evilgx" that were created on this computer, can you tell with 100 percent accuracy whether all of those pages were created by the defendant?

A No, I cannot. Since I did not witness you sitting at the computer, I cannot state that you, in fact, were at the computer and created those.

Q Of the edited versions, anybody with access to that computer could have edited any pages; right?

A That is correct.

Q And if those pages were downloaded to somebody else who had FTP access to that website, they could tinker with the page, too, couldn't they?

A Yes. They could alter the Webpages that were up on the Internet.

Q Right.

Say, if I did a download or backup of that website and somebody had altered a page, it goes onto my computer, too; right?

A Yes. If you had downloaded the Webpage, then you would have a copy of that on your machine.

Q Can you tell, in your opinion, with 100 percent accuracy, when each of those pages was created?

A I can look at the file dates and time and form an opinion as to the time period that the Webpages were created, but to actually give an exact opinion as to the exact moment in time, it would be extremely difficult.

Q Can you tell, through your analysis, where physically the defendant or anybody was when that page, or any of those pages, was put up on the website?

A No, I can't tell you where the computer was physically located when the Webpages were created and posted to the Internet.

MR. SUTCLIFFE: Nothing further, Your Honor.

MS. DUARTE: Nothing further, Your Honor.

THE COURT: Okay. Thank you, Mr. Siebert. You can step down. You are excused.

Please call your next witness.

MS. DUARTE: Your Honor, at this time the government rests.

THE COURT: Okay. Ladies and gentlemen, I'm going to excuse you for a few brief moments. Please wait for further instructions while you are in the jury room.

(Jury out.)

THE COURT: Any motions, Mr. Sutcliffe?

MR. SUTCLIFFE: Yes, Your Honor. Thank you.

At this time, the defense would like to make a motion for a Rule 29 hearing.

THE COURT: For a hearing or for judgment of acquittal?

MR. SUTCLIFFE: I stand corrected. Motion for judgment of acquittal.

THE COURT: Okay. And your basis?

MR. SUTCLIFFE: Your Honor, the government's witness, Tracy Hall, is clearly not a credible witness. She was off by her accuracy on the alleged threat to kill her, which is contained within Count Two. She's off by over -- close to two months, Your Honor.

And the defense would respectfully note that this is anything but reasonable, which I believe is the standard which is being applied.

She's admitted that Count One can be construed as rhetoric, hyperbole. So in that case, the defense would respectfully request Counts One and Two be dismissed.

As to Count Three, I believe that it's just as vague. There has been great testimony as to the FAQ. Everybody has looked at the FAQ who testified.

The witness, Mrs. Greenwood, who came in, as to Count Four, she clearly had an agenda and her agenda was to

come up with -- take, for instance, Count Three and turn it into a threat.

The government's case on Count Four that the word "dead-icated" and a sound file "This is all far from over," I think the defense has clearly shown that this sound bite, "This is all far from over" is contained throughout multiple pages within the website, and it's clearly not meant to be a threat. It's clearly meant to be censorship of this site, and the slandering of the defendant and the defaming of his name "It is not over and we will meet in court."

And there was never any intent to threaten. And I don't believe the government has shown specific intent on behalf of the defendant to threaten anybody, Your Honor.

And defense would respectfully ask that those counts be dismissed.

THE COURT: So your motion is addressed only to Counts One through Four?

MR. SUTCLIFFE: No. I'm going to move on to those.

THE COURT: Let me break it down since you did. I think that was a good idea that you did.

I deny the motion. The arguments that you're raising in support of the motion are quintessential issues that the jury can consider.

You can argue how the evidence should be construed and what the reasonable inferences are. I think much of the

evidence is not even going to require inferences. It could be evaluated directly.

In any event, the government has provided sufficient evidence to make it appropriate for a jury to return, based upon the evidence received thus far and only that evidence, a guilty verdict, so I deny the motion.

MR. SUTCLIFFE: Okay. As to Counts Five through Eight, defense makes the same request, that they be dismissed.

THE COURT: Counts Five through Nine, I suppose you mean.

MR. SUTCLIFFE: Excuse me. Five through Nine. I misspoke.

THE COURT: Please proceed as to your basis for that.

MR. SUTCLIFFE: Your Honor, the evidence has shown that the alleged victims in this case clearly knew that it's not against the law, under the First Amendment of the Constitution and the Bill of Rights, to publish home phone numbers, home addresses, social security numbers.

There was a clear disclaimer and a clear terms of service that were -- from the beginning of this website, which said, "Look, any information you are going to find on here, we are not making any representation as to its accuracy. Furthermore, don't even think about using this stuff for illegal purposes. This is an informational First Amendment site. And any links that are to the outside sources are not to

be inferred as advocating any type of activity which would be a crime."

And I'm sure Your Honor is well versed in the law enough to know that even advocating a criminal act is not against the law.

The intent was never to aid and abet social security fraud. Nobody has come in to say that anybody lost a penny due to this website. This was a private website. It was only seen by employees of Global Crossing. If it wasn't blocked, most of them couldn't even get into it. I doubt the employees are going to be stealing their own social security numbers or other employees' social security numbers.

This was an informational website. It's clearly protected under the First Amendment. And on those grounds, the defense would ask that Counts Five through Nine be dismissed, as they were by the Honorable Judge Muirhead in New Hampshire, when I was first arrested almost two years ago.

Nothing has changed. The evidence hasn't changed from the Honorable Judge Muirhead's analysis of it. They have come up with nothing unique or new other than that one link to a third-party site written by the Honorable Senator Shaw.

And that clearly, Your Honor --

THE COURT: I think he's a congressman.

MR. SUTCLIFFE: He's honorable. I read his document. He's teaching people and people do need to be made aware of

this.

The only evidence -- we've never seen 8,000 social security numbers. They were there on the website, Your Honor, for one day. Okay? Gone. The 1900, one day, gone. It caused a lot of furor, caused a lot of concern. That's not against the law. They were never seen again on this website.

There was no -- clearly, no intent -- if the defendant clearly wanted to aid and abet, the defendant clearly could have put those 8,000 social security numbers right back up and left them there, and they could still be there to this day.

THE COURT: Okay. Ms. Duarte, other than the much-viewed links to the Clay Shaw speech or article, on what basis does the government think the evidence would permit a verdict of guilty knowing that the government has to prove intent to deceive to establish violations that are alleged in Counts Five through Nine?

MS. DUARTE: Your Honor, I don't think the government has to show Mr. Sutcliffe's intent to deceive. That's actually an element of the aiding and abetting that he's accused of doing.

THE COURT: Right.

MS. DUARTE: We have to show that he intended to aid and abet the fraudulent use of the numbers.

THE COURT: Yes. Which, in turn, requires whoever

would use the numbers to do so with the intent to deceive.

MS. DUARTE: Correct.

Your Honor, not only the article --

THE COURT: And I think that in the reality of the aiding and abetting theory, it's necessary for you to address my question as to both prongs of the intent.

For Mr. Sutcliffe to be guilty of aiding and abetting, that kind of crime, he has to have intended that whoever would have access to this information would have the requisite intent to use it fraudulently.

So what is the evidence as to that?

MS. DUARTE: His acknowledgment on the website of that reality in the form of not only the article, but links such as "Uncomfortable," which we see on Exhibit 11, and he indicated that he acknowledged that employees were uncomfortable, and then he linked that to the site.

His acknowledgment that there was some detrimental effect of publishing these numbers, including, "You think seeing your license plate number is bad, it can get much, much worse," or he would link that "much, much worse" to the article, he would link "license plate number" to another "Boardlabels" file, which had the personal information, including much more than license plate numbers, as the Court has heard, on the file.

The fact that when he published the personal

information about the members of the law firm that he was angry at, he included all of their information. And then in the notation at the bottom, which we saw on Exhibit 13, for instance, he left out the information "omitted for the time being," clearly intending to make it clear that he would be publishing that information for a nefarious purpose.

He also acknowledged in Exhibits 15 and 17, when he talked about "in America today," and he would go to the article and then he would also talk about the personal information and how all you need is a DOB in order to effectuate identity fraud. He then linked that to publication of 265 pages of names and dates of birth, which were employees of Global Crossing, which we've proven. And, again, that was in Exhibit 17. And he said on that, "Stay tuned for social security numbers to follow."

So in addition to just the article, there are numerous links that clearly show his intent to publish these numbers in a way that will be used for a nefarious purpose including that -- it was not a private website. He --

THE COURT: I know that. I didn't pay any attention to that.

MS. DUARTE: -- picketed and advertised it to the public, clearly intending that this information, and insinuating that this information, in his website, would fall into the wrong hands and that these people would become

victims. And that clearly shows --

THE COURT: These people would be what?

MS. DUARTE: These people would become victims. He couched them as "victims." He referred to them as "victims." He threatened them with becoming "victims." This is all in terms of the social security numbers. And that we made clear throughout the exhibits, not only with those links to identity theft, which were contained in a number of exhibits, including "Boardlabels," the "Gary Winnick" and "DizzyLizzy," but also "LettertotheOfficers." And I believe that all five of the charged counts had links to not only that article, but, as I've stated, other insinuations.

And lastly, I think -- oh, we also had evidence that he offered the entire contents of his website, including thousands of social security numbers -- I believe it said 9,000 or 10,000 -- for sale.

Additionally, he offered an opt-out clause -- and that was in Exhibits 15 and 17. I'm sure it was 15. It might have been 17 as well -- where he offered employees that were disturbed a chance to opt out, but it was clearly not a real offer. It was saying, "If you send me additional personal information and prove you don't work for the company and pass a background check, you can get off this list."

So everything about the way he expressed and published these numbers indicated that he was threatening to

see them used and was intending to see them used for a bad purpose, which is the false use of those numbers by someone else.

THE COURT: I think the evidence -- I don't think you need to respond because it's sufficient to permit a jury to return a verdict of guilt based upon this evidence.

The standards for obtaining a judgment of acquittal, under Rule 29, have not been established or have not been met, so I deny that motion.

Now, Mr. Sutcliffe, it's time for you to put on your case. Are you ready to proceed?

MR. SUTCLIFFE: Yes, I am, Your Honor.

THE COURT: Okay. Who will be your first witness?

MR. SUTCLIFFE: Defense will call Mr. Leslie McAfee.

THE COURT: All right. Let's use the available time.

Just let me say so that we can avoid any confusion and especially avoid any delay or unintended adverse inferences concerning your status, Mr. Sutcliffe, that when and if you testify -- I think I discussed this before -- you will be permitted to testify from the witness stand.

I am going to discuss with the marshals certain provisions to make sure that appropriate measures for security are followed. You would be required to ask a question as if you were questioning a different person, much the way you've been doing -- you've been doing a good job of framing your

questions where they have been relevant -- and then you would answer the question as if the person who had asked it was a different person.

In answering the questions you put to yourself, you can use the words in the first person. If you ask, "Did you mean to do this?" and stop and pause and give the prosecutor an opportunity to rise to signal that an objection is forthcoming, after I rule on any such objection and if I overrule it, you'll be permitted to answer as if it were responsive, let's say, to Mr. Reed or some other lawyer who was questioning you.

Is that all understood?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: When you question the witnesses you are going to call, other than yourself, you should do so from where you've been questioning everyone else thus far.

With that, let's bring the jurors in.

MS. DUARTE: Your Honor, if I may, just briefly. Just so there is no delay, I would renew my Rule 16(b) request for discovery -- I have received nothing -- and also make a reverse Jencks request at this time.

THE COURT: Well, refresh my recollection about the previous requests that you say you've made. I don't remember exactly what the record shows.

MS. DUARTE: 16(b).

THE COURT: Yes?

MS. DUARTE: I made numerous requests in written correspondence, Your Honor.

THE COURT: Did you get any responses?

MS. DUARTE: No. I've received nothing, which is fine. He may have nothing. But I'm just making the Court aware that if there are exhibits that are planned that I do not have, I will be objecting at that time.

THE COURT: Well, let's see what happens.

What was the other thing you raised?

MS. DUARTE: A reverse Jencks request, Your Honor, for any written materials prepared by the witness and adopted by them that I do not have.

THE COURT: Let's hear right now so we can know whether there are going to be problems lying ahead.

Are there any materials that you intend to introduce that would be discoverable under Rule 16(b), "yes" or "no"?

MR. SUTCLIFFE: The U.S. Government is correct. The defendant has nothing. The defendant has no money, has no access to send the government anything via mail, has no access to monies to copy anything.

In answer to the Court's question, yes, I do have material. But, no, I have not been able to make a copy or to provide it to the government because I'm, in fact, indigent, as I've been incarcerated for the past 20-something months.

MS. DUARTE: Your Honor, just for the record,

Mr. Sutcliffe has sent me numerous correspondence from the time he was incarcerated.

THE COURT: I have permitted copies to be made of things that he has requested to be filed. I don't think there has been an impediment to the delivery of something in writing to the other side.

And the record is clear that much has been sent to the other side. I've seen copies of materials that were sent to the government.

But the bottom line is, we don't have a problem here. We don't have an issue here because you are saying, other than what you might choose to use for material that the government produced to you, there is no additional documentation or evidence of any kind covered by 16(b) that you intend to use; is that correct?

MR. SUTCLIFFE: Well, Your Honor, if I remember correctly, there was a discussion about the defense exhibits. There were exhibits that I had mentioned that I wanted to show. Some of those were news articles or articles from magazines, and you said that you have no problem.

THE COURT: Yes. I ruled on the subpoenas on those.

MR. SUTCLIFFE: Right. So I can introduce, through witnesses, exhibits of news articles or magazines; correct?

THE COURT: No.

MR. SUTCLIFFE: Why not?

THE COURT: Have you produced those news articles and magazines?

MR. SUTCLIFFE: I have them right here. Yes.

THE COURT: Have you produced those to the government?

MR. SUTCLIFFE: I have no copy machine. I can't make a copy of these. I have no money for copies, Your Honor.

MS. DUARTE: He has not, Your Honor.

THE COURT: I'm not going to permit you to produce anything unless you -- show anything to a witness and inquire about any document. I'm not even sure to what you are referring when you talk about the ruling on the magazines.

As I remember, you had some subpoenas directed to some publications or publishing houses or magazines that were out of town, and I denied the issuance of those subpoenas.

Now, any documentation that you claim -- and I don't accept your claim, and I want the record to be made clear that I don't think the claim is rooted in fact -- you did not produce to the government because you could not, that's not a correct nor persuasive nor legally appropriate response.

However, hand them over, through Mr. Reed, right now, and the government will have an opportunity to inspect those overnight and duplicate those overnight, and not until the government has had that opportunity will I permit you to inquire into those.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: And that's true for every single document that you intend or think you may show to any witness other than the documents that have been provided to you and the evidence provided to you by the government.

I want it to be understood, by the way, Mr. Sutcliffe, that I'm not ruling on the admissibility of these. I am only ruling that they would not be permissible areas of inquiry absent production to the government, but that doesn't mean that now that a folder -- and let the record reflect the file folder containing a certain amount of documents has been handed to Ms. Duarte -- the fact that it's been handed to her doesn't mean that any or all of those documents can come in. I'll have to make a determination as they are proffered.

MR. SUTCLIFFE: Your Honor, just for my clarification, I believe that you had informed me that you had no problem with my bringing in magazine articles, and I wouldn't need to issue the subpoenas on those.

THE COURT: What I said was, if there were publications about which judicial notice could be taken, or documents about which judicial notice could be taken, or otherwise the rules of evidence relating to authentication could be satisfied without a custodian, you wouldn't need a custodian.

I didn't say that you could produce those documents, so I think you misunderstood -- that you could introduce those documents.

I didn't say that and I'm not going to debate what I said because I've made my ruling.

MR. SUTCLIFFE: I understand, Your Honor.

THE COURT: Now, let's turn to the second issue that Ms. Duarte raised, which is --

MR. SUTCLIFFE: I'm not done, Your Honor, as far as the additional discovery. I do have documents here that I was going to cross-examine Mr. McAfee over --

MS. DUARTE: Cross-examine, Your Honor?

MR. SUTCLIFFE: Not cross-examine.

THE COURT: It's all right. We understand. That you were going to question him about?

MR. SUTCLIFFE: Yes, Your Honor. Thank you.

-- related to my employment at Global Crossing and the legal representation he provided to me, as well as documents --

THE COURT: Hand them to the prosecutor and don't get into them today.

MR. SUTCLIFFE: Okay.

THE COURT: Instead of having to classify and categorize every single thing, I'll repeat again, Mr. Sutcliffe. Anything that falls within Rule 16(b), you have

a duty to produce. And unless you produce it, give the government a reasonable opportunity to inspect it, you won't be allowed to inquire into it, much less get it received in evidence.

MR. SUTCLIFFE: Okay. One second.

THE COURT: And I think the government should Bates stamp whatever it's getting today so that -- and I'm authorizing the government to Bates stamp the very pages and items that Mr. Sutcliffe is giving you, the originals, the so-called originals, so that tomorrow morning, when you hand those back to Mr. Reed, they will be different than they are right now, but only insofar as the Bates stamp will have been attached to them. And then you copy that. And then we have a level playing field as to what item, if any, Mr. Sutcliffe seeks to refer to and introduce, and it will be referred to through the Bates stamp number.

MS. DUARTE: I will do that.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Let the record reflect that Mr. Reed is now handing to Ms. Duarte a second file folder containing some material.

Is that it, Mr. Sutcliffe?

MR. SUTCLIFFE: I believe -- let me just double-check, Your Honor.

Yes, that will be it, Your Honor.

THE COURT: We'll proceed according to what I have just said.

Now, as to the second part of your request, Ms. Duarte, relating to Jencks material, in the event that some guidance might be helpful, I want you to state clearly and in layman's language to what you are referring.

MS. DUARTE: Your Honor, I'm referring to any writings created by Mr. Sutcliffe's witnesses on the topic, or reasonably near the topic, of their testimony that are complete statements by them. So in other words, not rough notes, but statements that they've made, letters that they've written, notes that they've taken, that are complete, anything like that that speaks to one of the subjects that they are going to testify about.

THE COURT: And your basis for obtaining those?

MS. DUARTE: Jencks Act, 18 U.S.C. 3600.

THE COURT: 3500.

MS. DUARTE: Sorry.

THE COURT: I'm not sure what provision in that creates a two-way reciprocal duty.

MS. DUARTE: Your Honor, I think that there is. Unfortunately -- and I apologize for this -- I just did not look that up recently. I think that it's in case law, but I'm not in a position right now to tell the Court. I can look it up tonight.

THE COURT: It's not in the statute as far as I can quickly tell.

MS. DUARTE: I think that you are correct, but I do think it's been extended to the government, just as Batson has, through case law. Of course, Batson is case law.

THE COURT: Well, you cite the case and you can file a document this afternoon that would contain the case. You can serve it upon -- just the case citation.

MS. DUARTE: I can't file it because the clerk's office is closed, but I certainly could prepare it.

THE COURT: Mr. Montes will be available to receive it.

MS. DUARTE: I will try to find that, Your Honor.

THE COURT: And fax a copy of it to Mr. Reed, if you choose to file something. But until I am satisfied that that duty extends to Mr. Sutcliffe -- I know it extends to the government -- I'm not going to order him to do it.

MS. DUARTE: Okay. I'll take a look, then.

THE COURT: Tell you what. Maybe we don't have any need for confusion or unnecessary labor.

Do you have any such statements? Are there any such statements?

MR. SUTCLIFFE: Written?

THE COURT: That's what she said.

MR. SUTCLIFFE: I believe there would be in that

packet I just provided to her.

THE COURT: Other than what's in the packet -- and I don't know what is in there -- from any witness that you intend or expect to call to the stand, do you have any statements in writing discussing the subject matter about which you are going to inquire which are not merely notes that may have been taken, but which are narrative descriptions of their memories of the events about which they are going to testify, statements that either they wrote out themselves or that somebody else wrote out and that they signed?

MR. SUTCLIFFE: I can't speak for what anybody else wrote out.

As for what I have, I've just turned over everything I have, in my possession, to the government.

THE COURT: Then I don't think there is anything further we need to do, and you don't have to file anything.

MS. DUARTE: Okay.

THE COURT: All right. I want to get started because I think it's important to keep our promises to the jury, so please call in the next witness.

MR. SUTCLIFFE: Your Honor, may I reserve -- I would like to, at this point -- even when I'm finished with Mr. McAfee, I would like the record to reflect I want to reserve the right to recall Mr. McAfee in my defense.

THE COURT: That you can't do. You get one shot. If

the government puts on a rebuttal case and something new comes up in the rebuttal case, then you might have an opportunity and a right to call back a witness that was previously questioned, but you get one shot.

The government is not in a position to call back its witnesses; neither are you. If you want to elicit information, evidence from any witness, get it all out.

THE CLERK: All rise.

(Jury in.)

THE COURT: Mr. Sutcliffe has got a right to introduce evidence to the jury and he's chosen to exercise that right.

Call your first witness, please.

D E F E N S E

MR. SUTCLIFFE: Thank you, Your Honor.

The defense would call Leslie McAfee.

LESLIE SCOTT McAFEE, DEFENSE WITNESS, SWORN

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Leslie Scott McAfee, M-c, capital A-f, like in Frank, e-e.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. SUTCLIFFE:

Q Good afternoon, Mr. McAfee. How are you doing?

A Good afternoon. I'm doing fine. Thank you.
Q Mr. McAfee, can you tell the jury, what is your current profession?
A I'm an attorney licensed to practice law in the State of California. I'm admitted before every Federal District Court in the State of California, admitted to practice before the Ninth Circuit Court of Appeals in the State of California, and admitted to the Northern District, Eastern Division --
THE COURT: You have answered the question by explaining you're an attorney. It's not necessary to tell us in what court you are admitted to practice.
THE WITNESS: Thank you.
BY MR. SUTCLIFFE:
Q Isn't it a true statement that you are admitted to practice in any state, in any court?
A No, that is not a true statement.
Q Can you tell us what states you are admitted to practice in?
MS. DUARTE: Objection to relevance, Your Honor.
THE COURT: Are you admitted to practice in California?
THE WITNESS: I am, Your Honor.
THE COURT: That's sufficient. Please proceed.
BY MR. SUTCLIFFE:
Q In California, are you admitted to practice in any court?

A Yes, I am.
Q Have you applied for admission to any other courts?
A I have. I have sort of listed them already.
Q Have you been denied admission to any courts?
A I have not.
MS. DUARTE: Objection to relevance, Your Honor.
THE COURT: All right. I'm going to overrule the objection because we've already heard he hasn't been refused admission.
Move on to something relevant, please.
MR. SUTCLIFFE: Thank you, Your Honor.
Q When were you first admitted to the Bar?
A 1988.
Q Could you tell the jury, where is your office located?
A It's in the City of Burbank in the State of California.
Q Do you have an e-mail address that goes with that law office?
A I do.
Q Would you tell the jury, what is that e-mail address?
A "trialattorney@hotmail.com".
Q And do you know the defendant in this case?
A I do.
Q Do you see him in court today?
A I do.
Q Would you identify him for the record?

A It is the -- it is yourself.

MS. DUARTE: Objection. So stipulate.

THE COURT: Okay. The government has stipulated and we all know that the witness was about to identify correctly the defendant, Mr. Sutcliffe.

MR. SUTCLIFFE: Your Honor, I'd like to move Mr. McAfee as an expert, just as the government offered Mr. Siebert as an expert.

MS. DUARTE: Object to that, Your Honor.

THE COURT: Sustained. There is no basis whatsoever to qualify him as an expert.

BY MR. SUTCLIFFE:

Q Mr. McAfee, in the past -- how long have you known the defendant?

A I believe I first met the defendant in the latter part of 1998, I believe.

Q What was the nature of your relationship the first time you met the defendant?

A Mr. Sutcliffe was engaged in some civil litigation, and he asked me to assist him in that litigation.

Q Do you presently represent the defendant also --

A I do.

Q -- in a different matter?

A Yes.

Q Can you tell the jury, briefly, what the current status is

of your representation of -- or how -- let me rephrase that question.

In the instant matter that you represent the defendant, can you tell the jury how you came to represent the defendant in the instant matter?

MS. DUARTE: Objection. Vague.

What matter?

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Let me rephrase that.

Did Mr. Sutcliffe ever ask you to represent him in any capacity related to Global Crossing?

A Yes, he did.

Q Will you tell the jury approximately when that was that he asked you to represent him related to Global Crossing?

A To the best of my recollection, that probably would have been September or October of -- I believe it was 2002.

Q On this previous instance where Mr. Sutcliffe asked you to represent him, that also involved a website?

A It did.

Q On that website, did Mr. Sutcliffe list you on the "WHOIS" query so if somebody wanted to contact the owner or owners of the website, did he, in fact, list the address of your law office?

A I don't know if I was listed as an owner, but I was

certainly listed as a contact on the website.
Q Correct. Excuse me if I misspoke. I meant to say, if they wanted to contact the owners of this other website of which you were representing the defendant, they need only look up and they would find your law office mailing address to get in touch with the owner or owners?
A That's correct. My name, telephone number, address, and e-mail were all listed on that website.
Q And did anybody ever contact you through that medium?
A I don't believe so.
Q Now, when the defendant first contacted you in the representation related to Global Crossing, you said this was sometime around September; is that correct?
A I believe so, yes.
Q And prior to that, in the summer, do you recall the defendant contacting you related to a termination from Global Crossing?
A Yes.
Q And was the defendant, in fact, terminated sometime in the summer, during his appointment at Global Crossing?
A Yes, he was.
Q What did the defendant tell you he was terminated for?
A I was told that he was terminated because he had failed to report an infraction that he had committed several years before his employment with Global Crossing.

Q I think you are referring to the second firing. I'm speaking specifically of the first firing that predated the second firing.

A Well, the first firing, I didn't see it as a firing because I was involved in getting Mr. Sutcliffe re- -- not rehired, but reinstated, I think, was the way I saw it.

Q And was Mr. Sutcliffe -- based upon your assistance for him and representation of him to the legal department of Global Crossing, was Mr. Sutcliffe, in fact, hired back?

A Again, I believe the first instance involved a suspension. That's how I remember it. And I was successful in convincing the legal brain trust at Global Crossing that he should be reinstated.

Q Now, I'd like to talk to you a minute about your e-mail address "trialattorney@hotmail.com".

Do you recall, in the latter part of December 2001, an e-mail that was forwarded to you regarding a Joe Shmoe?

A Yes, I do.

Q And would you tell the jury basically what your recollection is, if anything, of Joe Shmoe?

A I don't remember the exact words of the e-mail. It was, however, an unpleasant e-mail. I believe it suggested some physical harm would -- could or would be brought to Mr. Sutcliffe. I don't remember the exact wording of the e-mail.

Q It was addressed to "evilgxhr@yahoo.com"; correct?
A Yes.
Q That was the e-mail the defendant was using to solicit files on the "evilgx.com" website; correct?
MS. DUARTE: Objection. Leading, Your Honor.
THE COURT: Sustained.
Mr. Sutcliffe, you'll have to ask your questions in the form of direct examination.
MR. SUTCLIFFE: Okay. I'm sorry, Your Honor.
THE COURT: I will give you, as I would give any examiner, latitude, if you are laying a foundation, just to get past things that would otherwise consume unnecessary amounts of time.
MR. SUTCLIFFE: Thank you, Your Honor.
Q Now, regarding that e-mail and the so-called threat to -- contained within it, had you and the defendant ever discussed the nature of what constitutes a threat?
A Many times.
Q When you say "many times," could you briefly explain to the jury what that means?
A Yes. My first involvement --
MS. DUARTE: Object to relevance, Your Honor, without a proffer.
THE COURT: The question right now is only about what he means by "many times." I'm not going to permit the witness

to give information about what he said, absent an appropriate proffer. But the only question is, what does he mean by "many times." So let's hear the answer to that.

THE WITNESS: Okay. My first memorandum to Mr. Sutcliffe on the issue of threats was dated sometime in September, I believe, of 1999. I provided a number of hard-copy memorandums, case histories, case summaries, we've had numerous discussions on the issue of what constitutes a threat, but types of words, what types of conduct, since 1999, perhaps even earlier than that.

BY MR. SUTCLIFFE:

Q And is it not true that this came about because of a previous website that we just discussed that the defendant asked you to represent him on?

A That's exactly how it arose. It was out of the initial retention for the other website.

Q Okay. And to your knowledge -- I'll withdraw that question.

Let me move on to a different -- in these discussions with the defendant, did they take different forms; for instance, in person? over the phone? e-mail?

A Yes. All of the above.

Q And the defendant was basically seeking clarification?

A The scope of my retention was to provide advice and direction on what constituted a legal threat. So we had

numerous discussions about Mr. Sutcliffe's publications, or his intent to publish material, in a variety of different ways, to determine whether or not, in my legal opinion, those intentions would cross the line and constitute a legal threat.

THE COURT: With that, ladies and gentlemen, knowing that there is going to be some other rulings I'm going to be expected to make, I'll excuse you for the day. Tomorrow will be a day that ends at 12:30.

I hope and expect that we'll be ready to proceed with further testimony at 8:30. So I thank you. You've been really remarkably punctual and responsible, all of you, and I'm appreciative of that. We'll see you tomorrow morning. Please remember the admonition until then.

THE CLERK: All rise.

(Jury out.)

THE COURT: Do you want to be heard, Ms. Duarte?

MS. DUARTE: I do, Your Honor.

It appears that the defendant may be poised to offer evidence in an advice-of-counsel defense. I have been given notice of that defense. However, I think that --

THE COURT: You said you have been?

MS. DUARTE: I have been, that's correct.

He wrote it to me in a letter, which I believe ended up becoming part of the file because he cc'd you, so I have been given notice.

My concern is that, if we don't have a proffer up front, it will end up, in some way, to be an incomplete defense that then just does not justify an instruction, and will leave the jury confused.

So my understanding of the defense, as I put in my amended trial brief, was that, in order to qualify for an appropriate jury instruction, he has to present evidence that there was full disclosure to his attorney of all material facts and that he relied, in good faith, on the specific course of conduct recommended by that attorney.

So that would mean that Mr. McAfee is going to have to testify that he specifically okayed the threats charged in the indictment, and not to some amorphous concept that will end up soliciting so-called expert testimony about his area of the law in front of the jury, despite this Court's denial of his attempt to do so.

My concern is for the record. My concern is that unless he proffers and meets a complete defense, he will not qualify for the instruction, and we'll end up with a very muddled record.

So I wanted to bring that to the Court's attention. I did brief the issue on pages 14 and 15.

THE COURT: Did you want to voir dire the witness and take him out of order? Is that what you are proposing?

MS. DUARTE: I had not anticipated that. I had

anticipated getting a proffer from Mr. Sutcliffe as to what he expects the witness to testify to, preferably out of the witness's presence. However, I can --

THE COURT: Let's try it that way. I have very limited time. I have another matter at 4:30. I have a very overworked and valiant court reporter.

Step out of the courtroom, Mr. McAfee.

(Mr. McAfee left the courtroom.)

THE COURT: In essence, Mr. Sutcliffe, give me a proffer as to what advice you anticipate, in good faith, having this witness confirm he gave you relating to the specific communications that have been the subject of either the indictment, the four specific threats in the indictment, or the inquiry that the government made of the witnesses about other contents on these websites.

MR. SUTCLIFFE: Well, Your Honor, the defense seeks to have Mr. McAfee qualified as a Rule 703 expert, as an attorney who has expertise in constitutional and federal criminal law and, as the defense intends to show, relies on his expertise regarding the creation of the website, as well as, if the government wants to go there, the previous website that he was retained to give counsel on.

THE COURT: That being "killercop.com"?

MR. SUTCLIFFE: That's right.

THE COURT: Don't harken again to that because the

government didn't go there.

MR. SUTCLIFFE: I'm trying not to go there, too, Your Honor.

THE COURT: The government didn't go there.

MR. SUTCLIFFE: A big can of whoop.

So I don't know how we want to play this out. I am definitely --

THE COURT: Just tell me what you, in good faith, anticipate this witness, under oath, will say as to specific advice he gave you about the communications that are the subject of this lawsuit, not about Constitutional Law 101 in general.

MR. SUTCLIFFE: Okay. I relied upon his advice that it was not against the law to publish phone numbers, social security numbers, home addresses.

I relied upon his advice that any file that I received after my employment at Global Crossing -- according to the judge, where he went in and represented me, the order of that temporary restraining order, I relied upon his advice that any file that I received that came out after the fact that I had already been employed there was fair game. That goes directly to the heart of these social security numbers. We've already heard that not all of them are correct.

As far as the threats, Count One, I relied upon his advice, that's rhetoric.

THE COURT: You anticipate that you are going to ask questions, and he's going to say, "Before Mr. Sutcliffe placed on a website the language, 'I will personally send you back to the hell from where you came,' I told him it would be lawful to do so"?

MR. SUTCLIFFE: I believe so, Your Honor.

THE COURT: And are you representing that he's going to say, before you posted on the "evilgx.com" website language stating, "I will kill you," he said that would be not in violation of the law?

MR. SUTCLIFFE: The defense did not specifically question him on every page that was created within his website. However, the defense did rely upon, as he has spoken from the stand, that we had numerous discussions as to what statement and what statements do not constitute a threat, and based upon that advice, that Webpage was created with that advice in mind.

He was then notified -- he was notified, not at the moment of the creation or prior to the creation, of that page, specifically, on Count Two; however, when I was able to contact him, I did rely upon his advice, and he advised me at that point to modify that page because the word "kill," as we have discussed before, has a real knee-jerk reaction, which is why "killercop.com" was so infamous.

THE COURT: Okay. Let me cut you off here. This is part of a defense that doesn't come as a surprise. You

yourself have acknowledged that.

MS. DUARTE: That's true.

THE COURT: The law doesn't require that the attorney stamp with a kosher stamp of approval the precise language of every statement in advance, so that's not the test that Mr. Sutcliffe is required to meet.

The importance to Mr. Sutcliffe of challenging on the element of specific intent warrants letting him elicit this testimony.

You will have full opportunity to cross-examine this witness. You will have no opportunity to establish him as an expert. He's a percipient witness. He's a lawyer. If he says what you say he will say, and if you follow it with some testimony to the effect that you relied on it, you could argue that you relied on it as a lawyer.

And the government will have full opportunity to cross-examine both Mr. McAfee and you about the advice that you have now represented to me, in this proffer, and to the courtroom you claim he will confirm he gave you, and the jury can decide whether that's relevant and credible evidence on the issue of intent.

I intend to instruct the jury, before Mr. McAfee resumes his testimony, that Mr. Sutcliffe has the right to inquire about their communications and statements that Mr. McAfee recalls making, or information Mr. McAfee recalls

giving to Mr. Sutcliffe, and they are not to assume that the statements are a correct -- or were a correct statement of the law.

The evidence is being admitted solely for the purpose of providing relevant evidence as to Mr. Sutcliffe's state of mind in making the communications on the website.

I will instruct them further that the fact that the information was given is not a complete defense to the charges, but is relevant evidence as to Mr. Sutcliffe's state of mind.

Anything further?

MR. SUTCLIFFE: Yes, Your Honor.

The defense also seeks to elicit 704 ultimate issue testimony.

THE COURT: What are you referring to?

MR. SUTCLIFFE: I'm referring to -- may I have a minute, Your Honor?

THE COURT: Yes, you can have a minute.

Just a second. Before you continue -- I don't even know what you are going to say -- I do want the record to reflect that, during the break, Mr. Sutcliffe exercised the opportunity to consult with Mr. Reed. That has happened on several occasions, both today and throughout the trial, and there's nothing improper about that, nothing inappropriate.

In fact, I think it's a good idea that it was done, but I want the record to reflect that Mr. Reed has been more

than simply a bump on the wall here.

Now, you may proceed, Mr. Sutcliffe.

MR. SUTCLIFFE: I would like the record to reflect that there is an inference there that I'm waiving my Sixth Amendment right, and that clearly is not the case. And the Court clearly does not know what interaction I just had with Mr. Reed as far as related to any question I might have asked him related to anything.

THE COURT: Now, turning to the 704 --

MR. SUTCLIFFE: Yes, Your Honor.

The defense seeks to elicit, under Rule 704, the ultimate issue as to whether Mr. McAfee is indeed an expert on constitutional law and that the defense -- the defendant relied upon Mr. McAfee's expertise as a constitutional law expert as to what, under the constitution, constitutes a threat.

MS. DUARTE: Just a point of clarification, Your Honor.

Are we talking constitutional as in free speech?

THE COURT: I don't know, but there is absolutely no foundation whatsoever to establish that he's an expert. Zero.

MR. SUTCLIFFE: I will qualify that.

We are speaking specifically as to speech; First Amendment issues, in particular.

MS. DUARTE: Your Honor, the jury is -- well, unless you want to hear from me.

THE COURT: The jury is what?

MS. DUARTE: The jury, presumably, will be instructed on that. We submitted instructions that go to the definition of "true threat" as it goes to free speech.

THE COURT: I will instruct the jury on that. I am not going to permit him to testify as to what his opinion is that goes to the ultimate issue of fact that would affect the jury's determination of the verdict.

I will permit him to tell the jury what he told you. I will permit you to try to establish on what basis he thought he had the right to tell you whatever he told you. That's all you are entitled to.

If you want to build up his resume and establish some kind of special expertise, I won't preclude you from doing that.

The fact that somebody becomes a lawyer in 1988 doesn't qualify him as an expert in constitutional law. I'm not going to permit evidence on the ultimate issue.

Now, it's past 4:30 and I want to adjourn, so we'll be proceeding tomorrow morning.

(Adjournment at 4:37 p.m., to resume on Wednesday, November 26, 2003, at 8:00 a.m.)

C E R T I F I C A T E

I hereby certify that the foregoing is a true and correct transcript from the stenographic record of the jury trial proceedings in the foregoing matter.

Karen R. Pinn, RPR, CSR 5574
Court Reporter

Sept 29 2004
September 29, 2004

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE A. HOWARD MATZ, JUDGE PRESIDING

UNITED STATES OF AMERICA, Plaintiff, vs. STEVEN WILLIAM SUTCLIFFE, Defendant.	Case No. CR 02-350(A)-AHM

CERTIFIED COPY

REPORTER'S TRANSCRIPT OF JURY TRIAL PROCEEDINGS

Los Angeles, California

Wednesday, November 26, 2003

DAY 9

(Pages 1649-1727)

KAREN R. PINN, RPR, CSR 5574
Court Reporter

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I N D E X

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DEFENSE
WITNESSES DIRECT CROSS REDIRECT RECROSS

McAFEE, Leslie
By Mr. Sutcliffe 1669(resumed)

LOS ANGELES, CALIFORNIA;

WEDNESDAY, NOVEMBER 26, 2003; 8:13 A.M.

(Jury out.)

MS. DUARTE: Good morning, Your Honor.

Elena Duarte and Frank Harrill on behalf of the United States.

THE COURT: Good morning.

MR. SUTCLIFFE: Good morning, Your Honor.

Steven William Sutcliffe, accused, present.

MR. REED: David Reed, advisory counsel.

THE COURT: Good morning to both of you. I understand you have something to bring up.

MS. DUARTE: I do, Your Honor.

I have several matters. For the last matter, it won't take long. For the last matter, I would ask that the witness in the courtroom be excluded. I can go ahead and bring up the first few matters, if the Court will allow me to exclude the witness.

THE COURT: Let's exclude the witness, first. The witness being Mr. McAfee.

MS. DUARTE: Your Honor, would it also be possible to exclude any other collateral people here, whose presence is not necessary, for the limited purpose of what I'm about to bring up?

THE COURT: Yes. The only people who will remain are

the defendant, Mr. Reed, and representatives of the marshal service. I'm not sure who you are, sir, but could you leave, please.

MS. DUARTE: First, Your Honor -- this is not a private matter -- I did speak with Special Agent Cugno about the Court's order that he return on Tuesday. He has advised me that he's having, at least as of last night, a little bit of a problem with the airlines, just with some technical issues about refunds and the like. And he asked if there was some kind of minute order -- I can get him a subpoena -- but he asked if there was some kind of minute order that might issue that requires his presence here.

THE COURT: Okay.

MS. DUARTE: Actually, I misquoted. I offered to ask this Court for a minute order for him. He only asked me what he should do.

THE COURT: What's his first name?

MS. DUARTE: Jeffrey, J-e-f-f-r-e-y, Cugno, C-u-g-n-o. And he just needs proof that his presence is required in Federal Court in Los Angeles at 8:00 a.m. on Tuesday, December the 2nd, and if there were any way, later this afternoon, for me to acquire that from Mr. Montes and fax it over.

THE COURT: Okay. I'll get it.

MS. DUARTE: Thank you, Your Honor. I appreciate

that.

Your Honor, the second matter is, I have copied -- per the Court's order yesterday, I caused to be copied all of the defense discovery that was given to me. We did Bates stamp the originals, and I have provided the Court with its copy, and I have provided the originals again to Mr. Sutcliffe.

There was one thing in particular, although I realize that all these will be subject to objection at the time they are offered, if they are for admission. There was one thing in particular I wanted to bring to the Court's attention that I would be asking, because it would be a little bit complicated to try to do in front of the jury.

Directing the Court's attention to page 16, Bates stamped 16 of this packet, is what appears to be a memo to Mr. Sutcliffe from Leslie McAfee.

I'm not forming an opinion yet, Your Honor, or asking the Court to find any relevance about this memo and whether or not it may or may not be admissible. However, to the extent that it is proffered and asked to be admitted, I would ask this Court to give a limiting instruction immediately upon its acceptance for admission; that this document, which is pages 16 through 21 -- Your Honor, it could be 20. Let me check. 16 through 19.

THE COURT: It looks like it's 19 to me.

MS. DUARTE: 16 through 19. My fault.

To the extent that 20 and 21 may be an appendage of that, my request would extend to those pages -- that the contents of this memorandum are not being offered -- or accepted, I should say, for the truth. They contain a good deal of law, Your Honor, and legal conclusions that are questionable.

THE COURT: That's what I said yesterday. I have notes of what I said I would instruct the jury, yesterday.

MS. DUARTE: I understand that the Court is instructing as to the basic advice of counsel.

THE COURT: No. As to the testimony -- any testimony that Mr. McAfee gives or Mr. Sutcliffe, for that matter, about what Mr. McAfee may have told him --

MS. DUARTE: Is not for the truth, but for the effect.

THE COURT: Right.

-- and I'm going to tell them that it's not necessarily a correct statement of the law; that the Court will define what the law is that's applicable to the case; that the evidence is introduced solely for the jury to evaluate whether the government proved that the defendant had the necessary state of mind; namely, the specific intent to threaten.

MS. DUARTE: I didn't understand that you were going to do that for these exhibits, so that's good. Thank you, Your Honor. That's what I wanted to know.

The third matter is, I understand that Mr. Robert -- Detective Robert Campbell has been subpoenaed by the defense. That is the witness that apparently they are planning on calling to impeach witness Tracy Hall-Fraser on what I would argue would be a collateral matter.

To the extent that that witness may be offered today, I wanted to inquire about that. I would like to speak to that. To the extent that that witness may not be offered today, I don't want to waste any time. I would speak to that next week, when I've had a chance to research the issue more thoroughly.

I wonder if the Court could inquire as to whether the defense plans on calling the witness today.

THE COURT: Do you plan on calling Campbell today?

MR. SUTCLIFFE: We've been in touch with Mr. Campbell. He's not available today. We expect him to be coming in Tuesday morning.

THE COURT: Okay.

MS. DUARTE: With the Court's permission, I'll address the issue, then, at that time.

And, lastly --

THE COURT: If you believe that evidence or testimony that he would give, inconsistent with whatever Tracy Hall said, would be collateral, or otherwise for some other reason inadmissible, then you should file a memorandum on Monday morning, and arrange to have a copy given to Mr. Sutcliffe on

Monday as well.

MS. DUARTE: I will do that, Your Honor.

THE COURT: At least you bring it to the prison.

MS. DUARTE: Or have it brought.

THE COURT: Or have it brought. Not you personally.

MS. DUARTE: Understood. I will look into that, then.

And I believe this is the last issue. Your Honor --

THE COURT: As a courtesy to Mr. Reed, I don't know if he's going to be consulted about it by Mr. Sutcliffe, but make it available to Mr. Reed, too.

MS. DUARTE: I'll fax it to Mr. Reed, if I file it.

Before trial, the Court made an order that previous litigation, or litigation that has come up in relation to the instant case, that those matters would not be available to be brought up, in summary.

The testimony of Mr. McAfee, I believe, may result in improper cross-examination. My inquiring -- in order to inquire as to his possible biases, as well as --

THE COURT: Sir, who are you?

UNIDENTIFIED SPEAKER: I was just going to watch the trial, but I'll leave.

THE COURT: You can come in in a few minutes.

MS. DUARTE: To the extent that he -- to the extent that I may need to inquire as to certain other documents he's

filed in this case, as well as in the civil case with Global Crossing --

THE COURT: You mean in this criminal case?

MS. DUARTE: In this criminal case.

His declaration that he made to this Court has something in it that I may need to ask him about. There is a Complaint that was filed based on Mr. Nicolaysen's actions in this Court that had some interesting things that I may need to inquire about. There were a few orders that were issued in the Global Crossing case, wherein Mr. McAfee had declarations that have some things in them.

And I wanted to make -- and also, and most importantly, Your Honor, because this is the thing that I really wanted to make sure is all right, Mr. McAfee, in 1998, which is less than a year, I believe, prior to some of these writings that are included in the discovery, was sanctioned by Judge Wilson. And Judge Wilson used a couple of sentences in particular in that order that I would be interested in asking Mr. McAfee about should he again raise the issue of --

I know this Court has declined, thus far, to qualify him as an expert and, of course, I would continue to object to that qualification. But to the extent that the questions and answers suggest some sort of competence, that is perhaps --

THE COURT: Do you have this order of Judge Wilson?

MS. DUARTE: I do.

THE COURT: Let me see it. Give a copy, please, to Mr. Sutcliffe.

MS. DUARTE: Perhaps we should address this particular order separately from those other documents I was discussing.

Let me draw the Court's attention on this order, however, as long as we are on it, to page 8, "Improper Purpose," large "B" at the top of the page. This is where the findings were made against Mr. McAfee. And it reads, in part, "Mr. McAfee's conduct in bringing and maintaining this frivolous claim crosses the line into abuse of process."

The history -- excuse me, turning to page 9, line 3, "The history of this case and the egregiousness of McAfee's violation leads this Court to believe that a significant sanction is warranted in order to deter McAfee from further abuses of judicial process."

Now, the last time I checked the docket, Your Honor, this order was still in effect. It has not been in any way abrogated, as far as I am informed.

Again, I would only bring this up if Mr. McAfee insists on maintaining as he did. I have noted, when I reviewed the earlier civil litigation in the Global Crossing case, he actually filed several declarations, wherein he expressly described these sanctions as not including any findings of impropriety on his part but being purely

jurisdictional, which is clearly not true. He has already filed declarations saying that in civil court.

To the extent that he tries to say that, if it comes up in this courtroom, that would be impeachment evidence against him.

THE COURT: I'm having a little trouble following what you are referring to about whatever he's filed in the civil litigation involving Global Crossing, but I'll tell you this: Nothing he's said so far would permit cross-examination based upon Judge Wilson's order, but if he opens the door in other testimony, then it may well entitle the government to inquire about this, at least for purposes of either credibility or competence.

MS. DUARTE: And those are the purposes that I was intending to offer.

THE COURT: I don't give you permission to inquire about this based on the record right now.

MS. DUARTE: I understand that, Your Honor.

Let me make clear that this is all anticipatory. I bring it up to make sure that it's within the Court's earlier order.

THE COURT: Okay.

MS. DUARTE: And about the additional documents that I described, Your Honor, that were actually filed in, and collateral to, this case in the civil litigation, other than

the sanctions, the documents that were filed that have some declarations by Mr. McAfee made to this Court, the Complaint that was filed, to the extent that those become relevant, do I also have permission to inquire into those?

THE COURT: Yes.

MS. DUARTE: Thank you.

I believe that's it. If I could just check my notes.

THE COURT: In order to avoid confusion for you, Mr. Sutcliffe, confusion that would only serve to your detriment if it came up in the presence of the jury, I'm looking at the first page, 0001, of what was Bates stamped after you gave it to the government yesterday.

MR. SUTCLIFFE: Your Honor, if I can maybe be heard for one second before you go on. I'm going to stop you right there, only to save the Court time.

I have given a lot of thought about yesterday's events, and --

THE COURT: About the what?

MR. SUTCLIFFE: Yesterday's events.

-- and I conclude that my defense witness, Mr. McAfee -- I want to get this trial over quickly. I'm sure everybody on that jury does, too. I'm sure the Court does. I have heard you express that numerous times.

THE COURT: Yes, but I want you to understand -- I have to respond to that -- the objective is not to get it over

quickly. The objective is to get it over fairly.

The secondary related objective is to make sure that the predictions and representations made to the jury were made in good faith. So I've been concerned about the jury's schedule and the Court's assurances. I have no other agenda.

MR. SUTCLIFFE: It's interesting you said that, Your Honor, because I'd like to get it over fairly, too, which would lead me to my next motion I'd like to be heard on, which is I'd like to file a motion, orally, right now, to dismiss this case based on the prejudice that the defense has suffered.

The defense has read the e-mails that were provided yesterday by the government. The defense has clearly, specifically, demanded all Brady material from the government, and defense, clearly, in letter form sent to the government, clearly demanded unredacted copies of all previously provided Brady material, all Bates-stamped discovery.

We now -- at the twelfth hour and one minute, I've been provided six documents with impeachment witnesses I could have subpoenaed under the compulsory process of the Sixth Amendment. These are not lost to the defense forever.

I would move for either a mistrial so I may go and subpoena these witnesses to impeach the two witnesses, Mr. Saly and Mrs. Greenwood, who have already come and gone.

There are numerous people within these documents. There is a Lawrence Burke. There is a Sandra MacArthur.

THE COURT: You need to do a lot more than tell me who is mentioned or who these concern to establish some kind of violation of your constitutional rights under Brady.

This is your opportunity to do more. Tell me, with precision, what it is that you think, in the material that the government said they didn't have the ability to corroborate perfectly, as having been given to you, although it may have been, you had a right to get that you didn't get, and your constitutional rights were violated, and you are not getting. Will you be specific, please.

MR. SUTCLIFFE: Your Honor, I'll be very specific. The Constitution, specifically the Fifth Amendment, affords the right to the defendant --

THE COURT: I know that.

MR. SUTCLIFFE: Excuse me, Your Honor.

THE COURT: Just tell me what the documents are. I know what the law is. You don't have to make a record. I understand what the law is under the Fifth Amendment.

Please tell me which documents you think you should have gotten earlier that the failure of the government to give you has prejudiced you.

MR. SUTCLIFFE: Your Honor, the Sixth Amendment gives the defendant the right to have the compulsory process for obtaining witnesses in his favor.

The defendant cannot exercise his right to have

compulsory process for obtaining witnesses in his favor when the government intentionally and willfully prejudiced the defendant by willfully and intentionally failing to turn over requested discovery matter, which is a matter of due process right of the defense.

I do not have to prove anything. I have made my record. I will stand on my record.

I will move this Court to immediately dismiss or declare a mistrial for the failure of the government to uphold the defendant's constitutional right to a fair trial.

You said it yourself. You want to get this over fairly. There has been an egregious violation of fairness, due process, compulsory process, and a violation of the defendant's constitutional rights.

With that, I will stand on --

THE COURT: The motion is denied based upon that showing.

Turning to the documents, Mr. Sutcliffe, that I started to address before you intervened -- and I haven't done anything more than look at page 1, which is page 92 of some publication. Circled on it is part of a snippet of an article concerning Lars Ulrich, and I guess that's the part that is perceived to be relevant.

If you are -- could you make a proffer, please. You said that you were going to introduce all of these documents.

Can you explain to me what the relevance is and how it affects your defense that whatever this publication is contains the portion -- is the portion circled on page 1, the part that you think is -- the part you want to call attention to?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: Please explain in what way that is relevant to this case.

MR. SUTCLIFFE: Your Honor, I don't believe anything is relevant to this case at this point, and I would make a motion to dismiss this case for the failure of the Court to uphold my constitutional rights.

THE COURT: Okay. That motion is denied.

MR. SUTCLIFFE: Then I would make a motion to dismiss this case for the failure of the Court to uphold the Constitution, which it has taken a sworn oath to do.

THE COURT: And that motion is denied.

MR. SUTCLIFFE: Thank you, Your Honor.

I have nothing further.

THE COURT: Then I'm going to rule. If you seek to introduce evidence that, in publications available to the public, nasty language is used -- and the particular one that is circled, on 0001, it shows a picture of someone -- I don't know who it is, but I assume it's Lars Ulrich. The facial expression is, I guess, one can say, angry or frowning. The

caption beneath that says, quote, "What do you mean? This is my happy face." There is some text, about two or three very short paragraphs. The part that's been quoted says, "Quote" -- and the word "quote" is in the quote. Then it says, in quotation marks, "You want to fucking see in three months how we can fucking blow your measly little company apart? No problem."

Statements like that that reflect communications like that, not directed to specific individuals and not in the context of the evidence that, thus far, has been introduced by both sides, because much of it has been elicited and presented by the defendant, would not be relevant.

MR. SUTCLIFFE: Your Honor --

THE COURT: I'm just giving you an indication so you don't feel that you are prejudiced if I entertain and rule upon -- don't interrupt me -- objections that the government may make.

I'm not sure what the government is going to do. I'm not excluding them now, but I'm just telling you, in advance, that I don't understand, and you haven't established, any basis whatsoever for those to be admitted.

MR. SUTCLIFFE: Your Honor --

THE COURT: That's not an issue of authentication or foundation.

MR. SUTCLIFFE: I understand, Your Honor. But

just -- that document right there, you'll note that right below that quote you just quoted that is circled, you'll see the case United States v. Whiffen, W-h-i-f-f-e-n, comma, First Circuit, 1997.

That case specifically dealt with the same standard as being applied to defendant, and in that case right there, the accused in that case had called up an insurance company and used, roughly, the same words about "Your building is going to go boom" or "get blown up," or words to that effect.

Under the reasonable person standard, he was found guilty.

Now, the same standard can be applied to Mr. Lars Ulrich, "Fucking blow your measly little company apart." That can be taken out of context, too, just like --

THE COURT: I haven't read Whiffen. I will try to find it. It doesn't have a citation here.

But you are telling me, even in the case you are calling my attention to, the defendant was convicted and the conviction was sustained?

MR. SUTCLIFFE: That is correct, Your Honor. Because he made -- in the New Hampshire transcript, the facts of the U.S. v. Whiffen case, I believe, were cited at the preliminary hearing that took place back on March 26th of 2002.

Mr. Ulrich is known for going after companies who promote or download e-mail -- excuse me, songs, file-sharing

songs, companies that promote that; and so a reasonable person who owns one of those companies could say, Well, pooh, I took that as being applied to me, because he testified, in Congress, that these companies that promote and download these file-sharing things over the Internet are taking away his money.

So anybody can reasonably come and say, "Well, that was directed toward" -- "I felt fear. I felt it was directed towards me." The same standard can be applied, Your Honor, as being applied to me.

Just like Mrs. Greenwood said, "We can come up with some more threats if we searched." Sure, you can. Anybody can search long and hard enough and come up with -- take things out of context, especially when you have an agenda.

THE COURT: Okay. Anything else that needs to be brought up?

MS. DUARTE: No, Your Honor.

THE COURT: Bring in the witness, bring in the jurors. I'll be back in a minute.

(Brief recess.)

(Jury in.)

THE COURT: We are going to resume with the evidence, and today our schedule will be 8:30 to 1:30, as it's been on most of the days. Then we'll break for the holiday. There will not be a trial on Monday. You will not need to come in on

Monday. I will remind you what the schedule will be as we say goodbye this afternoon.

We will take periodic breaks, probably two breaks between now and 1:30.

LESLIE McAFEE, DEFENSE WITNESS, PREVIOUSLY SWORN

THE COURT: Mr. McAfee, I remind you that you are under oath, and you have the continuing obligation to testify truthfully. Do you understand that?

THE WITNESS: I do, Your Honor.

THE COURT: You may proceed, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you.

DIRECT EXAMINATION (Resumed)

BY MR. SUTCLIFFE:

Q Good morning, ladies and gentlemen of the jury. Good morning, Mr. McAfee.

A Good morning.

Q Mr. McAfee, do you recall a time in October, specifically the 18th, of 2001?

A Do I recall the date in general?

Q Yes. Do you recall anything that happened on October 18th of 2001? Did someone come to your office, a female, specifically?

A I was visited by a woman by the name of Tracy Hall, at least who identified herself to me as Tracy Hall.

Q Had you ever seen this woman before, "yes" or "no"?

A There is a sequence of events, and I can't recall if I had seen her before that date. I believe I had seen her before that date, but didn't know who she was.
Q When she came into your office, did she tell you why she was there?
A Yes, she did.
Q Would you please tell the jury what she told you?
A Yes. She told me she was looking to serve documents on a Mr. Sutcliffe, and I invited her into my office to show her that Mr. Sutcliffe wasn't there.
Q At some point of this meeting, did she ask you, "How would you feel if your personal information, such as your home address, your home telephone number, and your personal social security number, were put on the Internet?"
A She did.
Q Did she claim that her telephone number, her personal social security number, or her address were ever put on the Internet?

MS. DUARTE: Object to leading, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:
Q Did she seem upset with you?
A She did.
Q Did she seem upset with the defendant?
A In particular she did.

Q Did she ever make the statement she was going to make the defendant's legal life miserable?
A She not only made that statement about the defendant, but she made that statement about myself and my family as well.
Q Did you ask the defendant -- excuse me. Did you ask Ms. Fraser -- Ms. Hall to leave your office at some point?
A I did. In fact, I demanded that she leave or I would call the police.
Q Did, in fact, you call the police?
A No. Fortunately, a client of mine had come in and I guess the numbers convinced her that she should leave.
Q Do you recall a man by the name of Jeff Brenner?
A I do.
Q What was the nature of your relationship with Mr. Brenner?
A I received a phone call from Mr. Brenner on November 1st --
THE COURT: No, that's not responsive, Mr. McAfee.
THE WITNESS: Sorry.
THE COURT: Was the client a friend? a business acquaintance? Just answer the question.
THE WITNESS: I received a phone call from him. He was none of the above.
BY MR. SUTCLIFFE:
Q Did he identify himself to you as to who he was?
A He did.

Q Did he identify himself as to his nature to anybody else?
A He did.
Q Could you tell the jury what was that nature?
A Yes. He informed me he was a previous employee of Global Crossing who had worked in the -- with the computers at Global Crossing.
Q And did Mr. Brenner give you any information or offer any information to you?
MS. DUARTE: Objection. Calling for hearsay.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Did Mr. Brenner -- what was your discussion with Mr. Brenner? What was his concern?
MS. DUARTE: Same Objection, Your Honor.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Did Mr. Brenner -- was Mr. Brenner concerned about the website "evilgx.com"?
MS. DUARTE: Objection, Your Honor.
Calling for hearsay to the extent that it's offered for the truth.
THE COURT: And it calls for a conclusion or speculation based on what we know thus far.
You can try to lay a foundation, and it may be that, for limited purpose, Mr. McAfee will be permitted to respond to

questions concerning this individual, Mr. Brenner, but you have to do it the right way.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Did Mr. Brenner ask you for any legal advice?

A He did.

Q Can you please tell the jury what legal advice he was seeking from you?

A He was asking if he was required to sign a declaration that had been prepared for him by the attorneys for Global Crossing.

Q What, if anything, did you tell him?

A I advised him that if he did not believe the declaration was truthful, which is what he was declaring under penalty of perjury, that he need not sign that declaration.

Q So he was concerned that he was being asked to sign a declaration that was containing perjury?

MS. DUARTE: Objection, Your Honor.

Misquotes the witness. Assumes facts not in evidence.

THE COURT: It does and it's a leading question. It calls for a conclusion. So the objection is sustained on all of those grounds.

MS. DUARTE: Your Honor, move to strike the question.

THE COURT: The question itself is not evidence. I think I've already explained that, but I'll repeat that. I

realize you've heard it, but you are to disregard the question and not take it into account at the time you deliberate in the case.

BY MR. SUTCLIFFE:

Q To your knowledge, did Mr. Brenner ever sign a declaration?

A Not to my knowledge.

Q Did you have any conversations with Global Crossing's attorneys related to your conversation with Mr. Brenner?

A I did. I sent a letter to Laura, I believe her last name is Premi, from Christensen, Miller, the attorneys for Global Crossing.

Q Do you have a copy of that letter with you?

A I do.

Q May I see that letter, please?

A It will take me a minute to find it.

Q Sure. Take your time.

MS. DUARTE: Your Honor, while he's looking, I want the record to reflect that Mr. McAfee has a redwell full of numerous papers in front of him up at the podium that he's looking through.

THE COURT: The record will so reflect.

THE WITNESS: Sorry. Here it is.

THE COURT: Let's present this letter to Mr. Sutcliffe, for whatever use he thinks he can make of it. I

think if you have the declaration to which this letter refers, I need to see it before I can permit further inquiry.

Do you have the declaration?

THE WITNESS: I do, Your Honor.

THE COURT: Let me see both declarations to which your letter refers.

MS. DUARTE: Also, for the record, Your Honor, I do not believe I have a copy of that letter.

THE COURT: Well, we'll have to do it the hard way. Give me the declarations.

THE WITNESS: This is the only declaration I have, Your Honor.

THE COURT: What Mr. McAfee has handed me, as the declaration to which the letter Mr. Sutcliffe is now holding onto refers, contains handwriting. Whose handwriting is it?

THE WITNESS: That is my handwritten notes I took when I was talking to Mr. Brenner.

THE COURT: This declaration has to be part of the letter and of any use to the letter and has to be shown to the government as well.

I'm handing the declaration to the clerk to give to Mr. Sutcliffe. If you want to proceed, you are going to have to bring that declaration to the attention of the jury.

MS. DUARTE: Your Honor, I've taken a quick look at it.

THE COURT: All right. You may proceed.

BY MR. SUTCLIFFE:

Q This conversation you had with Mr. Brenner, you said he informed you he was also a member of the IT -- or the Information Technology Department at Global Crossing where the defendant worked; correct?

A That is correct.

Q Did he tell you, if anything, when his -- when he was terminated or if he was terminated?

MS. DUARTE: Objection, Your Honor.

It's offered for the truth. It's hearsay.

THE COURT: I will instruct the jury that although I'm not sure where we are heading with this, I will permit some limited inquiry to see if there is some relevance.

Whatever the witness says, you must not, and may not, consider for the truth of whatever it was that he's going to tell us he was told. So if he tells us, for example, that Brenner told him he was terminated on October 1st, that doesn't constitute a basis for you to find, even if it is relevant, that Brenner was, in fact, terminated on October 1st.

Instead, the only limited purpose for which you may consider whatever it is that this witness is going to say, in response to the question about what Brenner told him, is for the purpose of understanding what was in this witness's mind, assuming that, in some way, it may be relevant to the

allegations against Mr. Sutcliffe.

So nothing that you are about to hear, at least at this stage of this witness's testimony, means that what he was told was true. We are only letting you hear the evidence to find out what he was told and to see if it had any impact on the other events and the other issues that are relevant in this case.

You may proceed, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you.

I have forgotten my question.

THE WITNESS: Sorry.

THE COURT: Just ask it again.

BY MR. SUTCLIFFE:

Q I forgot the question. Something about when he was terminated.

Did he tell you when he was terminated?

A I don't have a recollection. It may be in the letter. I don't have an independent recollection.

Q Basically, why he was calling you was regarding a declaration he wanted legal advice on?

A Correct.

Q And the declaration was being prepared by who, if anybody?

A I believe it was prepared by Laura Premi, an attorney at Christensen, Miller, who were representing Global Crossing.

Q And who else works at Christensen, Miller in that law firm

that was representing Global Crossing against the defendant?
A That I had contact with, initially, it was Mark Block, B-l-o-c-k -- that was in early October 2001 -- and a Mark Labaton. I couldn't tell you exactly when I had contact with him.

MR. SUTCLIFFE: I have nothing further, Your Honor.

THE COURT: No further questions?

MR. SUTCLIFFE: No further questions, Your Honor.

THE COURT: Any cross-examination?

MS. DUARTE: I do, Your Honor, but I have a question. Was the Court planning on giving the instruction that was discussed, based on yesterday's testimony and where it ended?

THE COURT: No. There was no testimony about assertions of law.

MS. DUARTE: Okay. Could I have just a moment?

THE COURT: Yes.

MS. DUARTE: I have no questions, Your Honor.

THE COURT: Okay. You are excused, Mr. McAfee.

THE WITNESS: Thank you, Your Honor.

THE COURT: Please call your next witness, Mr. Sutcliffe.

MR. SUTCLIFFE: Your Honor, we are currently waiting on Mr. Robert Campbell from the Los Angeles Sheriff's Department. I've been informed he will not be available until

Tuesday. As the Court is well aware, Agent Cugno is also out until Tuesday.

So if the Court is so inclined, feel free to give the members of the jury an early Thanksgiving. I have no other witnesses until Agent Cugno gets back so I can continue my cross-examination and when Sheriff Robert Campbell comes in for impeachment purposes of Witness Hall.

MS. DUARTE: Your Honor --

THE COURT: Don't say why he may be relevant. I'll make a ruling at the appropriate time.

MR. SUTCLIFFE: That's where I stand, Your Honor.

THE COURT: Are you representing to me, Mr. Sutcliffe, that the only remaining witnesses you seek to call in your case are Cugno and Campbell?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: No other witnesses?

MR. SUTCLIFFE: No, Your Honor, subject to the reservation of rights to recall any other agent, like Mr. Harrill, if I needed to, which I believe I reserved that right.

MS. DUARTE: Your Honor, I ask, if that right is going to be exercised, it be exercised right now while we are here. Agent Harrill is ready to testify if he's going to be called.

THE COURT: I would permit you to question

Mr. Harrill. But if you are going to question Mr. Harrill and it's your plan to question Mr. Harrill, let's take advantage of the opportunity you have now, because this impact on scheduling is coming as a surprise to me.

I will not force you to rest, so I may be required to permit the jury to go home, but I'm not going to do something that's going to consume time next week that can be productively used now.

So if you wish to question Agent Harrill, I'll allow you to call him to the stand.

MR. SUTCLIFFE: I understand, Your Honor.

The last thing I want to do is waste any more time. Unfortunately, I can't -- in my defense strategy, I can't tell the Court with a definitive answer at this point whether I will seek to recall Agent Harrill after I have spoken to Agent Cugno. I'm placed between a rock and a hard place.

So I would just suggest that we all go home and have an early Thanksgiving, at this point, and meet back here Tuesday, respectfully.

THE COURT: I'm going to excuse you for just a moment, ladies and gentlemen. Please go into the jury room.

(Jury out.)

THE COURT: First, Mr. Sutcliffe, I know you realize this and I know it's been touched on, both directly and indirectly, on many occasions, but I feel it's my duty to

advise you that you do have the right to testify on your own behalf, and nothing arising out of, or relating to, the fact that you are representing yourself at this trial would prevent you from exercising that right.

Do you understand that?

MR. SUTCLIFFE: I've given a great deal of thought to that, Your Honor. You said that several times.

I have this feeling that if I did that, I would look like a nut.

"Mr. Sutcliffe, did you not...."

"No, I did not."

"Yes, you did."

"No, I did not."

They would think I'm nuts. So I'm going to respectfully pass on cross-examining myself or testifying on my own behalf, as is my right under the Constitution and Bill of Rights.

THE COURT: It may be a wise tactical decision as well. As long as you understand that you have that right, I can move on to the next point. And you do understand that?

MR. SUTCLIFFE: I do understand that, Your Honor.

MS. DUARTE: Additionally, Your Honor -- I'm sorry to interrupt -- perhaps defendant should be reminded, although I know the Court has advised him of this, that he could write out his questions word for word and have Mr. Reed ask them to him

should he be concerned about the appearance of asking them to himself.

THE COURT: I did already tell him that, and you remember that, don't you, Mr. Sutcliffe?

MR. SUTCLIFFE: I'm as cognizant as can be, Your Honor.

THE COURT: Secondly, it sounds to me like you've thought through this and that's to your credit, but I think it would be very unfortunate, and most especially from your point of view, Mr. Sutcliffe, if during the intervening days you think through it, yet further, and change your mind and request leave to call in witnesses next week who could have been questioned today, if you were to call back Mr. McAfee or decide to testify on your own behalf, I probably would permit you to do it, but I think it would look very, very bad in terms of your credibility perhaps or other aspects of the jury's evaluation of you in terms of the evidence and the charges against you.

So I felt compelled to tell you that, if you're quietly or silently thinking that you could always bring on new witnesses next week and bide time to prepare, you might be right, because I would bend over backward not to prevent you from putting on witnesses. But you might be greatly injuring your own prospects of persuading the jury that the government has failed to meet its burden of proof.

Do you understand that?

MR. SUTCLIFFE: I understand it, very clearly, Your Honor. And I have no intention of calling any other witnesses other than Mr. Campbell and continuing my cross-examination of Mr. Cugno.

THE COURT: Has Mr. Campbell actually been subpoenaed?

MR. SUTCLIFFE: Yes, he has, Your Honor.

THE COURT: And you have been informed that he is not available today but will be available on Tuesday?

MR. SUTCLIFFE: That's correct, Your Honor.

THE COURT: Mr. Reed, I know you've been moving around there. Is there anything you wish to call to my attention?

MR. REED: Well, Your Honor, technically, I spoke to Detective Campbell yesterday. I didn't actually speak to himself personally. I left a voicemail message for him. He had called me previously. He acknowledged the service of the subpoena.

And on that message that I left him, I told him that if it was possible, he could run down here today and show up before 1:30, and we could squeeze him in as an out-of-order witness.

And since I left that message, I never really got back to him and he's never returned our phone call.

So there may be a possibility today, Your Honor, you might see a detective, if you are intending to release us early. There may be a detective walking in here like at around 10:30, 11:00. There is nothing I can do to prevent that.

THE COURT: Well, I'm not going to subject the parties, their lawyers, advisory counsel, or the jury to further tour of duty in this courtroom or the jury room waiting for that possibility.

If Campbell comes today, I'll instruct him to come back on Tuesday, assuming that I adjourn the trial, which is pretty clearly, to me, the thing I have to do. I don't understand whether there is any meaningful or better alternative.

Do you wish to be heard about that?

MS. DUARTE: Your Honor, I don't see any alternative, either.

THE COURT: Then what I propose to do, but I want both sides to have an opportunity to suggest a different way of framing it, is to call the jurors back in, excuse them now until Tuesday. We'll resume on Tuesday at 8:30. And I think there is a high likelihood that we'll have closing arguments and jury instructions on Tuesday.

Actually, I think what I'll do is keep the parties and the lawyers here today and talk about jury instructions later this morning, so we could save time in that regard.

And I'll just tell the jurors that sometimes it's impossible for a judge to know exactly what the scheduling -- and the parties to know exactly what the scheduling requirements will be.

There will be more evidence that we anticipate next week. And the trial will continue on Tuesday. There is a good chance that they'll begin deliberations Tuesday or Wednesday.

Does anybody want to be heard about that?

MS. DUARTE: That's fine, Your Honor.

I was wondering if there is any way the Court could inquire of Mr. Sutcliffe as to whether he has any estimate for his remaining cross on Special Agent Cugno. I ask because I have obligations next week that I'm trying to decide whether I'll be able to make, so if there is any way to estimate that.

THE COURT: I'm not even going to bother trying.

MR. SUTCLIFFE: I anticipate moving pretty quickly through his testimony unless, of course, he takes the tactic of "I don't recall anything," you know, brain damage. If he's forthright and forthcoming in his examination -- in his testimony, I can move through him pretty quickly.

THE COURT: One hour, you mean?

MR. SUTCLIFFE: I'd say one to one and a half hours.

MS. DUARTE: Okay. Thank you.

THE COURT: Let's bring the jurors back in, please.

(Jury in.)

THE COURT: All the jurors are back in their respective seats. Everyone else may be seated.

Ladies and gentlemen, in any trial, it's frequently -- or in many trials, it's frequently the case that the parties, the lawyers, and the judge are not able, with perfect control or accuracy, to predict the sequence of witnesses, the availability of witnesses, and how long things will take.

We don't have witnesses who are available to testify right now, so we are going to take an adjournment of the testimony stage and proceedings that occur before the jury today. But you are going to go home in a couple of minutes is what I'm about to tell you.

We will resume the trial on Tuesday. There will be, as I'm currently understanding it, probably one or two witnesses. And I'm not sure whether there will be any -- those will be witnesses questioned by the defendant. And I don't know if there'll be any redirect evidence rebuttal, it's called, put in by the government.

I think it's a very good possibility that on Tuesday and an even more likely possibility, an extremely strong possibility, that by Wednesday you will be given jury instructions and closing argument and begin your deliberations.

It really could well happen on Tuesday. There are certain things I'll go over with the parties to the case in

your absence this morning to save time next week so we can speed things along.

So please enjoy your Thanksgiving holiday. I personally think that Thanksgiving is the most meaningful holiday on our calendar. To celebrate what the pilgrims celebrated, as part of our national recognition of who we are as a people and as a nation, inspires me. I hope you feel the same way. In any event, enjoy your weekend. You are contributing, as citizens, to what we all have to be thankful for. I want to thank you for doing so.

I ask you and instruct you to remember the admonition. There's a few days' span between now and next Tuesday. Don't form opinions about the case. Don't discuss your views about the case or developments in the case with other people. Please keep an open mind, in fairness to both sides.

Be ready to proceed and in the jury room so that you can take your respective jury seats at 8:30 on Tuesday morning.

With that, you are excused. Have a good weekend.

(Jury excused at 9:08 a.m. and following proceedings had.)

THE COURT: Everyone may be seated.

I'm going to need probably at least an hour to review certain material that I want to double-check on. But I want to make sure I correctly cite the state of filed proposed instructions.

I, secondly, want to make sure that both sides have those here in the courtroom, so that when I talk about them and issue my rulings on them, it will be clear as to what I'm referring.

On or about January 8th of 2003, at a time when Mr. Sutcliffe was represented, I believe by Mr. -- yes, by Mr. Harris, both sides submitted a document entitled "Joint Proposed Jury Instructions," along with the accompanying disk.

On the same date, the government submitted a document entitled "Government's Proposed Jury Instructions," containing four instructions: Threats to injure; true threat defined, citing the Planned Parenthood case; aiding and abetting; and proof of knowledge or intent.

On or about September 23rd, the government submitted another -- filed another document entitled "Government's Supplemental Proposed Jury Instructions," basically -- not basically, but stating, in its entirety, quote, The Internet is an instrumentality of interstate and foreign commerce, and citing various authorities for that.

So far as I know, those are the only instructions that the Court has received. Are there any other instructions that you have filed?

MS. DUARTE: Not that I have filed. I do have other instructions, however.

THE COURT: You have what?

MS. DUARTE: I do have other instructions that my filed stamp is January 8th by defense.

THE COURT: January 8th?

MS. DUARTE: Yes. I have another copy.

THE COURT: May I see those? I don't have them.

MS. DUARTE: I'm giving you my filed stamped copy. They were filed by Mr. Harris. There are also a series of objections, Your Honor.

THE COURT: Whose objections?

MS. DUARTE: The government objected to those instructions. And I believe the defendant, through Mr. Harris, objected to some of mine. Yes.

Would the Court like copies of that?

THE COURT: Yes. I'll have to speak to my staff about why those weren't gathered. It would help to see those instructions.

MS. DUARTE: I have an extra of the government's objections, and I'm also giving the Court my only copy of the defendant's objections.

THE COURT: The document entitled "Government's Objections to Defendant's Proposed Jury Instructions" you don't need back?

MS. DUARTE: That is correct.

THE COURT: But the document entitled "Defendant Steven William Sutcliffe's Proposed Instructions" you do need

back?

MS. DUARTE: No, Your Honor. I only need the one back that is his objections to my instructions.

THE COURT: Okay. The clerk will make copies. You can instruct the secretary to make copies of the document filed January 13, 2003, entitled "Defendant Steven William Sutcliffe's Response to Government's Objections to Defendant's Proposed Jury Instructions."

Before you make just one copy, I want to ask Mr. Sutcliffe, are there any other instructions that you have filed or any of your -- any of the individuals who, at any previous time, were then functioning as your appointed counsel, that you know of?

MR. SUTCLIFFE: Not that I know of, Your Honor.

However, I do have a proposed jury instruction I would like filed at this point.

THE COURT: Okay. Would you hand it to the clerk and we'll get it filed.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Is it a two-pager or two different --

MR. SUTCLIFFE: Two different issues, Your Honor.

THE COURT: Two different instructions?

MR. SUTCLIFFE: Yes.

THE COURT: What I'll do, for purposes of having this filed into the record, is, I will prepare a cover sheet and it

will say "Defendant's Supplemental Instructions." I will do that now, and I'll make copies for the government and get them filed and consider them back in my chambers.

Is that the entire array of instructions that both sides wish me to consider? Is there anything else?

MS. DUARTE: If I could have just a minute, Your Honor.

There was one that I had contemplated. Let me just check my notes because I'm not sure that there is still a need.

Your Honor, I don't have anything to propose at this time.

MR. SUTCLIFFE: I would just like to make the record that I have objected in the past to the government's standard of which I'm being tried, under the, quote/unquote, true threat standard.

I believe that that standard there is only for national -- something that would apply to a national interest of the government, such as a threat made to the President of the United States of America.

THE COURT: Here's what we'll do. Let me interrupt, although I ordinarily try not to.

You'll have, and so will the government have, an opportunity to address each and every proposed instruction I contemplate giving. That will be done after I go over these instructions. It won't take less than an hour. It could take

a little bit more. Then you can share what you have to say. You have a right, and you'll be afforded the right, to make a very explicit objection, so do it later this morning.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: All right. I'm going to, with that, go back and review these instructions and some other material, and the clerk will let you know when I'm ready to come out. You can all be seated.

(Recess taken at 9:15 a.m. to 12:55 p.m.)

THE COURT: We are here to discuss and resolve jury instructions, and here's how we'll go about doing it:

First of all, I've prepared and circulated for your review already a series of standard jury instructions tailored to the names of the parties in this case and to the fact that Mr. Sutcliffe is representing himself that deal with recurring issues of jury instructions.

It contains a number of instructions, ending with No. 26, although some are not by number, certain numbers don't have instructions accompanying them. Altogether, it's 29 pages, and that doesn't contain the disputed instructions nor the instructions that relate to the specific crimes that are alleged and to the elements of the offenses. Those I'll go over with you.

I haven't had time to put those into the format and into the sequence and assign them the number that they'll be

given on Tuesday or Wednesday, but we will resolve those today.

I've also circulated to each of you a new instruction, also lacking a number and even a page number, relating to the First Amendment.

So the first thing I want to do is ask whether you have any objections to the, I think, standard of noncontroversial instructions that are in the group that have the caption of the case and the title "Jury Instructions" on those before we address the other ones that each side submitted and to which there were some objections.

So starting with that set only, any objections, Ms. Duarte?

MS. DUARTE: Yes, Your Honor.

Well, the only thing I want to point out is, as to Instruction 13A on page 17, I'm not sure that that instruction is actually necessary.

THE COURT: No, it isn't. Well, wait a minute.

MS. DUARTE: I don't really have an objection to it. I'm just not sure it's necessary.

THE COURT: I don't think it's appropriate and I don't think we should include it.

I assume you agree, Mr. Sutcliffe?

MR. SUTCLIFFE: Are we looking at page 17? Mine says 15.

MS. DUARTE: Also, Your Honor --

THE COURT: Wait. Let me hear from Mr. Sutcliffe.

MR. SUTCLIFFE: We seem to be looking at two different page 17s. Hers says something different than mine.

MS. DUARTE: I just realized the problem with mine. It's a pagination problem. I have two 17s, no 15, no 16, and no 19 in my packet. At least we are talking about the same instruction, 13A.

THE COURT: I'll fix the pagination.

MR. SUTCLIFFE: 13A?

THE COURT: Yes.

MR. SUTCLIFFE: I have no problem with that, Your Honor.

THE COURT: 13A will be deleted.

MS. DUARTE: And the last thing, Your Honor, I'm not sure yet that we'll need No. 13, which immediately precedes 13A, but I understand that if it's in just for Tracy Hall, the Court will make that determination at a later time, unless there is some other --

THE COURT: I think that it belongs there regardless of what happens with Tracy Hall because Mr. Sutcliffe undoubtedly thinks that he's established that as to somebody he cross-examined.

MS. DUARTE: Oh, other inconsistencies during cross?

THE COURT: Yes.

MS. DUARTE: Okay. All right. I don't have any

objection to it. I just didn't see the need for it.

THE COURT: That's all you want to say about that portion of these instructions?

Anything you want to say about those?

MR. SUTCLIFFE: Nothing, Your Honor.

THE COURT: Okay. Those will all be given except for 13A. They'll be renumbered and they'll be given page numbers.

I reserve the right, where there is a numerical gap, to put in a page that says -- I'm just making this up as an example. There is no Jury Instruction 12.

If I skip from 11 to 13, the jury will know that it wasn't inadvertent and something had been left out. The reason I'm doing that is that some of these are already on my word processing system. It's the fastest way to assemble them.

MR. SUTCLIFFE: May I be heard, Your Honor, on some of these also?

THE COURT: I thought you said you didn't have anything to say.

MR. SUTCLIFFE: To her objection.

THE COURT: No, you didn't understand.

Sure, you may be heard.

MR. SUTCLIFFE: Thank you, Your Honor.

On page 5, on Court's Instruction No. 4, the defense would request that on line 11 --

THE COURT: Wait a minute. I don't have a page 5. I

see. This got all messed up, the way it was done. We'll fix it. I see where you are at.

MR. SUTCLIFFE: It starts, in the middle, "On the other hand," and then it has a sentence that starts out, "if after a careful," and then it ends with the word "guilty" at the bottom.

The defense would request that the "ifs," starting on line 9, "if after a careful and impartial consideration," those two paragraphs be switched so that it would start out "if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty."

"On the other hand, if after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty."

THE COURT: Okay. I decline to transpose the sequence of those two sentences.

MR. SUTCLIFFE: Could I ask why, Your Honor?

THE COURT: It's unnecessary to, and I don't even think it's in your interests. But it's totally unnecessary and it won't affect the substance of what the jury is told.

MR. SUTCLIFFE: The defendant believes that the last thing most people hear or see leaves an impression upon their mind, and the last thing that is going to be left for the jury

to read, the defendant would request that it be "find him not guilty" as opposed to "find him guilty."

THE COURT: Some people think that the first thing people see and hear is what they remember most. The psychologists are in dispute, but I'm not switching it.

Anything else?

MR. SUTCLIFFE: Yes, Your Honor. One second.

No, that's it, Your Honor. Thank you very much.

THE COURT: Okay. Now, on the stand-alone single page relating to the First Amendment, this works off of something that we'll turn to again later when we review the instructions submitted by Mr. Harris on behalf of Mr. Sutcliffe to which the government filed objections and Mr. Sutcliffe, through Mr. Harris, filed a response. We'll have to go through all of those for the record anyway.

I do believe that notwithstanding the government's objection to any instruction about the First Amendment, Mr. Sutcliffe is entitled to some instruction, and this is the one I propose to give.

Do you want to be heard, Ms. Duarte?

MS. DUARTE: No, Your Honor. I'll agree to this instruction.

THE COURT: Okay. Do you agree to it?

MR. SUTCLIFFE: No, Your Honor.

I would object that the First Amendment instruction

be modified to say that "The First Amendment to the United States Constitution provides" -- and strike out "in essence" -- "that the government may not abridge a citizen's right to speech or press."

MS. DUARTE: Speech or what?

MR. SUTCLIFFE: Or "of the "press."

THE COURT: Is that your only modification?

MR. SUTCLIFFE: No. I'm sure the Court would not agree, but I would like that the next line "Not all forms of written, printed or oral speech are protected by this provision, however," be stricken or modified to add that "unless the danger from the speech is imminent, specific, unequivocal, and unconditional," which is the constitutional standard under this country, I believe.

THE COURT: If you want the words "in essence" to be deleted, I don't have an objection to that. I'll delete them.

The substitution of "citizen's" for "person's," I don't object to it. It isn't what the constitution says and it isn't the law, because noncitizens have certain rights, too, if they are resident aliens. But if you want it, I'll give it. It's not complete, but it isn't wrong, either. So we'll substitute "citizen's" for "person's." We'll get rid of "in essence."

I'm not going to substitute "press" for "expression," and I'm not going to delete anything else because it's all a

correct statement of the law.

And your contention as to what the constitutional requirements are and what the standards are and how imminent the threat has to be are incorrect as a matter of law.

So I'll give that instruction as modified, but only as I agree to modify it.

MR. SUTCLIFFE: Would the Court agree that it's only incorrect in certain jurisdictions within this country, not all the jurisdictions?

In some jurisdictions, the test is imminent, specific, unequivocal, and unconditional.

THE COURT: I'm not going to debate what the law is in other jurisdictions, and I'm not going to -- let me finish. I'm not going to modify the instruction to incorporate provisions that don't apply in this circuit and that don't govern in this jurisdiction. That's all I'm going to do.

MR. SUTCLIFFE: But the Court does recognize that?

THE COURT: What am I, taking a test in law school?

MR. SUTCLIFFE: No, Your Honor.

THE COURT: I'm not going to respond to that, Mr. Sutcliffe. This is a correct statement of the law.

Now, let's turn next to the joint proposed jury instructions that were jointly proposed by your then counsel in January.

Now, the aiding and abetting instruction, which I

annotated and circulated, has been slightly revised in the model jury instructions. There is a later supplement in March of '02. You might want to note that for your office, Ms. Duarte.

MS. DUARTE: I did, Your Honor.

I wasn't aware of that.

THE COURT: And although it has no practical impact, I think, I'm just going to update this aiding and abetting instruction on the transmittal of the threats to reflect the current model instruction that the Ninth Circuit --

MS. DUARTE: That's fine, Your Honor.

I'm just not sure where you are looking at right now. I'm sorry.

THE COURT: I'm looking at the joint proposed jury instructions. No. 1 was an aiding and abetting instruction relating to threats to injure.

MS. DUARTE: Thank you. I'm sorry.

THE COURT: Did you not get a piece of paper that contained some writings on it?

MS. DUARTE: I got the modifications the Court made to the government's proposal which contains similar modifications.

THE COURT: But you should have gotten it as to the joint.

MS. DUARTE: Let me check. I did. It's last in my

packet. I'm sorry.

THE COURT: I'm going to make those changes to No. 1.

Do you want to be heard, Mr. Sutcliffe?

MR. SUTCLIFFE: Just so we are on the same page, Your Honor, are you referring to the January 8, 2003, filed joint proposed jury instructions --

THE COURT: Yes.

MR. SUTCLIFFE: -- that listed a trial of January 14th; correct?

THE COURT: Yes.

MR. SUTCLIFFE: And you are on page 4, I assume?

THE COURT: Yes, I am. But I handed it out also. There is a page 4 stand-alone with some writing on it.

MR. SUTCLIFFE: Right. Yes. I see that one you are referring to.

I'd like to be heard on that, Your Honor.

THE COURT: Go ahead.

MR. SUTCLIFFE: Starting on line 15, I would like this to read, "The government is not required to prove that the defendant intended to carry out the threat, but it must prove" -- excuse me, let me modify that. "The government is not required to prove that the defendant intended, but it must prove that the defendant had the specific intent to carry out the threat, or had the ability to do so, but it must prove that the defendant had the specific intent that the communication

would threaten," or words to that effect, Your Honor.

I see where you -- did you mark that line up right there, after "do so, but it must prove"?

THE COURT: You are looking at a different page than I am.

MS. DUARTE: I don't know where he's looking.

THE COURT: Listen carefully, Mr. Sutcliffe. I know this is a new experience, so I'll try to make it helpful to you.

Right now, what we're talking about are instructions that were jointly proposed. The one that you are talking about was separately proposed and objected to by you or your prior lawyer. And I'll turn to that in a few minutes.

MR. SUTCLIFFE: Okay.

THE COURT: The only one I'm talking about right now is "Joint Proposed Instruction No. 1."

MR. SUTCLIFFE: I'm on that page.

THE COURT: That's what it says at the top of the page. Do you see it?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: I intend to delete the references to "causing" because they are no longer in the model instruction. That's all I intend to change in that one.

MR. SUTCLIFFE: Which line is that, Your Honor, you are referring to?

THE COURT: It's on line 5. It's on line 7. It's on line 12.

Any objection to that?

MR. SUTCLIFFE: Only maybe that a supplemental be added to what constitutes -- is there -- maybe there is already. Is there a supplemental to the jury to inform them as to what is -- what is the definition of "knowingly and intentionally"?

THE COURT: Yes, there is. It's already been approved by you. It's in the standard ones that we already went through.

MR. SUTCLIFFE: Unfortunately, my previous lawyers did not --

THE COURT: I circulated it to you today. You said it was okay.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Anything else on this one?

MR. SUTCLIFFE: No, Your Honor.

THE COURT: Okay. Turning to Joint Proposed Instruction No. 2, if you get what was filed last January, it will help us all, Mr. Sutcliffe, on the Joint Instructions. Are you with me?

MR. SUTCLIFFE: I'm with you.

THE COURT: Joint Proposed 2, I'm going to give. No, I'm not because I already have it in the other set. It's

No. 4 from the other set, I think it is.

Joint Proposed No. 3, I'm not going to give because that's No. 10 in the other set. It's the same thing, but I had already assembled it on my system.

Turning to Joint Proposed No. 4, I am going to give that, relating to the elements of the crimes charged in Counts Five through Nine.

Do you want to be heard about that, Mr. Sutcliffe?

MR. SUTCLIFFE: Yes, Your Honor.

Give me a minute here to digest this.

This is fine, Your Honor.

THE COURT: Okay. Turning to Joint 5, defining "transfer," I am going to give that. It comes right out of the statute.

Turning to Joint 6, "false representation of a social security number," the elements of that, I am going to give that.

Turning to Joint 7 --

MR. SUTCLIFFE: Can I be heard on any of these, Your Honor?

THE COURT: Oh, yes. Sure.

MR. SUTCLIFFE: You are moving kind of quickly for me.

THE COURT: Which one do you want to be heard on?

MR. SUTCLIFFE: I'm trying to digest them now as we

are moving along here.

I would object to this. It's very vague as far as the wording on this page as to the "perpetrator" -- that appears to show a bias or a prejudice -- as opposed to the word "defendant," or whatever else it's trying to describe.

It almost appears that a crime has been committed and the "perp," which is a common police name, is inferred in the first, second, and third paragraphs, from 9 to 16.

THE COURT: Anything else?

MR. SUTCLIFFE: It doesn't mention anything about unlawful -- unlawful authority and it fails to state most of the elements of the crime.

THE COURT: Okay. I overrule your objections. I'm going to give No. 6.

Did you have some objection to No. 7?

MR. SUTCLIFFE: Yes. I would object to this quite a bit, Your Honor.

In interstate or foreign commerce, when it utilizes instrumentalities of interstate or foreign commerce, it does not set forth the true nature of the Internet and the elements that surround what the Internet consists of.

The Internet is comprised of more than just what is vaguely called "instrumentalities." It's a very complex system. It's a very in-depth system. And one can utilize the Internet and it can appear to be an interstate transfer, but,

in reality, it's not. This instruction is vague and overbroad and very misleading and it's prejudicial to the defense.

THE COURT: Okay. I'm going to overrule the objection to No. 7, but I should tell you now so things will be clear, that the government filed supplemental proposed instructions. It did so in September. I mentioned those this morning. They filed one instruction.

That instruction says, in a single sentence, the following: "The Internet is an instrumentality of interstate and foreign commerce."

I intend to give that instruction. It is a correct statement of the law. The cases that the government cited supporting that proposed supplemental instruction stand for the propositions for which they are cited. And I will give that instruction, once this material is all assembled in a coherent sequence, immediately after what currently is being referred to as Joint Proposed No. 7.

MR. SUTCLIFFE: Correct me if I'm wrong, Your Honor, one of the elements of the crimes to which the defendant is charged is that the threat was transmitted in interstate commerce; correct?

THE COURT: In or affecting.

MR. SUTCLIFFE: "Including of an instrumentality." Instrumentalities has nothing to do with "in or affecting." Instrumentalities is going to lead the broad inference to the

jury that a cable modem connected to the Internet must automatically mean that the transmission went in or is affecting interstate commerce, when it's common knowledge among computer people that, in the portable world, in the virtual world of the Internet, I can easily step from one state into another and make a communication which never leaves the state, though, to a layman, it would appear that I did; or to a real layman, just the mention of the instrumentality, a cable modem, makes an inference that it crossed interstate lines.

There is no way for the jury, as laypeople, to understand the technical difference. And by including "the instrumentalities" part in this, it's going to lead to confusion to the jury, Your Honor.

THE COURT: Okay. I overrule your objection to both 7 in the joint and 7A in the proposed supplemental, and I'll give both.

Okay. Continuing with the joint ones, then, No. 8, I will not give. It's already included in the Court's own set that I've circulated, to which both sides have agreed, as No. 15.

MS. DUARTE: Your Honor, if I may be heard on that?

THE COURT: Yes.

MS. DUARTE: It is, however, the approximate amount, which I also included in the second half of this instruction, starting at line 10. That is actually not included, that I

found, Your Honor, anywhere in the Court's --

THE COURT: You are right about that.

MS. DUARTE: -- and I would ask for that.

THE COURT: Yes. All right. Lines 10 through 15 do correctly reflect what the applicable law is. That's lines 10 through 15 on Joint Proposed Instruction No. 8, Mr. Sutcliffe, which has the page No. 11 at the bottom.

Do you see those?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: I'm going to give those. Do you want to be heard?

MR. SUTCLIFFE: I would just like to object to them on the record.

THE COURT: Okay. Your objection is noted.

But No. 9 I'm not going to give because it's in the other set as No. 17. No. 10 I'm not going to give because it's in the other set as No. 22. And No. 11 I'm not going to give because it's in the other set as 24.

Another way of putting it more accurately is, I am giving all of those, but not out of the joint instructions.

Those are my rulings on the Joint Proposed Jury Instructions. I've already given my rulings on the government's September 2003 Supplemental Proposed Jury Instructions that will be given.

Now I would like you both to turn to the document

filed last January entitled "Government's Proposed Jury Instructions."

The government proposed, at that time, in January, without defendant agreeing to them, four instructions. Let's go through those one by one.

To assist the parties, what I'm asking you to look at is the document which would say at the top, "Court's Instruction No..." blank, and immediately after that, "Government's Proposed Instruction No..." and I'm starting with No. 1. It happens to be about the first four counts.

Are both sides with me?

MR. SUTCLIFFE: Yes, Your Honor.

MS. DUARTE: Yes, Your Honor.

THE COURT: Okay. I intend to give that instruction. But, as the annotated changes that I've circulated for your review before I came out reflect, there'll be slight changes between lines 15 through 18.

To clarify what the elements are and avoid confusion, lines 15 through 18 will read, "The government is not required to prove that the defendant intended to carry out the threat, or had the ability to do so, but it must prove that the defendant intended the communication to threaten."

Do you want to be heard, Ms. Duarte?

MS. DUARTE: No, Your Honor. No objection to that.

THE COURT: Do you want to be heard, Mr. Sutcliffe?

MR. SUTCLIFFE: Yes, Your Honor.

I would like that line changed to, "The government is not required to prove that the defendant intended to carry out the threat, or had the ability to do so, but it must prove that the defendant had the specific intent that the communication would threaten."

THE COURT: Do you have a problem with that, Ms. Duarte?

MS. DUARTE: Could he say it one more time, Your Honor?

THE COURT: Please repeat it, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

Right after where you've marked in, "but it must prove that the defendant," and then I would insert the words "had the specific intent that" in place of the word "intended," and then continuing on with "the communication," and then I would add the word "would" and then "threaten."

THE COURT: Ms. Duarte?

MS. DUARTE: I don't have an objection to that, Your Honor.

THE COURT: I think it's a correct statement of law and I'll do it.

MR. SUTCLIFFE: Thank you. And --

THE COURT: Hold on a minute.

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: Anything else on that one?

MR. SUTCLIFFE: No, Your Honor. Thank you.

THE COURT: That instruction, as we've just agreed would be modified, will be given.

Turning to Government's Proposed Instruction No. 2, I'm going to add the words "or 'expression.'" to the end of line 10.

Do you want to be heard, Ms. Duarte?

MS. DUARTE: Your Honor, I don't have any objection to the Court's adding that, but I would propose one thing.

Now that the Court has added its stand-alone instruction on the First Amendment, I think it might read more smoothly, assuming the Court is intending to give the stand-alone on the First Amendment, followed immediately by the "true threats" definition.

THE COURT: I'm not sure what the sequence is yet.

MS. DUARTE: Okay. I think it would just read better if that last sentence of the Government's Proposed No. 2, as modified by the Court, on the "true threats," were actually raised up to the top and came first. It just seems to read better because --

THE COURT: I think that's true. I think the jury will be able to follow it better.

MS. DUARTE: So I would ask, with that modification, that that be given.

THE COURT: I'll do that.

MS. DUARTE: Thank you.

THE COURT: Anything else, Ms. Duarte?

MS. DUARTE: No, Your Honor. Thank you.

THE COURT: Anything from you, Mr. Sutcliffe, on Government's Proposed No. 2?

MR. SUTCLIFFE: Yes, Your Honor.

I would again bring the Court's attention to the standard that's being applied here is a -- one which would be applicable to the President of the United States or a statutorily congressional created entity, such as the -- and I find it really poetic and ironic that the Orozco-Santillan, 903 F.2d 1262, case is incorporated in there, when that case specifically deals with the words which were made to the officer, under Title 18, Section 115, "I'm going to kick your ass."

We've seen that statement bantered around. It was made to the defendant at his website and posted thereon. But I've yet, to date, seen anybody from the government approach me -- even though I specifically requested that the same standard be applied to Joe Shmoe, the government has failed to ever come to me and say, "You know what? Under the equal protection due process clause of the Constitution, we're going to go get Joe Shmoe for you because one day, you know, you might win this case and he's probably still out there wanting

to kick your ass."

So I would object to this subjective "true threat" type national interest standard that's being applied to me here.

THE COURT: Okay. Your objection is noted and overruled.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Let's turn to Government's Proposed Instruction No. 3. I've made the same changes to that "aiding and abetting" instruction.

This one applies to the posting of the social security numbers, Counts Five through Nine. The changes I'm going to make are the same as to the other "aiding and abetting" instruction that we discussed previously relating to the threats.

Anybody want to be heard?

MS. DUARTE: No, Your Honor.

MR. SUTCLIFFE: Yes, Your Honor.

Specifically, on line 4, I would like, after the word "persons," the words "with a specific intent to defraud" inserted there.

On line 9, I would like the words "these elements" inserted after the word "prove."

Line 7, I would like -- after the word "of," I would like "causing the act or acts to be done," I would like that to

be stricken.

THE COURT: It is going to be stricken.

MR. SUTCLIFFE: Okay. On line 8, after the words "abetting in their commission," I would like that to be stricken.

Also, I would object to lines -- the word "transferring" on line 14 without the element to be included "without lawful authority." Because under 1028(a)(7), every time they use the word "transfers," there is always a comma, and it says "without lawful authority."

I would like -- anytime that the word "transfers" is used in any of these instructions, I would like the words -- a comma followed by "without lawful authority" because, as I've already raised to the Court, if I lawfully own something, I could transfer it and do whatever I want with it, if it's mine. If I didn't steal it and I lawfully own it, I can do whatever I want with it.

And so there is an inference, as I've raised, that's been brought up by Global Crossing, that I somehow stole this information. And the Court -- the jury has heard it over and over and over.

And to include the word "transfer" without the comma, like in the elements of 1028(a)(7), "without lawful authority," I believe would cause a bias or a prejudice to the defense.

Thank you.

THE COURT: Your position on "without lawful authority" being added, Ms. Duarte?

MS. DUARTE: I didn't quite get where it was going to be added, Your Honor.

THE COURT: After the word "transferring" that appears on line 14.

MS. DUARTE: That's fine, Your Honor.

MR. SUTCLIFFE: I'd also like the record to reflect that I also said that any instructions that are given to this jury related to 1028 and includes the word "transfers," I would like the following words, "from the elements of the crime, without lawful authority," to follow the word "transfers" at some point.

MS. DUARTE: Your Honor, to the extent that he has objections to other instructions, we should take those one by one as the Court has been doing.

THE COURT: I'll add "without lawful authority" on line 14. Okay.

Now, on Government's Proposed Instruction No. 4, that is already part of the Court's standard instruction, No. 18, so it will be given, but that's already been incorporated into what I discussed with you.

So that covers all of the government's proposed jury instructions. There are none others that the government is proposing; correct, Ms. Duarte?

MS. DUARTE: That's correct, Your Honor.

THE COURT: Now let's turn to Mr. Sutcliffe's.

By the way, just so I can clear out some of the documents that are up here with me, the government should know, although it's no longer an issue in this case and there'll be no need for any jury instruction at all, that there is now a model criminal jury instruction on advice of counsel.

MS. DUARTE: In the March 2002 revised?

THE COURT: In the December 2002.

MS. DUARTE: There is a December 2002?

THE COURT: Yes. You have to go online. You should tell this to your office --

MS. DUARTE: I will.

THE COURT: -- especially if they are going to be litigating in my court.

The Ninth Circuit jury instructions are frequently updated. And when they are, they are online and notices go out to subscribers and to the lawyers.

5.9 is a new standard instruction, and your office should know about it.

MS. DUARTE: Thank you, Your Honor.

THE COURT: It's hard to keep up, I know. I work on these instructions. That's why I was out of town last week, but you should let them know about that.

MS. DUARTE: I'll let them know, Your Honor. Thank

you.

THE COURT: Now, Mr. Sutcliffe proposed some instructions through Mr. Harris to which the government objected. Let's go over those.

I'm looking now at a document entitled "Defendant Steven William Sutcliffe's Proposed Jury Instructions Annotated Set." It was filed on or about January 8, 2003.

The government objected to that on or about January 10th. Mr. Harris filed a response to that objection on or about January 13th. Those are the ones we're looking at now.

And then I'll rule on the ones that Mr. Sutcliffe gave me this morning.

"Defendant Sutcliffe's Proposed Instruction No. 1," I'm not going to give.

MR. SUTCLIFFE: Your Honor, I don't have a copy of these that we're working on here. Excuse me. I found a copy.

THE COURT: I'm not going to give Instruction No. 1 You are deemed to object to my rulings if I decline to give them.

The record will reflect, and does reflect, that you proposed these instructions, and the instructions, as I've already gone over them with both sides, correctly state what is and is not a true threat, and that a true threat is a required element. Watts v. United States is good law, but it is not the law applicable to this precise issue and itself was applied in

the Planned Parenthood case, which specifically deals with the question of true threats. So I'm not giving No. 1.

MR. SUTCLIFFE: May I object, then, and state why I'm objecting?

THE COURT: Yes, you can state why.

MR. SUTCLIFFE: I'm objecting because what is a "true threat" must be distinguished from what is constitutionally protected speech because, as was quoted in the Kelner case, the way you distinguish between what is, quote/unquote, a "true threat," which is the standard which is applied to the government's national -- substantially national interest, which is to protect, such as the President and members of Congress and agents of the Marshal's Office -- which they have a right to do because they belong to the government. That's their property. They have the right to protect it and apply any standard they wish to protect what is theirs.

However, speech belongs to the people, Your Honor, and it must be distinguished.

What is constitutionally protected speech is speech that can be fraught with danger, that can be anything so long as the danger that is perceived is not imminent, it's not specific. It must be specific. It must be imminent. It must be unconditional. And it must be unequivocal.

If it does not meet those four criteria, as the Kelner case clearly stated, it is constitutionally protected

speech.

Just as Your Honor has qualified, after he said he would come off the bench and punch me in the head and kick me in the shins, then you qualified it as, "This was a figure of speech," I could apply a subjective true threat test to that speech, too.

The fact that I put a qualifier in the front of my speech, on my website, the Court doesn't seem to give that any credence at all. The fact that I was 3,000 miles away, and the victims knew I was 3,000 miles away, the Court has refused to acknowledge that fact.

That's hardly specific that the -- the so-called threats were definitely conditional, you know. If you stay away from me, I'm staying away from you.

They were not -- they were not even close to being what is called equivocal. They were unequivocal -- excuse me. They were equivocal, not unequivocal. "I'm armed."

You bet I'm armed, with tons of information.

If I say, "I'm armed with a knife and I'm coming to hunt you down," yeah, that's a threat. But I never said that.

And the true threat test is only for national government interests. I hardly see how this woman, Tracy, or any of these other people, are substantially national interests which should be protected by the entire resources of the federal government, for words that I said 3,000 miles away from

these so-called victims, who had a real big ax to grind.

That's all I have to say on that matter.

THE COURT: Okay. I reject your analysis of the law and note that the Planned Parenthood case involved abortion clinics, which were not government officers, and the standard was applied in that case.

I think you are misstating what the applicable law is. In any event, I have made my ruling.

I'm not going to give Defendant Sutcliffe's Proposed Instruction No. 2, but I am going to give the First Amendment instruction, as slightly modified this morning here in court.

Do you want to be heard about that?

MR. SUTCLIFFE: We are on page 3 of the proposed instructions?

THE COURT: Right.

MR. SUTCLIFFE: And you are speaking of lines 8 through 10?

THE COURT: I'm not going to give any part of that instruction, but I've already said I am going to give the First Amendment instruction that I've circulated.

MR. SUTCLIFFE: Are you asking me to comment on Instruction No. 2?

THE COURT: I'm not asking you to. I'm giving you the right to object to my ruling.

MR. SUTCLIFFE: I object.

THE COURT: Okay. You are deemed to object, anybody would be, if you submit something that the Court declines to give, but you can say it anyway. I don't mind.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Sutcliffe's Proposed Instruction No. 3, I will not give.

An instruction about context being something that the jury must take into account will be incorporated into the true threats and 875 instructions. And the defendant will be permitted to argue that the specific intent to have the communication threaten was absent because what the communication said was a figure of speech or hyperbole, or anything else that's a fair inference from the evidence, he will be permitted to argue, but this is not a correct statement of the law, and certainly is not applicable to this case. So I'm not going to give No. 3.

I know you object. Is there anything else you want to add, Mr. Sutcliffe?

MR. SUTCLIFFE: No, Your Honor.

THE COURT: Defendant Sutcliffe's Proposed Instruction No. 4 is an incorrect statement of the law. I will not give it. Civil Code Section 47 does not preempt federal law, in general. It doesn't preempt federal criminal law, in particular. And it doesn't preempt or prevent criminal prosecutions, even under state law. So it's a totally

incorrect statement of the law, and I'm not going to give Defendant Sutcliffe's Proposed Instruction No. 4.

Do you want to do anything -- do you want to say anything more than "I object" as to that ruling, Mr. Sutcliffe?

MR. SUTCLIFFE: No. Just I object.

THE COURT: Okay. No. 5, I'm going to modify. And I've circulated a proposed modification. I will give part of Defendant Sutcliffe's Proposed Instruction No. 5.

In case my writing isn't clear, what I propose to instruct the jury is as follows: "The mere fact that a communication actually induces or coerces action in the person to whom it is directed does not remove it from First Amendment protection, so long as the speaker does not threaten that he, or someone acting in concert with him, will resort to violence if the warning is not heeded." That's what I am contemplating giving.

Do you want to be heard, Ms. Duarte?

MS. DUARTE: I don't have any objection to that, Your Honor.

THE COURT: Do you want to be heard, Mr. Sutcliffe?

MR. SUTCLIFFE: Yes, Your Honor.

While I do appreciate Your Honor including some of my -- one of my instructions, I just want the record to reflect that I object to the statements being taken out of context from the law from which they came.

THE COURT: Okay. Your objection is noted.

No. 6, I'm not going to give. It's inapplicable, incomplete, and could be very misleading.

Do you want to be heard further, Mr. Sutcliffe?

MR. SUTCLIFFE: Just that it was produced by incompetent counsel, Your Honor.

THE COURT: Okay. Those are my rulings on the proposed instructions that were submitted on behalf of Mr. Sutcliffe last January.

Now, this morning, Mr. Sutcliffe submitted two additional proposed instructions, which have now been filed, with a cover sheet that says "Pro Se Defendant Supplemental Instructions," and I'm not going to give either of those.

The first of those -- I'm not sure where it comes from, although there is a reference to Devon and Blackmore. It's specific intent and that I have already covered.

And the specific intent requirement, the jury has been, or will at least be, under the instructions that I've already ruled on, instructed about.

So this is a different and discouraged distinction and would be extremely confusing and unnecessary. So I decline to give it.

Would you like to be heard, Mr. Sutcliffe?

MR. SUTCLIFFE: Only to note my objection, Your Honor.

THE COURT: Okay. Then the second one that Mr. Sutcliffe filed this morning is "intent defined fraud," and I decline to give that. The intent to deceive is built into the instructions. I forget which number it is, but they'll be in the set that each of you will get.

As to the elements of the offenses involving alleged transmission of the social security information with the intent -- aiding and abetting with the intent to misrepresent the true owners or possessors or persons to whom those numbers were assigned, the word "deceive" has clear meaning and it doesn't require, and even in this proposed instruction, it doesn't receive further definition.

This is not a case of a fraud allegation, such as in mail fraud, where additional language is necessary. So I decline to give it.

Do you want to be heard, Mr. Sutcliffe?

MR. SUTCLIFFE: Just at the end of Your Honor's rulings. Thank you.

THE COURT: I'm finished now. That's the final ruling.

MR. SUTCLIFFE: Can we go back to the adding of the words "without lawful authority" to every instance where the government alleges there is some transfer, in any of the jury instructions, as per the elements of 1028(a)(7) of Title 18?

THE COURT: I, notwithstanding --

MR. SUTCLIFFE: I'm looking at Title 18, 1028. It starts off with the word "fraud."

THE COURT: Okay. I know what you are driving at. I think I can save you some effort.

The government's proposed -- the Joint Proposed Instruction No. 4.

MS. DUARTE: Joint Proposed No. 4, Your Honor?

THE COURT: Yes. It already has "without lawful authority." It's on line 16. So it's already in where it's supposed to be, Mr. Sutcliffe. I'm going to add it to the other aiding and abetting.

MS. DUARTE: Your Honor, I'm sorry. Which number was the aiding and abetting that the Court is looking at that you are adding it to?

THE COURT: No. I already ruled on that. You didn't object.

MS. DUARTE: All right.

THE COURT: I think that's the only one where there was a parallel reference that required "without unlawful authority" to be included.

Don't you agree, Ms. Duarte?

MS. DUARTE: I do, Your Honor.

THE COURT: Don't you agree, Mr. Sutcliffe?

MR. SUTCLIFFE: One minute, Your Honor.

Just so I understand, for clarification, my request

that any instruction given to the jury related to 1028 that uses the word "transfer," I request that the words "without lawful authority" is only being applied to the joint proposed and not any or all of the government's instructions?

THE COURT: No. Where the element of transfer is an element in the specific instruction -- and it is in two places -- the reference to it being "unlawful" or "without authorization" -- I should say "without lawful authority" will be made. That's already been made on the Joint Proposed Instruction No. 4, and I agreed to make it on one other one. I forget which one, but it will be made.

So that's my ruling. Anything else?

MS. DUARTE: Nothing from the government, Your Honor.

THE COURT: Anything else, Mr. Sutcliffe?

MR. SUTCLIFFE: Nothing from the defense, Your Honor.

THE COURT: Okay. We'll see you on Tuesday. Have a good holiday.

I'll have, in your respective places, a cleaned-up, complete, I hope, correctly paginated and numbered series of proposed instructions before argument. I'll give you a chance to be heard about those one more time.

We're adjourned.

(Adjournment at 1:50 p.m., to resume on Tuesday, December 2, 2003, at 8:00 a.m.)

C E R T I F I C A T E

I certify that the foregoing is a true and correct transcript from the stenographic record of the jury trial proceedings in the foregoing matter.

Karen R. Pinn, RPR, CSR 5574
Court Reporter

October 11, 2004

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE A. HOWARD MATZ, JUDGE PRESIDING

UNITED STATES OF AMERICA, Plaintiff, vs. STEVEN WILLIAM SUTCLIFFE, Defendant.	Case No. CR 02-350(A)-AHM

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REPORTER'S TRANSCRIPT OF JURY TRIAL PROCEEDINGS

Los Angeles, California

Tuesday, December 2, 2003

DAY 10

(Pages 1728-1920)

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Court Reporter

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I N D E X

GOVERNMENT'S WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
CUGNO, Jeffrey				
By Ms. Duarte				
By Mr. Sutcliffe		1769(resumed)		
DEFENSE WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
CAMPBELL, Robert				
By Mr. Sutcliffe	1760		1767	
By Ms. Duarte		1766		
McAFEE, Leslie				
By Mr. Sutcliffe	1820(resumed)			
By Ms. Duarte		1851		

DEFENDANT'S EXHIBITS	FOR IDENTIFICATION	RECEIVED
239		1779
240	1820	

LOS ANGELES, CALIFORNIA;

TUESDAY, DECEMBER 2, 2003; 8:25 A.M.

(Jury out.)

THE CLERK: Calling item No. 1, CR 02-350(A)-AHM, U.S.A. v. Steven William Sutcliffe.

Counsel, state your appearances, please.

MS. DUARTE: Good morning, Your Honor.

Elena Duarte with Frank Harrill on behalf of the United States.

THE COURT: Good morning.

MR. SUTCLIFFE: Good morning, Your Honor.

Steven William Sutcliffe, accused, present.

THE COURT: Good morning.

MR. REED: David Reed, advisory counsel.

THE COURT: Good morning to you.

Okay. Before we bring the jurors out -- and I was told a few minutes ago that we are still awaiting the arrival of at least one of those jurors -- there are a couple of things, although no one has asked me to come out, that I want to take up with the parties.

Let's start with jury instructions. I made available to you early this morning a complete set of all the instructions that I agreed to deliver containing the modifications that I agreed to make and it is 36 pages, although there are some pages that are knowingly omitted, and

the second page of the instruction specifies which instructions are not included.

I have some questions about some of the instructions, myself; one of them, in particular.

So before I hear from the parties, I'm directing you to turn to page 24, Instruction 23A. Tell me when you have it before you, please.

MR. SUTCLIFFE: Yes, Your Honor.

MS. DUARTE: I have it.

THE COURT: I don't see any aiding and abetting allegation in the indictment on the first four counts. It's a straightforward charge of willfully transmitting the threats.

Why do we need and what would be the basis for including an aiding and abetting instruction as to that?

MS. DUARTE: Your Honor, I usually include aiding and abetting even if it's not in the indictment. In this case, I believe the reason would be if, for some reason, someone on the jury would think that the defendant himself didn't actually transmit the threats, but they were transmitted by virtue of their being on the Internet, passing from computer to computer, host to host, in and of itself the fact that he didn't transmit them physically, but actually, by putting them on there, making them available and all that, aided and abetted the actual transmission, that would kind of catch that argument.

THE COURT: I knew that's what you were going to say.

What I really should have asked is, what's the authority for including the instruction? I think there is a right that you have as an advocate for your client. That's something I remember from past practice. But what is the basis, legally? Can you cite me any authority for including an aiding and abetting instruction even though the indictment doesn't specifically allege aiding and abetting?

MS. DUARTE: Not off the top of my head. I know that there are cases that say that aiding and abetting of Section 2 is a component of every indictment whether or not it's explicitly there.

THE COURT: I think you are right, but here is what I'm going to direct you to do. I'm not going to delete it right now because I think it's a correct way to proceed, and there hasn't even been an objection by the defendant.

However, call up to your office and have them prepare a bench memo or a trial memo, a two-sentence memo, that can be filed, so at least the record will be complete, setting forth whatever authority has been recognized or used to incorporate that kind of aiding and abetting allegation, even in the absence of a specific reference in the indictment.

I'm confident it's there because I remember from decades ago that it used to be commonly done, but I want to make sure, in fairness to the defendant.

That's the first thing I want to raise about the ones

that I've circulated.

Next, do you have any objections to the ones I've circulated?

MS. DUARTE: No, Your Honor.

THE COURT: Okay. Do you, Mr. Sutcliffe?

I've given you many opportunities to object, but these are the rulings I've made. Don't repeat any things that you said at prior occasions, such as last Wednesday.

In terms of being consistent with the rulings I've made at the previous occasion -- I think it was last Wednesday -- do you agree that these do represent what I previously ruled on? I'll get to the ones you circulated this morning in a minute.

MR. SUTCLIFFE: Yes, I do, Your Honor.

THE COURT: As to the ones you circulated this morning, do you have a copy, Ms. Duarte?

MS. DUARTE: Yes, Your Honor.

THE COURT: When I say "circulated," I was handed three instructions, which are somewhat overlapping, and all of those instructions apply to Counts One through Four. They are numbered pages 1 through 3.

So, to save time, I'll state my take on the propriety of these proposed instructions.

Turning to the one that is numbered page 1, at the bottom, I don't think that that instruction is necessary, and

it's slightly different than the guidance that the Ninth Circuit gave in the Planned Parenthood case. In any event, instruction 23C, currently on page 26 of the set that I've circulated to the parties this morning, is a correct statement of what a true threat is, and it sets forth part of what Mr. Sutcliffe's proposed instruction 1 sets forth; namely, the reasonable objective person test. So I don't think that I should give No. 1.

Would you like to be heard, Mr. Sutcliffe?

MR. SUTCLIFFE: Yes, Your Honor. Thank you.

Your Honor, I think what we have here is -- the issue is that the Court and other parties are trying to define what is "true."

And I'm sure Your Honor is wise enough to know that that's like trying to define "common." There is nothing so uncommon as common sense.

The issue here is a "threat," not what's "true." That's for the jury to decide.

The case law, which goes back for almost a hundred years, nobody has been able to define -- the Supreme Court, to my knowledge, has never defined a "threat."

This is the standing case law for the Ninth Circuit, Your Honor: The Kelner case, the Roy -- this is what the instruction --

THE COURT: Kelner is Second Circuit. I've looked at

these cases. They are old cases and they are not cases that define "threat" in the careful manner, in the more recent manner, than the Ninth Circuit did in 1999.

But I can't understand -- I want to make sure I do understand. If you look at 23C in the set that I've circulated, what is your real objection? Are you simply proposing that the word "true" be deleted, on line 3 and on line 4?

MR. SUTCLIFFE: No. I object to the whole thing. It's full of adjectives, Your Honor. It's very confusing. It's like the word "common." It's reasonable person, true threat.

It goes to -- it doesn't really define who gets to define what the threat is. It says, "A statement is a true threat where a reasonable person would foresee that the listener," so that's the speaker test; is that correct? It's not the listener test? Because I know that some circuits define it as to what the "reasonable listener" would interpret and the other circuits have the "reasonable speaker."

Once we start splitting hairs, using adjectives, as I tried to demonstrate with Agent Cugno, when he first took the stand, you get lost on a tangent. You lose sight of the fact as to what is a threat.

I mean, you could say, is it a cute threat? a funny threat? a false threat? a happy threat? I mean, it never ends.

THE COURT: Okay. Well, I don't accept that reasoning. It's not correct reasoning or persuasive reasoning. I'm not going to change Instruction 23C on that basis, as you know from my previous rulings.

Even the Lovell case that you cite from the Ninth Circuit, in 1996, doesn't require the change, and the language makes it clear that threats are protected by the First Amendment and uses the phrase "true threat" and says that we have set forth an objective test. So some of your premises are just simply unfounded, Mr. Sutcliffe.

And the case you cite says, "And, thus, falls outside the protection of the First Amendment: 'Whether a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of intent to harm or assault.'" And that's consistent with 23C.

MR. SUTCLIFFE: Which page are you on, Your Honor?

THE COURT: That's from Lovell. It's page 372.

So I don't want to have a lengthy debate about this. I've looked into the appropriate definition of a "threat" many times, and the authorities you've cited don't require a change in instruction 23C.

But I think you have a right to have them separately addressed, so let me turn to the one on page 2. Page 2 is a series of factors that you want me to instruct the jurors to

consider.

And 23C, as I have proposed it, specifically says "Alleged threats should be considered in light of their entire factual context, including the surrounding events and the reaction of listeners."

It is unnecessary, and I think at risk of being very, very skewed and incomplete, to specify some specific threats to the exclusion of others.

The seven that you've mentioned may be perfectly legitimate factors a jury can consider, but they needn't be directed to consider those and have those singled out to the exclusion of others.

You will be entitled, Mr. Sutcliffe, when you deliver your closing argument, to argue these things. You can, if you find it helpful to yourself, have this list, or checklist, available to you to go down. And as long as you do it linked to the evidence or to reasonable inferences from the evidence, you can argue all of these points because 23C, as I've proposed it, would entitle you to do that, because the jury will be instructed to consider the threats in light of their entire context.

So if you want to ask them to consider any of these -- or all of these seven factors, you'll be entitled to do so. But you are not entitled to have an instruction that singles those out to the exclusion of others. So I'm not going

to give the instruction that's on page 2.

As to the one on page 3 -- this maybe harkens back to what you were referring to a few minutes ago when you used the phrase "objective speaker test." 23C -- I mean, the instruction on page 3 is covered by 23C, and parts of it are almost verbatim included in 23C. So it's unnecessary to give it, and I decline to do so.

Those are my final rulings on the jury instructions.

I would like now to turn to a document that is entitled "Affidavit," which the clerk gave to me earlier this morning, in which I Xeroxed and which will be filed so the record is complete. Mr. Sutcliffe will have the benefit of that in the event there are further proceedings.

I really am not sure what you are asking for here and why you think you have had your constitutional rights, under the Brady doctrine, violated. So would you like to explain what it is that this affidavit is addressing, Mr. Sutcliffe?

MR. SUTCLIFFE: Yes, Your Honor. Thank you.

Your Honor, when the government chooses to prosecute a man, the right of that man to meet the charges against him by introducing documents that are relevant to his defense cannot be subject to the control of the government. Due process requires that I have a right to meet, head-on, any charges against me.

I have asked the government explicitly, in written

correspondence, for all exculpatory material, as well as Brady material. We have already seen the fact that they have withheld Brady material by the e-mails that were sent to the FBI from Mrs. Greenwood. Within there are, lost to the defense in this trial forever, people who I could have issued compulsory process to to subpoena them to impeach Mrs. Greenwood. That's now gone forever.

In the instant case, what discovery has been turned over to defendant as far as Bates stamped, I have gone through with a fine-tooth comb, up and down and sideways, every hour, in my cell, looking for any reference to a subpoena issued from February 5th, which is what has been testified to, that the agent in charge, Mr. Cugno, was sent an e-mail from Mrs. Greenwood from a "gary_winnick2002@yahoo.com".

This e-mail -- he has testified, in New Hampshire and in affidavits, that this is the e-mail he tracked me to in New Hampshire.

A subpoena was then issued on February 8th to AT&T for the IP address ending in 206. He then was notified by AT&T this is a New Hampshire customer at this address. He then -- that's how he got me. Okay?

I don't believe he issued a subpoena to "gary_winnick2002@yahoo.com" between the dates of February 5th and February 8th, when he issued the second subpoena.

The only discovery I could find, in 10,000 pieces of

paper, is an e-mail -- excuse me, a subpoena to Yahoo! for that e-mail address, but not until March, I believe, 7th or 8th of 2002. And then he didn't get a response back from them until, I believe, the 20th of March or shortly around that date.

I want to know how he got that IP address. I can't find -- why would he -- he has no need to subpoena another one.

THE COURT: I think I understand what you are stating now, but why is that Brady material -- how would that evidence, that's either actually or potentially exculpatory, affect the sentencing in this case, if we ever get to that stage?

MR. SUTCLIFFE: Your Honor, the subpoena is material to my preparation and presentation of my case, and I believe the documents provide exculpatory evidence.

This evidence would significantly impeach this witness and show that he's not truthful and he can't be trusted. This is not the only lie I intend to expose, if this is indeed a lie.

THE COURT: Don't go into areas where you don't want to "tip your hand."

Now that we have heard Mr. Sutcliffe explain what this affidavit is attempting to establish, do you want to respond?

MS. DUARTE: I'll respond, Your Honor.

First of all, I don't think it's anywhere near Brady even if it wasn't turned over.

Second of all, if he's looking for a 302, I don't turn over grand jury subpoenas. So he is correct, he does not have a grand jury subpoena. If he is looking for a 302 that speaks to the issuance of that subpoena, I've located one in a binder that Special Agent Cugno prepared. I would be happy to show it to him. Unfortunately, I don't have a Bates stamped copy. I received this this morning. I didn't have time to look through all of my Bates stamps. I'm sure I turned it over. If he wants to see it now, he can see it now.

THE COURT: "See it," meaning the 302?

MS. DUARTE: A single page 302.

THE COURT: Hand the 302 to Mr. Reed. I'm not sure that that addresses Mr. Sutcliffe's objective.

But I find, based upon what has been explained and stated in court and upon my, I think, intimate familiarity with the issues and the facts in this case that have been presented thus far, that the determination as to how and when the FBI agent tracked down the then existing location of the computer to which was assigned the IP address ending in the digits "206" is not within the doctrine of Brady that would establish any basis whatsoever to question the propriety of the prosecution thus far or the compliance of the prosecution with its duties under the Brady doctrine.

So I just don't think that there is any relevance -- I don't think there is any relevance at all, but it certainly

doesn't fall within the Brady doctrine to establish some kind of governmental misconduct.

It is not required that the government turn over subpoenas that grand juries issue prior to the return of any indictment. The dates reflected in the affidavit precede the return of the indictment in this case, the initial indictment, but -- I think that there is nothing further that I need to do.

The specific affidavit, for the record, states that "The accused requests" -- this is the concluding sentence. "The accused requests and respectfully demands the government be ordered to provide a copy of this subpoena issued on or after February 5, 2002, and prior to February 9, 2002."

I don't think that there is a legal basis that has been established that tells me to order that the subpoena be issued -- now, what does the 302 say? -- that the subpoena be produced, I should say. Pardon me.

MS. DUARTE: The 302 says, "A grand jury subpoena and 2703F letter" -- that's a records preservation letter -- "were issued and transmitted by facsimile to Yahoo! on 2-5-2002, requiring the preservation of evidence and the production of subscriber information for the electronic e-mail address 'gary_winnick2002@yahoo.com'. SA Jeffrey Raymond Cugno received a facsimile dated 2-7-2002 responding to the subpoena sent by Linda Isley, a Yahoo! compliance paralegal," followed by an address and phone number. "The documents provided by

Isley contain the following information: Registration IP address: 24.61.143.206. Full name: Mr. Gary Winnick. City: Beverly Hills: State, territory, or province: California. Country: U.S. ZIP/postal code: 90210. Account created (reg): Tuesday, February 5, 07:31:53, 2002. Account status: Active. A copy of the Yahoo! facsimile 2703F letter and grand jury subpoena will be maintained in the 1A section of the file.

The date of transcription on the 302 is 2-7-2002. And directing the Court's attention to --

THE COURT: Who prepared the 302? Cugno?

MS. DUARTE: Yes, Special Agent Cugno.

THE COURT: Okay.

MS. DUARTE: I believe it's Exhibit 34, Your Honor, which contains -- no, my mistake. It's right around there. It's Exhibit 33, Your Honor, which I believe contains precisely -- Government's Exhibit 33 -- precisely the information that is spoken to by that 302.

THE COURT: What is Exhibit 33? It says "Yahoo! Account Management Tool." It's in evidence. What is it?

MS. DUARTE: Exhibit 33 is records provided by Yahoo! for the account "gary_winnick2002". And those contain the information that's set out in that 302 from the registration IP address through and including all the other account information.

THE COURT: And I see that it contains the starting date of February 5th, Tuesday, February 5th, account created at the bottom of the first page; is that correct?

MS. DUARTE: That's correct, Your Honor.

THE COURT: Okay. I think the record is plenty complete on this, so that's my ruling on this.

Now, I'm directing the clerk, and I think he's already preparing to do so, to file a minute order of this morning's proceedings so that the proposed instructions that Mr. Sutcliffe handed up to the Court earlier this morning will be filed and the record will be complete, and do the same with the affidavit. I'm handing them to the clerk.

Now, this morning, where are we starting? Who will be the first witness?

MR. SUTCLIFFE: Your Honor, just a couple of issues about that. I was informed last week that -- I've been unable to get ahold of Mr. Winnick -- he's gone, so he's out on my list -- as well as Ben Mascardo. I've also been told that his address is no longer valid and I've been unable to locate him.

THE COURT: In other words, neither of those subpoenas were served?

MR. SUTCLIFFE: Yes, Your Honor, that's my knowledge.

I'm really discouraged, to say the least, that Mr. Winnick is not going to be present at my trial. He was a key witness I needed for my defense, Your Honor.

As far as -- there are a couple of other issues I wanted to deal with before I get to my witnesses, if the Court would indulge me.

I would like to make a motion in limine at this point regarding Tracy Hall.

THE COURT: Regarding who? Tracy Hall?

MR. SUTCLIFFE: Yes.

I have Sheriff Campbell. We were able to subpoena him, and he is present for this morning. However, there are some things I'd like to talk about in limine as to what I'm going to be able to introduce from this witness regarding Tracy Hall aka Fraser.

I believe that the witness opened up the door on her original testimony as to all of the underlying facts of her felony conviction. When she attempted to explain away this conviction or to minimize the guilt, under Federal Rules of Evidence 609, she tried to downplay it: "Oh, you know, I just pled not guilty" -- "no contest," excuse me, "no contest." It wasn't a guilty.

Also --

THE COURT: I don't think that correctly states what she actually said. She did say that she pled no contest, and I recall her saying that the no contest plea was an admission of guilt, having committed the act. It simply was different from a guilty conviction or judgment because it couldn't be used in

civil proceedings, but she had committed the crime, or words to that effect.

In any event, what is it exactly that you wanted some guidance on in your examination of Campbell?

Is Mr. Campbell in the courtroom?

MR. REED: Yes, he is, Your Honor.

THE COURT: No. You should leave the courtroom. Please don't remain present for this.

(Detective Robert Campbell left the courtroom.)

THE COURT: Go ahead, Mr. Sutcliffe.

MR. SUTCLIFFE: Your Honor, the defense would like to bring in Mrs. Fraser's previous conviction for grand theft and evidence tampering discovered in the instant case that she was convicted of by the arresting officer, Sheriff Robert Campbell, for witness tampering. It goes to the truthfulness and veracity of this witness as to the testimony that she gave, as well as her claim of reasonable apprehension of fear, as it goes to that witness.

Also, the defense would like to bring an introduction of her admission of -- and I'm going to quote -- "significant substance abuse" in the probation report of the underlying conviction for witness tampering that Sheriff Robert Campbell arrested her for.

THE COURT: What was that about a probation report?

MR. SUTCLIFFE: In her probation report, she listed

an admission of "significant substance abuse."

THE COURT: Substance abuse, okay.

MR. SUTCLIFFE: Yes. During the time of -- in the year 2002. This is directly in the time frame that all of this was going on.

And I find it significant that it lists "significant substance abuse." And it's in that probation report, in her underlying conviction, for witness tampering.

The defense would like to bring that in as it goes to her claim of reasonable apprehension of fear, as well as her truthfulness and veracity.

MS. DUARTE: Your Honor, could I have a page number on that probation report? It's not Bates stamped. I don't recall that reference.

MR. SUTCLIFFE: Hang on one second. It's not Bates stamped.

MS. DUARTE: There are pages on the --

THE COURT: Why don't you just show it to Mr. Reed, and please make it available for inspection by the government.

MR. SUTCLIFFE: Sure.

THE COURT: Hold off until she has a chance to look at it.

MS. DUARTE: If I could have a moment, Your Honor.

THE COURT: It's almost five to 9:00, so I would like to move this along. The jury has been waiting.

So you want to inquire into substance abuse.

Why don't you, Mr. Clerk, just tell the jury we're taking care of some things that will, in the long run, save time, please.

You may continue, Mr. Sutcliffe. You want to ask Campbell about -- something to do with whether Tracy Hall was abusing substances, controlled substances, presumably in 2002; am I correct so far?

MR. SUTCLIFFE: Correct.

In the probation document from the Superior Court of California, filed August 28, 2003, on page 9, it says, "Personal history: Substance abuse" and it's checked. And it says, "Indication admission of significant substance abuse problem."

THE COURT: Okay. What else do you want guidance on concerning your examination of Campbell?

MR. SUTCLIFFE: Introduction of her claims to Mr. Campbell and the AUSA, Mrs. Duarte, and the probation officer, in her underlying conviction, that she was, in fact, a private investigator. She's not, in fact, a licensed private investigator of the California Department of Consumer Affairs, Bureau of Collections. That is the department that licenses private investigators.

She's made the representation to the U.S. Attorney in the instant case, the sheriff who is going to come in, and in

the probation report that she was a private investigator. She's not. It goes to her truthfulness and veracity again.

THE COURT: Anything else?

MR. SUTCLIFFE: No, Your Honor.

THE COURT: So you want to question Campbell about the substance abuse and about a statement that Hall made to him, and apparently others, that she was a private investigator? Did you say something about a grand theft conviction?

MR. SUTCLIFFE: Yes.

There seems to be some kind of confusion in her records. She shows -- I found in here a conviction for -- it says "grand theft." I've seen -- here it is.

MS. DUARTE: Your Honor, just to facilitate things, that's on page 8 of the probation report that Mr. Sutcliffe is referring to, I believe. And this appears to speak to the '87 and '88 misdemeanors that have already been litigated priors.

THE COURT: What were those misdemeanor convictions for?

MS. DUARTE: Well, in the probation report, which is what I have now, although I did turn over the other documents, it indicates that there was a misdemeanor in 1987 for 487.1 PC, grand theft of property. And then there is a case number. And then the '88 was 118 PC, perjury.

I don't think that's right, though, Your Honor,

because I turned over additional documents that seemed to indicate that although she was charged with perjury, the conviction was actually -- I would have to take a look at my motion in limine.

Just to let the Court know, what Mr. Sutcliffe is referencing is the probation report from the dissuading witness conviction, which I turned over to him, which then, within that report, lists some adult history. So this is very secondhand. And I believe I turned over the actual -- whatever I had, which I believe were the conviction documents. So let me check that.

But these are '87 and '88 misdemeanors, which would indicate that they are consistent with the stuff that we already litigated, which were her '87 and '88 misdemeanors. But if I could have just a minute.

THE COURT: Your motion in limine that was filed on January 3, 2003 --

MS. DUARTE: Yes. I believe that they speak to the same thing.

THE COURT: -- represented that Hall sustained a misdemeanor conviction for grand theft, 487.1, in '88, and that conviction was dismissed and set aside in '92, pursuant to Penal Code 1203.4.

You also represented that in '88, she sustained a misdemeanor conviction for PC 135, destroying evidence.

MS. DUARTE: That's what the perjury charge was

disposed down to in the plea, Your Honor. That's what I remember when I researched and did the motion. I'm sure it's in the documents that I've turned over.

Like I said, the state, obviously, hastily, prepared a probation report for the 2002 that I later turned over that Mr. Sutcliffe is looking at. We have an inconsistency as to that.

THE COURT: Well, there was significant briefing, extensive argument, and a careful ruling. I issued oral rulings and then I signed off on a notice of ruling on or about January 13, 2003. And I'm referring at this point only to the question of the long-ago, ancient, and partly dismissed previous convictions.

So I'm not going to change that ruling, and I'm not going to permit you, Mr. Sutcliffe, to inquire from Campbell about something that was referred to in the probation office report arising out of the witness tampering.

MS. DUARTE: Your Honor, if I may. I'm sorry to interrupt.

Just so the record is clear, I have located these conviction documents that I turned over, starting with Bates stamp 3053, and they do indicate a misdemeanor plea to PC 135, which is consistent with my papers.

THE COURT: Okay. That's my ruling on the '87-'88 convictions.

Do you want to be heard, Ms. Duarte, about the other two things he wants to inquire about: Substance abuse and a statement that she was a private investigator?

MS. DUARTE: As to the substance abuse, Your Honor, I believe he's referring to the probation office report, and there is a -- let me get the report here.

There is a portion of the presentence report, again prepared by the state -- the probation report, that has a box checked -- and, of course, I put it down somewhere -- a box checked where it says, "See additional information below: Indication admission of significant substance abuse problem."

I left that portion unredacted when I gave it to Mr. Sutcliffe precisely because I thought he might want to bring it up. The portion below that I redacted, which I feel, and continue to feel, is extremely private, references occurrences in 1988. I'd be happy to show the Court. I have the original redacted. You can see right through it.

THE COURT: The proffer is that --

MS. DUARTE: It occurred in 2002. I don't know anything -- I don't have any indication of that. I certainly would object, even if it did, to its coming in. And I believe the Court already made a ruling on this last week.

THE COURT: Okay. I was starting to say that the proffer is that it somehow is relevant as to whether or not the testimony that Hall gave is credible concerning her subjective

reaction to the communications on the Internet that were addressed to her or about her or referred to her as to whether or not her response or reaction was reasonable.

The reasonableness of the listener's or reader's response is a factor that can be considered, but the objective test applies to what a person would be expected to -- reasonably would be expected to perceive as to whether the communication was a threat or not.

And I think that the link between whatever the amount, nature, and timing of the supposed substance abuse and the credibility of Hall is is so farfetched and remote, that to permit collateral inquiry into that from an arresting officer, who arrested her -- am I right that Campbell arrested her for what became the witness tampering conviction? Is that his role in this story?

MR. SUTCLIFFE: I believe it is, Your Honor. He was the lead or he was the investigator.

THE COURT: He didn't prepare the probation report. And even if he had, it wouldn't be within the proper scope of examination of Campbell, so I'm going to preclude that.

As to whether or not she was a private investigator, I think that you did a fine job establishing, from her own lips, when you cross-examined her, that she worked for a private investigating firm and that she herself was not licensed. That's already been established before the jury. So

it would be cumulative to get that from Campbell.

To the extent that whatever he was told reflects that she said she was a private investigator, it's consistent with what she told others that you've already inquired into. She said she was a private investigator. And when she said that, her view is, the jury can accept it or reject it in terms of its evaluation of her credibility and you can argue it.

She should have said, "I worked for a private investigator," and she shouldn't have represented that she herself was one if to be a private investigator requires a license.

MR. SUTCLIFFE: That's fine.

THE COURT: So I'm not going to permit inquiry into that.

Those are my rulings. We do have Campbell here.

Cugno, is he here?

MS. DUARTE: He's here, Your Honor.

THE COURT: So we have those two witnesses.

Anyone else that you intend to put on? Because I need to be able to give some guidance to the jury about timing here.

MR. SUTCLIFFE: Yes, Your Honor.

I'd like to apologize to the Court. I was very flustered last week, and I totally forgot there was several documents I wished to introduce through my previous counsel,

Mr. McAfee.

THE COURT: Do you want to recall McAfee?

MR. SUTCLIFFE: I would like to briefly call him back.

THE COURT: All right. You can do it.

MR. SUTCLIFFE: I appreciate your offer to me.

THE COURT: You can call him back. Is he here?

MR. SUTCLIFFE: I told him to be present. I was told he was here. Yes, Your Honor.

THE COURT: Somebody in the audience is telling me he's here.

MS. DUARTE: If I could just see the documents, I may even be able to stipulate. I don't know what they are.

THE COURT: Show her the documents.

MS. DUARTE: Or I may object. I don't know.

THE COURT: So you've got McAfee and Campbell and Cugno. Anyone else, Mr. Sutcliffe?

MR. SUTCLIFFE: No. Just McAfee and Campbell.

THE COURT: I think -- I'm not sure what's left of your intended examination of Campbell, but let's start with him because he can then go about his business.

And then who do you want to do next, McAfee or Cugno?

MR. SUTCLIFFE: I'd like to -- who is coming up next?

THE COURT: Campbell first and then your choice, McAfee or Cugno.

MR. SUTCLIFFE: We'll finish off with Mr. Cugno.

THE COURT: Fine.

MR. SUTCLIFFE: Thank you, Your Honor.

Just for the record, I'd like the record to note regarding my request last week that the government turn over to me a CD-ROM with the Bates discovery, I told you I had received a CD-ROM, Bates 1 through 1036 and I was requesting 1037 on up. And the government informed me that that CD-ROM had been prepared by the public pretenders (sic) office.

I would like the record to reflect that this was one of the CD-ROMs that was turned over by Mr. Harris to the government en masse when it was so ordered by the Court that I turn everything back to him. And so the government was provided defense discovery and never notified this Court, just so the record is clear on that.

THE COURT: Okay.

MR. SUTCLIFFE: That was marked CD-ROM LA313, previously known as CD-ROM 13 by Mr. Harris.

THE COURT: Okay. The record will reflect what you said.

MR. SUTCLIFFE: Thank you.

THE COURT: Mr. Reed, let's have copies of those made so that when you get to the examination of McAfee -- I'm referring now to the documents that the prosecutor just finished looking at -- so we can avoid -- do you have an

objection to those documents?

MS. DUARTE: I do, Your Honor.

THE COURT: You do?

MS. DUARTE: I do.

THE COURT: Let's have copies made so you have them before you and I have them before me.

What I'd rather do is rule on the objections before Mr. McAfee is questioned so that the questioning will go smoothly, and that would suggest to me that we ought to do Cugno after Campbell and then take a break and I can rule on those objections.

Okay, Mr. Sutcliffe?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: All right. So hand the set to the clerk.

And I think now, am I correct, we are ready to bring in Mr. Campbell?

MS. DUARTE: The government is ready, Your Honor.

THE COURT: So let's do it. We'll start with Mr. Campbell. When we finish with him, Mr. Cugno, and then we'll take a break.

MR. SUTCLIFFE: Mr. McAfee.

THE COURT: No. You just said okay. We are going to do Cugno, then take a break so I can rule on these objections, and then McAfee.

MR. SUTCLIFFE: Okay.

THE COURT: Please bring the jury in.

MR. SUTCLIFFE: I expect to have Agent Cugno for quite a while. I expect to have Mr. McAfee a very, very short period, so I would ask that Mr. McAfee go before Mr. Cugno.

THE COURT: Maybe we can do that. We'll see.

MR. SUTCLIFFE: Thank you, Your Honor.

(Jury in.)

THE COURT: All the jurors are present. Each of the jurors is seated. I welcome you back to the trial. We are going to go today until 1:30 and then break.

There is a very good possibility, I think, that we'll be finished with all of the evidence, all of the testimony today, but I can't be sure.

We are in the process of continuing with the case that Mr. Sutcliffe is presenting. I hope you all had a good weekend. I apologize for the delay in bringing you out here, but various things are happening that will truly result in the case being handled more efficiently.

With that, Mr. Sutcliffe, please call your next witness.

MR. SUTCLIFFE: Thank you.

The defendant calls Sheriff Robert Campbell.

DETECTIVE ROBERT CAMPBELL, DEFENSE WITNESS, SWORN

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: My name is Robert A. Campbell. Excuse me, I'm getting a bad cold. The last name is C-a-m-p-b-e-l-l.

THE COURT: All right, Mr. Sutcliffe.

Mr. Sutcliffe will be questioning you from counsel table.

DIRECT EXAMINATION

BY MR. SUTCLIFFE:

Q Good morning, ladies and gentlemen of the jury. Good morning, Mr. Campbell.

A Good morning.

Q I'm sorry to hear you are not feeling well. I know the feeling. I just got over that bug myself.

Mr. Campbell, can you please tell the jury with whom you are employed?

A I work for the Los Angeles County Sheriff's Department. I'm a detective with the Commercial Crimes Bureau. I work the Fraud Unit.

Q How long have you been a sheriff?

A Almost 31 years.

Q And what specific types of investigations do you do?

A Fraud. Usually I work elder financial crimes on larger dollar losses, more complex crimes against the elderly.

Q Fraud crimes against the elderly, okay.

In 2002, were you involved in any investigations where you came to hear the name Tracy Hall?

A Yes.
Q And can you tell the jury, please, what was the nature of this investigation that you were involved in when you came to hear the name Tracy Hall?
A Tracy Hall was acting as a private investigator for a defense attorney, David Wallin, who was representing a defendant that I had in an elder fiduciary abuse crime in another case. And Tracy had acted as a private investigator to assist this defense attorney.
Q Now, when you say "acted as a private investigator" for this attorney, could you explain what you mean by that?
MS. DUARTE: Objection to outside the scope of the calling of the witness.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Did your investigation at any point reveal that this Tracy Hall had left false phone numbers?
MS. DUARTE: Objection, Your Honor. Same.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Did your investigation reveal that Tracy Hall had left fictitious addresses?
MS. DUARTE: Same Objection, Your Honor. It's outside the scope.
THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Did your investigation reveal that this woman, Tracy Hall, had left a fictitious name to any witnesses or victims?

MS. DUARTE: Same Objection, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q In 2002, Sheriff Campbell, did you have a chance to interview this Tracy Hall?

A Actually, I had a total of four conversations with Tracy Hall.

Q Can you tell me how the first interview was conducted?

A On September 11th of 2002, I received a telephone call from Tracy Hall.

THE COURT: That was September 11th of 2002?

THE WITNESS: Yes, Your Honor.

BY MR. SUTCLIFFE:

Q And did you tape record this interview?

A Yes, the majority of it.

Q Do you have a copy of that with you?

A Not with me. No, I don't.

Q Do you recall the conversation?

A Yes, pretty well.

Q Okay. Now, can you please describe for the jury Mrs. Hall's -- Tracy Hall's attitude when you first -- the first time you interviewed her?

MS. DUARTE: Objection. Outside the scope.

THE COURT: It's also irrelevant.

MS. DUARTE: And irrelevant.

THE COURT: So the objection is sustained.

BY MR. SUTCLIFFE:

Q Did she threaten you in any way?

MS. DUARTE: Objection.

THE COURT: Overruled.

THE WITNESS: At one point in the conversation Tracy threatened a slander suit against me.

BY MR. SUTCLIFFE:

Q By "make your legal life miserable"?

A She didn't use those terms. She used the term "slander."

Q But were you slandering her?

A No. I was conducting a criminal investigation.

Q You were trying to get some information, okay.

Did she ever accuse you of threatening her?

A No.

Q Did you come to meet with this woman, Tracy Hall, in person, at a later point in your investigation?

A Yes, I did.

Q Did you tell her why you wanted to speak with her when you met with her?

A Actually, she called me a second time on September 16th and asked if she could meet with me at the Santa Clarita Valley

Sheriff's Station and said that she had some information that I would -- would "make me happy" was the term she used.

Q Did you tell her the nature -- did you explain to her the nature of this meeting, when you met with her, why --

A She arrived at Santa Clarita about an hour later, after our phone conversation on the 16th of September, and we spoke in person for probably 45 minutes or so out in front of the sheriff's station.

Q When you spoke there, were you polite with her?

A Yes.

Q Did you tell her at that point that you had learned that she had given false information while she was investigating a case to one of the victims in the crime in which you were investigating?

A Yes.

Q Did she tell you that she had the right to deceive witnesses?

A During our initial conversation, the one on September 11th, I paraphrased that, but it was in response to something I had said to the effect of, "You had left false information with one of my victims," and her response was "that's something that an investigator" -- I believe she used the term "including retired police officers, are able to do that," or "it's acceptable," or something to that effect.

Q She told you she believed she had a right to deceive

victims or witnesses in her capacity as a private investigator?
A Yes.
Q But she's not a private investigator; right?
A Subsequently, it was determined she was not a licensed private investigator.
Q Subsequently, you also determined that her real name was -- Tracy Hall was one of many other names that she used; correct?
MS. DUARTE: Objection, Your Honor.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Subsequently, you learned that her true name was Tracy Fraser; correct?
MS. DUARTE: Same objection and objection to leading.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Did you subsequently arrest this Tracy?
MS. DUARTE: Objection. Relevance.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q What, if anything, was Tracy convicted of?
MS. DUARTE: Same objection.
THE COURT: That's already been established, but I'll permit an answer.
THE WITNESS: I believe she took a plea to a felony

136, dissuading a witness, 136 of the penal code.

BY MR. SUTCLIFFE:

Q This was the elderly gentleman who you were investigating?

A Yes. The victim in that case was George Pyup.

Q He had been a victim of fraud?

A Yes.

MR. SUTCLIFFE: I have nothing further for this witness.

THE COURT: Okay. Anything further?

MR. SUTCLIFFE: Thank you for your time, sir.

MS. DUARTE: Just briefly, Your Honor.

CROSS-EXAMINATION

BY MS. DUARTE:

Q Detective Campbell, the report of the interview with Tracy Hall that you were just speaking about with Mr. Sutcliffe, was that verbatim or was that a summary report?

A No. It was a summarized, a paraphrased report.

Q So to the best of your memory, did Tracy Hall actually use the word "deceive" to you when she talked about what she could do with witnesses? Do you remember?

A She probably didn't use that term specifically. I had brought it up -- again, I don't remember exact words -- but I had suggested -- not suggested. I had told her that she had left false information with at least my victim, and that it wasn't acceptable for investigators to do that when working for

an attorney.

That's when she said that's not true. They are able to.

Q Just so I get this straight, so what it meant to you was deceive; correct?

A Yes.

Q So that's why you put it down because you interpreted that as the fact that she was justifying deceiving them; right?

A True. Deceive or ruse.

Q But she didn't necessarily use those precise words?

A True. That's correct.

MS. DUARTE: I have nothing further, Your Honor.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. SUTCLIFFE:

Q Just so I understand, if I heard that correctly, you said to Tracy, "You can't deceive people," and she said, "That's not true"?

A No. What I told her was, as a private investigator, working for an attorney, that it's not acceptable to falsely identify yourself to a victim or a witness.

Q Right. And she wasn't -- but she wasn't a private investigator?

A She was a --

MR. SUTCLIFFE: I'm finished. Thank you.

MS. DUARTE: Nothing further, Your Honor.

May this witness be excused?

THE COURT: You may be excused.

THE WITNESS: Thank you.

THE COURT: You may go about your business.

I discussed with the parties the sequence of the next witnesses, and I'm not in a position to deal with the evidentiary objections at this time, so I think we should call Agent Cugno next.

MS. DUARTE: I'll get him, Your Honor.

THE COURT: You may recall, ladies and gentlemen, that Mr. Sutcliffe, when Mr. Cugno was testifying in the government's case-in-chief, began but did not complete his cross-examination of Agent Cugno, and I assured him he would be entitled to complete it. And that's what he's about to continue to do.

AGENT JEFFREY CUGNO, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

THE COURT: Let the record reflect that Special Agent Jeffrey Cugno has taken the stand. I remind you that you are under oath, and you have the continuing obligation to testify truthfully.

Do you understand that?

THE WITNESS: Yes, sir.

THE COURT: All right. Mr. Sutcliffe, you may proceed.

MR. SUTCLIFFE: Thank you, Your Honor.

CROSS-EXAMINATION (Resumed)

BY MR. SUTCLIFFE:

Q Good morning, Agent Cugno. How are you today?

A Good morning, sir.

Q I'd like to start off going back in time a little bit with you.

During your investigation, you had spoken with Mrs. Greenwood on many occasions; correct?

A Correct.

Q And do you recall her saying that she believed that Mr. Sutcliffe had stolen this information, that he had hacked into the computer system?

A I believe she thought that you had stolen the information, that Global Crossing believed that you may have hacked and received that information.

Q Okay. So she was saying Global Crossing said they believed I had hacked?

A To the best of my recollection, that was what was said.

Q Do you recall interviewing Bruce Wieseltier, who was the IT manager, the government's first witness who came in?

A I do.

Q And on November 30th, did you, in fact, interview Mr. Wieseltier?

A I can't recall the date offhand, but that sounds about

right.

Q If I showed you a document, would that refresh your recollection?

A Most likely.

MR. SUTCLIFFE: Permission to refresh the witness's recollection, Your Honor?

THE COURT: All right.

MR. SUTCLIFFE: Thank you.

THE COURT: Put it on the screen, please.

THE WITNESS: Yes, that does refresh my memory.

BY MR. SUTCLIFFE:

Q You also recall, isn't it true, that Mr. Wieseltier had filed, in the civil case, that temporary restraining order to stop the dissemination of this information, or any information, on the website "evilgx.com", where Mr. Wieseltier had declared that he believed I stole this information? Do you recall that?

A I don't recall what he said in his declaration.

Q I'm going to point down to the bottom here.

Present on -- or on the phone was a John Hanley. He was a senior security analyst -- or excuse me. There was Michael Welker at this interview, and Mr. Welker advised that John Hanley interviewed a Global Crossing employee named Jim Hill regarding hacking activity; is that correct?

A That's what was told to me.

Q This hacking activity took place back in July of 2001, and

that this guy, Hill, had gotten passwords to get into the human resources employees' e-mail accounts.

Do you see that at the bottom?

A Correct.

Q And to retrieve a list of the employees being laid off?

A That's also what it says.

Q Right.

Do you recall ever seeing that type of information on the "evilgx.com" website?

A I wasn't presented with that information.

Q Nobody ever told you that there was passwords or human resources passwords on the website or e-mail accounts or people getting laid off?

THE COURT: Wait. One question at a time.

MR. SUTCLIFFE: I'm sorry, Your Honor.

THE COURT: It's compound. Just break it down, please.

BY MR. SUTCLIFFE:

Q Weren't you told that, within "evilgx.com", somebody was publishing human resource's lists of people who were being laid off?

A I think there was some mention of that. I believe so.

Q Isn't it true that Mr. Wieseltier told you this guy, Hill, was the one who was sending -- or was possibly sending this stuff to this website?

A I don't think that's what that says in that document, sir.
Q I understand it doesn't say it in that document.
But isn't it true that he said this was the information about the layoffs that was being published on this website; this is where it came from?
A I don't know if that's what he was referring to as the source of the information.
Q Okay. Now, I'm going to show you -- are these your handwritten notes regarding this interview?
A They appear to be.
Q And down at the bottom here, we see the name Andrew Ramsey; correct?
A Correct.
Q Now, is this the first time that you've been introduced, spoken to, met, or talked to Mr. Andrew Ramsey?
A I cannot recall.
Q Okay. On approximately November 30th, you write about this meeting; you write down the name Andrew Ramsey. That's the first recollection you have of writing down that name?
A I don't recall when the first time was I wrote down that name.
Q Let's move on to Mr. Saly.
Are these your notes regarding an interview with Mr. Saly?
A It appears to be.

Q Do you see where I've circled right there, "His declaration is correct except for No. 9"?
A Correct.
Q It says afterwards, "He has access to information of all employees"; is that not true?
A That's what I wrote.
Q So what you were referring to right here, is it not true, that Mr. Saly had filed a declaration; and then No. 9, he had lied in that declaration, that it was not true and correct, but that he had misrepresented -- he didn't have any access to this information?
A No, I don't believe that's true, sir. I think that he had reviewed it with me and then had noted that there was a discrepancy. I think that's what he was trying to clarify in our interview.
Q You can call it a discrepancy. But when you file a document under penalty of perjury to be true and correct and it's not true and correct --
MS. DUARTE: Objection. Argumentative.
THE COURT: Overruled.
You can start again.
BY MR. SUTCLIFFE:
Q When you file a declaration against somebody alleging certain facts and you sign it under penalty of perjury, and then later on, way after the fact, you admit that it wasn't

true and it wasn't correct, it's more than a discrepancy; correct?

A I'm not sure exactly what Mr. Saly had done during the time of the declaration and the time that we spoke to him to make him refresh his memory as to what his access was. So I don't know what his mind-set was.

Q But you wrote down right there, "Declaration is correct except for No. 9." And right after that, you said, "He has access to information of all employees."

A That's what I wrote.

Q Okay. He was trying to -- it looked like he was trying to cover that fact up; right?

A I believe he was trying to be truthful with me, sir, during our interview.

Q Seven months later, after he filed a declaration, then he figures it out, after I'm already arrested? Kind of convenient. Okay.

I'm going to show you this document here dated 12-18. Do you recall this document?

A Yes, sir.

Q This is the first time you testified that you went to Network Solutions and did a "WHOIS"; correct?

A I believe that's what I said.

Q And this was after -- so on 12-17, which is approximately five days after you made a copy for the first time of

"evilgx.com", on 12-12, because you saw tons of social security numbers and you were very concerned and worried, five days later, you go to Network Solutions and you say, "Who is the owner of this website?" and you get this information back. You get Sutcliffe's e-mail address, "rampartscandal@europe.com". You get a mailing address, 231 East Palm Avenue, Suite A, Burbank, California 91502, and you get a phone number.

Now, you testified that you believe that that e-mail address, "rampartscandal", had changed over time; correct?

A I believe the contact information had changed slightly over time.

Q You say "contact information."

There is a lot of contact information on there, is there not?

A There is.

Q There is three different ways, I see, that you can contact the owner of this domain. You can go by e-mail, you can go by regular mail -- as we call it, "snail mail" -- or you can pick up a phone and call him. Is that not true, there is three different ways to contact for information?

A That's correct.

Q I'm speaking specifically to the first. Let's start with the first one, the e-mail address.

Is it your testimony that this e-mail address, "rampartscandal@europe.com", was consistent throughout the

period of September 2001 until the arrest of the defendant on March 26, 2002?

A I don't believe that was my testimony.

Q So it changed or it stayed the same?

A I believe it changed.

Q You believe it changed. Okay.

I'd like to show you a document right here. It's dated April 2, 2002. It's a "WHOIS" query.

Do you see that?

A I do.

Q It's by your partner, Mr. Harrill; correct?

A Correct.

Q Would you read the e-mail address that's highlighted right there?

A It's "rampartscandal@europe.com".

Q Can you read the address?

A Which one?

Q Right below it.

A 231 East Palm Avenue, Suite A, Burbank, California 91502, U.S.

Q And the phone number?

A 310-659- -- it's difficult to read. I believe it's 8220.

Q That's correct. You got it correct.

I'm going to show you again the 12-17 document. Are they not identical?

A They appear to be.
Q So is it a fair statement to say that on 12-17-2001 and April 2, 2002, the information on who owns this website or how to get in touch with this guy is identical?
A On those two different dates, they appear to be identical.
Q Thank you.
I'm going to show you a document which is marked as Defendant's Exhibit 234.
Your Honor, has this document been admitted?
THE COURT: 234?
MR. SUTCLIFFE: Yes.
THE COURT: Yes.
MR. SUTCLIFFE: Permission to publish?
THE COURT: Go ahead.
MR. SUTCLIFFE: Thank you, Your Honor.
Q I'm sure the jury is getting bored over there and not looking at anything we are seeing.
Are you familiar with this document, Agent Cugno? Have you seen this document before?
A I'm not sure if I've seen this exact document. I know I've seen similar documents.
Q Do you see up in the corner, it says, "December 5, '01"?
A Yes.
Q And then right next to it, to the right of it, it says, "Joseph Gubbrud/Tracy Hall"? Do you see that?

A I do.
Q To your knowledge, the alleged threat to Tracy Hall, did it take place prior to December 5, 2001?
A One threat occurred before then and one threat afterwards.
Q How about the one "I will kill you," when did that take place? Did that take place prior to December 5, 2001?
A No. The "I will kill you" threat --
Q You have answered the question. Thank you.
So it clearly did not take place prior to --
THE COURT: Hold on one minute. There is a discrepancy between what the file shows as 234 and what's on the screen. Maybe that's 224. Let's just make sure the record is clear.
MR. SUTCLIFFE: Maybe it's a "9." My eyes are going bad.
MS. DUARTE: It is, Your Honor. I believe it's 239.
THE COURT: It's 239. I don't know if the punishment for poor handwriting is a capital offense or not, but I can see why everyone thought it was 234. Whoever put down the number on the exhibit tag wasn't very clear.
Just so we have a clear transcript here, you've been inquiring, then, about 239; correct?
MR. SUTCLIFFE: Yes, Your Honor. I apologize.
THE COURT: That's also in evidence, I think.
THE CLERK: No, it's not.

THE COURT: It's not in evidence?

THE CLERK: No.

THE COURT: I'm going to allow it to come into evidence because it's already been displayed to the jury.

239 is received and admitted.

(Defendant's Exhibit 239 received.)

BY MR. SUTCLIFFE:

Q Did Tracy Hall ever tell you that prior to December 5, 2001, I said, on the website, "I'm going to kill you" or I used the words "I will kill you" to her?

A I don't recall when I spoke with Tracy Hall first.

Q Did she ever say to you, "Hey, he said 'I'm going to kill you'" prior to December 5, 2001?

A I don't recall when she said you threatened to kill her, but I know she did say you threatened to kill her, on the website.

Q Was it 2001?

A Again, sir, I don't know.

Q Okay. Now, this document that we're looking at, do you see in the center part here -- I'm going to bring it to your attention -- it's basically saying that this website is an open forum and we're inviting people to e-mail and post any files from this company. We're looking for evidence of fraud. Send it to us.

Do you see how it's asking for, "If you have any

evidence of crimes, we want to know"?
A I see that.
Q Do you see this paragraph right here in the middle, "To date, Global Crossing has spent tens of thousands of dollars, as we predicted, to lose this ex parte lawsuit"?
A I see that.
Q Now, did you ever see a link on this page here going to a file called "Shareholders money spent to date"?
A Not that I remember.
Q Have you ever seen this paragraph copied onto another page?
A Something similar. I've seen words to that effect.
Q Now, this document is dated down here, in the right-hand corner, October 17, 2001, as a representation of a page copied from "evilgx.com".

Now, back on October 17th, which I believe is the day that I was supposedly served -- the defendant was supposedly served with this temporary restraining order, do you see what it says right here, "Global Crossing has been and it is breaking the law and we have proof"?
A I see that paragraph.
Q Then it's saying, "If you are a stockholder, sell fast"?
A I see that.
Q Is it not true that this is a prediction, in October of 2001, that this billion-dollar corporation, this billion-dollar

telecommunications corporation, is breaking the law and is going bankrupt, it's going down, bail ship, quick, get out?

A I'm sorry, I don't know what the question is.

Q Is this document not saying, send us evidence of crimes by this company, we've got evidence of crimes, and if you are a stockholder, get off this -- get rid of this stock quick because this company is going down?

A That's what it says.

Q This is back on October 17, 2001; correct?

A That's what the date indicates.

Q Is it not true that Global Crossing did file as the first or second largest bankruptcy in the history of the United States in January of 2002?

A I'm not sure of the date, but I know there was a bankruptcy filed.

Q This website is predicting, way before it ever happened -- did Global Crossing ever tell you that they were trying to silence this website for that reason, that that's one of the reasons?

A No, sir.

MR. SUTCLIFFE: I'd like to show one of the exhibits from -- Exhibit 24, Your Honor, of the website.

THE COURT: All right. I think 24 is in evidence.

MS. DUARTE: It is, Your Honor.

THE COURT: Go ahead, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Bear with me one second here.

You said on 11-7 you had started your investigation; correct?

A No. That was the date that was on the prosecutor report that you showed me previously.

Q Did you not begin your investigation on that day? Were you not handed the ball by your partner?

A Again, my testimony was, I do not remember the date, but I know the prosecutor report indicated the investigative dates were 11-7 through 12-31, I believe.

Q Did you not prepare that report?

A I did.

Q You did. Okay.

So from 11-7 to 12-31, when that report ended, the only thing you had listed was a potential 1028 violation: Fraud?

A The report that you are referring to is a summary of the case to that point and was not necessarily inclusive of everything.

Q Now, do you see this Zip I'm looking at right now? It's number 2001, 11 -- it appears to be 10 -- excuse me, 11-07. I stand corrected.

A I see it.

Q If you start with the year, which is 2001, the month is 11

and the day is 7.

Do you see these files in here, the ones with the little "e's"? Those are Webpages; correct?

A Correct.

Q And these yellow ones are folders which contain more Webpages?

A Correct.

Q Now, can you tell me what -- what are these? When I click on them, it says, "We don't know what you are trying to do."

Do you see those files?

A I did not create these downloads.

Q Who created these downloads?

A Andrew Ramsey.

Q And then we go back to some more e-pages and some more little ones.

So is it a fair statement that these pages that we're looking at right here are not true and accurate representations of certain pages within this file, within this Zip file?

A I don't know if that's true.

Q So what you are saying is that whoever is publishing this website is putting up gobbledygook files, for lack of a better word? Because I don't recognize these files as anything.

A Again, Mr. Sutcliffe, I didn't make this creation, so I can't speak to it.

Q Right. Okay.

These Zip files that Andrew Ramsey created, did he ever put any encryption on them?

A The copies I received were not encrypted. They were zipped.

Q Did he ever put any passwords on them?

A Not on the copy I received.

Q So anybody could open these files up and play with these Zips; correct?

A No.

Q No?

A No.

Q How no?

A They were in the control of the FBI, so not anybody could just come in and --

Q Maybe after they were in the control of the FBI, but I'm talking about before they get to the FBI.

A I wasn't there to see how Mr. Ramsey administered his system.

Q I never said you were.

I'm saying, is it not true that before they got into the hands of the FBI, anybody could open up -- I can go to a Zip file -- and I'll show you the Zip files. Here's a folder called, "Andrew Ramsey downloads," and I put the copy of Exhibit 24 in there.

And in here, we have a whole bunch of Zip files. Do

you see those?
A I do.
Q All I have to do is go click and then I'm inside here. Here's what is in that little Zip; it happens to be three files now. If I want, I can click "delete"; correct?
A It appears you can.
Q Then I close up the Zip and no one is the merrier, no one is the wiser; isn't that a fair statement?
A I guess I just don't understand the question.
Q The question is, if there is something that maybe Global Crossing didn't want the FBI to see, they could take that Zip before they give it to you, give it to somebody else to screen, and it's then passed on to the FBI?
MS. DUARTE: Objection. Calls for speculation. Outside the scope of the witness's knowledge.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Okay. Let's go back to where we were.
You testified that on 12-12 you downloaded the website because you saw social security numbers and stuff like that; right?
A That's correct.
Q Do you recall the name of the file that you saw?
THE COURT: The file that he saw?
MR. SUTCLIFFE: Yes.

Q Or files that you saw that had these numbers on it on 12-12?
A I believe it was "seeya.htm."
Q Do you see where I'm clicking right now? It's 2002 -- excuse me, 2001, 12-10.
A I see that.
Q In Mr. Andrew Ramsey's downloads, here's 2001, 12-7. It starts off on 12-7, under the "wget" folder. Then here's 12-12. I'm going to put those into the folder we're looking at. I'm going to extract them. Then I'm going to grab 12-14.

Do you see these little spaces? Let me move this out of the way. Right here, on 12-13, it goes from 2,000 kilobytes down to 8 kilobytes. Do you see that?
A I see that.
Q Then it goes to 7 kilobytes?
A Correct.
Q Then it jumps back up to 29?
A Correct.
Q And then down here, it goes to 398. Do you see that?
A Yes.
Q Can you explain why?
A Again, I did not create this, so I cannot.
Q Now, under the "nonwget," he provided two folders for you -- correct? -- one called the "nonwget" and one called "wget"?

A Correct.
Q And if you look at them, under "detail," and you sort them by their name, this appears to show from 2001 October 18th was the first download at 2048 hours.
Is that a true statement?
A That's what it appears to be.
Q So he numbered them as year, first; month; day; and then the time.
That was his system; correct?
A Yes.
Q So starting on 10-18 -- I'm just going to shorten the times off of here so we can look at it just by year, month, and date.
It's from 10-28 to the "nonwget," it goes 19, 20, 21, 22, 23, 24, 25. And then it goes to 11 October. Then it goes 7, a whole bunch of 8's, a 9, 10, 11, 12. Then it stops in 2001 on 11-13. Then it goes to 2002; right?
A Correct.
Q So there is no December in this folder at all; right?
A There does not appear to be.
Q Let's go to the "wget."
In the "wget," we have 2001 again and here we have a 12, which would be December.
A Correct.
Q It starts off December 7th; right? It goes 9, 10, 11, 12,

13, 14, 17. And then, on 17, it stops and it jumps to the 31st.

Do you see that?

A I do.

Q Did he ever explain to you why December 17th through December 31st was missing?

A I think, as part of his testimony, he had spoken about his program would catch changes in the website and then make those downloads. So beyond that, I wouldn't know why there would be a discrepancy in the dates, if you want to call it a discrepancy.

Q That's a pretty big leap, though. I don't see any leaps as wide as that, do you?

A (No response.)

Q Do you recall -- I'll ask another question.

Do you recall the owner of "carolina.net" who came in here and testified?

A I don't know if he testified while I was here.

Q Okay. Did you ever review documents that said that during this period of -- November through December, it was hosted by a Webserver "carolina.net"?

A I believe it's Carolina Online.

Q All the way until the point of December, approximately December 28th?

A That sounds about right.

Q Okay. But there is no copies of the website from the 17th until the 31st.

Did Mr. Ramsey ever tell you that he didn't want you to see what was in those Zips?

A No.

Q Did you ever delete any Zips before you made the CD-ROM and turned it over to the United States Attorney's Office?

A No.

Q No. Okay.

This file that you were talking about that you saw all of these social security numbers on was approximately December 12th; right?

A Correct.

Q I'm going to open that up for you right now.

A I think you have the incorrect date.

THE COURT: Are you still working with Exhibit 24, Mr. Sutcliffe?

MR. SUTCLIFFE: Yes, Your Honor, I am.

Q I have it now. 12-12 at 1707 is the download from Andrew Ramsey.

Now, is this an accurate representation on 12-12 of approximately what the website looked like, the index page?

A It looks similar.

Q It starts off, "The devil" in the "details"; right?

A That's the heading.

Q And down at the bottom here, do you see where it changes from green to red? I know it's kind of small text, but do you see it's changing right there?

A I do.

Q Okay. It's asking to send us a file or two.

Then down here below -- I'm moving my mouse over where it says "e-mail."

Do you see that?

A I do.

Q Could you read the address that shows up right down here?

A "evilgxhr@yahoo.com".

Q I'm now going to go back to Mr. Ramsey's "wget" folder here -- excuse me, "nonwget."

If I searched -- I'm going to search this. I'm going to ask you to tell me how many times you see the e-mail address "evilgxhr@yahoo.com"?

Wait a minute. I'm going to stop this. I'm going to look for files that contain that.

I'm now going to search through these Webpages for the address "evilgxhr@yahoo.com". So any page that contains the word "evilgxhr@yahoo.com" is now going to show up, and it's going to list what file -- excuse me, what folder it's contained in and the page name on the left.

It's still going. Okay. Do you see right down in the left-hand corner where it's counting?

A I do.
Q Okay. I'll close this window out. We are up to 206 pages right now and still counting. We are still in 2001.
Do you see this little arrow that's going around up here in the corner?
A I do.
Q Let me know when that stops, would you?
I'm going to stop it now because we've been going for a while. It's just getting to 2001. It's at 1-13.
Can you read how many files in the left-hand corner it's showing?
A "600 files found."
Q Is it a fair statement to say that there is at least 600 pages from the time this domain was created up until approximately January of 2002 that contained the e-mail address "evilgxhr@yahoo.com"?
A I don't necessarily know that Mr. Ramsey's downloads go to the inception of the website; but it appears, from when he began to download it to that date, that's correct.
Q Did you testify at a probable cause hearing in Manchester, New Hampshire, two days after my arrest?
A It may have been the next day. But, yes, I did.
Q Did you take an oath to testify to tell the truth?
A I did.
Q Did you, in fact, tell the whole truth?

A To the best of my ability, yes, I did.
Q Did you ever mislead?
A No, sir, not that I know of.
Q Did you ever exaggerate?
A Not that I know of, sir.
Q You never lied?
A Not that I'm aware of.
Q Do you know that if you, as an agent, tamper with a document or if you tamper with evidence, that constitutes obstruction of justice? Are you aware of that?

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MR. SUTCLIFFE:
Q And if you cover up a crime, that's also a crime, isn't it?
A It can be.
Q "Misprision of felony"?
A I'm sorry?
Q "Misprision of felony."
A I'm not familiar with that term.
Q Title 18, Section 4.

You also filed an affidavit for a search warrant on Hosting Solutions after the so-called "Tracy threat" -- correct? -- in February?

A I believe that's correct: February.
Q And when you arrested the accused, you also filed a -- you arrested him by a Criminal Complaint; correct?
A Correct.
Q Now, by -- he wasn't arrested by indictment of a jury or anything, it was based on your Complaint?
A Correct.
Q Now, I'd like to ask you a few questions about this testimony you gave up in New Hampshire.

Before I get there, I'd like to ask you a couple of other questions.

Agent Cugno, as an FBI agent in cyber crimes, you're experienced in the Internet in particular; correct?
A Correct.
Q Now, did you ever testify that a website could only be used by one person, the registered owner?
A I don't recall if that was my exact testimony.
Q Well, we've talked about, when you go to "WHOIS," you see who is the registered owner; right?
A Correct.
Q My question to you is, did you ever testify, under oath, that a website can only be used by one person, the registered owner?

MS. DUARTE: Objection. Asked and answered, Your Honor. The witness said he didn't recall.

THE COURT: I'll permit an answer.

Overruled.

THE WITNESS: Again, I don't recall if those were my exact words.

MR. SUTCLIFFE: May I refresh the witness's recollection, Your Honor?

THE COURT: Yes.

MR. SUTCLIFFE: Thank you.

MS. DUARTE: May I have a page number, Your Honor?

MR. SUTCLIFFE: New Hampshire testimony, CR-0217M1, March 28, 2002, 9:55 a.m.

MS. DUARTE: Understood. I just need a page number.

MR. SUTCLIFFE: Page 12.

Q I'll direct your attention, Agent Cugno, to the line that is highlighted.

THE COURT: Just ask him whether that refreshes his recollection.

BY MR. SUTCLIFFE:

Q Does it refresh your recollection?

A Yes, it does.

Q Did you, in fact, say that "A website on the Internet could only be used by one person, the person who had it registered"?

A I believe what we were discussing there is that --

Q No. My question is, did you make the statement that "A

website on the Internet could only be used by one person, the person who had it registered"?

A You are taking it out of context.

Q Okay.

THE COURT: Mr. Sutcliffe, are you suggesting that the person who gave the response on line 21 is this witness?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: The response on line 21 is the answer to a question. So you can reframe your question.

BY MR. SUTCLIFFE:

Q Did you answer "correct" to the question, "And that would be so that a particular website that was on the Internet could only be used by one person, the person who had it registered"?

A That was my answer.

Q Okay. Isn't it true that a website can be used by a thousand people?

A Yes.

Q A collaboration, if you will, of forces?

A It can be.

Q You've conducted many searches on the Internet; right?

A I have.

Q And part of that revolves around e-mail addresses and IP addresses, as we've already established; correct?

A Correct.

Q Now, you served a subpoena, is it not true, on Hosting

Solutions in Virginia, approximately February 1st, for information on the -- who is the subscriber or owner of the website "evilgx.com"?

A I believe so.

Q Based on the e-mail that was sent to you by Elizabeth Greenwood, saying that "Sutcliffe is threatening to murder the process server"?

A I don't know if that was the basis for that.

Q Do you know of another basis for it?

A It may have been through my own investigation.

Q Of?

A Of the website.

Q Had you issued a subpoena for any other ones that you knew of that was being hosted on the Internet?

A Any other Web host companies?

Q Yes.

A Yes.

Q And is there -- is there any occasions where you didn't issue subpoenas that you knew of where it was being hosted? In other words, did you turn a blind eye and say, "I don't want to go after that one"?

A I don't know that I purposely avoided serving a subpoena on one.

Q Okay. You testified that you went to the website on January 11th; correct?

A That's correct.
Q And you made a copy again on January 11th; correct?
A Correct.
Q Do you know what caused you to copy the website on January 11th?
A I believe specifically it was because it appeared to be password-protected at that time.
Q And this caused you concern?
A I don't know if it caused concern, but it raised my interest.
Q And did you -- you accessed the website on January 11th?
A Yes, I did.
Q Were you able to view the contents of the website?
A Yes, I was.
Q All of the website?
A I don't know if it was all of it.
Q Did you download it?
A I did.
Q Did you get it all?
A I'm not sure if I did.
Q Why are you not sure?
A I think, at the time, when I found that it was password-protected, I then contacted the U.S. Attorney's Office for further guidance on that matter.
Q How soon did you contact them for guidance?

A I don't remember.
Q Okay. You reviewed the download, though; right?
A Correct.
Q You were actively seeking the defendant at this point; was that not your previous testimony?
A Yes. It was an open investigation.
Q You were looking to serve a Criminal Complaint on him; correct?
A I'm not sure when the Complaint was filed. So I don't know if on January 11th it had been filed yet.
Q Why were you looking for the defendant if there is no crime being committed?
A I believe there were crimes being committed. That's why I was pursuing.
Q Exactly.

So you are looking for this guy and you can't find him; right?

A At the time we did not have a specific address for you. We had your previous address.
Q Okay. Now, I'd like to show you the website on January 11th that you -- or a replication from Mr. Ramsey that he downloaded on this date, 2002, 01-16.

THE WITNESS: Your Honor, can you enable my screen?

BY MR. SUTCLIFFE:
Q Here's a 2001, 01-11. Do you see it?

A I do.
Q I'm going to --
THE COURT: Is this still Exhibit 24?
MR. SUTCLIFFE: Yes, Your Honor.
Q I'm going to drop it right into this file right here. I'm extracting it into this folder right here.
It seems to have a problem with a long file name here. Do you see that, Agent Cugno?
It's saying, "Hey, there is an invalid file name we've got going on in this Zip file." Do you see that?
A That's what it says.
Q It's like -- it's some kind of guest book contained in a CGI script?
A Correct.
Q I'm not going to go into what CGI scripting is and all that.
Now it says it's done and it's got problems. We are not going to look at it.
I'm going to go to the 11th and open it up.
(Playing audio.)
BY MR. SUTCLIFFE:
Q Is this an accurate representation?
A It's been a while since I viewed that version of the website, but I remember seeing a Webpage similar to this.
Q Okay. I'll be glad to do a file prepare with you on the

one you downloaded if you are uncertain.

But will you stipulate that on January 11th, at approximately 1447 hours, this was an accurate representation of the website known as "evilgx.com"?

A Made by Andrew Ramsey, yes.

Q I'll stipulate, yes, it was made by Andrew Ramsey.

THE COURT: Good. We have a stipulation as to what it is. Now, please proceed.

BY MR. SUTCLIFFE:

Q Now, on this page, the initial page --

May I sit down, Your Honor, for this? My back is killing me.

THE COURT: Yes, you may. If you need to question while sitting in order to manipulate the equipment there, you are welcome to do it.

MR. SUTCLIFFE: Thank you, Your Honor. I appreciate that.

Q Now, examining this Webpage -- I'm going to mute the volume for a second and refresh it -- there appears to be an old man. He's reading a book at the top. Do you see him flipping pages?

A I see that.

Q And there appears to be only two hyperlinks right here, enter or an exit; right?

A I think there were some on the bottom.

Q Right. I'm getting there. I'm just talking about in the middle, what you originally see here.

At the bottom, we have -- it looks like these are e-mail addresses.

(Playing audio.)

BY MR. SUTCLIFFE:

Q Do you see that?

A I do see that.

Q Now, the first one says, "Media at 'evilgx.com' for media relations." The other one "Has become an archive partner." The third one is "Information protection policy questions." And the fourth one is, "Problems with our website."

Do you see that?

A I do.

Q They have different names, but all have the extension of "@evilgx.com". But when you put your mouse over it, it changes the subjects in the left-hand corner.

But this last one, "postmaster@evilgx.com", do you see in the lower left-hand corner -- I'm pointing over to here right now -- do you see what address is being shown?

A I do.

Q What is that address? Can you read that out loud?

A "evilgxhrdept@evilgx.com".

Q So is it a fair statement that coming into now January of 2002, the designer of this website has added the words "dept"

to his original e-mail address "evilgxhr@yahoo.com"?
A Except for this one now says "@evilgx.com".
Q I understand that.
But it's now adding a "dept"?
A Correct.
Q Now, if you exit, where do you go?
A The bottom shows the -- the hypertext link and it's to "www.disney.com".
Q And if you want to go in, what's the name of the file you are getting?
A "Terms_of_use.htm".
(Playing audio.)
BY MR. SUTCLIFFE:
Q Let's enter now. You get a "Welcome to my domain" thing, and there's a bunch of "terms of use"; correct?
A I'll have to apologize. The left side of my screen is cut off, but I do see the majority of it.
Q Okay. I'm not going to read all of this to you, but it's basically big-old "terms of use," for lack of a better word.
Down at the bottom, we have three links in green.
Now, do you see where it says the "Webmaster"?
A I do.
Q Do you see the e-mail address that's being shown there?
A I do.
Q Can you read that out loud for me, please?

A "evilgxhrdept@yahoo.com".
Q Now do you see where I was referencing? The designer of this website, if you wanted to contact him or send stuff before 2001, or during 2001, it was "evilgxhr@yahoo.com" and now it appears to be "evilgxhrdept@yahoo.com"; correct?
A For the links that you showed me, that's correct.
Q Right.
Now, again, if you disagree with the terms, where do you go? Disney?
A Back to "Disney.com".
Q Then if you agree, you go in a little further.
The next file appears to be a thing called "Counter"; right?
A Correct.
(Playing audio.)
BY MR. SUTCLIFFE:
Q We get some music in the background.
It appears to be another disclaimer of the terms of condition; correct?
A That's the title.
Q And did you read this document?
A At least some of it, if not all of it.
Q Did you read the part where it says that, "The pages contained in this site may be unsuitable to some rather narrow-minded folks"?

A It does appear to be familiar.
Q Did you read the five bullets here?
A Yes.
Q Do you see where it says, "If you fall into any of these categories, then please find another site to visit without further delay"?
A That's what it says.
Q During your investigation, were you able to ever ascertain whether anybody had been the subject of being a victim of having their hands forced onto this computer to go to this website?
A No, I never found such.
Q Did you find out if anybody was ever forced or imposed to put their hand on a mouse and freely click "I agree" or "I disagree"?
A No, I did not find that.
Q And this -- did you read the bottom part down here during your investigation on January 11th?
A Again, I may have.
Q Did you form an opinion as to what this bottom part was?
A Just kind of nonsensical ramblings.
Q Kind of like humor? Parody? Joke?
A It was nonsensical to me.
Q It's a matter of opinion; right?
A You asked my opinion.

Q It's a matter of opinion, exactly.

Somebody else might think different; correct?

A (No response.)

Q If we disagree, where are we going?

A Back to "Disney.com".

Q Right.

If we agree, we go a little further into a thing called "privacy policy"; correct?

A Correct.

(Playing audio.)

BY MR. SUTCLIFFE:

Q We are back in now. We've got a private policy going on here.

It says that, "Evilgx is committed to respecting the privacy rights of all visitors to our website. The following policy describes how it protects the information it receives from visitors to its Web properties."

Now, do you see -- as you read down in the first paragraph, do you see there is a hyperlink there? There are actually two hyperlinks in the first paragraph; right?

A That's correct.

Q The next paragraph has got the same words and the same hyperlink?

A That has one hyperlink.

Q Right.

And then further down, in paragraph 2, there is another one, paragraph 3 has two of them, and then it's got some information here, which, correct me if I'm wrong, this address right here appears to be the one that you saw back in December, "WHOIS"?

A Correct.

Q And, again, there is that word -- the same hyperlink over and over here; right? And, again, this address. And then there appears to be two different hyperlinks down at the bottom, which are different from these ones, called "opt-out program."

Do you see that, "opt-out program"?

A I do see those.

Q Is it fair to say that there is at least -- I'm going to count them from the top, going down. One, two, three, four, five, six, seven, eight, nine.

There are at least nine of these "opt-out program" hyperlinks -- correct? -- approximately?

A Approximately.

Q If we put our mouse over it, what does it read, down at the bottom left-hand corner?

A "evilgxhrdept@yahoo.com".

Q Okay. That's an e-mail address which has just added, basically, the "dept" other than the previous one that we've been looking at; right?

A Correct. And the subject line "opt out, please."

Q Right. Okay.

THE COURT: Mr. Sutcliffe, the court reporter has been going for more than two hours. We are going to take a break here.

We'll take a 20-minute break, ladies and gentlemen. Please remember the admonition. We'll see you back here in 20 minutes.

(Recess taken at 10:20 a.m. to 10:41 a.m.)

(Jury out.)

THE COURT: The clerk has informed me that Mr. Sutcliffe wants to put on Mr. McAfee out of order to accommodate his schedule. That's fine with me, but that means that I want to hear the government's objections to these exhibits. There are, I believe, seven.

Why don't you set forth those to which you object, referring to them by the Bates stamp number, and then I can make rulings.

MS. DUARTE: Unfortunately, Your Honor, I don't think they are all Bates stamped.

THE COURT: Well, give us a sufficient description.

MS. DUARTE: I can actually start out with, there is a one-page exhibit called, at the top, "evilgxhrdept@yahoo.com". It appears to be a series of e-mails that is one page.

THE COURT: Yes, I see that.

MS. DUARTE: I don't object to the admission of this document. However, to the extent that Mr. McAfee is going to testify about his contact with this Josh in the e-mail, I've already objected to that and it was sustained last week.

I would just draw the Court's attention to the fact that as testimony comes in, I would object. But this e-mail itself, I don't have any objection to.

THE COURT: It appears to be an e-mail -- or a series of e-mails with responses between the defendant and somebody named Josh Lifshitz, L-i-f-s-h-i-t-z.

Is that what it is, Mr. Sutcliffe?

MR. SUTCLIFFE: Actually, it's a series of correspondences between the defendant at "evilgxhrdept@yahoo.com" to Mr. Lifshitz and a carbon copy cc'd to the trial attorney, as well as providing Mr. McAfee's name and phone number to him.

THE COURT: What's the relevance of this?

MR. SUTCLIFFE: Well, the relevance is that the defendant was not engaged in committing crimes. The defendant was engaged in trying to expose the crimes, as we pointed out on the website, that it was soliciting any evidence of crimes.

This law firm was a class action law firm that was actively suing Global Crossing in a class action status, alleging fraud, and representing thousands of shareholders who

had lost their homes, their life savings.

MS. DUARTE: As to that, that proffered -- what apparently will be testimony, because it certainly doesn't say what Mr. Sutcliffe just said in this exhibit. I would object to that.

THE COURT: No, it doesn't say that. The testimony would be irrelevant.

Mr. Sutcliffe, somebody can have legal motives to do something that itself can be criminal if done. There is an instruction that I've already gone over and I intend to give that says that.

The fact that part of what may have been -- most of what may have been, in the jury's view, could well be that all of what may have been on "evilgx.com" was lawful, doesn't mean that other parts weren't unlawful, the parts that are the subject of the allegation in the indictment, or the superseding indictment particularly. This is so collateral as to what the issues are in the case.

Anything substantive that Mr. McAfee might say about whatever follow-up he may have had with this other lawyer would be totally irrelevant. So I'm going to exclude that.

What's your next objection?

MS. DUARTE: Well, the next document is the temporary restraining order. There is no Bates stamp at the bottom. I've reviewed it. I believe it is identical to Exhibit 203,

already a defense exhibit in evidence.

If it's not, I would like --

THE COURT: 202, I think, is the TRO. You check your records.

Am I right, Mr. Sutcliffe, 202 was received?

MR. SUTCLIFFE: I don't have an exact on that, Your Honor, because I've never gotten what's in/what's out from anybody yet. I'm just kind of winging it here.

THE COURT: Let's have the clerk tell me. I know 202 is in evidence.

May I see it, please, Mr. Clerk?

202 is what this document is. All the writings are the same, and the text is the same. All the handwriting is the same, etc. So this document is already in evidence. The TRO is in evidence. It's No. 202. You introduced it and it was received.

What's your next objection?

MS. DUARTE: The next exhibit that I object to, I think, is -- I'm not sure why it's in here -- but it's Allen Bernard v. Allen Haber, and it is the order to show cause, beginning Bates stamp 00704, issued by Judge Wilson against Mr. McAfee. I'm not sure --

MR. SUTCLIFFE: Your Honor, may I be heard, just briefly?

THE COURT: Yes.

preliminary, Exhibit 203, temporary restraining order says. If it's not stolen, I can publish it.

They took a stand and he represented me in that stand.

THE COURT: Okay. I don't accept and I don't think the facts warrant your characterization of the temporary restraining order.

I understand what you are driving at in there, and I understand what the judge, who issued that order, wrote down in his own writing. But that doesn't mean that you were given a license by anybody to post the communications that are said to be threatening or to post other communications that otherwise would violate federal law. So if that's what this document is supposed to prove, it doesn't prove that at all.

However, if you can elicit and have a good faith belief that you can elicit some information that Mr. McAfee is in a percipient, competent position to provide that relates to the credibility of Greenwood and/or Saly, then I would permit you to do so.

I'm not going to authorize the admission of this letter, but you might be able to refer to it. And if you can establish a foundation that would otherwise fall within the scope of relevance, I would probably let it in.

But as it now appears and as this case has come down in terms of what the evidence and issues are, I think it's

irrelevant and it is hearsay.

MR. SUTCLIFFE: Okay.

MS. DUARTE: The next exhibit, Your Honor, Law Office of Leslie McAfee. It bears a Bates stamp of 71, dated November 1, 2001.

This appears to be a letter from McAfee to David Vinterella, who was the attorney for Intercosmos. That's also DirectNIC. And we heard testimony from custodian Monte White as to those records.

This appears to be McAfee's opinion and possibly even legal conclusion as to the effect of the TRO on Vinterella's allowing -- or removing the information from the Internet.

This is certainly hearsay to the extent it's offered for the truth, and it is also irrelevant because the effect of the TRO on Vinterella, as of November 1, 2001, is not at issue.

THE COURT: Mr. Sutcliffe.

MR. SUTCLIFFE: I believe it goes -- it's very relevant, Your Honor.

Mr. McAfee was, like I said, representing me in this temporary restraining order. The witnesses have come in and testified that they took down the website based on the temporary restraining order.

Mrs. Greenwood testified -- we showed documents that she was sending out to all of these ISPs -- Internet Service Providers -- saying that they were in violation of this

restraining order.

This document is relevant in the defense of the defendant that he was not in violation of this temporary restraining order, and that the witnesses who testified were not credible and that they have lied.

THE COURT: As I have already instructed the jury and I'll reiterate right now, whether the defendant was at any time in violation of the temporary restraining order is not relevant to this case. There has been no allegation that he is.

And I think almost all of what you just referred to as being in the record, even if it's correct -- I'm not sure that it is, but it could be -- is information that I permitted you to establish because I've been trying to bend over backwards to give you some opportunity to put a little bit of context into the communications that are at issue here. That's something that you have a right to have, and I think I've gone very far in permitting you to explore.

But to establish that a lawyer, then representing you, told a third party what that lawyer's view is as to the application of the TRO to that third party is way beyond the scope of relevance. So I'm not going to permit the document bearing Bates stamp 0071 to come into evidence.

MS. DUARTE: The last exhibit, Your Honor, appears to be an MSN Hotmail e-mail document bearing Bates stamp number starting with 64.

THE COURT: Yes, I see it.

MS. DUARTE: I believe what this document is, just from looking at it, is an e-mail received probably by Mr. McAfee mailed off of the website contact. And it contains a long e-mail from someone who appears to be Marnie Clay, which name I have not heard referenced to date. It talks about the company and treatment of Marnie, and other individuals, by the company.

It's hearsay to the extent it's offered for the truth. To the extent it's not, or even that it is, it's not relevant. It couldn't be impeachment because we haven't heard from Miss Clay.

So, again, I would object because this document has no purpose and it's hearsay.

MR. SUTCLIFFE: Your Honor, this document is very, very relevant to this case. This document was sent by the defendant.

THE COURT: By the defendant?

MR. SUTCLIFFE: Me. "evilgxhr@yahoo.com", that's my e-mail address. It was the first e-mail address that ever appeared on this website. You can see the e-mail address was at least created back as far as September 28, 2001.

MS. DUARTE: Your Honor --

THE COURT: Excuse me just a second.

What part of this document shows who sent it?

MR. SUTCLIFFE: Right at the top, Your Honor. Do you see the big "MSN" at the upper left-hand corner, page 1?

THE COURT: Yes.

MR. SUTCLIFFE: Look down below it, you'll see a black "From: Whowants Toknow." It was sent to Mr. McAfee, at his address, which is "trialattorney@hotmail.com". I sent this document to him.

It was forwarded. You can see the "Subject: Forward." And the "subject" was "evilgxhr director." And it was Friday, September 28, 2001.

THE COURT: Is it correct, Mr. Sutcliffe, that this exhibit -- or this document is a transmittal e-mail from you using the e-mail address "whowantstoknow@evilgxhr@yahoo.com"?

MR. SUTCLIFFE: No. The e-mail address is "evilgxhr@yahoo.com". The name that shows up is "Whowants" as the first name; the last name would be "Toknow."

THE COURT: Okay. It's from you to Mr. McAfee -- let's just cut through it -- forwarding somebody else's e-mail, that somebody else being Marnie Clay?

MR. SUTCLIFFE: No. I'm forwarding him my e-mail of a conversation I was having with Marnie Clay.

My original conversation -- the original conversation starts off on September 27th on page 2 of 3. And in there -- you have to read this backwards -- Miss Clay was contacting the website and she was explaining that --

THE COURT: I see where it begins. Okay.

MR. SUTCLIFFE: It begins actually on page 3. I reply on page 2. She replies on page 1.

THE COURT: I think that this is so irrelevant and collateral that, under Rule 403, it doesn't even come close to warranting admission.

I'll note that whoever Marnie Clay is made allegations in certain exchanges with the sender of the e-mail to her -- let's just call him Mr. Sutcliffe -- about having been fired, unlawfully, from Global Crossing, having been accused of sexual harassment. She takes a swipe at somebody's sex life who she doesn't like who was associated with Global Crossing.

There is nothing at all about the posting of social security numbers, communications that were allegedly threatening. Of any of the particular victims -- or alleged victims in this case, the only person who is referred to who has testified is Richard Saly, S-a-l-y.

And there she says that if she were ever to lay eyes on him and one other person, she would physically attack them.

MR. SUTCLIFFE: Your Honor, I would like to go back and clearly reflect on page 2, she continues on with these statements. She says, about three-quarters of the way down, "If I were still working there," speaking about Global Crossing, "I would be dead or Bob Glissendorf (phon) would be

dead and I would be in prison."

THE COURT: I see that. But, you know, once again, that raises an issue that seems to be what underlay your earlier references to selective prosecution.

You evidently have a view that if other people made statements that one can construe to be threatening and weren't prosecuted, that somehow it undermines -- vitiates is the word I want to use, v-i-t-i-a-t-e -- this prosecution. As a matter of law, that's not correct. As a matter of logic, it's not correct.

I'm not going to permit that exhibit to come in. I am going to direct the clerk to lodge all of these exhibits in the order in which they have been addressed so that the record will be complete as to what it is that I have excluded by my rulings.

Now, having made those rulings, Mr. Sutcliffe -- and I'm handing those to the clerk now. Just lodge them as part of the court record in this case, please -- do you still need to call Mr. McAfee?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: Do you want to do that now?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: Let's bring him in and let's bring the jurors in. I'll explain to the jurors that we are interrupting the questioning of Mr. Cugno.

We will assign these collective single Exhibit No. 240, but they won't be received. Let's call the jurors in, please.

(Defendant's Exhibit 240 marked for identification.)

(Jury in.)

THE COURT: The jurors are in their respective seats.

Ladies and gentlemen, Mr. Sutcliffe wishes to question Mr. McAfee with some additional questioning, and I permitted him to do so and to allow him to do so now in the middle of Mr. Cugno's cross-examination to accommodate the scheduling needs of Mr. McAfee.

So we are going to interrupt the examination of Cugno to complete the examination of McAfee.

Please step forward. You can take the stand.

I remind you that you were previously sworn and that you are under oath. You remain under oath, and you have the continuing obligation to testify truthfully.

Do you understand that?

THE WITNESS: I do, Your Honor. Thank you.

LESLIE SCOTT McAFEE, DEFENSE WITNESS, PREVIOUSLY SWORN

THE COURT: Go ahead, Mr. Sutcliffe.

DIRECT EXAMINATION (Resumed)

BY MR. SUTCLIFFE:

Q Good morning, Mr. McAfee. How are you today?

A Good morning.

Q Mr. McAfee, I'm trying to -- right now, I'm trying to bring up a page from the website from the earlier versions that were created in 2001.

THE COURT: Can you tell us what exhibit you are using?

MR. SUTCLIFFE: Exhibit 24.

Q Just bear with me one second while I try to bring up the page.

MS. DUARTE: Your Honor, if I may. Once the file is brought up, could we please get the original file name and number so we can look at it as well?

THE COURT: What do you want?

MS. DUARTE: If Mr. Sutcliffe could refer to the actual file name by date that he's looking at once he gets in.

THE COURT: Sure. All right. He'll do so.

MR. SUTCLIFFE: I'm now looking at 20011018. That would be 10/18 of 2001, at 2056 hours, created by Andrew Ramsey.

MS. DUARTE: Thank you.

MR. SUTCLIFFE: I'm looking at a file name "faq.htm."

Q Mr. McAfee, I'd like to draw your attention to this "faq" -- frequently asked questions -- page. Do you see this disclaimer-type text at the top that -- well, can you read the text okay?

A I can.

Q And have you ever seen this type of language before?
A I have.
Q And do you know who created this language?
A Most likely I did.
Q Can you tell the jury, what was the purpose of this language that was placed within this Webpage?
A Yes. This was one of a number of different disclaimers or paragraphs that were created to be at the beginning of the website to alert potential viewers of this site, not only as to the content that was in the site, but that certain content is not being represented to be true, it's just being published.
Q And the reason that it was saying that "it wasn't represented to be true," could you explain to the jury why it wasn't being represented to be true?
A Yes. You had received and had shown me a number of, I believe, two, if I'm not mistaken, CD-ROMs you had received in the mail that had certain information on the CD-ROMs that you wished to post on the website, and these CD-ROMs involved information about Global Crossing employees.

Since we didn't know -- or I didn't know, anyway, where it came from and you had received these anonymously, I created a disclaimer saying that the information was being posted, but we didn't know whether the information was true or not.

Q Did the defendant ever tell you that he was also receiving

information from other sources?
A Yes. You weren't the only person who told me that.
Q Now, I'd like to ask you a question. Can you tell me, Mr. McAfee, what is "UUIS"?
A "UUIS" is an acronym I created for you -- it stands for "UUIS" -- that I created -- I'm sorry, for Mr. Sutcliffe, to give him the elements of what constituted a true threat.
Q And where did this acronym "UUIS" come from?
A It came from legal research involving two federal cases.
Q Two cases?
A Two federal cases.
Q Would you tell the jury what federal cases those were that you are referring to?
A The general case, or the broader case, was a case called United States v. Watts. The other case, or the more important case, at least in terms of the acronym, was a case called United States v. Kelner.
Q What does "UUIS" stand for?
A As I said, it's "UUIS". That stands for "unconditional, unequivocal, imminent" or "immediate" and "specific."
Q Did you ever discuss these terms with the defendant?
A Many times.
Q In what manner did you discuss these with the defendant?
A These discussions arose because these were the elements of a statement, whether it's oral or written, or however it's

published, that would have to be avoided, in my legal opinion anyway, to avoid logging into what U.S. v. Watts called a "true threat."

THE COURT: Now, ladies and gentlemen, I didn't expect that this would be the inquiry, although I'll permit it, but I want to tell you right now that, if there is going to be questioning about the views or opinions or research that Mr. McAfee may have done and may have communicated to Mr. Sutcliffe, if that's where we're heading in this, Mr. Sutcliffe would have a right to establish what he was told, and I'll permit that; but you are not to assume that what he was told is a true or correct statement of the law, and it is not necessarily a true or correct statement of the law.

What the law is concerning whether something is a threat that is illegal and prohibited is something I will tell you about, very soon, as I anticipate the course of this trial.

It is not a defense to these charges that Mr. Sutcliffe may have been told whatever we are about to learn he may have been told.

But it is admissible to find out what he was told, if anything, and for him to inquire about what he was told, solely for purposes of enabling you to evaluate whether he had the specific intent to threaten, because that is a requirement that the government has to prove beyond a reasonable doubt.

So if the testimony is relevant as to issues that you

may have to address, or will have to address, concerning what the intent was of Mr. Sutcliffe, it's admissible for that purpose and only for that purpose. It is not admissible to demonstrate to you what the law is or whether Mr. McAfee's legal work was sound, correct, complete, or the like.

And within that broad -- within that specific instruction I've given you, I'll permit Mr. Sutcliffe to proceed. We'll see what happens thereafter.

Now, you may proceed.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Mr. McAfee, you mentioned unconditional, unequivocal, imminent, and specific.

Now, did you ever happen to have specific conversations with the defendant regarding the application of these elements?

A Many, many times.

Q In these discussions, did the word "kill" ever come up?

A Many times.

Q Can you tell the jury in what context?

A Yes. Mr. Sutcliffe has a propensity to use words that are subject --

THE COURT: No. No. No. You are going to a narrative and it's not a responsive answer.

The context means, was it a personal discussion? Was it a letter? Was it a telephone call? You are not to tell us

BY MR. SUTCLIFFE:

Q Did the defendant ever ask you about this specific statement, "If I ever see you near my family again, and I know how to stalk, too, I will kill you"?

A Yes.

Q Now, what did he say, if anything, about this -- or what was your -- actually, I'd like to know what your comments were to him when he asked you about this specific statement, "If I ever see you"?

A My comments to you were that "you needed to tie that statement into what you told me you meant that statement to mean," which was related to some other page involving a threat to "kill you in court."

And I felt that you needed to be clearer, if that's what your intent was, in using that word, to link it -- or to be more specific. I also told you, in my view, I was uncomfortable with that phrase as it appears on this website.

Q Did you ever ask the defendant to, other than modify it, do anything else with the page?

A No. Other than I thought you should link it or use the same language that you were referencing. I didn't advise you to remove it.

Q When you say "link it," link it back to the original page that I was referencing?

A Correct. You showed me a link to -- I don't remember

your views about Mr. Sutcliffe's propensity.

THE WITNESS: Okay. Sorry. I misunderstood his question.

The context was, orally, I gave you several written memos. We talked about these issues on the telephone numerous times.

BY MR. SUTCLIFFE:

Q And during these discussions of the use of the word "kill," could you give the jury examples of some of the uses of the phrase "kill" in the context in which they were discussed?

A Yes. We discussed things like -- statements, "My dad is going to kill me when I get home" -- did that constitute a threat under the "UUIS" acronym? -- phrases like your parents saying, "If you don't clean your room, I'm going to kill you," those types of statements where the word "kill" was used in those statements.

Q Did the defendant ever ask you, in the context that if you use the word "kill" in a conditional setting, would that result in a threat?

A Yes. We discussed that issue, frequently.

Q Okay. Now, what does it mean "unconditional"?

A In terms of what I told you or is this a general question?

Q I'm talking about in terms of the -- you testified that you had discussions, and we discussed the acronym "UUIS," and the first part of the acronym was "unconditional." What does

it mean "unconditional"?

A I advised you that it was my legal research that the use of the "unconditional" word would render the statement as not a true threat, except or unless the condition itself was a threat or was impossible. In other words, there was a relationship between the condition and the other words that constituted the threat.

Q Where did this concept of "true threat" come up from?

A That evolved directly out of the United States v. Watts case.

Q A Supreme Court case?

A It is -- was and is.

Q In the indictment, one of the charges against Mr. Sutcliffe is -- I'm going to find the Webpage so we can actually read it here. Bear with me one second, Mr. McAfee.

This statement here, for the government's identification, 20020131. That would be January 31st, 2002, at 14:19 p.m. I'm going to highlight this sentence for you. "If I ever see you near my family again, and I know how to stalk, too, I will kill you."

Is that a conditional statement?

MS. DUARTE: Objection, Your Honor.

What he told defendant is relevant, but not what he feels.

THE COURT: Sustained.

whose comment it was. You showed me a link, and I told you I thought you should make that more specific to that link.

Q Okay. Did the defendant ever ask you about the word "kill" prior, before it was published in this website, in the instant case?

A Yes.

Q More than once?

A Many times. More than once.

Q In this website "evilgx.com", we've had occasion to see an address for the owner or -- excuse me, the owner or registration contact. If you want to get ahold of this owner of "evilgx.com", we've seen an address in Burbank.

Could you tell the members of the jury, what is your -- back in 2001, what was your mailing address and was it in Burbank?

A It was the same then as it is now. It's 231 East Palm Avenue, Burbank, California.

Q Thank you.

Did you notice that -- did you ever view the website and see your office address listed on this website?

A I did.

Q Were you surprised?

A I was.

Q Did you talk to the defendant after seeing your office address listed within this website?

A I did.
Q And did Mr. Sutcliffe tell you why your name was placed on this website?
A He did.
Q And could you explain to the jury why he told you your name was placed on this website?
MS. DUARTE: Objection. Calls for hearsay.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Did you ever tell Mr. Sutcliffe to remove your name and your contact information from this website?
A No, I did not.
Q Did anybody ever contact you directly -- based on having your name and your mailing address and other contact information, did anybody ever contact you directly from this website getting information?
A Yes. On at least two occasions.
Q Two?
A At least two. Two I can remember distinctly.
Q Can you tell the jury, what was the nature of those contacts? Do you recall?
MS. DUARTE: Objection to the extent it calls for hearsay.
THE COURT: Sustained.
Frame a more specific question, please,

Mr. Sutcliffe, because I don't know what you mean by "the nature."

BY MR. SUTCLIFFE:

Q Did anybody contact you, representing to be from within Global Crossing or an ex-employee of Global Crossing or a current employee of Global Crossing or anybody affiliated in any way, shape, or form with Global Crossing, related to the website "evilgx.com"?

A Well, that's pretty broad. Yes, I've had many conversations with people who would fit those categories.

Q To narrow it down, did anybody contact you, in that broad category, requesting -- or in the nature of personal information?

A Again, yes.

Q Okay. Can you tell the jury what, if anything, that was related to?

A Yes. I was asked -- sorry. There was concern about personal information that was on the Web, and I was asked if I could have it removed.

Q And to your knowledge, was their information removed after they contacted you?

A Yes. Within minutes or certainly within an hour.

Q How do you know that?

A Because I had access to the website. I could see the website.

Q And you had notified -- did you notify anybody that this information was being requested to be removed?
A Yes.
Q Who did you contact, if anybody?
A On one specific occasion, I contacted you. On another specific occasion, I contacted a gentleman by the name of Richard Weatherman.
Q During that contact, you advised, or you requested, that somebody had a problem with the information on the website?
A No. I just said somebody requested their information be removed and requested that you remove it -- or that it be removed. I'm sorry.
Q Shortly thereafter you saw this information was removed?
A Correct.
Q Thank you.

And did Mr. Sutcliffe ever discuss with you any kind of legal advice about publishing social security numbers on the Internet?
A Yes. We had a rather lengthy discussion about that issue.
Q Could you tell the jury, what was the nature of this discussion, this lengthy discussion, on publishing social security numbers on the Internet?

THE COURT: Okay. Before I permit Mr. McAfee to answer, I will instruct you that the same limitation applies to any testimony about the publication of social security numbers

on the Internet, and whatever advice this witness may have given to Mr. Sutcliffe.

What the witness told Mr. Sutcliffe is relevant only for purposes of understanding Mr. Sutcliffe's intent, in doing whatever he may have done, and is not to be accepted or considered by you as a correct statement of what the law actually is relating to the publication of social security numbers on the Internet.

Mr. McAfee's views are only relevant insofar as they provide a context for establishing the state of mind in which Mr. Sutcliffe was acting in doing whatever he may have done as you find him to have done it.

So with that, you may proceed, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you.

Q Mr. McAfee, in the latter part of September, early part of October, correct me if I'm wrong, you had a discussion with the defendant related to publishing social security numbers and other personal information on the website "evilgx.com"; correct?

A In 1991, yes, that's correct.

Q You mean --

A Sorry. 2001. I'm getting a little old here.

Q We all are.

What did you advise the defendant related to the -- what was the nature of this advice that you gave him?

A Mr. Sutcliffe brought a CD-ROM to my office, and we booted the CD-ROM on my computer. It contained personal information from people he told me were either past or present employees of Global Crossing, including social security numbers. He told me his intent to publish them on the Web, and asked me to determine whether or not, if he did so, he would be violating any laws.

Q On this CD-ROM, wasn't there also a lot of other information?

A There was a multitude of information on the CD-ROM.

Q We are not speaking specifically about personal information, are we?

A No. There was just a lot of information about Global Crossing on the CD-ROM.

Q The defendant indicated to you he wanted to start publishing stuff off of this CD-ROM, and part of that was these social security numbers.

Now, subsequently, he did publish information on this website; correct?

A Subsequent to his showing me the CD-ROM, yes.

Q And were you contacted by any other attorneys representing Global Crossing at this point?

A Yes, I was.

Q More than once?

A More than once.

Q Did you represent Mr. Sutcliffe in the California Superior Court on the issue of whether he could publish these social security numbers and other information that he was obtaining --

A I did.

Q -- to third parties?

A I have to qualify that. Not for that specific purpose. My purpose was a little bit more limited than that.

Q You said "not directly."

Was an action brought in California Superior Court regarding the publishing of this information, such as social security numbers of Global Crossing?

A Yes.

Q In what capacity did you represent Mr. Sutcliffe?

A Global Crossing's attorney brought a -- were bringing a temporary restraining order, and I was retained by Mr. Sutcliffe to challenge the jurisdiction of the Court in considering whether it should consider issuing a temporary restraining order.

Q I'd like to show you a copy of a document which is defense Exhibit -- 203, Your Honor, is that what you said?

THE COURT: The temporary restraining order is 202.

MR. SUTCLIFFE: 202. Okay.

THE WITNESS: I have it in front of me, if that's easier.

MR. SUTCLIFFE: Can I show this on there?

THE COURT: Yes.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Let me zoom out for you here.

Is this the document that you represented Mr. Sutcliffe in, in a limited fashion, to challenge the jurisdiction?

A It is.

Q I'm going to direct your attention to the top part here.

To your knowledge, do you know who scratched that word "confidential" out?

A Yes. I was present when this letter was created. That was done by the -- the initial crossing out was done by the judge. I believe the clerk then conformed the number of copies.

Q Did this judge, before he crossed this out, see any confidential information within your papers that you had filed?

A No. That's why he crossed out the word "confidential".

Q I'm speaking specifically about himself.

A I'm sorry. Did the judge see any confidential information about himself?

Q Yes.

A Yes.

Q Could you please tell the jury what confidential information the judge saw within the moving papers that you filed?

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q In these papers that you represented Mr. Sutcliffe in, that you filed within the Superior Court of California, did they include publishing the judge's name and his social security number?

A They did, as well as his father's and both of their birth dates.

Q Did he express surprise that somebody could get his and his father's social security number?

A He did.

Q To date, these documents are still available publicly in this case, are they not?

A To my knowledge, they are still part of the court file and record.

Q Is that aiding and abetting fraud, to your knowledge?

MS. DUARTE: Objection, Your Honor.

THE COURT: Sustained.

MR. SUTCLIFFE: I'll move on.

Q This document now, after -- let me rephrase the question.

Did the Court grant this temporary restraining order?

A Yes, it did. And you have the actual order or had it in front of you.

Q This was a limited temporary restraining order; correct?

A That's correct.
Q Can you explain to the jury what it means by a "limited temporary restraining order"?
MS. DUARTE: Objection to relevance.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Did this document that you represented Mr. Sutcliffe in prevent Mr. Sutcliffe from publishing any of the information he was receiving?
MS. DUARTE: Same objection, Your Honor.
Only his advice is relevant.
THE COURT: Sustained.
Ladies and gentlemen, I do want to reiterate that Mr. Sutcliffe is not accused of violating the temporary restraining order in this case. That's not what the allegations are that triggered this criminal prosecution.
I'll permit an answer only as to advice Mr. McAfee may have given that relates to the conduct that's alleged to have been in violation of Federal Criminal Law that's at issue in this case.
BY MR. SUTCLIFFE:
Q Mr. McAfee, I'll direct your attention to the top we were talking about where the judge scratched out the word "confidential," and direct your attention to the part where it says, "Information on the website. To the extent that such

info was obtained from plaintiff while defendant was employed by plaintiff." Who is the defendant?

A In that matter, that was Steven Sutcliffe.

Q Who would be the plaintiff?

A Global Crossing.

Q So, basically, this says, to the extent that the info was obtained from Global Crossing while Sutcliffe was employed by plaintiff?

A That's correct.

Q And Mr. Sutcliffe, during the time of this, had been a long time unemployed from that company at the time this was filed?

A I don't know that I would say a long time. He was no longer employed.

Q When you are trying to feed a family, being a long time unemployed can have a real -- can seem really quick; is that not true?

THE COURT: Ladies and gentlemen, we are not going to permit argument in the form of irrelevant questions. You can disregard the question and should.

BY MR. SUTCLIFFE:

Q Okay. Mr. McAfee, what happens to somebody if they violate a superior court judge's temporary restraining order?

A I would imagine the same thing that would happen in this court. You would be found -- or could be found in contempt if

the Court found that you knew the order --

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: I'll let him finish the answer.

THE WITNESS: -- if the Court found that you knew the order and willfully violated the order.

BY MR. SUTCLIFFE:

Q You would be thrown in jail?

A Well, that's one option, I suppose, the Court would have.

Q Now, to your knowledge, did Global Crossing ever seek an order of contempt from the Court related to this temporary restraining order?

MS. DUARTE: Objection. Relevance.

THE WITNESS: They did not.

THE COURT: Disregard the answer. If you see the lawyer rise, don't give an answer until I've heard the objection and ruled on it.

The objection is sustained. The question is calling for irrelevant information.

Disregard the question and disregard any answer you may have heard.

BY MR. SUTCLIFFE:

Q Now, this temporary restraining order, did Global Crossing eventually obtain a permanent injunction on him?

A They did.

Q And this permanent injunction, this was against the

defendant?
A It was against Mr. Sutcliffe, that's correct.
Q Based on this temporary restraining order?
A That's correct.
Q Okay. Did a hearing occur on the temporary orders?
A You mean on the permanent injunction?
Q The permanent, excuse me.
A Yes. There was a hearing conducted to determine whether the temporary restraining order should become a permanent injunction.
Q Okay. And permanent means a long, long time?
A I believe it's three years, if I'm not mistaken, and they can be renewed.
Q Were you present at that hearing?
A I was definitely present at that hearing.
Q Did you represent the defendant, Mr. Sutcliffe, at that hearing?
A No, I did not. Months -- I'm sorry, I did not.
Q Why didn't you represent Mr. Sutcliffe at this hearing?
A Once the issue of jurisdiction had been decided, my authority had terminated.
Q In the temporary restraining order?
A Well, that was decided at the hearing at the permanent injunction, yes.
Q Were you present when the Court issued the order for the

permanent injunction?
A I was.
Q Can you tell me, what was that order from the Court?
MS. DUARTE: Objection to relevance, Your Honor.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Have you ever seen a copy of that permanent injunction?
A I have.
Q Is the language identical or the same as the temporary restraining order?
MS. DUARTE: Same Objection, Your Honor, and it's hearsay.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q In your dealings with the law firms, while you were representing Mr. Sutcliffe, did the attorneys tell you how they believed that Mr. Sutcliffe had gotten this information?
A Yes.
Q Could you tell the jury what they represented to you how I had received this information?
MS. DUARTE: Objection. Irrelevant. Calls for hearsay.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Did --

THE COURT: If you wish to inquire about any person by name who was functioning as an attorney for Global Crossing who said something to this witness, and if you frame the question properly, I would probably permit you to do so. But a general inquiry like that, and one that lacks foundation, is not permissible.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Did you ever have a conversation with Mr. Block?

A I had a number of conversations with Mr. Block.

THE COURT: Mr. Block is not a witness in this case. I had a different individual in mind.

BY MR. SUTCLIFFE:

Q Mr. Block worked at which law firm?

A Christensen, Miller, Fink -- sorry.

Q Was there --

A There is a bunch of other names after that.

Q There was another Mark who worked there also; correct?

A Yes. Mr. Mark Labaton.

Q In your conversations with Mark 1 or Mark 2, did either of them make a representation to you as to how they believed Mr. Sutcliffe had obtained information that was being presented on the website?

MS. DUARTE: Objection. Irrelevant, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Did Mr. Labaton ever tell you that he believed that Mr. Sutcliffe had stolen this information?

MS. DUARTE: Objection. Irrelevant.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Did Mr. Block, on October 2nd, send you a letter saying Mr. Sutcliffe has stolen information?

MS. DUARTE: Same objection.

I ask that Mr. Sutcliffe be asked to move on.

THE COURT: Sustained.

Mr. Sutcliffe, I've made rulings, as you know, including today. So please comply with those rulings and move on to something else.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Now, in the temporary restraining order and injunction, did you submit any declarations?

A I did.

Q Correct me if I'm wrong, but one of those declarations that was -- you testified earlier was from Jeffrey Brenner?

A That is correct.

Q Is it not true that Mr. Brenner was representing that he was being asked by Global Crossing to file a false declaration?

MS. DUARTE: Objection. That's hearsay, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q That declaration that Mr. Brenner sought legal advice from you -- let me rephrase that question.

Did you ever send a letter to the lawyers at Global Crossing telling them that you believed that Mr. Brenner was being asked by Global Crossing's company (sic) or representatives to file a false declaration accusing Mr. Sutcliffe of stealing this data?

MS. DUARTE: Objection to relevance and it contains hearsay.

THE COURT: Sustained.

I think we went through that last week. It has been asked and answered.

BY MR. SUTCLIFFE:

Q Did you ever discuss with Mr. Sutcliffe any other statements that he was placing on this website?

A Yes. I believe there were two or three -- well, there were many, but two or three that are relevant to this case, I think.

Q Now, I'm going to show you -- one of these charges in the indictment in Count Three is "Keep your dogs at bay. I'm now armed."

Did you ever have a discussion with Mr. Sutcliffe regarding the statement "I'm now armed"?

A Yes.

Q Could you tell the jury, what did you tell Mr. Sutcliffe

about the statement "I'm now armed"?
A Yes. I looked at that statement before it was published on the website, and I advised Mr. Sutcliffe that, given the context in which the statement was presented, that I felt it did not constitute a true threat.
Q Have you reviewed this website "evilgx.com"?
A I have seen it many, many, many times.
Q And have you seen the four statements Mr. Sutcliffe is being charged with as constituting true threats?
A No.
Q Has Mr. Sutcliffe ever told you that he was being charged with saying, "I'm now armed"?
A Of course, I'm aware of that.
Q And these other -- based upon the website, as you've seen it in the past, do you believe that Mr. Sutcliffe followed your counsel and your advice as to the acronym "UUIS"?
A Yes.
Q Did you ever advise Mr. Sutcliffe to modify or remove the statement regarding -- or put a hyperlink to another page regarding "I will kill you"?
Let me rephrase that question. Did you ever tell Mr. Sutcliffe you should modify or change or delete or do anything with any other statements within the website, other than the "I will kill you" one?
A No. Other than the one I've already discussed, no.

Q Can you tell me why not?
A Because, in my opinion, none of the other statements and not just the three that -- others that are here, but none of the other statements or content violated any law or constituted a true threat.
MS. DUARTE: Your Honor, I'm going to object to that and move to strike the answer.
THE COURT: Yes. The answer is stricken.
You should disregard the answer. The -- I'll just stop there.
You have asked, I think, about some, but not all, of the alleged threats, and you would be -- well, you may continue. Go ahead.
MR. SUTCLIFFE: Thank you.
Q Mr. McAfee, of the statements that are charged in this indictment, do you believe that Mr. Sutcliffe complied with your instructions -- as to the acronym "UUIS," and the advice you had given him regarding social security numbers and specific words, do you believe he had followed your advice and counsel?
MS. DUARTE: Objection, Your Honor. The witness has testified he hasn't seen the indictment.
THE COURT: Sustained.
It's also compound. You are asking about two entirely different legal issues and apparent forms of advice

you may have been given.
BY MR. SUTCLIFFE:
Q Did you ever have a phone conversation with Mr. Sutcliffe since his arrest?
A I have had a number of telephone conversations with Mr. Sutcliffe since he was arrested.
Q In those conversations, did Mr. Sutcliffe read to you from the indictment the phrases that he was charged under?
A Yes. I also have copies of both of the indictments.
THE COURT: But before you continue, Mr. Sutcliffe, it would be irrelevant to elicit information about any views or opinions that this witness may have expressed to Mr. Sutcliffe after he was arrested.
The only relevance of any testimony that Mr. McAfee is being permitted to give has to do with the state of mind of Mr. Sutcliffe at the time he may have committed the alleged acts which preceded his arrest.
So I'm not going to permit further inquiry about any such telephone conversations.
BY MR. SUTCLIFFE:
Q Based on your examination of the website "evilgx.com", do you believe that Mr. Sutcliffe followed your advice and your counsel related to "UUIS" to avoid making or publishing a true threat?
MS. DUARTE: Objection, Your Honor. It's after. His

question postdates his arrest.

THE COURT: I'll permit an answer to that.

MS. DUARTE: Okay.

THE WITNESS: Yes, I do believe that Mr. Sutcliffe followed my advice as to the "UUIS," an acronym I had given him.

BY MR. SUTCLIFFE:

Q Isn't it a fact that, in your view -- or maybe it's not -- in your viewing of the website "evilgx.com", that that page, "I will kill you," it was eventually deleted, wasn't it?

A I believe it was removed almost immediately after you and I had -- my conversation with you about linking it -- better linking it to the page that you told me it was referring to.

Q Let me ask about the conversation you had -- one or more conversations you might have had with Mr. Sutcliffe.

We talked earlier about this disclaimer where Mr. Sutcliffe said -- or represented to you that, "Look, people are sending me information. I'm requesting information on any crimes committed by this company, and people are giving it to me, so I want to publish it." And then you created a disclaimer for Mr. Sutcliffe in the website that said, "Look, we don't know if this information is real. We don't represent it to be true until the makers of whoever sent us this information confirms that it's true," something to that effect; correct?

A I don't remember the exact language, but, in essence, that's true.
Q Isn't it true that Mr. Sutcliffe told you that if anybody tells you -- contacts you and says, "This info is real," you are to contact him immediately?
A Yes. We had that conversation on a number of occasions.
Q And there was talk about 8,000 social security numbers being published, and 1900 social security numbers being published.

Somebody who wants to aid and abet identity theft is going to leave that stuff up on the website, aren't they?

MS. DUARTE: Objection. Argumentative. Calls for speculation.

THE COURT: Sustained.

BY MR. SUTCLIFFE:
Q If Mr. Sutcliffe found out information -- if Mr. Sutcliffe found out that he was receiving information and then that information was then confirmed to be true, his intent, correct me if I'm wrong, he told you that when someone said, "If anybody acknowledges" -- I'm going to rephrase this question.

Did Mr. Sutcliffe ever say, "Hey, I want to commit fraud on this website"?
A No.
Q Did Mr. Sutcliffe ever say to you, "I want to follow the letter of the law to the T"?

MS. DUARTE: Objection, Your Honor. It's hearsay.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Did Mr. Sutcliffe ever forward you so-called threats that were directed to him via e-mail?

A Yes.

MR. SUTCLIFFE: I have nothing further for this witness at this time.

Thank you for your time, Mr. McAfee.

THE COURT: Any cross-examination?

MS. DUARTE: I do have cross, Your Honor. May I ask for a facilities break prior to cross? Then I would be prepared to resume until 1:30.

THE COURT: We'll take a 15-minute break now. We'll resume at 12:00. We'll go straight to 1:30. I promise you, no matter what happens, you'll be excused not later than 1:30. I know there is at least one juror who needs to be -- needs to rely on that. So we'll go to 1:30, but we'll take a 15-minute break now.

(Recess taken at 11:45 a.m. to 12:03 p.m.)

CROSS-EXAMINATION

BY MS. DUARTE:

Q Mr. McAfee, you testified that you advised defendant, at least in part, on whether or not his writings on the website were legal or illegal. Is that fair to say?

A That's fair to say.
Q Did that include an analysis under federal law?
A It did, although my focus was more on state law than federal law.
Q But you did advise him on certain aspects of federal law; correct?
A Yes. Since the state law is derived from the federal laws that I quoted to him and gave him copies of the cases of.
Q As a matter of fact, those two cases that you mentioned earlier, Watts and, I believe, Kelner, those are both federal cases; right?
A Yes, they are.
Q So you were researching in the federal arena?
A Not really. In researching the state law, the legislative notes referred to federal cases. Then I went to the federal cases, pulled those cases, read those cases, read the cases that were cited in Shepard's, and subsequently cited those cases.
Q You Shepardized them and looked at the legal authority on that?
A At the time I did the research, correct.
Q When did you do the research?
A My original memo was dated, I believe, in 1999. I have done a number of memos, at least one or two, since that time.
Q Now, your original memo dated back in 1999, you say that

you followed up with other memos since then?
A Yes.
Q Do you have those other memos that you've written with you?
A I was only able to locate one in the computer, since the files are in storage, but I do have another one with me.
Q Is the one that you are referencing dated September 9, 1999?
A No. This one I'm looking at is not dated. It was -- when I conduct legal research, I take my computer to the library and I make notes, and often I will convert those to a memo.

In this case, I didn't convert it. I just gave him a copy of my notes.

Q You are testifying that you gave Mr. Sutcliffe this information that you have in front of you?
A That's correct.
Q Okay. What about a memo dated September 9, 1999? Did you also give Mr. Sutcliffe that information?
A I don't know. I can look through the documents I've brought to see if I did.
Q Would seeing a copy of it refresh your recollection?
A Sure.

MS. DUARTE: Permission to approach, Your Honor?

This is Bates stamped 16 of defendant's previous submissions.

THE COURT: Yes, you can approach.

Actually, Mr. McAfee, I'm going to ask the clerk to substitute a clean copy and give me back my marked copy, if I could.

THE WITNESS: I actually have my copy of this memo in front of me. Whichever you want me to look at is fine.

THE COURT: Let me see the document, or tell me -- what's the Bates stamp number?

MS. DUARTE: It's 16, Your Honor, from the submissions by the defendant last week that the government copied.

THE COURT: Okay.

BY MS. DUARTE:

Q Mr. McAfee, speaking specifically about September 9, 1999, you gave defendant some legal advice at that time about threats; correct?

A That is correct.

Q And is it fair to say that the legal advice you gave him is embodied, at least in part, by this memo?

A It's embodied, in part, by this memo, yes.

Q When you gave him the advice in 1999 -- directing your attention to page 2 of the memo, you talked a little bit about the conditional aspect of threats; correct?

A Yes.

Q Go ahead and refresh your memory, if you need to. It's

paragraph 4, down on the second page.
A I have already seen it. Thank you.
Q And at the time did you advise him that just because a condition is conveyed, it does not mean that the statement is not a threat?
A No, that's not what I said.
Q What did you say?
A Do you want me to read it?
Q No. I want you to tell me what you said.
A Okay. I told him that if a condition precedes -- or, I guess, comes after the language that constitutes a threat, then the nature of the condition has to be looked at to see whether the condition itself took the statement out of a "true threat" context.
Q Let me stop you and ask you, you said "precede" and then you said "comes after."
A Sure.
Q Which do you mean?
A It could mean both. It could mean, if you don't do something, I will do something; or it could mean, I'm going to hit you in the head and kick you in the shins, I'm only kidding. It can be before or after the statement.
Q All right. And before or after the statement, this condition would happen, and it wouldn't necessarily make it a nonthreat; correct?

A No. You are absolutely right.
Q As a matter of fact, you suggested that, did you not, Mr. Sutcliffe would have to be careful, or whoever you were addressing this memo to, that the content of the comment itself does not directly convey such specific facts about the person, that the language itself conveys a sense of boding or fear?
Do you remember making that statement to Mr. Sutcliffe?
A No, not directly. I can review the memo real quick.
THE COURT: Direct his attention to where it is.
BY MS. DUARTE:
Q Directing your attention to Bates stamp 18. Do you have a Bates stamp copy, Mr. McAfee?
A I do.
Q Bates stamp 18, one paragraph up from the bottom, the paragraph beginning "I must warn you, however."
A Yes, I see that.
Q If you can review that paragraph, and I'm going to ask you a few questions about it.
A Okay. I remember this paragraph.
Q Directing your attention near the bottom, did you not caution Mr. Sutcliffe that, if the information conveyed was of a personal nature to convey, I believe you said a sense of boding or fear?
A Well, that's part of a longer sentence; but, yes, I do use

those words in that sentence.
Q You told him, if that occurred, he would be dangerously close to the line?
A No, that's not exactly what I said. In fact, that's not even close to what I said.
Q Then what did you say?
A Well, I would be happy to read it, if you'd like me to.
Q Just tell me what you told him back then, and use this to refresh your memory, if you'd like.
A I told him that, if the condition -- I'm sorry, that if the result of the condition was not imminent or immediate, it was not unequivocal, and if the maker didn't have the imminent or immediate ability to convey the conduct, that the content of the comment itself -- and if the content of the comment itself does not directly -- I'm sorry, I'm reading it because --
THE COURT: You know, Ms. Duarte, ask him, Did he say this. If he denies it, have him read it. Okay. Let's just find out what he said, because I think that will be the clearest way to make clear just what he said and didn't say to the defendant.
BY MS. DUARTE:
Q What specifically did you say to the defendant regarding the sense of boding and fear that could be conveyed that I've asked you about before?
A I told him --

THE COURT: Read the sentence.

THE WITNESS: I'm going to read it, Your Honor. "You should ensure that any language contains conditions that the result of the condition being met or not met is not immediate and is not unequivocal, that the maker of the comment does not have the imminent ability to carry out the conduct, and that the content of the comment itself does not directly convey such specific facts about the person, that the language itself conveys a sense of boding or fear."

THE COURT: Now read the next sentence.

THE WITNESS: "While it appears that such language, if conditioned and equivocal, would still not constitute a threat, as that word is presently defined, you would be coming dangerously close to the 'line'" -- and the "line" is in quotes -- "that has been established in the law, at least of this state."

BY MS. DUARTE:

Q Thank you. So, Mr. McAfee, this was back in September of 1999 that you were giving defendant this advice that we see here?

A That's correct.

Q Did your advice to him change significantly regarding conditional aspects of threats from that point on?

A Materially, no, but it did become more cautious. A few cases came out after that.

Q Okay. So by becoming "more cautious," you mean you were advocating that he take more caution with the contents of the website than before?

A No. What I was telling him was that the state of the law was uncertain, and that given some of the new cases that had been ruled upon, that he needs to be more cautious if he was going to use language that conveyed a threat of any type, whether it be conditional or equivocal or not imminent or not specific.

Q When did you tell him this?

A I don't have a date on the memo, but I can probably give you an estimate, based on the dates of the cases that are cited in that memo.

Q That's fine.

A Let me just -- the most recent case in that memo is 2001. So it would have been sometime most likely towards the end of 2001. As you know, there is a delay between when the Court rules and when it's published.

Q So this would be at the time the defendant was operating "evilgx.com"?

A I can't say that for certain. I -- I honestly don't know. It may have been at the time I first became aware of "evilgx.com", but I don't really know.

Q When you discussed the law with the defendant, you discussed federal, as well as state, law; correct?

A In both instances, that's correct. In both memos, I mean.
Q And in person?
A And in person.
Q Okay. You don't consider yourself to be experienced in federal criminal matters, do you?
A I do not.
Q As a matter of fact, you've declined to -- have you ever represented anyone in a federal criminal matter?
A No.
Q How about a federal civil matter?
A Yes. Many times.
Q Mr. McAfee, if you were not -- I'll withdraw that, Your Honor.

Now, Mr. McAfee, aside from the two memos that we've discussed, is there anything in writing that -- e-mails, memos, anything like that -- back you up when you say that you advised the defendant on each and every count in the indictment?
A I can't tell you for certain. I don't know if I sent e-mails. I don't retain e-mails.
Q So you don't know of anything offhand?
A I don't have a present recollection of anything.
Q Now, Mr. McAfee, you are -- you represented the defendant in other collateral matters in federal court as well; correct?
A That's correct.
Q And you actually represented him in a federal civil matter

that occasioned out of his representation in this case; correct?

A That is true.

Q And you have sued, on his behalf, one of his former criminal defense attorneys; isn't that right?

A One of his former Court-appointed attorneys, yes, that is true.

Q Who was appointed by the Court to defend him, criminally; correct --

A That is correct.

Q -- in this case?

A That's correct.

Q In that Complaint, you seek monetary damages, do you not?

A If the cause of action permits it, it's sought. I don't really recall.

Q You don't recall whether or not you seek damages?

A You asked about monetary damages.

Q I'm sorry, monetary damages. You don't recall whether or not you seek monetary damages?

A If the cause of action that's pleaded permits monetary damages, then, of course, they would be pleaded.

Q Would seeing a copy of that Complaint refresh your recollection as to whether you are seeking monetary damages?

A Sure.

MS. DUARTE: If I could have just a moment, Your

Honor. Your Honor, if I may just look for it here.

THE COURT: All right. Take your time.

MS. DUARTE: I apologize. I thought I had it. I can take one more look and then I'll move on. I can't locate it.

I've got it, Your Honor. I apologize for the delay.

May I approach with the Complaint?

THE COURT: Yes.

BY MS. DUARTE:

Q Go ahead and take a look, if you need to refresh your recollection, as to whether or not you are seeking money.

A All I have to do is look at the causes of action titles, and I know that each of them -- two of them permit statutory monetary damages, and two of them are civil damage causes of action.

Q How much money are you seeking?

A How much money is Mr. Sutcliffe seeking?

Q How much are you seeking on his behalf?

A For each count --

Q The total is fine.

A A hundred dollars a day -- do you want me to read this?

THE COURT: Add it up. She wants a number, and that's what you are required to give her.

THE WITNESS: A hundred dollars a day for each unlawful incarceration or delay.

BY MS. DUARTE:

Q Doesn't it also give a total figure there in the amount of approximately $365,000, or am I remembering wrong?
A No. That's correct.
Q You are seeking a total of $365,000 as of the date of that filing; right?
A No, that is not correct.
Q Okay. Correct me.
A We are seeking a hundred dollars a day for each day of unlawful incarceration, which was believed to be in excess of $365,000 as of the date the Complaint was filed.
Q Okay. Thank you for the clarification.
Your Honor, may I get the document back?
THE COURT: You may.
BY MS. DUARTE:
Q Mr. McAfee, if defendant is convicted in this case, that would not help your lawsuit, would it?
A I don't think it would have any effect on the lawsuit.
Q How is that possible?
A The lawsuit alleges a violation of civil rights. The defendant can be convicted but still have his civil rights violated. The two are not mutually connected.
Q Correct. But in the Complaint, you also allege that defendant is wrongly accused; correct?
A I don't think that -- I don't know. I don't think that's an element of a violation of civil rights. It may be a general

allegation, based on the defendant's belief, that he's been wrongly accused, but it's not an element of any of the causes of action.

Q And you don't allege in the Complaint, do you, that you specifically advised the defendant as to each and every count in the indictment on the legality of those counts; right?

A No. Because the indictment is not part of the Complaint.

Q But there is a lot of stuff in the Complaint that doesn't have to do with the indictment. There is a lot of stuff in the Complaint, excuse me, that doesn't have to do with the elements; correct?

A No, I don't think so.

Q But the fact that you are now saying you counseled the defendant specifically on these counts, you'd agree with me that that is not there in the Complaint; correct?

A I would agree that is not in the Complaint.

Q Mr. McAfee, you've known the defendant for how long?

A At least six years, perhaps longer.

Q And you consider yourself his friend; right?

A Well, we kind of went through this before. I don't consider him a friend.

Q I'm sorry. When did we go through this before?

A I thought, when I was on the stand the last time, or maybe it was before the jury was here. I don't recall. I remember this conversation before.

But to answer your question, no, I don't consider him a friend as I consider friends, friends. Does that make sense?

Q What do you consider him to be?

A He is a client with whom I am friendly.

Q But you've had dinner at his house -- you've had him at your house for dinner; right?

A On one occasion in six years.

Q On one occasion in six years?

A Correct.

Q And his wife was with him?

A As well as his daughter.

Q What was that occasion?

A You know, I believe he was coming to work on my wife's computer, and his payment was dinner.

Q All right. And in addition to the state court matter -- actually, I want to get into that a little bit.

In the state court matter that we have discussed, you said that you represented defendant as to a jurisdictional aspect only; is that correct?

A That's correct.

Q And so by the time it got to the stage where the preliminary injunction was granted, you were no longer representing him?

A That's correct.

Q Did you challenge the jurisdiction of the state court over

him?
A Yes.
Q And you lost that challenge?
A Correct.
MS. DUARTE: If I could have just a moment, Your Honor?
THE COURT: All right.
Q Now, in addition to that challenge, you also applied, during the course of this civil litigation, for a temporary restraining order, did you not?
THE COURT: Which civil litigation are you now inquiring about?
MS. DUARTE: The same, Your Honor.
THE COURT: Between Global Crossing and Mr. Sutcliffe?
MS. DUARTE: Correct.
THE WITNESS: Yes. I brought a motion for a temporary restraining order.
BY MS. DUARTE:
Q Who did you try to get that temporary restraining order against?
A Against a person by the name of Tracy Hall.
Q In the affidavit in support of the temporary restraining order, did you allege that Ms. Hall had threatened you?
A I believe that was the reason why I sought the TRO.

Correct.
Q That's why you sought the TRO?
A Correct.
Q Now, before, when you testified, I think it was last week with Mr. Sutcliffe, you had said that Tracy Hall had told you that she would make your legal life miserable; correct?
A Something like that, or words to that effect.
Q That was the threat that you were alleging when you tried to get the temporary restraining order against her?
A No. I think it was -- off the top of my head, without reviewing my declaration, I don't think she said "legal life hell." I think she just said "make your life hell." That was several years ago. I don't have a present recollection.
Q Right. But that was the same comment to you and the same exchange when she came to your office to give you papers? That's the same thing we are talking about -- right? -- the same exchange?
A Correct.
Q So she either said, "your legal life miserable" or "your life miserable"?
A Well, it wasn't directed just to me. But, yes, that's correct.
Q You and your family?
A Correct.
Q So you sought a TRO against her; correct?

A Correct.
Q And in that TRO -- this was during the time when there were all the -- all the issues in state court about service -- correct? -- that I don't want to get into? This was during that time; correct?
A Yes.
Q A lot was going on in state court whether or not defendant had been served; correct?
A That was the basis of the jurisdictional claim.
Q So at the same time, or around the same time, you sought this TRO alleging that Ms. Hall had threatened you, and you wanted her to stay at least a hundred feet away from you; correct?
A Away from me and my family and my house. I think that's correct.
Q Wasn't it also away from Mr. Sutcliffe?
A I believe it was. I did request that.
Q In addition to Ms. Hall, didn't you also seek to keep any representative from Christensen, Shapiro, the law firm that represented Global Crossing, away?
A Christensen, Miller, Fink, you mean?
Q My fault. I think Shapiro is the last name in there.
A You are right. I -- I think so. It sounds familiar.
Q That you also included them in the application for the TRO?

A Yes.
Q And that application was denied; correct?
A It was.
Q And in the course of making the application, in your memorandum of points and authorities, you explained, then, to the Court what a threat was; correct?
A I don't have a recollection as to what was contained in the memorandum of points and authorities.
Q Would looking at it refresh your memory?
A I'm sure it would.
THE COURT: You may approach.
THE WITNESS: I believe I have it in front of me as part of the subpoenaed documents I brought. Can I just verify it's the right document?
THE COURT: Is it a document that says "Ex parte application of Leslie S. McAfee"?
MS. DUARTE: It is, Your Honor.
THE WITNESS: Yes, I have the same document, Your Honor.
BY MS. DUARTE:
Q If you need just a minute to review your memorandum of points and authorities, which begins on Bates stamp 337, I'm not going to ask you about specifically what you wrote, but I will ask you about the understanding that you conveyed about threats.

A Okay. I read the memo in terms of the issue of threat.
Q Okay. So at that time, when you made that application, you told the superior court why it was that Tracy's statement to you that she would either "make your legal life" or "your "life miserable" was a threat; correct?
A Was a "terrorist threat," yes.
Q You categorized it as possibly a "terrorist threat"; right?
A Yes. I put that in quotes in the memorandum.
Q When you wrote this application and you wrote the memorandum, is that really what you thought, that that was a terrorist threat?
A Yes.
Q Did you also know that just because it was conditional -- did you write that just because it was possibly conditional, didn't mean it wasn't a threat?
A No. You are talking about a law that involves 875(c), which is not a terrorist threat.
THE COURT: Wait. She's asking you what you said, not what the law is in this case.
BY MS. DUARTE:
Q Directing your attention, if we need to --
THE COURT: Answer the question that she asked you, please.
THE WITNESS: Reask the question.

BY MS. DUARTE:

Q In this memorandum, did you also discuss the fact, the legal fact, that a threat, even if subject to possible contingency, may still be a threat?

A Yes.

Q Even a terrorist threat; correct?

A Right, as I stated before.

Q And given that you characterized Hall's threat to you as just that: A "terrorist threat"; right?

A That's correct.

Q And you noted in your memo that "a statement may constitute a threat even though it is subject to a possible contingency in the maker's control"; correct?

A Yes. In the maker's control. Correct.

Q In the maker's control.

And this memorandum was submitted by you on October 21st, 2001?

A Yes.

Q Now, one more question about this memorandum. You also discussed what, in your opinion, might exempt Ms. Hall from your definition of threat; correct?

A I don't recall.

Q Take a look at the second paragraph down, page 7, which is Bates stamped 337, beginning "A threat," and I direct your attention to the last sentence of that to refresh your

recollection as to what you said.
A Okay. I'm sorry. Ask me the question again, then.
Q You also told the superior court about, if you will -- you mentioned three categories of communications which, in your opinion, would not constitute a threat; correct?
A That is correct.
Q And those were political argument, idle talk, or jest?
A That's correct.
Q So Tracy Hall's statement to you was none of that; therefore, it was a terrorist threat; correct?
A No, that's not correct.
Q Okay. I'll move on.
A Okay.
Q Back to your relationship with Mr. Sutcliffe just for a minute.

Now, you characterized him not as a friend, but as a client that you're friendly with; correct?
A That's correct.
Q And did you give him permission or authority to put you, say, on his professional references in his employment applications and resumes and the like?
A I did.
Q So you were aware that you were listed as his foremost professional reference?
A I don't know if foremost. I didn't see his resume, but I

knew I was listed in it.
Q And that was professional reference in what aspect? Because you represented him?
A No. He was the computer specialist for my law firm and for the office next-door to me and for a number of other law firms that I had referred him to.
Q When you say "law firm," you are a sole practitioner; right?
A I am both a sole practitioner and I'm a partner in a firm called McAfee, McAuliffe & Willis.
Q Does that operate at the same Burbank address?
A I am -- my Burbank address is the satellite office for McAfee, McAuliffe & Willis. The main office of that firm is located in Los Angeles.
Q So you work with two other gentlemen by the name of McAuliffe --
A McAuliffe.
Q -- & Willis?
A Correct.
Q They are downtown here in L.A.?
A They are.
Q And by "satellite office," do you mean that's where you work?
A That's correct.
Q But you also run your own practice?

A I do.
Q And were you representing Mr. Sutcliffe in the superior court litigation under your own sole practitioner practice or in the partnership that you have described?
A No. As a sole practitioner.
Q Do you know whether or not you are Mr. Sutcliffe's emergency contact?
A Did I know I was Mr. Sutcliffe's emergency contact?
Q Yes.
A Yes, at some point in time I did.
Q You gave him permission to list your name as his emergency contact?
A For what?
Q For his employment.
A For his employment? I don't recall that. I may have, but I don't recall it.
Q If you gave him permission to do that, did you consider yourself close enough with him to be his only emergency contact?
A Well, again, I don't have a recollection of whether I was even his emergency contact or whether I was his only emergency contact, but I felt that I knew him well enough to be able to locate him if someone needed to call about an emergency related to him.
Q So you could locate him regardless of what the emergency

might be?
A At the time that I gave him permission to use my name, yes.
Q When Mr. Sutcliffe moved from Los Angeles to New Hampshire, you were aware that he had moved; correct?
A At some point in time I was.
Q At what point in time?
A Just before he was arrested.
Q So you were not aware until March 2002 that Mr. Sutcliffe had left Los Angeles?
A No. I was aware that he left Los Angeles well before then.
Q As a matter of fact, you wrote a letter to the Law Offices of Christensen, Miller, telling them that he had left Los Angeles; correct?
A I believe that's correct.
Q But you did not know where he was, you say now, until March of 2002?
A I can't tell you exactly when it was, but certainly at the time I wrote the letter to Christensen, Miller, I had no idea where he was, other than I believed he was no longer in California.
Q So during that time period where you had no idea where he was, you would have been unable to locate him; correct?
A I'm not sure what you mean by "locate him."

Q You said, as his emergency contact, you were always able to locate him.

My question to you is, During whatever time period it was that you did not know where he was, you would have been unable to locate him; correct?

A To locate him, that's probably correct.

Q But you were able to have other contact with him?

A Yes, of course. He had a website and he had an e-mail address, and I could communicate with him, as anyone could, through that website.

Q So you were in touch with him by e-mail during the time period between November 2001 and March 2002?

A Between November 2001 -- no. I think I knew he was in New Hampshire by then, but I could have sent e-mails to him. I really don't know.

Q When you say by "then," what's the date to which you are referring?

A The date you gave me, November of 2001.

Q So you are saying you knew he was in New Hampshire by November 2001?

A I -- I would have to go back in time. Let me think about this.

Q Go ahead and take your time.

A No, I didn't know he was in New Hampshire in November or, I don't think, in December. I don't think it was in 2001. I

think it was sometime in 2002, that he was in New Hampshire.
Q I'm sorry, that what occurred?
A When I knew he was in New Hampshire.
Q Was sometime in?
A 2002.
Q But you knew that he was no longer in Los Angeles after November of 2001?
A Yes.
Q Mr. McAfee, you spoke with Mr. Sutcliffe, briefly, about a proceeding that took place in superior court on October 15, 2001, where the TRO that you looked at was secured.
Do you remember that conversation?
A Yes, I believe so.
Q And in that conversation with Mr. Sutcliffe that you just had, you referenced, and correct me if I'm wrong, that it was at that hearing on October 15, 2001, that the judge made some reference to his own social security number being on the Internet. Do you remember that?
A I'm sorry, that the judge made a reference to the judge's social security being on the Internet?
Q Is that what you said or did I get that wrong?
A No.
Q What did you say?
A I had -- okay. I had published the judge's social security number and birth date in a motion to demonstrate or to

counter Global Crossing's claim that the only way you can get this information is if you steal it from an employer.

Q So you had published it in a separate motion.

Was it your testimony, though, that that was discussed at the time of the hearing on October 15th, and that the judge found it amusing? Didn't you testify to that?

A Whether it happened on the October 15th date, I don't recall. But the Court did make a comment about his social security number being presented to him in a motion.

Q Did you link his social security number to an article on identity theft when you gave it to him?

A Linking would suggest that I had a computer. I didn't present it to him on a computer database.

Q Did you present it to him coupled with an article on identity theft when you gave it to him?

A No.

Q At the October -- as of the October 15, 2001 hearing, when you represented Mr. Sutcliffe there, you could not access the website; isn't that right?

A That is correct.

Q So as of October 15, 2001, when you were appearing, you had not seen the website; is that true?

A No, that's not true.

Q How were you able to see it that you could not access it?

A I had purchased a new computer that Mr. Sutcliffe helped

me set up. The problem was I couldn't transfer my data files to the new operating system. So even though I had a new computer, I had to use the old operating system until I could convert my files. So there was a period of a couple of weeks where I had to use the old computer platform with a new computer that I could not access Mr. Sutcliffe's site, at least not all of it.

Q When you represented to the judge back on October 15, 2001, that you could not access the website, that time period was for how long?

A I don't know. I think I first became aware of the site in early October. October 2 sticks in my mind, for some reason. And for probably two or three weeks I was not up on the current operating system, so there is a window there of approximately 14 to 21 days.

Q Right. Now, you also represented to the judge, did you not, that you did not know how defendant got the information; you had no personal knowledge about the information that he had posted?

A Correct. I had no personal knowledge.

Q And you presumed where he got it based on his statements to you; correct?

A Correct.

Q When you discussed the information that he brought you to review, I believe you said that he actually, physically,

brought you two CDs. Is that what you said?
A I think it was two. It might have been more. I remember two.
Q So he brought these CDs, physically, to you and you two sat down and reviewed them?
A He brought the CDs to me and we booted the CDs up. That's what I recall. I don't --
Q Booted them up for the purpose of viewing them; correct?
A Correct.
Q Did you view them?
A I viewed some of the files that were on the CD-ROM.
Q So you did not view the whole CD-ROM?
A No.
Q Was the CD-ROM various files or was it the website -- was it a download of the website?
A It was not a download of the website, at least that's my recollection. It was just a collection of files.
Q It was a collection of files that Mr. Sutcliffe brought you on a CD-ROM. When did he bring these files to you?
A I don't have an exact recollection. It was probably October or November of 2001.
Q So it was fairly early on in this litigation over "evilgx.com"; right?
A "Early on in this litigation over 'evilgx.com'," you mean Global Crossing v. Steven Sutcliffe?

Q My fault.
A I just want to make sure I'm clear.
Yes, it would have been early in that process.
Q And you said that you didn't look at the entire contents, but you looked at a few documents.
A I looked at what Mr. Sutcliffe showed me.
Q He showed you these files that he brought in on CD for what purpose?
A To show me the information that was contained in the CD-ROM.
Q What information was that?
A There was a list of employee names that had -- that looked like an employee roster. It had telephone numbers, addresses, cell numbers. I believe it had birth dates. I believe it had social security numbers.
There was another file that --
Q About how many employees were on this roster you are talking about?
A I didn't look at the whole roster.
Q More than 20?
A I would say so.
Q Hundreds?
A Could have been hundreds. Could have been thousands. I really don't know.
Q Go ahead. Besides the roster with all that information on

thousands of people, what else did you see?
A There was a file involving the -- I believe the people who were the directors of Global Crossing, and that contained the same information, plus additional information, including number of shares they held, stock options, salaries.
Q Were there also other lists of names and social security numbers?
A Other than the employee list and -- not that I can recall.
Q What about termination information, things like that?
A There was a file that included what we call in the legal field "golden parachutes" or "settlement agreements" that are reached with people who leave their employment.
Q Now, as you have discussed before -- I want to get this straight -- your e-mail address was actually one of the e-mail addresses presented that people could mail things from the website "evilgx.com"; correct?
A I believe it was posted on the website, yes.
Q But this information that you were discussing came in by CD via Mr. Sutcliffe; correct?
A Yes. In a white cardboard box, as I recall.
Q When you reviewed this information, is this the information that you reviewed and you told him it was okay to put on the website? Is that your testimony?
A I think that's the information that ultimately I reviewed and told him it was okay to put on the website.

Q But not at that time?
A I don't -- you know, that's a "yes" and "no" answer. I can't answer it directly "yes" or "no".
Q "Not at that time" is a "yes" or "no" answer?
A No. If you are asking me is that the information that I told him it was okay to post, the answer is yes. Whether or not it was at that time, it was probably both at that time and in the format that he ultimately posted it in.
Q So you saw the formatting that Mr. Sutcliffe took the information on social security numbers and he put it in on the website?
A Yes.
Q And I've seen your memos about threats. Do you have a writing wherein you told him that that format was okay, under either federal or state law?
A I probably have at least a memo on that issue, but it's -- I couldn't locate it in the computer. The computer file is quite lengthy. I'm not nearly as adept at that as Mr. Sutcliffe is.
Q But you've had plenty of time to look; right?
A Yeah. I think the subpoena was served on me a couple of weeks ago.
Q Well, the subpoena, regardless, that's a defense subpoena you are talking about?
A Correct.

Q You've been well aware of the history of this litigation; correct?

THE COURT: "This litigation" meaning this --

MS. DUARTE: The present criminal case.

THE WITNESS: I'm not sure well aware. But, yes, I think I am intimately aware of this case.

BY MS. DUARTE:

Q You've been involved, at least in some part in the litigation, the present criminal litigation, since the beginning, haven't you?

A Again, I'm not sure what you mean by "involved," but I've been in court on the occasions where it was appropriate for me to be in court.

Q Well, you offered yourself as a surety for Mr. Sutcliffe; correct?

A I certainly did.

Q And that was way back in April of 2001 -- April of 2002? My mistake.

A I believe it was April 2002.

Q So that was a year and a half ago?

A At least.

Q So in the last year and a half, you haven't located any memos that you wrote to Mr. Sutcliffe saying it was okay to publish social security numbers in the format that they are charged in the indictment; right?

A I haven't looked for any memos in that regard.
Q You haven't been planning to testify?
A Was I planning? No.
Q This came as a complete surprise to you?
A It did come as a complete surprise to me, yes.
MS. DUARTE: If I could have just a moment, Your Honor?
THE COURT: All right.
MS. DUARTE: Thank you, Your Honor. If I could have just a moment?
Q Mr. McAfee, I just want to go back for just a minute about those CDs that Mr. Sutcliffe brought you in the fall of 2001.
Now, when he brought them to you, as far as you can remember, were they in an envelope or anything of that nature?
A No. I believe -- well, they might have been in what we call a jacket, but they were contained in a white, as I remember it, a white cardboard box.
Q Was there any address or mailing information on the box?
A There was.
Q Do you remember what that was?
A It was Mr. Sutcliffe's home address.
Q What was his home address at the time?
A I don't remember the number, but it was Bedford Street, I think, in Los Angeles.
Q So this conversation occurred, this bringing of the

documents, while Mr. Sutcliffe was still in Los Angeles?
A I'm sorry, I didn't understand. What conversation do you mean?
Q When he brought you the CDs and you two discussed the contents of them --
A Yes.
Q -- that occurred while he was still living in Los Angeles?
A I presume he was living in Los Angeles.
Q You don't know for sure?
A No. He came to my office with a box with that address on it.
Q After he left Los Angeles, did he come visit you?
A I don't know. I don't know when he left Los Angeles.
Q So you knew he had moved from Bedford, but you didn't know he left Los Angeles?
A No. I knew that he had moved from Bedford, and I knew that he left Los Angeles. But whether he had come to see me in between or after either of those two occasions, I don't know.
Q All right. So these CDs didn't come in a box to your address at 231 East Palm, they came to Mr. Sutcliffe's address?
A That's correct.
Q That's the box that they were in when he brought them to you?
A That's correct.
Q Do you recall -- you said you are familiar with the

"evilgx.com" website; correct?
A Correct.
Q Do you recall whether Mr. Sutcliffe's address, 1054 South Bedford in Los Angeles, was published on the website as a contact point?
A Don't have a clue.
Q You never saw it there, did you?
A Whether I saw it there or not, I don't have any recollection of seeing it or not seeing it.
Q You don't remember seeing it?
A No, I don't remember seeing it.
Q And you gave him permission, in fact, to use your address in Burbank as the contact; correct?
A Correct.
Q Mr. McAfee, I'm going to direct your attention to some specific exhibits. I'm going to have you look in the binder behind you, please. It's a big fat binder. Take a look, first, at Exhibit 15.
Permission to publish page 1, Your Honor, on port 1?
THE COURT: Page 1 of what exhibit?
MS. DUARTE: Exhibit 15.
THE COURT: Yes, you may.
BY MS. DUARTE:
Q Mr. McAfee, I've put in front of you -- you should be able to see it both in your book and on the monitor -- the first

page of Exhibit 15. This is the alleged threat to Tracy Hall.

Now, is it your testimony that you reviewed the contents of this page in its entirety before Mr. Sutcliffe posted it on the website?

A No, I can't testify to that.

Q So you saw a different version of this?

A No. I -- I couldn't tell you what version I saw. I saw a version. Whether it was before it was posted or after it was posted, I don't even know when this was posted.

Q So this specific address that begins, "Tracy, have you ever been stabbed with a knife?" and toward the end, "I will kill you. That's my offer," you don't recall whether or not you specifically told Mr. Sutcliffe that this was not a threat prior to his posting?

A That this specific statement that's on the Webpage?

Q That this page did not constitute a threatening communication, in violation of 18 U.S.C., Section 1875(c).

A I don't believe that I ever told Mr. Sutcliffe that this page did not violate 18 U.S.C. 1875(c) before I saw this page on the website.

Q After -- well, did you ever see this page on the website?

A Yes.

Q When did you see it on the website for the first time?

A I couldn't give you a date. I don't know.

Q Who directed your attention to this page on the website?

A Mr. Sutcliffe.
Q And you don't remember what date that was?
A No.
Q You don't have any notation or anything that would help us narrow down a date?
A No.
Q When Mr. Sutcliffe directed your attention to this specific page on the website, what, if anything, did you tell him -- let me ask you this: Did he ask you whether this constituted a threat under federal law?
A No, he didn't use those words.
Q What words did he use?
A He asked me if there was anything wrong or illegal about this page -- actually, not anything illegal about the page. It was about the statement.
Q Which statement are you referencing?
A The "I will kill you" statement.
Q Down here at the bottom?
A Yes.
Q In showing you the statement and asking you about the statement "I will kill you," did he show you the entire page? Did you read the entire page?
A Yes, I did.
Q And he asked you about, specifically, the statement "I will kill you"?

A Correct.
Q And did you tell him that it was legal to say that to somebody?
A Yes, I did. I told him that that met the requirements of the "UUIS." That was our shorthand language back and forth.
Q You told him that "I will kill you" met those requirements?
A No. "I will kill you" by itself, by itself, would not meet "UUIS".
Q I thought you testified earlier that you told him to modify it. Am I remembering wrong?
A No. That's correct.
Q So you told him it was legal, but he should still modify it?
A Yes.
Q And would you explain again why he should modify it if it were legal?
A Yes. Because the "I will kill you" reference linked -- the page linked to a comment that was made to Mr. Sutcliffe, I believe, on Mr. Labaton, but my memory may be fading in that regard, which said something to the effect that "I will kill you in court," and Mr. Sutcliffe indicated to me that that was his intent that this should say the same thing.

I told him that if that's what you intended to say, then that's how you should modify it to say it. Don't just

link it and expect that someone is going to make that connection.

Q But you told him that if it were not linked, it would still be okay?

A Yes. Because it was conditional. It was not unequivocal. It was not imminent or immediate and it wasn't specific.

Q And that was your understanding of the law?

A That is still my understanding of the law.

Q Okay. Well, let's take a look at Exhibit 13. Just to clarify, Mr. McAfee -- it's my fault because I don't remember what you said -- you do not recall whether you gave him this advice on its legality prior to or after him posting the threat -- the statement on the Internet; correct?

A This specific statement, that's correct.

Q Let's take a look at the first page of Exhibit 13.

Now, Mr. McAfee, do you recall seeing this specific page on the Internet?

A You know, those two pages are very similar and I couldn't tell you which one I remember seeing. The language is very similar.

Q When you say "two pages," what are you referring to?

A This one and the one we just looked at.

Q This one and the first page of the exhibit?

A I have to look at the other one again. I'm sorry.

Yes, I remember the "Mount Rushmore" comment. I'm

sorry. I need to read it.

Q You remember the "Mount Rushmore" comment?

A I do.

Q And did Mr. Sutcliffe -- this page, in the entirety, did Mr. Sutcliffe let you or run this page by you before he published this page on the Internet?

A Yes. We talked about this page very specifically, or language very similar to this, "Mount Rushmore" and "I will send you back to the hell from where you came."

I remember those two statements very clearly.

Q And there is no link here on "hell to where you came"; right?

A I don't see one on the page or on the website. I presume that's the website page you are showing me on the screen?

Q Correct.

A I don't see a link.

Q Did you advise him to put a link there?

A No. There was no need to.

Q Did you tell him that?

A You bet I did.

Q On what basis did you tell him that he could tell someone he "would send them back to hell" without any kind of a qualifier?

A Because -- I don't know what "hell" means to you, but Mr. Sutcliffe and I had a rather lengthy discussion upon what

"hell" means or could mean.
Q Before this was posted on the website?
A You bet.
Q Based on that lengthy discussion, what was your advice to Mr. Sutcliffe regarding this Webpage?
A That I saw this page and no part of this page was a violation of any law that I was aware of.
Q At this time you were still operating under the law, as we previously described it and we discussed your understanding of the law, from those memorandums written in 1999 and updated?
A I can't tell you whether it was just that single memorandum or the other one we looked at or something in between, but certainly it was based on the initial September 9th memorandum.
Q Were you aware that between the time that Exhibit 13 and Exhibit 15, which you just saw, appeared on the Internet, three months had passed where Mr. Sutcliffe had no contact with Ms. Hall?
A No.
Q Did Mr. Sutcliffe advise you of the facts of what was going on in the underlying litigation in this case?
A Of course.
Q So you knew what was going on with the civil case?
A Yes.
Q And you knew that Mr. Sutcliffe was no longer in

Los Angeles?
A At the time I reviewed this statement?
Q Correct.
A I don't know. I can't put that -- I can't, chronologically, tell you that's true. It may be true. I don't know.
Q And you knew that Mr. Sutcliffe -- that no further service of process was being attempted on Mr. Sutcliffe; correct?
A I'm sorry. It would have had to have been before Mr. Sutcliffe left, because I had no contact with Mr. Sutcliffe for months after I knew that he was gone. So I would have had to have reviewed this before he -- I can't say before he left, but before I was aware that he was gone.
Q By "this," you are referring to Exhibit 13; correct?
A That's correct.
Q Which first appeared on the Internet October 23rd. So you --
A I don't know when it first appeared.
Q Regardless, you would have had to have reviewed this with him before he left L.A.; correct?
A Yes, I think that's true.
Q But Exhibit 15 that we just looked at was much later in time. Do you remember that?
A No. I don't have a recollection of the timing.
Q So is it your testimony, then, that you reviewed

Exhibit 15 that we just looked at that said "I will kill you" with Mr. Sutcliffe right around the time it appeared on the Internet?

A Again, I can't make that representation. Just to clarify, when you say "review with Mr. Sutcliffe," I'm not talking about a personal face-to-face review.

Q What are you talking about?

A I'm talking about -- I believe, both of these, in fact, maybe all of them. I think, certainly, these two were done over the telephone. He might have faxed me -- in fact, I'm trying to think about whether it was a fax or an e-mail.

I know he sent me at least two or three of the statements that are in the indictment. I know that the "I will kill you" statement was not one of them.

Q Was not one that he sent you?

A Was not one that he emailed me or faxed me. I believe He read that to me, and then I looked at it on the Webpage and saw the link.

Q So after it was up?

A Correct. That's why I can't tell you for sure if I saw it before or after.

Q Just to clarify, when you say you saw the link, he never inserted that link that you advised him to insert -- correct? -- "after death" or "I'll kill you" or whatever?

A I wasn't advising him to insert a link. I was advising

him to change the wording to mirror what was on the link.
Q Did he do that?
A Not to my knowledge.
Q So it's your testimony that at whatever time period this was that Exhibit 15, the "I will kill you" threat, was going up on the Web, you, at least by telephone, were in contact with Mr. Sutcliffe -- correct? -- because you were -- well, I will end it there.
A Yes.
Q You are nodding your head "yes"?
A Either by telephone or by e-mail, but I was in communication with Mr. Sutcliffe.
Q He might have even faxed you the information?
A I'm certain he didn't fax me 15, because if he did, I would most likely have a record of it. So I'm certain that he didn't fax me 15.
Q Do you have a record of any of the ones he faxed to you?
A I may have a fax. If it's a fax, I would have a record because all of my faxes go into my computer, and I archive my computer.
Q Did you have it here with you?
A My computer or my archives?
Q The fax that would show that he indeed faxed it to you.
A No.
Q You don't have it here?

A If indeed there was a fax, no, I don't have it here.
Q As to any of the charged counts?
A No. If it wasn't requested in the subpoena, I didn't bring it.
Q Do you have those e-mails that would show that you went over it with him by e-mail?
A No. If it was an e-mail, I would not have retained the e-mail.
Q Let's look next at Exhibit 19.

Your Honor, if it's okay, I would like to look at the electronic version of this, Exhibit 20.

THE COURT: All right.

MS. DUARTE: Actually, you know what, Your Honor? I made a mistake. I would like to look at Exhibit 23, which is the download that Exhibit 20 came from.

THE COURT: 23 is the download from exhibit what?

MS. DUARTE: 23 is the download that Exhibit 20 came from. It's also in evidence.

THE COURT: Okay.

BY MS. DUARTE:
Q If you could go ahead and look at the first index page that has the disclaimer on it.

(Playing audio.)

BY MS. DUARTE:
Q We've now accessed the first page of the website download

on March the 28th.

You testified earlier that you assisted Mr. Sutcliffe with these disclaimer terms/conditions licensing agreement; is that right?

A No, that's not what I testified to.

Q Okay. Did you assist him with the disclaimer terms/conditions licensing agreement?

A The one that's on the screen, no.

Q You did not?

A I did not.

Q If we could go ahead and scroll down -- let's not link yet -- to 5, "Release of liability."

That paragraph 5 here, did you counsel Mr. Sutcliffe on the need to put in a release of liability for this?

A For this website?

Q Yes.

A No.

Q So you didn't participate in whatever thought process he may have had as to the need to exempt himself from liability for violent acts produced as a result of the contents of the website?

A Of this website, I did not participate.

Q Why don't you go ahead and go into the first link in the index.

(Playing audio.)

BY MS. DUARTE:

Q Do you remember seeing all this on the Internet, Mr. McAfee?

A Specifically, no. I'm sure I saw it. Whether I specifically remember it, no.

Q Do you remember Mr. Sutcliffe asking you for advice on this page?

A I don't have any recollection of talking to Mr. Sutcliffe about this page.

Q Including -- if we could scroll down a little bit, including his addresses here to Elizabeth "Lizzy" Greenwood?

A Again, I don't have a recollection. We may have. I just don't recall.

Q You don't recall advising him on anything on this page?

A I'd have to read the rest of what you showed me.

Q While you are reviewing your --

A It's gone now. When you scrolled it up --

Q Go ahead and turn to Exhibit 19 in those binders. That will help you review the entire page while we are looking on the screen at portions of Exhibit 20.

A All right. The question is, Did I discuss this page or this content with Mr. Sutcliffe?

Q Correct.

A We discussed the content of some of the matter that I'm looking at, but I don't think we discussed this specific page.

Q Did you discuss this content that's now on the screen that I'm underlining, "Elizabeth, you now owe me $15,000 for the violations of the contract and I am coming to collect from you personally"?
A Yes, we did.
Q Was it your idea to include monetary damages in the contract that Mr. Sutcliffe is referring to on this link?
A I don't understand your question. I'm sorry.
Q Where did the 15,000 come from?
A I believe that was Mr. Sutcliffe's representation of how much he had lost in terms of wages because of what he perceived to be the illegal or improper termination.
Q That's your understanding of that?
A That is my understanding. That is what he told me.
Q He told you that that amount was wages?
A Correct.
Q He didn't tell you that that amount was an amount he would impose for $5,000 per attempt to get his website off the Internet?
A We discussed that, too, but I don't -- I can't -- I don't know if the $15,000 was wages. I believe it was wages. It could have been related to the disclaimer.
Q So you don't know what that meant?
A Well, it meant one of the two, but which one -- this is years ago, and I wasn't -- I didn't create this website.

Q It was years ago, but it's very important; right?
A It's not important to me.
Q It's not?
A No.
Q It's not important to you, the specifics of how you counseled Mr. Sutcliffe, and the fact that he's sitting here today?
A It's important to me how I counseled Mr. Sutcliffe as to what constituted legal or illegal conduct. That's important to me. If you are asking me if this constitutes illegal conduct, that I advised in that regard, I can answer that question.
Q That was not my question.
A I know it wasn't.
Q So you don't know what the $15,000 refers to; correct?
A I know it refers to either wages or some clause that he put in, which he took from an earlier disclaimer that I created for him related to liquidated damages, if the person gaining access to the site violated the terms and conditions of access.
Q So you had put in an earlier provision providing for liquidated damages for violation?
A I had created a disclaimer that provided for what we call in the law liquidated damages for somebody who agrees to terms and conditions and then violates those terms and conditions.
Q That was in the amount of $5,000? Do you remember?
A I don't recall what amount it was in for each violation.

Q So this specific address to Elizabeth Greenwood, "You now owe me $15,000 and I am coming to collect from you personally," did you see that segment of this page prior to its posting on the website?
A I don't recall.
Q Did Mr. Sutcliffe tell you or read to you or otherwise notify you of this segment prior to his posting of it on his website?
A Again, I couldn't tell you that for certain because I don't know when it was posted, and I don't recall when we had our conversation.
Q If you could click on the personal link. I'm sorry. Click on the "Lizzy" link. We are now on a link called "Lizzy." Take a look at what's there.
(Playing audio.)
BY MS. DUARTE:
Q Now, this information on Elizabeth Greenwood, do you remember seeing this information specifically on the Internet?
A No. I don't think I've ever seen this page before.
Q You've never seen her fax signature here?
A I don't believe so, no.
THE COURT: What exhibit is this and what page is this?
MS. DUARTE: This is Exhibit 23, electronically, and Exhibit 19, hard copy. I'll have to get you a page number,

Your Honor.

THE COURT: Remember, when the jurors retire, they are not going to have electronic evidence available. So both sides should try to make use of graphic evidence that if the jury chooses to can retrieve and view.

MS. DUARTE: I can do that.

THE COURT: This is Exhibit 19. What page?

MS. DUARTE: This is Exhibit 19, page 8.

THE COURT: That's the page, Mr. McAfee, that you never saw before?

THE WITNESS: Yes. I don't believe I've ever seen this page.

BY MS. DUARTE:

Q Go ahead and put that up on port 1. This is page 8 of Exhibit 19, which is the hard copy of what we were just looking at.

So you don't recall ever seeing that page?

A I'm fairly certain I've never seen this page before.

Q And, then, also directing your attention to page 11 of Exhibit 19, which I'll go ahead and put up, if you could follow along in your binder, you could probably get a more complete picture of it.

Do you recall seeing that page before?

A Yes.

Q Do you know who that person in the picture is?

A No, I have no personal knowledge as to who that person is.
Q Did Mr. Sutcliffe tell you who it was?
A Yes.
Q Did he tell you when he sought your counsel? Did he tell you who it was at the time that he sought -- let me stop and ask, Did he seek your counsel on this page?
A Yes.
Q As it appears in its entirety before you?
A You know, I don't have a photographic memory. I can't tell you if it's exactly the same.
Q Do you remember seeing Ms. Greenwood's picture up there?
A I thought there were two pictures when I looked at it.
Q When I asked you about Ms. Greenwood's picture, do you recall seeing it up there on the Internet when you looked?
A Yes, I remember seeing it on the Internet.
Q And do you remember the voiceovers and the music that went with it? Do you remember hearing that?
A I don't remember it. I know there was something that accompanied it.
Q Do you know where Mr. Sutcliffe got that picture of Ms. Greenwood?
A I have no idea.
Q Did you ask him?
A No. I didn't care.
Q What specifically, if anything, did Mr. Sutcliffe ask you

to counsel him on in regards to this page up on the website, which is page 11 of Exhibit 19 -- up on the computer, excuse me, which is page 11 of Exhibit 19?

A Do you want me to limit my review to what's just on the screen or to the entire page?

Q The entire page. If he asked you for your counsel.

Again, I see you reading. I just want to clarify. I'm not interested in your opinion now.

A I understand.

Q All right.

A I don't recall the content per se. I do recall the photograph and why -- or at least what Mr. Sutcliffe told me as to why he was posting it.

Q What, if anything, did you counsel him -- did he talk to you about the legality of this particular posting, specifically?

A He asked me whether it was legal to post the photograph of Ms. Greenwood and her daughter -- I believe that's her daughter on the website.

Q How do you know if that's her daughter or not?

A I presume it's her daughter. I don't know. I don't even know if that's Ms. Greenwood.

Q Did Mr. Sutcliffe tell you it was her daughter when he asked you whether or not he should post it?

A I believe he did.

Q Did he ask you whether or not he should post it prior to posting it?
A Yes.
Q Did he describe the context surrounding it, including the page that you did not see before?
A We discussed the context in which he wanted to publish the photograph, yes.
Q Did you discuss the context in which it was actually published, which you see in Exhibit 19, which we've also seen on Exhibit 23, where it was a link from a page of her personal information? Did he actually discuss that specific context with you?
A You are asking me now the context that's on the screen? Again, I'm not sure what context you are asking me about.
Q If we could enable port 4. Is that port 4? Exhibit 23 again so that we can see the link. Thank you. That's perfect.

Up on the screen we have a page of Exhibit 23. We are going to go ahead and link. Before we do, Mr. McAfee, you've never seen this page before?
A I don't think so.
Q And Mr. Sutcliffe didn't describe this page to you and ask you if it was okay; right?
A Not that I can recall.
Q So now we link "bad hair day," and we are going to go to what is page 11.

(Playing audio.)

BY MS. DUARTE:

Q Let's stop there.

Now, if you didn't actually see the prior screen, you didn't know that there was a link to her picture on this Webpage on that screen; right?

A I would not have known there was a link from that page if I never saw the page. That's correct.

Q So you wouldn't have related -- this particular page we're looking at, which is page 11, you wouldn't have related that page necessarily to what came before it; correct?

A Well, not to page, whatever, 8. I would have looked at what was before this page and what was after this page in the context of how it was I got to this page.

Q This was before that page. Are you saying now you looked at it?

A No. I don't know -- I have no idea what page preceded this page or what page came after this page, immediately. But, in order to look at content, according to "UUIS," I look at the context in which the content was published. So I would have looked at whatever page on the Internet came before this and came after it.

Q You probably don't understand, Mr. McAfee, because you haven't been in court.

What we're looking at on the screen here, in

Exhibit 23, is a download of the website. Therefore, that page that's up there right now, which is page 8 of the hard copy, I believe, is the page that immediately preceded the "bad hair day" link which we've just seen contained a picture of Elizabeth Greenwood.

A Okay.

Q So given that this page immediately preceded the link that you say you recognize, and you say you would have looked at the page immediately preceding, do you still say you've never seen this page?

A I don't understand your question. If -- I don't -- I believe if there are pages, or were pages -- well, let me rephrase that so I can be more clear.

I don't believe I remember seeing this page.

Q By "this page," you are referencing page --

A Page 8, I think.

Q -- 8 of the hard copy?

A Of Exhibit 20.

THE COURT: No. Exhibit 19.

BY MS. DUARTE:

Q Let me stop you and ask, so you also never saw, then, the fact that the address given for Ms. Greenwood was linked to a Yahoo! map to the house; you never saw that, either, then; right?

A I saw the Yahoo! map.

Q You saw the Yahoo! map?
A I did.
Q But you don't remember that that was linked to her address?
A No. It may have been linked to her address. I don't know, but I certainly saw the Yahoo! map.
Q There were a number of Yahoo! maps on the website; right?
A I don't know. There may have been.
Q But you remember that Ms. Greenwood's address -- or what was her address was linked to a Yahoo! map to her house?
A No. I remember seeing a Yahoo! map that Mr. Sutcliffe told me was a map to Ms. Greenwood's house.
Q Mr. Sutcliffe told you it was a map to her house. This is in one of your telephonic conversations?
A Yes. I -- no. I don't know for certain. I believe this was in my office. But, you know, I can't recall if it was in my office or not.
Q You don't remember the specifics?
A I know -- no, I don't remember the specifics.
Q Okay. But you are saying that, in order to review the contents of a Webpage, you feel you would have -- for threatening language, you would have looked at what preceded it and what followed it?
A Correct. As it appeared on the Internet. Correct.
Q As it appeared on the Internet when you were looking at

it?
A Correct.
Q But you don't remember this page?
A I don't.
Q So this version of webpages and links that you see before you that's Exhibit 19 and that we've seen the electronic version of, you don't remember that specific series of links and pages; correct?
A I don't have any recollection of linking the page with a photograph to or from any other page.
Q So you don't remember reviewing this entire exhibit in Exhibit 19 for the propriety of the content, then, because you don't remember all of the pages; right?
A In the way that this exhibit is presented to me, I don't have any recollection of reviewing it in this format.
THE COURT: Is it correct that, when you were reviewing material to understand the context, the material you were reviewing was on the Internet?
THE WITNESS: It was both.
THE COURT: And the material that the prosecutor has been asking you about now, you've been telling her is that you looked at the page preceding and the page following on the Internet; correct?
THE WITNESS: That was -- yes. It was on the Internet already.

THE COURT: It was on the Internet before you expressed an opinion about it?

THE WITNESS: Yes.

THE COURT: You had reviewed it before?

THE WITNESS: Yes -- no. Well, see, this is where it's getting confusing. If you are asking me if I reviewed this page before, I would have to say probably not.

If you are asking if I reviewed the photograph, the map to her house, the general content that is reflected on this page, we talked about it before it was ever published, and I looked to see how it was actually published once it was published.

BY MS. DUARTE:

Q You looked to see how it was actually published once it was published?

A Correct.

Q This is how it was actually published, but you don't remember seeing that page?

A I don't recall seeing the signature of Ms. Greenwood. I don't have a recollection of that. I'm fairly certain I've never seen it.

Q And you looked at these -- well, you'll agree, won't you, Mr. McAfee, that context is very important to the concept of whether something is threatening or not?

A Yes. It's a legal element, as I understand it.

Q So you did your best -- well, not quite an element, but it's very important.

So you did your best, when you were counseling your client on potential criminal violations, to review the context of what he was putting up; correct?

A Correct.

Q Yet -- and you reviewed what we have -- go ahead and click to "bad hair day."

You do have a specific recollection, correct me if I'm wrong, of reviewing what we're going to see in a minute on the screen, which is also page 11 of Exhibit 19?

(Playing audio.)

THE WITNESS: It was in a slightly different format, as I remember it.

BY MS. DUARTE:

Q It wasn't linked, then, to Ms. Greenwood's other information that we just saw?

A I can't tell you whether it was or it wasn't. I didn't follow links.

I looked at this page. I remember the format of this page being different than what I'm seeing on the screen and in your exhibit book. But the general content of what's being said was something that I reviewed to make sure that Mr. Sutcliffe was following my instructions as to how to present the information in the photograph.

Q And he followed your instructions on how to present it, you are saying?
A As to this document, yes.
Q "As to this document," you are pointing to page 11?
A Page 11, right.
Q He followed your instructions on how to present it, but you don't know the link?
THE COURT: That's been asked and answered. I think we've gone over that many times, so please move on.
MS. DUARTE: Okay.
Q So what specifically about this page, page 11, did you tell him to do that he did?
A I don't believe that I told him anything to do. I'm sure I told him -- I recall telling him things not to do.
Q And he didn't do them?
A Not as far as I'm aware. Not according to any website I looked at.
Q What was your understanding, Mr. McAfee, of the point of publishing this picture, then?
A My --
THE COURT: You can only answer if you have a basis to answer derived from what Mr. Sutcliffe told you. If you are going to speculate and guess, then you shouldn't.
THE WITNESS: Okay. I don't have a -- I can't answer the question without speculating.

BY MS. DUARTE:

Q When you and Mr. Sutcliffe were working, apparently, together to post and to disseminate the contents of this website, what was your goal? What was your reason for posting this picture?

A Okay. First of all, I had nothing to do with the website other than to review potential content that was to be placed on it. I never put anything on it. I never constructed anything on it. I never removed anything from it.

My responsibility was -- when Mr. Sutcliffe asked me about whether a comment or contents he wanted to publish violated the law, my job was to review it, to give him advice on what he was asking me about, and to look at it, when it was on the website, to make sure that what he published didn't violate "UUIS". That was my sole and exclusive interest in this website.

Q So your sole and exclusive interest was to make sure he didn't violate "UUIS"?

A Yes. Correct.

Q "UUIS" was your understanding of the law on threats; correct?

A On true threats, correct.

Q On true threats.

So that was your sole purpose in reviewing the website?

A That is correct.
Q So you did not, then, review it for the propriety of posting social security numbers and related information; correct?
A No. We had already discussed it, and I had already given him my opinion on that.
Q So you had had a previous discussion, maybe just one discussion -- or how many discussions did you have about that?
A At least one.
Q During what time period?
A I'm sure the first discussion occurred probably on the phone, before he brought me the CD-ROMs, telling me he was bringing me the CD-ROMs.
Q Let me stop you and ask you, he brought you the CD-ROMs -- and we've been over this. I'm not going to go over it again -- way back in the fall?
A I believe that's correct.
Q So you didn't actually advise him on the contents of these specific social security publishings with the links that he was charged with as he did them; right?
MR. SUTCLIFFE: Objection. Vague.
THE COURT: Overruled.
THE WITNESS: Well, if you are asking if I looked at the site when the social security numbers were posted, I did.
BY MS. DUARTE:

Q I'm not. I'm asking if you advised him as to specific postings throughout of social security numbers, and the legality thereof.
A I don't understand the question.
Q Okay. Let's look at Exhibit 11, then. It's in front of you in the binder. If we could enable port 1.
I put the first page of Exhibit 11 up here. It contains 49 pages of a list of social security numbers.
Do you recall seeing that list on the Internet?
A The specific list, I couldn't tell you. I saw a lot of names and a lot of numbers on the Internet.
Q At what point did Mr. Sutcliffe seek your counsel, if at all, on whether or not it was all right to post this list of numbers on the Internet?
A The first conversation Mr. Sutcliffe and I had regarding whether it was appropriate to post social security numbers was after he had received the two CD-ROMs.
Q That was what you already talked about; right?
A Correct.
Q Okay. What was the second time, then?
A Probably when he came to my office and we reviewed the CD-ROM or CD-ROMs.
Q That was the fall of 2001; correct?
A To the best of my recollection. I don't -- I don't recall.

Q When was the next conversation you had?
A I don't think we -- other than his remarking to me that he had removed either some or all of the social security numbers, I don't think we had a subsequent discussion about them because there was no reason to.
Q When he talked to you about the propriety of posting the numbers, at that time he had not linked those numbers to other information; isn't that right?
A I don't know. I couldn't tell you.
Q You don't know?
A I don't know.
Q So he did not go through with you not just that he was publishing the numbers, but he was including links to other articles and other information?
A I reviewed the website. I do recall the link, I think, that you are alluding to, but I don't recall giving him any specific advice. I don't think he even asked for it. I don't recall giving him any advice on that issue.
THE COURT: I think we are going to have to break now. We'll resume tomorrow.
Now, I'll explore with counsel just what the pace is and when we expect to wrap up the evidence in this case. Once we reach the point -- and it's possible that it might be tomorrow -- that you will have been both charged -- in other words, told what the law is by me, and closing arguments have

been completed. I don't think we will get through that tomorrow because we are going to break tomorrow at 1:30 -- I think you should assume -- today is Tuesday; is that correct? -- I think you should assume that beginning Thursday, the days will be complete days.

I may have you come in a little bit later and leave before 4:30. Of course, there will be lunch breaks and other breaks.

Once you begin to deliberate, it's a full day, and that will be true even if you begin to deliberate in the middle of one morning. So I think, in fairness to you -- I'm just trying to give you guidance -- you should assume that beginning, surely, by Thursday, and I would hope before then, you will be in the process of deliberating, and then you would have full days.

Meanwhile, please remember the admonition. Thank you for being punctual yet again, and we'll see you tomorrow morning.

THE CLERK: All rise.

(Jury out.)

(Mr. McAfee left the courtroom.)

THE COURT: I'm very disappointed and concerned that after last week's examination, Mr. Sutcliffe, you excused Mr. McAfee. You said you had no further questions, and you weren't going to get into any of the things you got into today.

You told me that you needed to ask him some follow-up things, and so I permitted you to reopen. I'm not sorry I did, but this is very inconsiderate to both the Court and to the jury and maybe to counsel. Maybe you had an opportunity to reflect over the intervening weekend, but it's akin to sandbagging.

You say you are not going to have an advice-of-counsel defense, and then you put on an advice-of-counsel defense.

I don't know where you are planning to head any further with respect to jury instructions. I am concerned. I've made this very clear, repeatedly, about making sure that this case doesn't consume the entire December of these jurors.

The examination is going on and on and on, and I think we have to move at a quicker pace.

You were permitted to go into things with Cugno this morning that I'm not going to permit you to do tomorrow. I expect all of the evidence to be complete tomorrow, and I'm going to charge the jury before closing arguments, and I expect to charge them with the instructions that I have already completed and reviewed and assembled and Xeroxed for the jurors, unless something happens that results in my changing my mind.

So that's the guidance I'm giving the parties, and we'll see you tomorrow morning.

MR. SUTCLIFFE: Thank you, Your Honor.

MS. DUARTE: Your Honor, just so the Court knows, I don't have much longer with this witness. I'll move it along.

THE COURT: Okay.

(Adjournment at 1:33 p.m., to resume on Wednesday, December 3, 2003, at 8:00 a.m.)

C E R T I F I C A T E

I hereby certify that the foregoing is a true and correct transcript from the stenographic record of the jury trial proceedings in the foregoing matter.

Karen R. Pinn, RPR, CSR 5574
Court Reporter

October 11, 2004

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE A. HOWARD MATZ, JUDGE PRESIDING

UNITED STATES OF AMERICA, Plaintiff, vs. STEVEN WILLIAM SUTCLIFFE, Defendant.	Case No. CR 02-350(A)-AHM

CERTIFIED COPY

REPORTER'S TRANSCRIPT OF JURY TRIAL PROCEEDINGS

Los Angeles, California

Wednesday, December 3, 2003

DAY 11

(Pages 1921-2065)

KAREN R. PINN, RPR, CSR 5574
Court Reporter

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I N D E X

GOVERNMENT'S WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
CUGNO, Jeffrey				
By Mr. Sutcliffe		1974(resumed)		
DEFENSE WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
McAFEE, Leslie				
By Mr. Sutcliffe			1959	
By Ms. Duarte		1931(resumed)		1968

GOVERNMENT'S EXHIBITS	FOR IDENTIFICATION	RECEIVED
45		1976

DEFENDANT'S EXHIBITS	FOR IDENTIFICATION	RECEIVED
241		1994
242		2017
243		2019
244		2035
245	2063	

LOS ANGELES, CALIFORNIA;

WEDNESDAY, DECEMBER 3, 2003; 8:35 A.M.

(Jury out.)

THE CLERK: Calling item No. 1, CR-02-350(A)-AHM, U.S.A. v. Steven William Sutcliffe.

Counsel, state your appearances, please.

MS. DUARTE: Good morning, Your Honor.

Elena Duarte and Frank Harrill on behalf of the United States.

THE COURT: Good morning.

MR. SUTCLIFFE: Good morning, Your Honor.

Steven William Sutcliffe, accused, present.

MR. REED: David Reed, advisory counsel.

THE COURT: Good morning to both of you.

Mr. Sutcliffe, I'm told that there is another request you have for some additional software.

Could you explain what you need and why and how it relates to this case, please?

MR. SUTCLIFFE: Yes, Your Honor.

I brought this up yesterday. The e-mails that were not turned over to me, that were finally given to me on CD-ROM format here by the government last week, which is a CD-ROM entitled "Greenwood E-mails AUSA copy," these have a format of -- one second and I will tell you -- dot-eml, which is Internet E-mail Message.

This computer does not seem to be able to open these files up. At MDC, I was able to use the computer there to view these e-mails that were sent to the FBI by Mrs. Greenwood. However, clicking here --

THE COURT: What did you find that makes these at all even remotely relevant to this case or to any defense -- any tenable defense you have?

MR. SUTCLIFFE: There is several in there, Your Honor.

THE COURT: Tell me. Tell me why we have to delay the trial further.

MR. SUTCLIFFE: I can't read them.

THE COURT: You just said you read them at the MDC.

MR. SUTCLIFFE: Yes, but I can't recall which ones they are right off the top of my head, looking at the file.

THE COURT: Make an offer of proof as to what you need and why you need it. What is there in this e-mail that's going to be admissible?

MR. SUTCLIFFE: Your Honor, these are the "de facto," "de jour" e-mails sent to the FBI by the head of Global Crossing, "I'm going to censor this website. Lead the charge, Mrs. Greenwood."

Is it the position of this Court that there is nothing exculpatory on this CD-ROM that I can use?

THE COURT: There is nothing that you have

established that's remotely exculpatory, nothing at all.

MR. SUTCLIFFE: I get the impression that Your Honor wants to just quickly move on to this persecution without giving me the -- I raised this up yesterday.

It's not my fault that somebody didn't come in here and take care of this issue on these e-mails yesterday.

I shouldn't have to be prejudiced --

THE COURT: Nobody that I recall --

MR. SUTCLIFFE: -- because this Court is in a hurry to quickly get this trial over because you promised the jury that we would be done soon. I'm sorry. That's not my problem.

My problem now is that somebody didn't do their job. And I get the impression that you are going to just say, "Too bad, so sad, move on." If that's going to be your ruling, I'll take it.

THE COURT: That's not going to be my ruling. I want to make sure that the record reflects what is going on here.

I don't think there has been any disclosure that there was some kind of component missing, software missing, or defect in the -- there has never been a case in this country where such an elaborate array of computer equipment, visual display equipment, and related equipment has been assembled for a defendant at the government's expense. Not the prosecutor's expense but the Court's expense.

And I'm not sorry that it's been done. But the right

to put on a defense doesn't entitle you or anybody else to every possible device necessary.

Now, what I'm going to order the representative of -- the MIS person to do is to see if the software that would enable Mr. Sutcliffe to display this material -- which is not likely to be admissible, but I'll reserve judgment on that -- can be installed at the next break.

I don't want to do it now, and I'm not going to delay bringing the jury out here.

Ms. Duarte.

MS. DUARTE: Additionally, Your Honor, just so the record is clear, defendant does have a hard copy, now that we have established, from the Court's prior order, for me to check all the copies and give him the ones that I couldn't find Bates stamp numbers for.

The defendant now does have a hard copy of each and every e-mail on that CD which he could display as an offer of proof to this Court and he has not done so.

THE COURT: Is that true, Mr. Sutcliffe, you have the evidence in hard copy form?

MR. SUTCLIFFE: No, I don't have all the hard copy forms.

THE COURT: One of you is correct and one of you isn't. I want to pin this down. If you have the hard copy forms, you can use the ELMO machine to project it and we don't

have to engage in yet further delay and confusion in this case.

Now, show me what you are referring to. Do you have a copy here?

MS. DUARTE: I don't have all the copies, but let me just refresh the Court's recollection.

Last week -- I'm sorry, I'm ill, Your Honor.

Last week, when the issue came up as to Mr. Sutcliffe not having the CD, the Court ordered me to go back and compare all of the Bates stamped hard copy e-mails to the e-mails on the CD. I did that.

I came back the next day, on the record, reported to the Court that I had located every e-mail on that CD, in Bates stamp form, with the exception of six e-mails.

I represented to the Court --

THE COURT: I remember.

MS. DUARTE: I was unable, at the time, to locate Bates stamped copies, so I made copies for the Court and for Mr. Sutcliffe of those six e-mails, which we had not -- Special Agent Harrill and I had not affirmatively found a Bates stamped hard copy for, gave them to defendant, along with the CD.

So, by process of elimination and putting those two events together, since we've compared the CD to the turned-over copies, and then we've turned over anything we couldn't locate, it seems clear that he would have a copy of everything on that

CD. And that's where I have that information.

THE COURT: All right. Do you want to respond to that?

MR. SUTCLIFFE: Yes, Your Honor. Thank you.

What I was given is approximately 10,000 pages that were dumped on me in my cell at MDC. This was supposed to be the total discovery given --

THE COURT: Just respond to what Ms. Duarte said about what she gave you last week.

MR. SUTCLIFFE: All right.

Mrs. Duarte, what is the name of the file that is in the attachment from Mrs. Greenwood to the FBI agent dated March 22nd? Can you tell me the name of that attachment?

THE COURT: Mr. Sutcliffe, that's not a response. That's my final ruling.

We're going to proceed with the trial. You sit down, Mr. Sutcliffe.

Who is on the stand? The lawyer?

MS. DUARTE: Mr. McAfee is on the stand.

THE COURT: Bring McAfee in and bring the jurors in.

You be available or have someone down here who can call you at the next break.

I want to make a finding, before you open the door, that this is a contrived and totally bogus issue.

Mr. Sutcliffe, from everything that has been

established, has had access to this evidence, and I accept the prosecutor's representation that there is nothing further that he hasn't been given that's not been available to him in hard copy form.

MR. SUTCLIFFE: And I object to that. And I want the record to clearly reflect that this stuff was not turned over to me in a timely fashion, and that within these e-mails, are certain documents which have specific names, which were not identified in any of the Bates stamped material that's been turned over to me or identified in any way, shape, or form by looking at any of the discovery that was turned over to me.

The only way I could identify it and the only way I was able to finally identify it is by looking at a hard copy of these e-mails, which I cannot now open and show the FBI agent, to cross-examine him and --

THE COURT: Do you have the hard copies?

MR. SUTCLIFFE: Excuse me. It was only until the other day, when I was able to finally look at these e-mails, when they were finally given to me, that I was able to put two and two together and see how they had been hiding certain facts from the defense.

THE COURT: Okay. I understand your position, Mr. Sutcliffe. But you have just confirmed that you have the evidence. There is no need for additional software, although I'm willing, at a break, to see if it can be put in.

Let's bring the jury in.

(Jury in.)

THE COURT: Please step forward, Mr. McAfee.

LESLIE SCOTT McAFEE, DEFENSE WITNESS, PREVIOUSLY SWORN

THE COURT: You have the continuing obligation to testify truthfully. Do you understand that?

THE WITNESS: Yes, Your Honor. Thank you.

THE COURT: You may proceed.

MS. DUARTE: Thank you, Your Honor.

CROSS-EXAMINATION (Resumed)

BY MS. DUARTE:

Q Mr. McAfee, when we left off yesterday, we were discussing your specific advice to Mr. Sutcliffe regarding the publication of social security numbers. Do you remember that?

A Yes.

Q I want to direct your attention to Exhibit 9, which should be in front of you in the binder.

Your Honor, I would ask that port 1 be enabled.

THE COURT: Sure.

BY MS. DUARTE:

Q Mr. McAfee, while you are accessing that exhibit, I placed page 4 of Exhibit 9 up on the ELMO. This link that we see down here, "This will only get worse," do you see where I'm at?

A I do.

Q Do you recall seeing this link on the Internet?

A No.
Q Did your client ever direct your attention to that link after it was posted on the Internet?
A No.
Q Do you know what this link goes to?
A Don't have a clue.
Q Directing your attention next to page 1 of the same exhibit --
Your Honor, could I have just a moment?
THE COURT: Sure.
BY MS. DUARTE:
Q I now put page 1 of the same exhibit, 9, up here. I'm going to direct your attention to this social security card up here.
Did you see this social security card on the Internet?
A I don't recall.
Q You don't recall seeing it?
A No.
Q Do you know whether or not this social security card had a link associated with it?
A I don't know.
Q Then you don't recall your client asking you for any particular advice on that link; is that a fair statement?
A If there was a link to the card, that's correct.

Q Looking next at Exhibit 11, which should also be in front of you in the binder, we looked at this briefly yesterday, but I just want to draw your attention to a couple of links.

Page 1, which I'm putting up on the ELMO, at the top, "Seeya. Wouldn't want to beya," which appears to be a link, do you remember seeing that link on the Internet?

A No.

Q Did your client ever draw your attention to that link at some point after it was on the Internet?

A Not that I can recall.

Q Do you recall giving advice as to that specific link?

A No.

Q The same exhibit, I'm going to direct your attention to page 52. I'm going to go ahead and put that up. This is Exhibit 11, page 52.

We are going to next look at another link which is at the end of the sentence, "Recently, we have heard through the grapevine that some of the people in the U.S. might feel uncomfortable." Do you see that link "uncomfortable"?

A I see the word with an underline.

Q You are not familiar enough with the Internet to know that that signifies a link?

A I don't know if that's a link or not.

Q Okay. Well, do you remember seeing that link on the Internet?

A No.
Q Or that word?
A No.
Q That phrase?
A No.
Q Any part of this Exhibit 11, page 52?
A No. There were hundreds of pages on this site. I don't remember any specific page regarding these social security numbers.
Q Regarding what I have in front of you, Exhibit 11?
A Correct.
Q Next, Exhibit 13, which is also in the binder in front of you, go ahead and take a look at page 2, which I'm going to put up. This is information on Mark Leonard Block.

Do you see where I'm at on page 2?

A I do.
Q Did you ever see this information on the Internet?
A I don't know if I saw the information on the Internet. I have a printout of Mr. Block's information.
Q Right. But did you see it before your client put it on the Internet?
A I don't know.
Q Do you remember specifically giving him advice as to whether or not to put this page that we're looking at, page 2, on the Internet?

A I didn't give him specific advice regarding the page. I gave him specific advice regarding the information.
Q But not in this format that we're looking at now?
A I don't recall seeing this format.
Q What about what appear to be links, the underlined portions to the addresses?
A I don't recall seeing those.
Q You don't recall being asked about those links to addresses?
A No.
Q All right. In this same exhibit -- let me clear this pink line here, if I can -- in the same exhibit, we are going to look at page 3, if you will. We see more information as to Mr. Block. Here we see a series of information, followed by a colon, "Omitted for the time being."

Do you remember seeing what I've circled, squared, there on this page on the Internet?
A No.
Q Before it went on the Internet, did your client specifically ask you about "omitted for the time being" and the propriety of putting that language on there?
A Not that I can recall.
Q In looking here at page 1, the same exhibit -- let me get this pink line out of the way, and then I'll show you what I want you to look at here.

Let's look, first, at this underlined portion. "You think seeing that, here it comes, number is bad." Do you remember seeing that specific link on the Internet?

A No.

Q You don't recall?

A No. I -- it wasn't my function to do that.

Q Do you know what that link goes to -- connects to?

A Don't have a clue.

Q What about "It can get much, much worse" also on that same page? Do you remember seeing that link?

A No.

Q Do you know what it goes to?

A I have no clue.

Q Did you give your client specific advice as to what to put on those links that we looked at?

A If I knew what the link was, I could answer the question. Since I don't know what the link is, I don't know if we spoke about that information or not.

Q Just so I get it straight, you may have spoken about the information that was linked, but you didn't associate it with the link itself at the time your advice was sought?

A Correct.

Q So you weren't shown, at least as to the exhibits that we have seen today that you've said you didn't recognize, you weren't necessarily shown the link, the language of the link,

with the accompanying link, you were just shown the outside information; is that fair?

A That's probably fair. I don't have a recollection of whether I saw any of these links. Mr. Sutcliffe showed me lots of things on the site. He's very fast on a computer.

Q Yes. And the site changed quite often, didn't it?

A It did, so I can't remember any specific page.

Q Were you asked to look at the site every day by Mr. Sutcliffe?

A No. That wasn't my function.

Q Every other day?

A No.

Q Once a week?

A Only when he asked me to look at something specific.

Q So you didn't monitor it on your own?

A No. That wasn't within the scope of my retention.

Q I want to talk about your retention in just a minute. First, you said yesterday that you had met Mr. Sutcliffe approximately six years ago?

A It could have been longer, but to the best of my recollection.

Q How did you come to meet him?

A I'm not sure who referred him to me. I don't recall.

Q You don't recall who introduced him to you?

A No.

Q Was it a legal referral?
A I don't know.
Q You don't remember?
A No.
Q What work did you do for him when you first met him?
A He was involved in a civil litigation matter against the Los Angeles Police Department, and he retained me for some purpose related to that. I think it was discovery, if I remember correctly.
Q So was that around the time you first met him, then, the time you were retained to litigate on his behalf?
A At that time I wasn't retained to litigate on his behalf. I was only retained to assist him in either preparing or answering discovery.
Q Discovery --
A Propounded by the City of Los Angeles.
Q -- to him?
A Correct.
Q Because he was suing the LAPD?
A Correct.
Q So did you ever actually represent him in that lawsuit?
A Eventually, I did.
Q That lawsuit was later dismissed, wasn't it?
A It was.
Q How long -- how many years did you represent him in that

lawsuit?
A I don't know.
Q From what year to what year?
A I couldn't tell you.
Q When was it dismissed?
A I don't know.
Q When did you first start the discovery assistance?
A Again, I don't know. Without -- I mean, I'm sure I have all of that information in the computer, but you are asking me to remember something five, six, seven years ago. I don't know.
Q In your computer at your office?
A Yes.
Q So before his lawsuit against the LAPD, were you representing Mr. Sutcliffe in any litigation?
A Not that I can recall, sitting here today. I don't think so.
Q How about after?
A Have I represented him in other litigation other than the LAPD litigation?
Q Yes.
A Yes, I have.
Q Let's just finish with the LAPD litigation, first.

Now, you said you were retained. Did Mr. Sutcliffe pay you for that service?

A He did.
Q What was your rate?
A It was -- I don't remember what my rate was. Let me think about this for a minute. That was a long time ago.
THE COURT: Why is that relevant? Let's just proceed. Let's assume he got paid some rate. Unless you can establish a basis for relevance, I would suggest that you move on.
BY MS. DUARTE:
Q Did Mr. Sutcliffe himself pay you or were you paid by a third party?
A No. Mr. Sutcliffe paid me.
Q Now, after the LAPD litigation, you represented him in litigation against Global Crossing; correct?
A Yes. There were a couple litigations in between the two. But, yes.
Q That you represented him in?
A Yes.
Q What litigation was that?
A There were two landlord/tenant disputes that I represented him successfully in.
Q That was disputes in connection with his being the tenant; correct?
A Correct.
Q And he had a grievance with his landlords?

A I think it was the other way around. I think the landlord had a grievance with him.
Q And you represented him in that?
A I did.
Q Look at Exhibit 49 in the binder in front of you, if you will.
A Okay.
Q Do you see any letters from you in that exhibit?
A I do.
Q Do you recognize those letters as letters you wrote?
A Yes.
Q Were they written on Mr. Sutcliffe's behalf?
A Yes.
Q Were you retained to write those letters?
A Yes.
Q Now, on direct yesterday, you said that, in the instant case, your scope of retention was "to provide advice and direction on what constitutes a legal threat."
Did I get that right?
A That was part of the scope of retention.
Q What was the other part?
A I was asked to give legal advice about whether or not information that he wished to post on the site violated any laws. That was primarily focused around the issue of threats, but it wasn't exclusively related to threats.

Q What were the terms of your retention for that purpose that you've just described?
A For "evilgx.com", it was already a going site when I was retained for that purpose. So the retention was that he would pass information to me that he wanted to publish. I would review that information, and then tell him whether or not I felt it needed to be modified, changed, or whether it was okay to publish, or things like that.
Q But he would only pass information to you that he sought an opinion on; correct?
A That's correct.
Q It was your understanding that he wasn't passing all of the information to you; correct?
A I'm sure that's true.
Q Were you paid for this service?
A I was.
Q What was the duration of your retention for this service? How long were you doing this for?
A From approximately October -- September/October of 2001, up until the time of his arrest in March of 2002.
Q You said that the website was already up at the time that you were retained?
A Correct.
Q Now, in this case, we touched on, briefly, yesterday the fact that you had offered yourself as a surety for

Mr. Sutcliffe.

A At the request of the Federal Public Defender's Office, I did.

Q At their request, but you agreed to do that; correct?

A Yeah. There were a couple of options, and I chose one of the options they gave me.

Q That option was to sign an appearance bond in the amount of $75,000; correct?

A I don't know. Yeah. Whatever it was, it was. I don't remember what it was.

Q The option included, did it not, Mr. Sutcliffe coming to live with you?

A I think that's what the public defender wanted. I certainly would have welcomed him to my home.

Q And you made that clear to the Court at the time; right?

A I did.

Q And at the time Mr. Sutcliffe was your client; correct?

A He was.

Q And, like you said yesterday, not even necessarily a friend of yours?

A Not as I define the word "friend."

Q Is it often that you make offers to have your clients live with you while they are out on bond?

A No. In fact, I don't think -- actually, I've never asked a client to live with me other than this one instance.

Q So this was the first time?
A It was. It was a unique set of circumstances.
Q When you represented Mr. Sutcliffe against Global Crossing, you said that you had challenged the jurisdiction of the state court?
A Correct.
Q And after that, that ended the scope of your retention?
A That's correct.
Q Were you paid for that?
A I can't tell you for sure. I believe I was, but I can't tell you for certain.
Q Is that the kind of work that you would normally do for free?
A Sometimes I do a lot of work for free, depending upon the nature of the work and the type of client and the circumstances.
Q After that, did you do more work for Mr. Sutcliffe for free?
A After when?
Q After the time that you don't remember whether or not you charged him to challenge the jurisdiction of the state court.
A I always charged him. The question is whether he paid me. I don't recall whether he paid me.
Q But you always charged him?
A Always charged him.

Q You never represented him pro bono?
A I don't think so.
Q Now, in the course of the Global Crossing litigation, your client was being sued by Global Crossing; correct?
A That's correct.
Q And did you cross-complain in that litigation?
A Did I? No. I wasn't hired for that purpose.
Q Did you ever say you were going to cross-complain?
A I don't know.
Q Now, as we touched on yesterday, you've also done work in this case -- correct? -- in the pending criminal litigation?
A I have.
Q Were you paid for your work on this case?
A I was not.
Q You were not paid for your work in this case?
A No. Mr. Sutcliffe doesn't have the means to pay me at the moment.
Q But you charged him?
A Well, it's in -- it's on account.
Q So he owes you money?
A Money or services. Yes.
Q What kind of services do you take in exchange for your work?
A Before he left California, he was my computer technician and kept my network up and my office partners' network up.

Q Did you trade your services for his services in that regard?
A Sometimes.
Q Would you include that in your definition of being paid?
A Sure.
Q When I asked you earlier if you were always paid or you always charged him, you were including services?
A Sure.
Q So sometimes Mr. Sutcliffe did his work for you in kind?
A Yes.
Q Now, we touched, briefly, on this memo, and I just want to ask you an additional question about it and then I'll move on.
A Which memo?
Q This is your --
A Which memo?
Q This is -- I'm going to tell you. This is your ex parte application for a TRO against Tracy Hall. I'm going to ask you a question about it. Do you need to see a copy of it in order to answer the question?
A I don't know. You'll have to ask me the question, first.
THE COURT: It's not an exhibit, Ms. Duarte?
MS. DUARTE: No, Your Honor.
THE COURT: Okay.
BY MS. DUARTE:
Q In your declaration accompanying -- excuse me, I'm a

little bit ill. In this declaration accompanying your motion for a TRO --

THE COURT: Excuse me. Let me say, we've got a lot of illness. I think a lot of people have been affected, including me.

If you need time to drink some water or take a break -- and this would be true for anybody -- you can take water into the jury box. Mr. Sutcliffe, if he were dealing with a sore throat or a cough or a illness, the way many of us have, he could do the same. You don't have to ask permission. Just take care of your needs as you see fit.

MS. DUARTE: I appreciate that. Thank you, Your Honor. I'm just having a little trouble talking. I'm sure the jury is happy about that. We'll wind up fairly shortly.

Q Do you remember in your declaration telling the Court that Tracy Hall had told you that if she was dragged into this matter, she would make sure that you would be sorry and your family would be sorry?

A Words to that effect, yes.

Q So you'll agree that she told you words to that effect, or you swore that she told you words to that effect, when she visited your office?

A Yes.

Q Did you also state to the Court, in conjunction with that declaration, that threats of the sort uttered by Tracy are

illegal and have no place in litigation?
A Yes.
Q Now, we also just touched on yesterday a civil suit that you had filed in federal court, suing a former defense attorney in this case. Do you remember that?
A I do.
Q And you filed that on Mr. Sutcliffe's behalf?
A I did.
Q And you filed it in July of this year?
A Whenever it was filed, that's when I filed it. I don't know. Sorry.
Q Now, in that Complaint that you filed, did you also name as a defendant another defense attorney for Mr. Sutcliffe?
A No.
Q Are you sure about that, or do you want to see a copy to refresh your memory?
A Are you asking did I name him in the caption or was his name mentioned in the body of the Complaint?
Q Was his name mentioned in the body of the Complaint preceded by the word "defendant"?
A It probably was. He was not a defendant in the caption.
Q He was not a defendant in the caption, but his name was in the body of the Complaint preceded by the word "defendant"?
A Correct. I neglected to take the word "defendant" out.
Q But you mentioned him throughout the Complaint?

A I mentioned him in the Complaint. Whether I mentioned him throughout the Complaint, I don't know.
Q Did you also allege improper conduct on the part of others besides the two defense attorneys that were defendants in the case?
A Again, Mr. Harris was not a defendant in the case. But did I allege improper conduct by other people? Yes.
Q Did you allege conspiracy to deprive Mr. Sutcliffe of his civil rights?
A Yes.
Q And did you name me as a coconspirator?
A I did.
Q Did you also name the U.S. Attorney as a coconspirator?
A I did.
Q Did you also name Judge Matz as a coconspirator?
A I did.
Q Did you name others as coconspirators?
A If they were appropriately named, I named them.
Q Do you remember if you named others as coconspirators?
A Without looking at the Complaint, I don't remember.
Q But you remember those three?
A Yes, I definitely remember those three.
Q We briefly touched on yesterday the fact that you were claiming damages in this Complaint in the amount of at least $365,000. Do you remember that?

A Yes. Statutory damages.
Q Well, in addition to statutory damages; right? Should we take a look at that?
A Sure. Because I don't have a recollection.
MS. DUARTE: May I approach, Your Honor?
THE COURT: Yes.
BY MS. DUARTE:
Q First, directing your attention to page 3.
A Okay.
Q Actually, let's look at page 1, first. Does the file date refresh your memory as to when this was filed?
A Yes.
Q When was that?
A July 17, 2003.
Q And does looking at page 3, paragraph 6, refresh your recollection as to whether anyone besides the three people I've mentioned were named as coconspirators?
A Yes. There was an additional individual.
Q Okay. And then let's look at the last page. I don't see a page number on mine, but it's the last page.
A Where my signature is?
Q Yes. Where you are praying for relief.
A Okay.
Q Where you pray for damages believed to be in excess of $365,000. Do you remember that?

A Yes.
Q And then also attorney's fees and costs?
A Pursuant to statute. Yes.
Q Pursuant to statute.
And then damages permissible by statute; correct?
A Correct.
Q Were these amounts for attorney's fees and damages, then, in excess of the $365,000 also claimed?
A Yes.
Q What about up at the top, between lines 4 and 5, on the last page? I'll ask you to take a look at that because I'm going to ask you if you also, in this Complaint, claimed $25,000 for attorney's fees and costs incurred thus far?
A Yes.
Q Whose costs are those?
A Just what it says. Legal fees, expenses, and costs.
Q Incurred by whom?
A They were incurred by Mr. Sutcliffe.
Q Paying whom?
A Those were fees that he would pay me for the work that I had performed on his behalf.
Q So that $25,000 was an estimate by you at that time in July for the work that you performed on his behalf in the instant case?
A No. The work that I performed on his behalf relevant to

this Complaint.
Q Relevant to this Complaint only?
A Yes.
Q $25,000?
A Yes.
Q All right. Now, besides this Complaint that we just discussed, you've also alleged conspiracy by various individuals to violate other clients' civil rights, haven't you?
A You mean in other actions have I alleged the cause of action of conspiracy?
Q Yes.
A Yes, I have.
Q Have you charged that judges and other people were indeed coconspirators?
A On one prior occasion, yes.
Q Was that prior occasion here in federal court?
A It was.
Q In front of a different judge?
A In front of Judge Wilson.
Q And at that time did you claim that California Supreme Court judges, California State judges, and California Appeals Court judges were conspiring to deprive your clients in that case of their civil rights?
A Yes, I did.

Q That claim was dismissed, was it not?
A It was. I filed it in the wrong venue.
Q But in dismissing that Complaint, Judge Wilson also imposed sanctions on you, did he not?
A He did, for the first time in 15 years.
Q In the amount of $10,000?
A It was in the amount of $10,000.
Q And when he imposed the sanctions on you, he held that your conduct in bringing and maintaining the frivolous claim crossed the line into abuse of process, didn't he?
A Yes. Because it was filed in the wrong court.
Q It was filed in the wrong court, but it was more than that, wasn't it?
A No. It was frivolous because I filed it in the wrong court. He made no findings on the -- on whether or not the Complaint itself had merit.
Q Didn't he say that he was sanctioning you to deter you from further abuse of process?
A Yes. When you file a cause of action in the wrong court, that's called abuse of process.
Q So you're saying here today that Judge Wilson made no finding of impropriety as to you?
A Of course, he did. As to the fact that I filed this Complaint in the wrong court, the wrong jurisdiction, it was frivolous, and he made that very specific finding.

Q And he fined you $10,000 for that?
A He sanctioned me $10,000.
Q And that's, like you said, quite rare; correct?
A Rare for me. I don't know if it's rare for him.
Q It's rare for you to be sanctioned?
A In federal court, that's the only time I've ever been sanctioned -- that's not true. I was sanctioned once before and that was overturned.
Q I'm sorry?
A I had been sanctioned by Judge -- I can't remember his name -- probably 10 years ago, and he vacated his order of sanctions. I've been sanctioned twice in federal court in 15 years.
Q Didn't Judge Wilson, in his order, discuss the fact that sanctions were rare but warranted because of the particularities of your conduct?
A I don't have a copy of the order. He may have.
Q Do you want to see it? Would it refresh your memory as to what he said?
A I'm sure it would.
MS. DUARTE: Permission to approach, Your Honor?
THE COURT: Granted.
THE WITNESS: Do you want to direct me to a particular page?
BY MS. DUARTE:

Q I am. I'm sorry, I'm trying to swallow.

Directing your attention to page 9, I'll ask you a specific question and ask if it refreshes your recollection as to whether Judge Wilson found that the history of this case and the egregiousness of your conduct, your violation, led him to believe that a significant sanction is warranted in order to deter you from further abuses of the judicial process.

Do you remember him making that finding?

A That's pretty much verbatim right in the order.

Q Mr. McAfee, just a few final questions for you.

You said yesterday that, in counseling Mr. Sutcliffe in your 1999 memo -- do you remember the memo I'm talking about? It's not in evidence, but we discussed it briefly.

A Okay.

Q You said that you relied on, in particular, the federal cases, Kelner, K-e-l-n-e-r, and Watts. Do you remember that?

A Yes, I do.

Q Is that still true, that you relied on those two cases, primarily?

A Is it still true today that at that time I relied on those two cases?

Q I'm just making sure I got it.

A You got it right.

Q Now, Kelner is actually a Second Circuit case, isn't it?

A It is. I think it's New York, I believe.

Q So Kelner is not good law in the California circuit; right?
A Actually, the Ninth Circuit case accorded the Kelner case, which means it adopted all of the findings and the rulings of the Kelner case within its own findings.
Q But you didn't rely on that case?
A At the time, no, because at the time I don't think the accord had occurred. I would have to look at my notes.
Q That advice that you gave, based on that case, I think you and Mr. Sutcliffe referred to it as "UUIS"?
A U-U-I-S.
Q Those are not the requirements of a true threat; correct?
A That's for the judge to decide. In my opinion, they are the elements of a true threat.
Q Still now in 2000 to 2001?
A Even in 2003. I've conducted additional research on the issue.
Q Are you concerned, Mr. McAfee, that by coming and -- I shouldn't say by coming here.

Are you concerned that as a result of your advice to the defendant, you'll be sued for malpractice?
A You know, that's always a concern. Any attorney can be sued.
Q Particularly, when your client is arrested based on advice that you are now saying you gave him; correct?

A That's why I carry malpractice insurance.
Q So you are not overly concerned?
A I don't practice law with concern that I might get sued. I do the best I can for my clients. If I make a mistake, I pay for the mistake, just like I did with Judge Wilson, just like I did with Judge Wallace. That's the other judge.
Q But coming here and testifying on his behalf, in a manner that could conceivably result in his acquittal, that would help any prospect that you have of being accused of malpractice; isn't that correct?
A I don't know. I presume it would.
Q But you say you haven't given that a lot of thought?
A No. It wasn't my idea to come here and give this testimony.
Q It was your client's idea?
A No. It was Mr. Nicolaysen's idea.
Q That is a former attorney in the case?
A It is.
THE COURT: I think we don't have to go down that road anymore.
MS. DUARTE: May I just inquire as to dates, Your Honor, without inquiring as to specifics?
THE COURT: The date of when he decided to come here?
MS. DUARTE: I think it's relevant.

THE COURT: Yes, you may.

THE WITNESS: I don't have a copy of his letter, but it certainly was after --

BY MS. DUARTE:

Q Without telling me what it said, because we don't want to get into that, approximately when did he suggest to you that you would be needed?

A I believe Mr. Nicolaysen assumed representation around March or April of 2002 and left somewhere in July or August. So it would have been in that window of time.

Q 2002?

A 2003. I'm sorry.

Q So earlier this year?

A Yes.

Q At least six months ago?

A Probably.

Q That's when you first got the idea of coming and testifying?

A No. He requested -- he subpoenaed me, actually, to come in and testify.

MS. DUARTE: I have nothing further, Your Honor. Thank you.

THE COURT: Okay.

Mr. Sutcliffe, any further questions?

MR. SUTCLIFFE: Yes, Your Honor. Thank you.

REDIRECT EXAMINATION

BY MR. SUTCLIFFE:

Q Good morning, Mr. McAfee. I'm sorry you caught that bug that seems to be flying around here.

In the current legal representation that you are performing on behalf of the defendant, did the defendant tell you that he had no money and that if you would represent him in certain legal matters, he would pay you?

MS. DUARTE: Your Honor, objection as to hearsay.

THE COURT: Well, I'll permit an answer and instruct the jury that you are only to consider the answer not for whether it's true that payment will actually be made if the answer is "yes," but just to see what the nature of the relationship was claimed to be between the defendant and this lawyer.

So I will overrule that objection.

You may answer.

THE WITNESS: Thank you.

Yes. You told me, repeatedly, that you would pay when you could.

BY MR. SUTCLIFFE:

Q In the past, when you've represented the defendant, he's always paid you?

A He's always paid me.

Q When he didn't have money to pay you, he would work off

his payment to you?
A Correct.
Q Now, regarding "evilgx.com", you were not the editor of this site; is that correct?
A No. I had nothing to do with the creation or the continual publication of the site.
Q Right. And you had no access via electronically, FTP, or inside to upload a page, download a page, edit a page?
A I wouldn't even know how to do that even if I had access.
Q So your function was as a contact if somebody wished to get ahold of the owner or owners of the website -- is that correct? -- "yes" or "no"?
A That's correct.
Q It was also to provide legal advice to the owner or owners of the website?
A That's correct.
Q You've represented the defendant successfully in other legal matters before courts; correct?
A Yes.
Q As to the initial lawsuit that is currently pending regarding conspiracy to violate civil rights, nobody is above the law, are they?
A Well, that's for a jury ultimately to decide.
Q Correct.
But if somebody was conspiring, whether it be a

prosecutor or whether it be anybody, nobody is above the law. You have the right to file a lawsuit on anybody's behalf if they believe their civil rights have been violated?

A Absolutely. That's what this country is all about.

Q And it's up to the jury to decide?

A Correct.

Q Thank you.

Now, regarding these statements, I'd like to show you -- may I publish this? This is from Exhibit 24.

THE COURT: Yes.

BY MR. SUTCLIFFE:

Q This is a file called -- this is from 20020125, January 25, 2002, a Zip file at -- approximately created at -- captured by Andrew Ramsey at 2231 hours.

THE COURT: Could you repeat the date, please.

MR. SUTCLIFFE: Yes, Your Honor. It's 2002, January 25, at approximately 2231 hours. The file is in the temp folder called "share_holders_money_spent_to_date.htm."

To shorten that down, I'm just going to call it "shareholders money spent to date."

Q Mr. McAfee, do you recall seeing this page here -- I'm going to highlight a specific portion for you, which is "Marky Mark. Before I let you kill me in a court" -- do you recall seeing that?

A Yes. This was the link that I talked about earlier that

was related to the Tracy Hall --

Q Right. And "kill me" goes to the "Tracy448669.htm" page, if I hold my mouse over it.

I'd also like to show you another page here, which is called -- this is in 2002, on March 25th, the day before my arrest, at 0608, and it's called -- the page is called "dizzylizzy.htm."

And in the upper left-hand corner, do you see the title of the page "Lizzy took an ax and gave GX 40 whacks"?

A I see that, yes.

Q It's a pun on Lizzie Borden.

Now, we've seen -- everybody has been pointing to these two links right here, up and down. We'll get to that page in a minute, but do you see this address right here?

A Yes.

Q I did discuss with you the Yahoo! map and Yahoo! maps that were contained within the website?

A Yes.

Q There was a lot of Yahoo! maps in there, was there not?

A There were a number of them, yes.

Q This link right here, "You can run, but you can never hide," that could reasonably be construed to be a threat if someone wanted to come up with threats; isn't that true?

A Well, I guess you can construe most anything as a threat if you want to.

Q Right.

If we click this link, it goes to another page called "Policy: We don't need no stinking policy." And it's titled "Lizzy Policy." It's also on 3/25. It seems to be a correspondence between Lodwrick Cook, co-chairman, and Elizabeth Greenwood, assistant general counsel, and they are talking about stock options and discussing things like that. Down at the bottom, it ends with the name of Leo Hindery.

There are a lot of things in here that could be construed as threats if somebody wanted to come up with a threat, are there not?

MS. DUARTE: Your Honor, I will object as to relevance if he's not asking what he advised him on.

THE COURT: Sustained.

Now, the prosecutor did ask about that document. I think you have a right to follow up on whatever inquiries the prosecutor asked about, but I don't think this witness was asked questions about what people, in the abstract, would construe.

Proceed accordingly.

MR. SUTCLIFFE: Okay.

THE COURT: Remembering, please, that the scope of redirect is defined by the scope of cross.

MR. SUTCLIFFE: Yes, I understand, Your Honor.

Q Now, Mr. McAfee, I'm going to direct your attention to

this page that we have seen here, which is also on 3/25/2002, the day before my arrest, and it's called "Index 2." And I'm going to point you specifically to this paragraph right here and this hyperlink, "Elizabeth, you now owe me 15,000 for the violation of the contract."

Now, we had -- correct me if I'm wrong, but there was -- in your retention, there were several issues related to different contracts; right? My contract, for instance, at Global Crossing?

A Yes. We talked about that.

Q And there was also -- did I not call you -- contact you prior to my arrest and say, "Look, this woman, Elizabeth Greenwood, has been slandering, defaming, libeling my name, and I put up a contract on this website, and I would like maybe to retain you to represent me in a lawsuit against her"?

MS. DUARTE: Objection. Leading. Compound. And he's testifying with his question.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Did the defendant ever contact you regarding possibly suing Mrs. Greenwood?

MS. DUARTE: Objection to relevance.

THE COURT: Overruled.

THE WITNESS: You know, we had a lot of discussions about Mrs. Greenwood. I can't recall if we discussed

specifically whether there was any legal action you could take against her. I'm sorry, I just don't remember.

BY MR. SUTCLIFFE:

Q That's okay.

Now, I'm going to show you another page here in one second. This page right here that's been shown a lot, do you see -- there is a picture at the top -- somebody -- a woman and her child. You've testified you don't recognize who she is.

Down there, do you recognize who that is in the picture?

A Yes.

Q Who is that?

A That's you and your daughter, Leael.

Q Now, I'd like to draw your attention down to the bottom here, this last paragraph, "I know you called my hosts in violation of the contract. Now I'm coming for you personally in a court and you can explain it to the judge."

Do you remember --

A Yes.

Q Do you remember ever seeing that paragraph?

A Yes. We discussed whether or not you could enforce the terms and conditions that a person had to agree to to gain access to your site if they violated those terms and conditions.

Q Right. Directing your attention back to this page we were

just discussing right here, when it says, "Elizabeth, you now owe me 15,000 for the violation of the contract and I am coming to collect from you personally," couldn't it be that that's exactly what I was talking about, but it's just explained a little deeper on this page here --

MS. DUARTE: Objection --

BY MR. SUTCLIFFE:

Q -- "I'm coming to personally collect from you in a court and you can explain it to a judge"?

MS. DUARTE: -- calls for speculation.

THE COURT: The objection is sustained. The question, as framed, is totally improper. It does call for a conclusion and speculation and it's argumentative.

BY MR. SUTCLIFFE:

Q When I say, on one page, "I'm coming to collect from you personally," and then I stop and I don't elaborate, okay, but if you look at that page and you click on this link, it takes you to -- it says -- do you see, down in the left-hand corner, Mr. McAfee -- I'm sorry, I know your eyesight isn't that good -- the far left-hand corner, do you see the name "evilgx.com", down right here?

A Yes, I see it now.

Q That goes to what is known as the route of the website; correct?

A I'm not a technical wizard. I don't know what that means.

Q This is what it would mean. Do you see this? This is called "Index." This is the contract.
A Yes, I see that.
Q You have seen this contract right here; correct?
A Yes.
Q It's talking about censorship, slander, defamation of character, lies, deceit, conspiracy, obstruction, all kinds of stuff, document shredding, etc., etc.; correct?
A Yes. We have discussed this.
Q Now, just so I'm clear, these statements within these websites, as you testified the other day, except for the "kill" statement regarding Tracy, we had -- you recalled we discussed those prior to them being put on the Internet; is that correct?
A Every one of them except the -- and we may have discussed Tracy Hall as well. I just don't have a recollection of doing that one before.
Q Have I always complied with your advice regarding statements within this website or any other websites where I sought your counsel?
A Yes.
Q Even if we didn't discuss this specific "kill" statement, did we ever discuss the use of the word "kill" in similar statements before this statement?
A Many, many times.

Q Okay. Now, I want to be very clear with this, Mr. McAfee. We discussed each and every statement except for the "kill", but you don't recall if we discussed that before or after it was published; is that correct?

A That's correct.

Q But you do recall discussing the "kill" statement with the accused?

A Absolutely.

MR. SUTCLIFFE: I have nothing further, Your Honor. Thank you.

THE COURT: Anything further?

MS. DUARTE: Your Honor, I hate to do this, but I do have a follow-up question.

THE COURT: All right.

RECROSS-EXAMINATION

BY MS. DUARTE:

Q Mr. McAfee, you just testified to two things that I want to clear up. One was that that disclaimer that we saw -- and I don't know which exhibit Mr. Sutcliffe was using -- but it's also in Exhibit 23 -- that disclaimer that we showed you yesterday, you said that you did not advise him on that.

You looked at it today and you said you did. I'm trying to get some clarification as to that.

A I don't have 23. I didn't write that disclaimer for him. We discussed the disclaimer. That was taken from a disclaimer

that I had prepared for him on a different site.
Q Do you remember yesterday, when I highlighted paragraph 5, which spoke to the release of liability for violent acts committed by people, I said, "So you don't recognize this?" and you said "no"?
A Right. Like I said, I didn't write the disclaimer or terms or conditions. It was culled from, at least in part, from disclaimer terms and conditions that I had done for him on a different site.
Q But he did it himself?
A I don't know who did it, but I didn't do it.
Q You did not do it?
A I didn't do it.
Q So you recognize it by virtue of your seeing it at times on the Web, but it was not your work?
A Yes.
Q Including paragraph 5?
A Correct.
Q The second point of clarification is that, yesterday, I believe you testified, tell me if I'm wrong, that on the "kill" threat, which "I know how to stalk, too, and I will kill you," to Tracy Hall, you actually advised your client to put a link on that word "kill" to clarify what he meant; isn't that right?
A No, I didn't tell him to put a link. That statement, as my recollection is, went to a link, and I advised him to use

the language of the link that you would go to if that was his intent, which he expressed to me it was, to put that language in the Tracy Hall statement.

Q Not to belabor it, when you say "that statement went to a link," what precisely do you mean?

A Okay. I don't have technical ability to pull it up, but the link that Mr. Sutcliffe showed me a little bit earlier about "I will kill you in court," Mr. Sutcliffe told me that's what he intended to state in the Tracy Hall statement, and he was linking the Tracy Hall statement to that link. And it was my opinion that if that's what he intended it to mean, he should be more direct and just include that language in the Tracy Hall statement rather than relying on somebody to make the connection.

Q But he didn't actually do that; correct?

A No. He took the statement off the Web instead.

Q After a couple of weeks?

A As far as I know, it was taken off right after we had our conversation.

Q So it could have been up before you had your conversation?

A It could have.

Q Was this one of the threats that you recall him asking you about after it was already on the Internet?

A I know we definitely discussed it once it was already on the Internet.

Q Now, you said that the threat that you looked at earlier on the litigation had a link to the Tracy Hall threat, but wasn't that linked to "Tracy448669"?

A I don't know.

MS. DUARTE: I'm sorry, Your Honor. That's the problem with not having a printout of what he's been showing. I apologize.

THE COURT: Go ahead. If you need to lay a foundation or follow up, you are entitled to.

BY MS. DUARTE:

Q Do you remember Mr. Sutcliffe just asked you to look at a link?

May I ask, Your Honor --

THE COURT: Mr. Sutcliffe, would you display the link that you just questioned Mr. McAfee about so that we can have a clearer record here, please.

BY MS. DUARTE:

Q This is the "Marky Mark" sentence.

While we're looking for this, I can ask you, Mr. McAfee, do you remember the sentence that Mr. Sutcliffe showed you that started, "Marky Mark," and had within it "I will kill you in court," or something like that?

A Something like that, right. "I won't let you kill me in court," I think, is the statement.

Q So that's the reference that you are saying now was linked

to the "Tracy Hall, I will kill you" threat?
A Yes.
THE COURT: Let the record reflect that Mr. Sutcliffe has been good enough to pull up the part -- I think it's from Exhibit 24; is that correct, everyone?
MS. DUARTE: Yes.
THE COURT: The part on Exhibit 24 to which Mr. Sutcliffe directed Mr. McAfee's attention concerning a reference to "Marky Mark" is now before the jury on the monitors.
BY MS. DUARTE:
Q If you look at the link "kill me," down there at the bottom, that link goes to "Tracy44H669"; correct?
A I have no idea.
Q You can't tell by looking down at the bottom left corner of the screen?
A No. I'm not a techno guy. I know where to point my arrow and I know where to click. That's about all I know.
Q Why don't we go ahead and click on that link and see if we can get through, if we could.
MR. SUTCLIFFE: Am I working for the prosecution now?
THE COURT: No. Can't you access it?
MS. DUARTE: We can access it. Let me see what file it is.
MR. SUTCLIFFE: It's 2002.

MS. DUARTE: Your Honor, we don't need to go any further into this.

Can we keep the screen for just a minute?

THE COURT: It's only appropriate that if you want to have this displayed or inquire about it, now that you know where it is, Agent Harrill, access it from your computer so that Mr. Sutcliffe doesn't have to do your work.

MS. DUARTE: I was just going to move on.

THE COURT: Okay. That's fine, too. You can move on, if you wish.

MS. DUARTE: All right. I have nothing further. Thank you.

THE COURT: Okay. Mr. McAfee, you can step down.

Do you have any more questions?

MR. SUTCLIFFE: No. Have a good day.

THE COURT: You are excused.

THE WITNESS: Thank you.

THE COURT: Let's call back Agent Cugno, please.

AGENT JEFFREY CUGNO, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

THE COURT: I will remind you that you are still under oath. You have the continuing obligation to testify truthfully.

Do you understand that?

THE WITNESS: Yes, sir.

THE COURT: All right. I think we're back to your

questioning, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

CROSS-EXAMINATION (Resumed)

BY MR. SUTCLIFFE:

Q Good morning, Agent Cugno. How are you doing today?

A Good morning.

Q I hope you don't have that bug that's going around.

I'm going to try to make this real quick today. I'm sure we all want to finish, and I'm sure the jury wants to get this over with, too.

Let's focus on the month of December right now. You downloaded the website on 12-12; right?

A Correct.

Q Let me take us all there, to 12-12.

Here is a download by Andrew Ramsey on 12-12 of the "evilgx" at 1707 hours.

Now, in the indictment, there is alleged 1900 social security numbers; correct?

A Correct.

Q This is the file right here; is that not true?

A It appears similar. However, this is not my download. This is Mr. Ramsey's download.

Q This is accurate; correct? Mr. Ramsey wouldn't falsify stuff; right?

A I don't know at what point during the day Mr. Ramsey's

download was taken compared to mine. I know you were very active in changing the website continuously throughout that time period.

Q I have yours right here. Would you rather we look at this one?

A You are asking the questions, sir.

Q I was asking you.

Would you rather we look at this one? I can look at either one you want.

THE COURT: Let's look at the one that's in your hand, Mr. Sutcliffe.

MR. SUTCLIFFE: Okay. This is marked as CD LA308 aka "evilgx.com" 12-12-01, formally known as No. 10.

MS. DUARTE: That's Government's Exhibit 45, Your Honor. I don't believe that's in evidence.

I'll stipulate to it.

THE COURT: Mr. Sutcliffe, before you display this, do you want to move this into evidence?

MR. SUTCLIFFE: Sure.

THE COURT: It will be received.

And what we'll do, for sake of clarity for the jury and clarity of the record, we'll mark the CD itself as Exhibit 241.

And Exhibit 45, according to Ms. Duarte -- oh, it's already been marked as Exhibit 45. I was thinking there was

going to be a hard-bound copy.

It's unnecessary to give it a second number. I withdraw what I said about assigning No. 241 to it.

And instead, Exhibit 45 is now in evidence and being displayed.

(Government's Exhibit 45 received.)

MR. SUTCLIFFE: It doesn't appear to be coming up too quickly, Your Honor.

Q Do you see the website as it was on that day?

A It appears to be.

Q So the first page appears to be "Devils and the details."

Now, do you recall the name of the page that had the 1900 social security numbers?

A I believe it's to the left, under "command," entitled "Seeya."

Q Right here, "Seeya"?

A Correct.

Q Let's click on that. There we go.

So this would be the page that had names that appear to be in alphabetical order and numbers to the right; correct?

A Correct.

Q At the time did you know if these numbers, like NM408PX05, whatever other numbers here, were accurate?

A I did not.

Q Do you know if the defendant knew they were accurate?

A I would have no way to know that.
Q There was also a lot more social security numbers on 12-12; isn't that true?
A I believe that's true.
Q Do you know approximately how many?
A I do not.
Q If I showed you a file, would it refresh your recollection?
A I suppose it will.
Q I'm going to zip back to Mr. Ramsey's download for a second here, for expediency sake, and I'm going to bring up a file.

Do you recall this file "Titles of the Nobility"? And do you see -- I'm going to direct your attention to, do you see these numbers right here? I know they are kind of tiny.
A I see them.
Q 001482308?
A Again, I'm going to have to apologize. The left side of my screen is cut off, so I can't see the entirety of the screen. I do see what you are underlining.
Q And these also have a lot of names and numbers here too; correct?
A They appear to.
Q And there is a whole bunch of them here. It just goes on and on and on and on.

When you get on the bottom, it's still got new numbers down here; right?

A Yes.

Q Isn't it a fact that each one of these three files that I've just found called "Titles of the Nobility, Titles of the Nobility 2 and Titles of the Nobility 3," if you click on them, they are almost identical, some kind of description, what is called "what they do," there seems to be some kind of description, a number, there appears to be some kind of truncated date, and a name.

Do you see that?

A I do see that.

Q It just goes on and on and on and on and on.

The third one does -- the third one, which is "Titles of the Nobility 3," appears to be the same thing again. It just goes on and on and on and on. Then it stops eventually down here at the bottom.

Did you ever analyze this file?

A Beyond viewing it, if I did view it at the time, no.

Q And you heard Mrs. Greenwood testify that she saw approximately 7900 names and social security numbers right there?

A I don't know if she indicated that that was the page she saw.

Q Is it a fair statement that there appears to be about 7900

names on those three pages?
A I didn't count them.
Q Okay. In your best guesstimate -- you work with computers and data a lot; right?
A I do.
Q Looking at this screen -- I'm going to hit "page down" now -- can you estimate how many -- how many names are on this one -- just one screen that we're looking at right now?
MS. DUARTE: Objection to relevance of this line, Your Honor.
MR. SUTCLIFFE: I'll get there, Your Honor.
THE COURT: Overruled.
You can give an approximate number.
BY MR. SUTCLIFFE:
Q Would you say at least 30?
A Probably about 30.
Q If I hit "page down" on my computer keyboard here, that would be another 30; right?
A If that did take the page all the way down, then, yes.
Q Do you see how small -- over here on the right-hand side, do you see how little -- just that thing barely moves; right?
A Correct.
Q That's 30 each time I hit this keyboard.
Now, if I go and do that on the second page, which is even bigger, each tap is 30. Wouldn't you guess that we've

surpassed 1900 at this point?
A Again, I'm not counting how many times you are tapping, but it appears you posted several pages of numbers which appear to be numbers and possibly dates of birth.
Q You said it appears I did this -- this file.
A Is this not your website?
Q That's not my question. I'm asking the questions, if you don't mind.
You said it appears I posted this file. What proof do you have that I posted those files?
A It's my belief that this is your website.
Q Did anybody else own this website?
A I believe you were listed as the contact person for this website.
Q Right. Somebody else owned the website, did they not? They paid for it -- correct? -- which was not me; true?
A I know that -- it appears that you used somebody else's credit card number.
Q Did I put a gun to their head? Do you have any evidence of that?
A I wasn't there, sir, so I don't know.
Q But you do know somebody else paid for the website, it wasn't me?
A I found records where someone else's name and credit card number had been used.

Q Correct.

Now, my question to you is, you said it appears I put this file up there.

Do you have any proof that somebody else didn't put up this file?

A In front of me, no, I don't.

Q Do you have any proof that I put up that file?

A It's your website.

Q I understand that.

But you testified the other day that more than one person can upload it to a website; correct?

A If given permission by the owner of that website.

Q Right.

Did you ever see a file in this website that said, "My name is Richard Lee Weatherman and I'm the owner of this website and I provided access to this website so people can upload or download information onto it"?

A That doesn't sound familiar to me.

Q How long was this file "Titles of the Nobility" within this website, do you know?

THE COURT: Which file?

MR. SUTCLIFFE: "Titles of the Nobility." There is three files: "Titles of the Nobiity," "Titles of the Nobility 2" and "Titles of the Nobility 3" dot-htm.

THE WITNESS: It appears it's listed three times on

this download.
BY MR. SUTCLIFFE:
Q Right.
On 12-12?
A From what you are showing me, yes.
Q Right.
The file that had the 1900, that was called "Seeya.htm"; correct?
A Correct.
Q Can you tell the jury, how long was that file contained within the website on or after 12-12?
A I couldn't tell you.
Q Okay. Well, let's use Mr. Ramsey as an example. How about that?
Here's Exhibit 24, which is 2001 downloads and 2002 downloads. I'm now going to do a search. I'm now searching Exhibit 24. Let's look for titles.
Is it a fair statement that if we look at Exhibit 24, which are all the downloads by Mr. Ramsey over the course of this website, and we do a search for the word "Titles of the..." that is going to bring up any file called "Titles of the Nobility"?
A I believe that's correct.
Q All right. Let's look.
We seem to have gotten a hit and we've got six

objects, which are -- I'm going to sort them by name, first, so they are duplicates. These are duplicates, these are duplicates, and these are duplicates. They are contained within 2001, all within the month of July -- excuse me, December, on two different dates, the 12th and the 14th; is that a fair statement?

A Yes.

Q Is it a fair statement to say that this file containing approximately 7,000 whatever -- thousands of social security numbers and dates of birth were only on this website for approximately two days during the time frame of this website?

A It looks like they were, yes.

Q Then somebody must have deleted them or taken them off?

A Based on the downloads of Andrew Ramsey.

Q Right.

Well, he testified he captured them every time they changed; right?

A That's what he testified to.

Q You have no knowledge that he would falsify evidence or anything like that; right?

A None whatsoever.

Q Now let's look for the "Seeya." There we go again. We've got two hits, again on the 12th and on the 14th.

So for the entire history of this website, this page was again only on there for two days and then it was gone;

correct?
A Correct.
MR. SUTCLIFFE: May I have the ELMO, please? I'm going to show Defendant's Exhibit 234.
I think this time we have the correct 234, not 239.
THE COURT: Okay.
BY MR. SUTCLIFFE:
Q This was the report, correct me if I'm wrong, that you typed up when you initially started your investigation to find the owner or owners of the website; correct?
A This was not the report that I initially typed up. This was the report that I submitted on December 31st.
Q On December 31st, you write up a report of the history of what you've done since you took over -- or the history of the investigation into this website from approximately November; correct? That's when you started, I believe.
A Correct.
Q So you went after two e-mails, "richardleeweatherman@hotmail.com" and "evilgxhr@yahoo.com" and both of these was on 11-14, prior to these social security numbers being published that we just looked at; correct?
A Correct.
Q And you were able to get two IP addresses from these e-mails; correct?
A I'm not sure if that's where those IP addresses came from,

but I do remember those IP addresses.
Q When you get an e-mail address and you are trying to track somebody, that's what you look for; right? An e-mail by itself isn't going to tell you anything unless you've got the IP address; correct?
A It also helps, yes.
Q It also helps. Okay.
Now, you testified you also found personal information on this website; correct?
A Correct.
THE COURT: Which website?
MR. SUTCLIFFE: "evilgx.com". Excuse me, Your Honor.
THE COURT: Okay.
BY MR. SUTCLIFFE:
Q And you initially learned this from talking to Mrs. Greenwood; correct?
A I don't know if that was initially. It may have been through my discussions with Special Agent Harrill.
Q May I refresh your recollection?
This is from the New Hampshire testimony. This is your testimony in New Hampshire --
THE COURT: Just read it silently to yourself, please.
BY MR. SUTCLIFFE:
Q Do you see it right there? I'll show you the previous

page I was reading from so you won't see I'm taking it out of context. I'll show you the continuation.

A Okay.

Q I'll ask you again. You testified you found some personal information on the website.

Now, my question was, you initially learned this from talking to Elizabeth Greenwood; correct?

A It appears to be, yes.

Q Not from another agent, but from Elizabeth Greenwood?

A Correct.

Q Did you uncover any evidence that anybody tried to use those, for instance, social security numbers, to obtain a fake ID?

MS. DUARTE: Objection to relevance.

THE COURT: Sustained.

MR. SUTCLIFFE: Your Honor, it goes to the witness's credibility and to --

THE COURT: Okay. I have ruled on the objection. I have sustained it. I'm not going to reverse that ruling, so please move on.

BY MR. SUTCLIFFE:

Q Agent Cugno, during the course of your investigation, you didn't obtain any evidence that anybody used any information that was on this website to obtain a fake ID; correct?

MS. DUARTE: Objection, Your Honor. Same objection.

Relevance.

THE COURT: Same ruling.

The objection is sustained.

BY MR. SUTCLIFFE:

Q You didn't uncover any information that anybody used this information to steal any money, did you?

MS. DUARTE: Same objection, Your Honor. It's irrelevant.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q As an expert -- excuse me. As a specialist on computers, you know that, correct me if I'm wrong, it's not hard for anybody to get somebody's social security number off the Internet; correct?

A It can be done.

Q Now, you know what search engines are on the Internet; right?

A Correct.

Q There is a lot of them; right?

A Yes.

Q And you can look for information on the Internet through these search engines; correct?

A Correct.

Q One of the things you can look for are social security numbers; correct?

A If you wanted to, yes.
Q You are aware that you can get someone's social security number by putting in their first and last name; correct?
MS. DUARTE: Objection to the relevance of this line.
THE COURT: Overruled.
THE WITNESS: I believe you can.
BY MR. SUTCLIFFE:
Q Anybody could.
Now, I'd like to ask you a couple of other questions regarding your testimony in New Hampshire.
You said -- did you or did you not say that, regarding your investigation with respect to "evilgx.com", you had conducted many searches on the Internet using various websites that allowed you to access Web addresses and find out who the owner of the website is and then who is currently hosting the website; correct?
A I believe I said that.
Q And then you testified that in January 2002, the website was being hosted by "hostingsolutions.com" in Virginia; correct?
A Correct.
Q And then armed with that information, what did you do?
A I believe --
THE COURT: What did he do in January of 2002?
MR. SUTCLIFFE: Yes, when he found out that the

website was being hosted by Hosting Solutions in Virginia.
Q Armed with that information, what did you do?
A I believe that was shortly after my download on January 11th, which then I submitted a request for a search warrant, which we did obtain, for the contents of that website.
Q Now, prior to that website -- let me read you a question. Hold on a second.
THE COURT: Take your time.
MR. SUTCLIFFE: Thank you, Your Honor.
Q This website was hosted by lot of servers other than that one in Virginia; correct?
A Correct.
Q Prior to Hosting Solutions in Virginia, were you ever able to ascertain whether or not Mr. Sutcliffe had any affiliation with the website "evilgx.com" when it was hosted by any other Web hosting company?
A I believe so. I would have to see something to refresh my memory, but I believe we did.
Q Why do you believe you did?
A I'm trying to remember the chronology of those events.
Q Would it shock you if I told you that you testified under oath that your answer to that question, to the U.S. prosecutor in New Hampshire, was "I was not"?
A Again, I said I would need to refresh my memory to recall that.

Q Would it shock you to know that the prosecutor's next question was, "Did you attempt to ascertain that?" and your answer was, "I did"?

MS. DUARTE: Your Honor, object. Move to strike. It's improper impeachment.

THE COURT: It is. The objection is sustained.

You can ask the question now. If the answer is the same, you move on. If the answer is different, you can attempt to impeach by prior inconsistent testimony. That's the only way you can do it.

BY MR. SUTCLIFFE:

Q Regarding Hosting Solutions server of "evilgx.com" in January of 2002, were you able to ascertain whether or not Mr. Sutcliffe had any affiliation with "evilgx.com" when it was hosted by any other Web hosting company?

A Again, without looking at something, I'm going to have to refresh my memory.

MR. SUTCLIFFE: May I refresh the witness's memory as to what he testified to, Your Honor?

THE COURT: Yes.

MR. SUTCLIFFE: Thank you.

Q This was the question and this was your answer.

A (Witness reading document.)

Q Do you recall that?

A I honestly do not recall that. I see that it's printed

here.
Q This is your testimony; correct?
A It appears to be my testimony.
Q Where it says, "Were you able to ascertain whether or not Mr. Sutcliffe had any affiliation with 'evilgx.com' when it was hosted by any other Web hosting company?" and we are discussing Hosting Solutions in Virginia at the end of January 2002, your answer was, "I was not"; correct?
A That appears to be what I said.
Q The next question -- I'll show it to you right there.
THE COURT: No. Just ask a question independently now.
BY MR. SUTCLIFFE:
Q Did you attempt to ascertain that Mr. Sutcliffe was affiliated with "evilgx.com" when it was hosted by any other Web server prior to the end of January -- or January, in Virginia -- when it was hosted in Virginia by "hostingsolutions.com"?
A I'm sorry, can you repeat the question?
Q Did you attempt to ascertain in any way, shape, or form that Mr. Sutcliffe was affiliated with "evilgx.com" when it was hosted by any other Web hosting company, other than Hosting Solutions, which you testified you went after in January of 2002?
A According to my testimony here, it says that I did.

Q Okay. So you attempted to ascertain that, but you were not able to affiliate Mr. Sutcliffe prior to January 2002 to this website "evilgx.com"? That's your testimony in New Hampshire; is that not correct?

A That's what it appears to say.

Q I'm going to show you, Agent Cugno, Bates 00139, which is a grand jury subpoena, correct me if I'm wrong, that you issued for the e-mail address "evilgxhr@yahoo.com" on November 13, 2001?

THE COURT: What's the Bates number?

MR. SUTCLIFFE: 00139.

THE WITNESS: Okay.

MR. SUTCLIFFE: Your Honor, move this as Defendant's next exhibit in order.

MS. DUARTE: Objection, Your Honor.

THE COURT: Well, this is not a subpoena. This is just a 302.

MR. SUTCLIFFE: Well, a 302.

THE COURT: Is this one of the documents that we talked about this morning before the jury came out?

MR. SUTCLIFFE: Not that I'm aware of.

MS. DUARTE: I don't believe so, Your Honor.

I think those were dated differently. That's how I'm able to --

THE COURT: Before you move it into evidence, you

have to establish a foundation for it and its relevance. So you can question him about it, but I'm not going to receive it now. I may receive it later.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Did you issue a subpoena on November 13, 2001, for the e-mail address "evilgxhr@yahoo.com"?

A Yes.

Q And did you receive information back from "yahoo.com" as to this e-mail address "evilgxhr@yahoo.com"?

A I did.

Q I'm going to show you -- is this part of the fax that Yahoo! sent to you?

A Yes, it appears to be.

Q It says the account is active?

A That's what it says.

Q And then it also says the registration IP address, meaning the home address, or wherever the computer was that registered this e-mail address, that's the IP; correct?

A Correct.

Q It's number 24.167.143.139?

A Correct.

Q For simplification, I'm just going to call this 139.

A Okay.

MR. SUTCLIFFE: Your Honor, may I now move this in as Defendant's next in order?

THE COURT: I think you can move in the one that shows what the IP address is. That's all you need.

That's not an exhibit already?

MS. DUARTE: I don't believe so, Your Honor. No, it is not.

THE COURT: Is it a stand-alone page or is it part of a larger document?

MR. SUTCLIFFE: It's a four-page document, Bates 139 through 142.

THE COURT: Do you have any objection to those coming in?

MS. DUARTE: No, Your Honor.

THE COURT: Okay. Whatever is Bates 139 to 142 will be received in evidence as Exhibit 241.

(Defendant's Exhibit 241 received.)

MR. SUTCLIFFE: Permission to publish?

THE COURT: Yes.

MR. SUTCLIFFE: Thank you, Your Honor.

MS. DUARTE: Your Honor, the front page, which Mr. Sutcliffe is exhibiting, is not in evidence.

THE COURT: Take that off. You don't need that.

BY MR. SUTCLIFFE:

Q This is the fax you received back from Yahoo!; correct?

MS. DUARTE: Your Honor, I'm sorry to interrupt, but could I see a Bates stamp number on that? I don't think

that's --

MR. SUTCLIFFE: Sure. 140.

MS. DUARTE: Okay. My fault.

MR. SUTCLIFFE: It's 140 through 142.

Q So in this initial report we were looking at, on 11-14, you issued a 302, which we just discussed, for a subpoena, and you said you wanted information on this e-mail address "evilgxhr@yahoo.com", and this is what you received back on the same day, 11-14; correct?

A It appears to be, yes.

Q So you got it back with pretty fast service.

It says here that, "Yahoo! does not require subscribers to provide proper names or residential addresses or telephone numbers." They don't require that; right?

A Right. I believe Ms. Isley testified to the same.

Q Right.

This is what you are really looking for when you send out a request for an e-mail address; correct?

A Correct.

Q You are looking for this thing right here, the registration IP; right?

A Correct.

Q And you want to make sure the account is active, which this definitely was. And then you also get some other information that comes along when you do something like that;

correct?
A Correct.
Q You get the numbers, which we've already established it was created at, we'll call it, 139. I don't know if the jury can see this. I'm going to zoom in a little.
We've got 139 active. It was created on September 24th. And along comes -- along with this subpoena is who has been accessing this account -- or this e-mail account. And we see a bunch of dates and we see a bunch of numbers and then we see the 139 again; correct?
A Correct.
Q All of a sudden it stops and it changes right here. From November 3rd, it stops and then picks back up on November 11th, but now it's 71, for simplification sake. It's actually 24.147.113.71; correct?
A Correct.
Q Now, it was testified earlier that 24-dot whatever is AT&T Broadband; right?
A I don't know if that was testified to.
Q I thought you did.
Are you familiar with 24-dot?
A As far as an IP address?
Q Yes.
Have you ever testified that, your knowledge of the Internet that you know from your previous experience and skill,

that that IP belongs to AT&T or Roadrunner or Broadband, one of those high-speed Internet access accounts?

A One of the IP addresses that we found did start with 24, and that came back to your home address in New Hampshire.

Q Now, between November 3rd and November 11th, this account stopped and then it picked back up with a new IP address; right?

A Correct.

Q Did you do anything with that new IP address when you saw this information on 11-14? Did you say, "Ah, a new lead"?

A I don't recall if I did.

Q Did you issue a grand jury subpoena and fill out a 302 form on 11-27 for the IP address 71?

A Again, without seeing something, I would have to refresh my memory.

MR. SUTCLIFFE: Permission to refresh?

THE WITNESS: It appears I did.

BY MR. SUTCLIFFE:

Q So you got the first e-mail. You get the registration IP. You track it. You get a second IP address. You follow that one; correct?

A I did. There were no records available, it looked like.

Q So you get a dead end now?

A It appears to be.

Q So in between getting this dead end, sometime in December

now, we hit the infamous date of 12-12 and thousands and thousands of these numbers are appearing on this website.

What did you do next?

A It was a very busy time for all of us. After the events of 9/11, we were all very busy trying to return to some sort of normalcy, on top of the other investigations we were carrying out at the time.

Q But on 12-17, didn't you file a -- didn't you go to "WHOIS" and do a check again on "who is the owner of this website?" and --

A I believe it was 12-17 or 12-18.

MR. SUTCLIFFE: Permission to refresh the witness's recollection?

THE COURT: Yes.

MR. SUTCLIFFE: Thank you.

Your Honor, would you like to take a break or --

THE COURT: Yes, we should. We should take a 15-minute break, ladies and gentlemen.

Please remember the admonition. We'll be back at 10:30.

(Jury out.)

THE COURT: I need to make some plans because of scheduling conflicts that I have.

Please tell me, in good faith, Mr. Sutcliffe, what's your estimate for completing your examination, time estimate,

of Mr. Cugno?

MR. SUTCLIFFE: I'm trying to clip along as quickly as possible, Your Honor. I'm actually leaving out a lot of stuff I wanted to touch upon because I know that you are in a hurry to get this over with.

THE COURT: Let me respond to that. I am in a hurry, but not for any reason other than making sure the case is tried efficiently and fairly and that we don't go down irrelevant paths. That is not as important as making sure that both sides have a fair trial.

You don't have an obligation to cut out inquiries that are legitimate inquiries. So I haven't said that you have such an obligation, and I want to make it clear you don't.

I'm not going to permit irrelevant inquiries, so that's not an open invitation to delay.

Now, understanding what I've just said, please give me a time estimate for how long it will take to complete Mr. Cugno.

MR. SUTCLIFFE: I expect to be -- we're going until what time today? 1:30?

THE COURT: That's what I need to determine after I hear from you.

MR. SUTCLIFFE: I expect to finish probably about 1:00, 1:30. I've got it all set up in increments. I need to walk him through this to get him to where I need him to go.

He can be evasive, if he wants, and not recall anything and then we'll be here a lot longer.

She can object -- the prosecutor can object to certain documents I want to show, and we are going to be even longer.

THE COURT: All right. And after you finish with Mr. Cugno -- after Mr. Cugno is finished -- I don't know what the government will do -- do you have any more witnesses?

MR. SUTCLIFFE: No, Your Honor.

THE COURT: That's it?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: Are you going to have any rebuttal witnesses?

MS. DUARTE: None are planned.

THE COURT: Well, I have a court commitment at 12:10. I'm not going to get there on time. I'm going to go until 12:30. One of the jurors has to leave by 1:30, so we can't continue in the afternoon even after my commitment is over. We are going today until 12:30.

I don't know if we'll have another break after we come back at 10:30. I may break a little bit before 12:30.

Tomorrow is going to be a full day. We are going to complete all examination if it's not done today. We are going to charge the jury. There is going to be closing arguments and the jury will start deliberations.

Any questions about what I said?

MS. DUARTE: Your Honor, I don't have a question, but I would like to be heard before you leave the bench.

THE COURT: Go ahead.

MS. DUARTE: Your Honor, I have a scheduling conflict. I'm going to end up missing a flight tonight. I've talked to the airline and apparently they may be able to reschedule me if I can prove to them that I am under Court order to be here.

THE COURT: Yes, I will do that. I have already done that.

MS. DUARTE: You did it for Special Agent Cugno. I would ask for the same. And also that this order could clarify that it was for this week, through Thursday.

THE COURT: I think it's not going to be sufficient. It's got to be longer than that.

MS. DUARTE: Through Friday. I'm hoping to fly out on Saturday now, and they'll only change it if -- I know that I may not be able to. The only hope I have is --

THE COURT: I will issue the order.

MS. DUARTE: Okay. I appreciate that, Your Honor.

THE COURT: Anything else?

MS. DUARTE: No, Your Honor. But if I could get the order this afternoon.

THE COURT: Yes. I'll take care of it at the break.

MS. DUARTE: I appreciate that. Thank you.

THE COURT: If you need to suck on some lozenges in order to be heard, without incurring additional discomfort or pain, I don't object to it -- ordinarily, I would never permit it in the courtroom -- so long as when you question witnesses, you remove it.

MS. DUARTE: I'm sorry.

THE COURT: So you can.

MS. DUARTE: I did question one with it. I realized it too late and I apologize.

THE COURT: I didn't even realize that. I was just giving you an opportunity.

All right. We'll be back in 15 minutes.

MS. DUARTE: Thank you.

(Recess taken at 10:19 a.m. to 10:56 a.m.)

(Jury in.)

THE COURT: We were trying to accomplish some technological equipment-related objective, and it took more time than I was told it would, so we had to inconvenience you.

Here's what the schedule will be. Yet again, I have explored with the parties what their expectations are, and based upon what I was told, the sensible thing to do is break today at a little before 12:30. I have to go to a -- I have a court commitment beginning earlier than that, but I'll stay until probably about 12:20, 12:25. Tomorrow will be a full

day, meaning 8:30 to 4:30.

I have been assured that the evidence will be over tomorrow, and I can, based on that assurance, tell you that you will be deliberating beginning tomorrow.

You will be given the jury instructions. You'll be given closing arguments. So beginning tomorrow, please schedule your availability to have days that typically will be from 8:30 to 4:30.

I'll tell you what the procedures will be as far as deliberations when we get to that point. Today, in other words, we'll be breaking maybe around 12:20 or so, and we'll go directly to then from now. There won't be a break between then.

Now, I had asked the representative of the MIS department to confirm to me, David Layman, that he attempted to accomplish what I had ordered over the break and he was unable to do so.

Is that correct, Mr. Layman?

MR. LAYMAN: Yes.

THE COURT: Okay. You are excused. Thank you for remaining.

Let's proceed.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Mr. Cugno, when we left -- Agent Cugno, when we left off, we were discussing that originally you had subpoenaed two IP

addresses -- two e-mail addresses, and from that you had gleaned IP registration addresses. And then you were following up on those with AT&T or the proper parties who owned those IP addresses which were connected to those e-mail addresses; right?

A Yes.

Q And along this time frame, the date of 12-12 arrives and thousands upon thousands of social security numbers allegedly are posted within this website, along with another file with about 1900 alleged social security numbers.

When we last left off, I asked you what you had done after the date of 12-12.

Isn't it a fact that shortly thereafter you went to the Internet and you said, "Who is this website owner? Who owns this thing?"; correct?

A I believe on 12-17 I did that.

Q And from that, you were able to get some information: Sutcliffe, S. as a name, an e-mail address of "rampartscandal@europe.com", a mailing address of 231 East Palm Avenue, Suite A, Burbank, California 91502, and a phone number; correct?

A That is what was listed.

Q And armed with this information, what did you do next?

A As to that day I'm not sure what I did next.

Q Did you issue another subpoena for that e-mail address?

A Which e-mail address?
Q "rampartscandal@europe.com".
A I think I already testified that I do not remember issuing such a subpoena.
Q I asked you earlier about "richardleeweatherman@hotmail.com", the subpoena that you had originally issued, along with the one for "evilgxhr"; correct?
A Yes, you did ask me.
Q You were working with Agent Harrill. He had originally started the investigation back in September/October.

Do you remember him testifying he had downloaded the website in October?

A Yes, he had the initial investigation.
Q Okay. I'd like to show you a page here from October 11th of the website that was captured by the government.

THE COURT: What exhibit is this?

MR. SUTCLIFFE: 0067, Your Honor.

MS. DUARTE: That's just a Bates number, Your Honor. This is not in evidence.

THE COURT: Okay. Well, you can show it, but I'm not sure what you are going to be asking, but let's see.

Go ahead.

BY MR. SUTCLIFFE:
Q Do you recall seeing that e-mail address "richardleeweatherman@hotmail.com" on the Webpage?

A I don't recall if it was this exact Webpage, but I remember seeing that e-mail address.
Q And do you recall, above that -- on this page that says, "I provided over a dozen people with information, permitted them to post information on the site, and therefore I make no representations as to whether the information is true or accurate"?
A Again, I don't have a specific recollection of this Webpage, but now that I'm seeing it, that's what it says.
Q Did you ever see that little counter right there?
A I've seen counters similar to that.
Q So the opening paragraph on this page saying, "I'm the owner" and listing Richard Lee Weatherman -- did you ever obtain a photograph of Mr. Weatherman?
A I don't know if I did.
Q Did you obtain one of the defendant?
A I did.
Q Is there any reason why you wouldn't want to obtain identification if you believed that somebody else was owning this website other than the defendant?
A I believed you owned the website.
Q Didn't you testify in New Hampshire, when asked, "Were you able to ascertain whether or not Mr. Sutcliffe had any affiliation prior to Hosting Solutions, you answered, "I was not." And then the question was, "Did you attempt to ascertain

that?" and you said you did.

Let me ask you, if you had gotten information that the website "evilgx.com" was owned or hosted by somebody other than Mr. Sutcliffe, this is something you would have ordinarily pursued; correct?

A Correct.

Q But you obtained a picture of Mr. Sutcliffe; correct?

A Based upon my investigation, I determined that you were hosting that website, so I did obtain that photograph.

Q Right.

But you also obtained information that somebody named Richard Lee Weatherman was associated with this website and was paying for it by a credit card; correct?

A His name and his credit card number were being used.

Q Right. And you followed up on that; correct?

A I didn't speak to Mr. Weatherman.

Q I didn't say, did you speak to him.

Did you do a DMV check on him to see if he has a driver's license?

A I remember conducting a ChoicePoint Online search of the name, I believe, and there was a result from there.

Q What is ChoicePoint Online?

A It's a commercial database with information.

Q What type of information?

A I believe it's credit information from the credit bureaus.

Q Does it list, "Does he live in L.A.?" or anything like that?
A I'm sorry, did it list for him?
Q During that search, were you able to ascertain whether Mr. Richard Lee Weatherman lived within Los Angeles?
A I don't have a specific recollection of what that report detailed.
Q Do you have any recollection of an address on Mr. Richard Lee Weatherman?
A The only one that's coming to my mind right now was one in Florida based on that credit card number or a billing address or something like that.
Q Does Reseda come to mind, an address in Reseda?
A Not right now, it does not.
Q Now, please tell the jury how you came to learn that Mr. Sutcliffe was in New Hampshire.
A I think, based on some of the discussions with Global Crossing and then also through my investigation, we determined that.
Q The first time you came to learn that Mr. Sutcliffe was in New Hampshire was by conversations with someone at Global Crossing?
A Again, I don't recall specifically when the first time was.
Q Do you recall an e-mail? Would that refresh your

recollection?
A I don't. But if you have one, I'll look at it.
Q I'm asking you, do you recall --
THE COURT: He answered he doesn't recall, so ask another question.
BY MR. SUTCLIFFE:
Q Did you testify that you located Mr. Sutcliffe through an e-mail that was forwarded to you by Elizabeth Greenwood from the address "gary_winnick2002@yahoo.com"?
A Based on that e-mail address, we obtained an IP address, which then resulted in discovering that that was the IP address of the home computer at your house in New Hampshire.
MR. SUTCLIFFE: Permission to refresh the witness's recollection?
MS. DUARTE: Your Honor, there has been no indication --
THE COURT: He has just answered the last pending question.
MR. SUTCLIFFE: Your Honor, I believe he's being evasive.
THE COURT: Don't tell us what you believe, please, Mr. Sutcliffe. Just ask questions.
BY MR. SUTCLIFFE:
Q Agent Cugno, in New Hampshire, did you -- the question -- can you tell us how you came to learn that Mr. Sutcliffe was in

New Hampshire -- is it not true that your answer was, "I was alerted by Elizabeth Greenwood at Global Crossing that she had received an e-mail that had been received by a former Global Crossing board of director. She then forwarded that e-mail to me and that e-mail was sent from the e-mail address 'gary_winnick2002@yahoo.com'"? Did you not answer that?

A Again, without seeing my answer from that testimony, I couldn't say for sure, but it sounds correct.

Q Okay. Would you stipulate that that's true?

A No. I would have to look at it, sir.

Q Here's the question and here's your answer.

A Can I read the question before?

Q The question is, "Can you tell us how it is you came to learn Mr. Sutcliffe was in New Hampshire?"

Do you see that question?

A I do.

THE COURT: Now just read out loud your answer, the answer you gave.

This isn't the way it's ordinarily done, ladies and gentlemen, but to get through this, I'm going to permit it.

THE WITNESS: My answer was, "I was alerted by Elizabeth Greenwood at Global Crossing that she had received an e-mail that had been received by a former Global Crossing board of director. She then forwarded that e-mail to me and that e-mail was sent from the e-mail address

'gary_winnick2002@yahoo.com'".

BY MR. SUTCLIFFE:

Q Okay. That's what I asked you.

So that's how you came to learn that Mr. Sutcliffe was in New Hampshire.

And then armed with that information, what did you do next?

MS. DUARTE: Objection to relevance as to this line.

THE COURT: What did he do to find you? Is that your question?

MR. SUTCLIFFE: No. He got an e-mail. He learned I'm in New Hampshire.

THE COURT: Then the objection is sustained.

You have to ask a correct question. Don't argue, please.

BY MR. SUTCLIFFE:

Q After receiving this e-mail from Elizabeth Greenwood, what did you do next?

THE COURT: That's been asked and objected to and the objection has been sustained.

BY MR. SUTCLIFFE:

Q Did you issue a subpoena for that e-mail account?

A At some point I did issue a subpoena for that e-mail account.

Q That day?

A I don't recall exactly what day it was sent.
Q Is it fair to say that once you get an e-mail and you issue a subpoena and you get that registration IP, who registered it, and along with that information, there comes who is accessing it, if it's the same one that registered it -- isn't it fair to say that there are no two IP addresses that are identical in the Internet?
A That's not exactly true.
Q Is it fair to say that there are no two IP addresses at any given point in time that are identical in the world?
MS. DUARTE: Objection to relevance.
THE COURT: Overruled.
THE WITNESS: My understanding is that no -- an IP address cannot be assigned to two people at the exact same time.
BY MR. SUTCLIFFE:
Q "Yes" or "no," it's fair to say that there are no two IP addresses at any given point in time that are identical in the world?
THE COURT: Mr. Sutcliffe, you are badgering the witness. You are arguing with the witness. He's told you the answer to that question as you reframed it in a different way, so please move on.
He's already said -- and this isn't the first time it's been said in this trial -- at any given time no two

different people can be assigned the same Internet number.
BY MR. SUTCLIFFE:
Q Once you find this Internet number, you want to find out who owns it; right?
A That would be the next step of the investigation.
Q And that's the meat and potatoes of a computer investigation by the FBI; correct?
A I think you've simplified it.
Q Well, I'm just using the words of the prosecutor in New Hampshire.
He asked you, once you found an IP address --
MS. DUARTE: Objection to reading the testimony. It's not even testimony, Your Honor.
THE COURT: If you are impeaching him with something inconsistent that he said before, you are entitled to do it. If you are impeaching him with something that somebody else said, you are not.
MR. SUTCLIFFE: I'm about to impeach, Your Honor. I just need him to establish what he's testified to.
Q Do you recall the prosecutor asking you -- the first question was, "All right. What did you do once you learned what the IP address was?" and then you answered, "Once I found out who owned the IP address, I learned that AT&T owned that address." That's referring to the Gary Winnick IP address that you were able to ascertain where Mr. Sutcliffe was in New

Hampshire.

His next question was, "And this is the meat and potatoes computer investigation?" and your answer was "correct"; correct?

A If you want to show me, then I can answer.

Q Sure. I'll be glad to.

A Right. Similar to the prosecutor in New Hampshire, he had simplified the process of investigating computer crimes and I answered "correct."

Q You get the e-mail address; that's the meat. You get the IP from the e-mail address; that's the potatoes. The rest is all gravy. You go after him.

Now, his next question was, "Once you have that IP address, you want to know who the ISP is who owns that address?" and your answer was "correct"; correct?

THE COURT: This is not proper for you to go over testimony he gave 3,000 miles away at a different proceeding. You do not have the right to do that. You don't simply say, "Didn't you say this, didn't you say that?"

You ask a question now. You get an answer. And only if it's inconsistent with something he said previously can you refer to the earlier testimony.

Now, let's get through this, please.

MR. SUTCLIFFE: I'm trying to do the best I can, Your Honor.

Q You issued the subpoenas. You are looking for these IP addresses. You were notified, eventually, that these IPs were dead ends -- correct? -- the 139 and the 71 that you were originally looking for?

A The 71 and the 139, I believe those were -- there were no records that were available.

Q Those were the ones issued around November/December?

A I believe so. I mean, again, I would have to refresh to make sure that was correct.

Q December 12th comes and thousands and thousands of social security numbers.

Now, did Mrs. Greenwood send you an e-mail on December 14, 2001 --

A I don't know, sir. Maybe.

Q -- referencing the "evilgx" website?

A If you had something to refresh my memory.

Q Sure. Be glad to.

Do you recall this e-mail?

A It looks something similar to an e-mail I received.

Q It's also cc'd to M. Labaton, which would be Mark Labaton, at Christensen, Miller?

A It appears to be.

Q On December 14th, she sends you this e-mail -- now, is it not true that -- one second, Your Honor, please.

THE COURT: All right. Take your time.

BY MR. SUTCLIFFE:

Q Does this document that she sent you reflect her concern that there are angry and upset people from Global Crossing and that they are sending out a flash announcement for employees with e-mail and without e-mail?

THE COURT: Do you understand the question?

THE WITNESS: I don't.

THE COURT: Could you reframe the question.

MR. SUTCLIFFE: Yes, Your Honor.

Q Does this e-mail that she sent you reflect that the communications department of Global Crossing put out a notice that human resources is being flooded with e-mails and phone calls from employees who are angry and upset about the postings on "evilgx.com", which we looked at on December 14th?

MS. DUARTE: Your Honor, I'm sorry to interrupt. Could I have a Bates stamp number?

THE COURT: Yes.

What is it?

MR. SUTCLIFFE: This is one of the new e-mails --

MS. DUARTE: There is no number?

MR. SUTCLIFFE: There is no number.

MS. DUARTE: Thank you.

MR. SUTCLIFFE: -- that the government turned over.

THE WITNESS: That is what it says in the e-mail.

MR. SUTCLIFFE: One of the six, Your Honor.

THE COURT: Okay. Fine.

MR. SUTCLIFFE: Thank you.

Q So we looked at before, on the Internet site, the downloads. And on 12-12 and 12-14, those were the two days that, out of the whole entire span of this website, these two files, "Titles of the Nobility" and "Seeya" appeared on this website, one containing approximately 1900 and one thousands and thousands; right?

A Webpages with those names.

Q And numbers?

THE COURT: Okay. That's what we established this morning. We've been through that, so let's move on, please.

BY MR. SUTCLIFFE:

Q December 14th, flooded with e-mails and phone calls, angry and upset people; right?

Defendant's next in order, Your Honor?

THE COURT: All right. We'll mark it as number -- whatever the next number is.

THE CLERK: 242.

THE COURT: Do you want to display it?

MR. SUTCLIFFE: Yes, Your Honor.

Move to enter it.

THE COURT: 242 is received. It's an e-mail.

(Defendant's Exhibit 242 received.)

BY MR. SUTCLIFFE:

Q This corporate communications e-mail that was sent to you by Mrs. Greenwood, talking about "human resources being flooded with e-mails and phone calls from employees who are angry and upset," did you call her on the phone and talk to her about this e-mail?

A I don't remember that I did.

Q Do you see her phone number at the bottom?

A I do.

Q And she's asking, "Is there an FBI case number and should we give it out to employees?"

Did you respond back to her by e-mail regarding this e-mail?

A I don't remember that I did. I know that we had several correspondence via e-mail and telephonic.

Q And this corporate communications announcement that went out, this flash announcement, that deals with this "flood of angry e-mails and upset people," it's referencing information that was recently stolen.

Now, correct me if I'm wrong, but it says that, "Stolen from Global Crossing hard drives by an employee who previously worked in our IT department."

Did the FBI ever arrest anybody for stealing anything out of Global Crossing?

MS. DUARTE: Objection to relevance.

THE COURT: It's been asked and answered and the

objection has been sustained.
BY MR. SUTCLIFFE:
Q Any of these angry and upset people that were flooding the Global Crossing human resources department, did they contact you?
A I don't have a specific recollection of receiving calls. I know I spoke with Mr. Saly and Mr. Wieseltier.
Q Okay. Let's move on.
Now, did you receive another document from Mrs. Greenwood on December 18th, a couple days later, "Subject: Security breach of employee information"?
A Again, without seeing it, I wouldn't be able to answer that.
THE COURT: You can show it to him.
MR. SUTCLIFFE: Thank you.
Q Does that document refresh your recollection?
A It appears that it was sent to the e-mail account I was using at the time.
Q And it's also again cc'd to Mr. Labaton?
A Correct.
MR. SUTCLIFFE: Move to enter it as the next exhibit, Your Honor.
THE COURT: Okay. It will be received as Exhibit 243.
(Defendant's Exhibit 243 received.)

MR. SUTCLIFFE: Move to enter and publish.

THE COURT: All right.

BY MR. SUTCLIFFE:

Q Now, this document that was sent to you a couple of days later, "Just to give you the flavor of the venom that is coming our way," did you call Mrs. Greenwood to discuss the "flavor of the venom that was coming your way" due to this employee breach of information that was posted?

A I don't recall making a phone call to her that day.

Q But they now have two full-time employees working to respond to this flood of e-mails and phone calls; is that correct?

A That appears to be what she's told me.

Q Right. Okay.

Now, did Mrs. Greenwood also send you an e-mail on December 20th regarding a Rochester, New York, newspaper story?

A It sounds familiar, but if we can look at it.

Q Sure. Be glad to show you.

A Okay.

Q Do you recall this document?

A Yes, it looks familiar.

Q Did you follow the link that she sent you regarding this Rochester, New York, newspaper story?

A I believe I did, but I don't recall what the story was.

Q Could it have been possibly about the thousands and

thousands of social security numbers and e-mails that appeared for two days on the website?

A Again, I don't recall what the article was.

Q But it was December 20th?

A That was the day that the e-mail was received --

Q Right.

A -- or at least sent.

Q Right.

Did you also receive an e-mail from Mrs. Greenwood on December 21st regarding a fraud report?

A Again, I'm going to have to look at it.

Q Sure.

A Again, this looks familiar.

Q And where she says, "I am pretty sure that Sutcliffe had already stolen the information at the time of the credit application," did you discuss with her what she meant by "I am pretty sure"?

A Again, I don't have a specific recollection of a conversation regarding that.

Q But she's making allegations that she's pretty sure I stole something?

A That's what she typed in her e-mail.

MS. DUARTE: Your Honor, just for the record, that was actually Defense Exhibit 208.

THE COURT: Okay.

BY MR. SUTCLIFFE:

Q Now, isn't it true that on December 21st, after all of this has now taken place, you did issue a subpoena to the Web host at that time, which was Carolina Online?

A I remember submitting a subpoena. I don't remember the actual date.

Q We heard Mr. Gary Carr; he was the witness who came in and testified.

A I believe I testified I was not here during his testimony.

Q Okay. Did you ever speak to Mr. Carr?

A Several times.

Q On December 21st, you issued a subpoena for the preservation and subscriber information for this website; correct?

A Again, sir, I submitted a subpoena. I do not recall the actual date.

THE COURT: It's irrelevant whether he issued a subpoena and whether he did it that day. I'm not going to permit --

MR. SUTCLIFFE: It is very relevant, Your Honor.

THE COURT: It's not relevant. We've heard from Mr. Carr. We know he got subpoenaed. The precise day he got subpoenaed is irrelevant, so please move on.

BY MR. SUTCLIFFE:

Q Now, December 21st, after you received that e-mail from

Mrs. Greenwood, you also got another e-mail later on after you had issued that subpoena; is that not true?

A Again, sir, I'm going to have to look at it to be sure.

Q I believe this is Defendant's Exhibit 203, the Shmoe.

THE COURT: Okay, if it's in evidence.

BY MR. SUTCLIFFE:

Q Now, this one came late at night. Do you see the time? I'm going to zoom it in for you.

Do you see this e-mail from Mrs. Greenwood?

A I do see it.

Q It came in later that night, after you had already issued the subpoena to Mr. Carr, and the "subject" is "evilgxhr@yahoo.com"; right?

A That appears to be the "subject" line.

Q And then it's regarding "You moron" and "forward."

Now, do you remember looking at this document?

A Yes, it looks familiar.

Q It's discussing Mr. Andrew Ramsey and how he's been able to gather information regarding the location of the sender of the "evilgx" reply.

Andrew Ramsey to Elizabeth says, regarding this "evilgxhr@yahoo.com", hey, this guy here is telling me -- this guy is in Manchester, New Hampshire, and their customer is in the Northeast along with Boston customers, and "More specific information will require legal process." And it's signed

Andrew Ramsey.

Do you see that?

A I do see it.

Q Now, do you see this IP address?

A I do see it.

Q 138.

Now, earlier, we were discussing the IP address 139, first; that's the one you went after. From that, you gleaned 71. Now we're looking at a new IP address on December 21st: 138; correct?

A Correct.

Q And it says the guy -- Andrew Ramsey says, "This host is physically located in the Boston area." So we are getting Boston; we are getting Manchester, New Hampshire, specifically; back here again to Boston.

Now I'm going to turn the page for you.

The question is -- it says, "This appears to be from the 'evilgx' guy. What do we do with it. It came from behind..." and there is some kind of computer code, or whatever that is.

Do you see the "evilgxhr@yahoo.com" address right there?

A I do.

Q Again, do you see the 138?

A I see it.

Q And the address again.

And do you see "trialattorney@hotmail.com" right there --

A I see that.

Q -- who is being carbon copied, also, a copy of this message we are about to look at right now?

A Yes, I see it.

Q And this is the defendant's e-mail address replying to a guy named Joe. It says, "Well, Joe, looks like you are the real itiot(sic). I shall post anything I wish, which is mine. You own no claim against me for any numbers. You however just threatened me (Assault) across interstate lines.

"Now, before I go on, in the spirit of giving, I'll give you a number in return for this number you seem to be under the delusion you own. Here, you can have 818-566-1986."

Have you ever seen that number before?

A I think I have. I'm not sure.

Q Correct me if I'm wrong, but when you went to "WHOIS" and you got the information on who owns this website -- do you see the address: Sutcliffe, 231 East Palm Ave.?

A I do see that.

Q Did you never check who owned this phone number? You never found out that this was Mr. McAfee's phone number?

A I may have. Maybe that's why it looks familiar to me.

Q And you see the word "SpamCop" down here; right?

A I do see those words.
Q As an Internet specialist, you are familiar with SpamCop; correct?
MS. DUARTE: Objection to the relevance of this line. I believe we've been over this with this exhibit and this witness.
THE COURT: I don't know if this witness testified. It seems so long ago, I can't really remember.
MR. SUTCLIFFE: I remember, Your Honor.
You told me, when we got back, I could continue this line of questioning with this specific --
THE COURT: Go ahead. I'll overrule the objection.
MR. SUTCLIFFE: Thank you, Your Honor.
THE COURT: Let's get through it, please.
BY MR. SUTCLIFFE:
Q Now, SpamCop, correct me if I'm wrong, you can use it to trace an e-mail?
If someone sends you a piece of spam, you go to SpamCop, you drop it in there, and it tracks it back to whoever sent it to you?
A I'm not familiar with SpamCop.
Q Anyway, let's get to the bottom line.
The bottom line is, the trace came back to Global Crossing and it said send a letter to "abuse@gblx.net". Andrew Ramsey is "gblx.net".

Now, this e-mail says -- because you have to read an e-mail backwards when you are reading it if it's been forwarded -- "Here's the original from Joe Shmoe from the Internet address 'your_a_real_jack_ass@yahoo.com'". In here he is saying, "If you post my info again, I'm personally going to make sure you get your ass kicked."

Do you see that?

A I do see that.

Q Down at the bottom it says, "Global Crossing Abuse Response Team 'abuse@gblx.net'".

You get this e-mail on December 21st, in the wee hours of the night, 11:31 p.m.

Did you go after that IP address?

A I'm sorry, which IP address?

Q The 138.

A I believe I did follow up on that IP address.

Q Isn't it a fact that you followed up on it many, many months later?

A I don't recall the time line.

Q Okay. Did you follow up on the "trialattorney@hotmail.com" at all?

MS. DUARTE: Asked and answered. Objection.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Now, seven days later you interviewed Mr. Gary Carr;

correct?
A Seven days from when?
Q Seven days from January -- excuse me, December 21st.
A I remember interviewing him. I don't remember the actual date.
THE COURT: The actual date doesn't matter. Just get to the point of the interview, please.
BY MR. SUTCLIFFE:
Q When you telephonically interviewed him, you discussed serving Carolina Online on 12-21 a subpoena for subscriber information; correct?
A I believe we did. But, again, I would have to look at that to make sure I was correct.
Q And is it not true that he noted that the website had been removed just prior to the issuance of your subpoena on 12-21?
A Again, I would have to refer to that document to refresh. That is what he said.
Q Okay. But he says he couldn't provide any subscriber information; correct?
A That's what he said.
Q Now, Mrs. Greenwood then notified you, did she not, on January 2nd, that the website that used to be on Gary Carr is moving -- or it's moved; is that not true?
A I remember receiving e-mails about different hosts, yes.
MR. SUTCLIFFE: Here's Defendant's Exhibit 10 (sic).

THE COURT: 10?

MR. SUTCLIFFE: 210. Excuse me.

Permission to publish?

THE COURT: Yes.

MR. SUTCLIFFE: Thank you.

Q Do you see this e-mail from Mrs. Greenwood on January 2nd?

A I do see it.

Q It's regarding the "evilgx" site moving, and it says it's going to Dave McDuff at "Real-Marketing.com" in Rochester, New Hampshire.

Do you see that?

A I do see that.

Q Is it a fair statement, between December 21st and January 2nd, 2002, you've now heard the word "New Hampshire" twice and seen it in print twice? Fair statement?

A I believe that's correct.

Q Isn't it a fact that you did not subpoena Dave McDuff or Real-Marketing in Rochester, New Hampshire, until May 6, 2002, two months after you arrested the defendant?

A Again, the time line I'm not sure of, but I remember issuing a subpoena.

Q Does that refresh your recollection?

MS. DUARTE: Your Honor, these documents are on the jury's screen. Not that it matters that much.

THE WITNESS: Yes. That's what it appears, on

May 6th.

BY MR. SUTCLIFFE:

Q So on January 2nd, Mrs. Greenwood notifies you that the website, with all these thousands of things that have been published, angry people, is moving to New Hampshire. She has already sent you an e-mail, "He's in New Hampshire, maybe Massachusetts," but you wait until two months after you've arrested the defendant to go and issue a subpoena for information on the website?

A At the time I was following other leads, which then did lead me, in fact, to your residence where I did arrest you.

Q But you just ignored this lead and you ignored the lead from December 21st.

Can you tell me why?

MS. DUARTE: Your Honor, renew the relevance objection.

THE COURT: Sustained.

It's totally irrelevant, Mr. Sutcliffe.

BY MR. SUTCLIFFE:

Q When you obtained this information five months later from Real-Marketing, this is the information you received; correct?

MS. DUARTE: Could I have an exhibit number, Your Honor?

MR. SUTCLIFFE: 01451.

MS. DUARTE: That's the Bates. Thank you.

THE WITNESS: Could I see the top of that e-mail?
BY MR. SUTCLIFFE:
Q Sure. Real-Marketing, May 6, 2002.
A That appears correct.
Q In this information that was provided to you, it says that December 28th was the day that this website was set up in Rochester, New Hampshire; correct? "Website ordered, Friday, December 28, 2001"; correct?
A That's the date that the e-mail was sent.
Q Right, to place an order with them.
And there is an e-mail address there, "rampartscandal@europe.com"; correct?
A That is the user e-mail that's listed.
Q And the card registering it is Richard L. Weatherman?
A Yes.
Q And the originating IP, it's 138?
A 24.61.143.138.
Q Right. The same one we just looked at from the Joe Shmoe e-mail that was personally going to kick my ass; right? That's the same one you looked at, the same IP address?
A Yes.
Q Now, after you sent a subpoena to Mr. Carr at "carolina.net", he responded to you on January 4th; correct?
I will show you the document.
THE COURT: All right. Do you want to display

Exhibit 235?

MR. SUTCLIFFE: Yes, Your Honor. Thank you.

THE WITNESS: This appears to be an e-mail from Gary Carr -- I'm sorry, from Danny to Gary Carr.

BY MR. SUTCLIFFE:

Q Right.

And Mr. Carr gave it to you; right?

A Correct.

Q And prior to receiving the Joe Shmoe e-mail, you sent this subpoena and this is what is coming back from it now.

I'd like to direct your attention, on January 4th, you are now being made aware of Steven William Sutcliffe, "evilgxhr@yahoo.com", there is the address in Burbank, and there is that phone number 818-566-1986; correct?

A That's what's listed.

Q And there is the "trialattorney@hotmail.com"?

A It's also listed there.

Q Going back to Joe Shmoe for a second here, you've got this phone number, you've got an e-mail, you've got an IP address, which you have now seen, since this date of January 4th, twice. You've heard the New Hampshire twice. You testified at the trial -- excuse me, the preliminary hearing in New Hampshire, after my arrest, that that's the meat and potatoes. You've got a Thanksgiving feast here.

MS. DUARTE: Objection to the form of the question.

THE COURT: Sustained. It's argumentative.

Stop making speeches and ask a proper question.

BY MR. SUTCLIFFE:

Q Why didn't you issue a subpoena for 138?

MS. DUARTE: It's irrelevant, Your Honor.

THE COURT: Sustained.

MR. SUTCLIFFE: I believe it's very relevant, Your Honor.

Q Why didn't you issue a --

THE COURT: I'll permit an answer so that this record will at least get an answer out that I'm not going down this field unchartered and forever.

Why didn't you issue a subpoena?

THE WITNESS: I did eventually issue a subpoena.

BY MR. SUTCLIFFE:

Q For "evilgxhr@yahoo.com"?

A I believe I did.

Q Right after this?

A Again, I don't recall when the date was, but I recall subpoenaing that e-mail address.

Q Was it -- never mind. I'll get to that later.

On January 4th, you were notified, correct me if I'm wrong, by AT&T Broadband that the subpoenas of 139 and 71 that you originally issued a subpoena for were not available, the logs had been --

THE COURT: That's been established three or four times today alone.

Move on to something new, please.

BY MR. SUTCLIFFE:

Q Did you personally call two people in regards to those IP addresses at AT&T?

A After the return of the request or before?

Q After you received the information from them that the IPs are no good -- sorry, the logs are not there, did you not call both of them and say, "I need more information why they are not available. I need more information on these IPs"?

A I believe I might have, but I'm not certain.

MR. SUTCLIFFE: Permission to refresh the witness's recollection?

THE COURT: No. It's irrelevant. I'm not going to admit it. It's not necessary to refresh his recollection.

BY MR. SUTCLIFFE:

Q Is it not true that on April 6, 2002, you received an e-mail from Mrs. Greenwood discussing the files that we've been talking about, "Titles of the Nobility.htm," regarding the 7,932 people?

A Again, I received several e-mails. If we look at it, it would help.

Q Sure.

THE COURT: Does that have a Bates stamp number?

MR. SUTCLIFFE: Yes, Your Honor. It's 01732.

THE WITNESS: Yes. She appears to list those Webpages.

MR. SUTCLIFFE: Your Honor, I'd like this to be entered as Defendant's next in order.

MS. DUARTE: Your Honor, I think it's irrelevant.

THE COURT: I'll allow it to come in.

MR. SUTCLIFFE: Thank you, Your Honor.

I move to admit Exhibit 244.

THE COURT: It's in.

(Defendant's Exhibit 244 received.)

THE COURT: What do you want to do about it?

MR. SUTCLIFFE: I'd like to publish it. Thank you.

Q This e-mail you received from Mrs. Greenwood contains three worksheets, and she is discussing this information that was posted approximately around 12-31-2001.

Now, this file that we looked at with all of the social security numbers, "Titles of the Nobility.htm" right there, do you see that?

A I do see that word.

Q It looks like the dates of birth on this information was correct, but the socials were not. She is trying to think of a way to match up the socials with the correct information. She hasn't figured that one out yet.

THE COURT: Don't read it. Ask a question about it.

It's in evidence. The jury can read it, Mr. Sutcliffe. You don't have to read it. Just please ask the witness a proper question.

MR. SUTCLIFFE: Thank you, Your Honor.

Q There was another worksheet attached to this e-mail -- correct? -- that listed how many people were listed in that file, "Titles of the Nobility"; correct?

A I don't have a specific recollection of what exactly was there, but it does say that "Attached" -- you just moved it down so I can't read it. There is something at the top where it said, "Attached are three documents."

Q Right.

This second one, correct me if I'm wrong, lists 7,932 people on that file that we earlier looked at; correct?

A That's what she had listed here.

Q There is another one, the third worksheet, and correct me if I'm wrong, but she's saying that on this page, though, this page does have correct social security number information except for one employee who alleged racial discrimination.

Now, did she identify who this one employee was?

A I don't recall if she did or did not.

Q Did she ever say that she believed that this employee was maybe one of the people who had sent this website information?

A I don't recall that.

Q That's all for that one.

Now, I'm going to show you Defendant's Exhibit 211. I want you to -- this is on January 11th where she's notifying you that the website is again back up on a new host, which was Virginia, the "hostingsolutions.com" website.

Do you see where it says "Attach"?

A I do see that.

Q That's where somebody is attaching something to this e-mail; correct?

A Correct.

Q It looks like a Zip file that we have been talking about that Mr. Ramsey was downloading; right?

A It has that extension.

Q Right.

But it's a different named Zip file; right? It's not like the ones we've been looking at; correct?

Correct me if I'm wrong -- I'll rephrase the question. All the ones that he sent you started off 2001, the month, the date, and the time; or in 2002, it was 2002, the month, the date, and the time dot-zip; correct?

A That's how those files were listed, yes.

Q This one appears to be a different format; correct? In other words, it's not from the bunch that he sent you?

A The attached file has a different file name.

Q The CD-ROM that you created of the Zips that were given to you by Andrew Ramsey, are any of them styled with

"evilgx20020111" without a time?
A I don't believe so.
Q Okay. Is it possible that Mr. Ramsey has two different sets of Zips, one he gave you and one he didn't give you that he didn't want you to see?
A I wouldn't be able to answer that. I don't know.
Q But he sent you this e-mail; correct?
A No. It came from Elizabeth Greenwood.
Q She forwarded it to you, but it had this Zip attached; right?
A The Zip file was attached to that e-mail, yes.
Q When you went there on 1-11 and you downloaded the website on that day, you examined the website; correct?
A To the best of my ability, I did.
Q Inside that website, you found a new -- I believe you testified you found a new e-mail address which was "evilgxhrdept@yahoo.com"?
A I don't remember if I testified to that.
Q Did you, in fact, find a -- didn't we look at the website on January 11th, and we went down to the opt page and it said "opt out"; and at each and every one of those hyperlinks -- there was like 10 or 12 of them on that one page -- when you put your mouse over it, it said "evilgxhrdept@yahoo.com"?
A I remember looking at that page.
Q You'd just been given another meal of meat and potatoes.

Armed with that information, what did you do?

A I'm sorry, armed with what information?

Q You testified in New Hampshire that that's the meat and potatoes.

You get an e-mail address --

THE COURT: All right. Now you are just delivering the same speech we've heard many times. You don't have to repeat what he testified to in New Hampshire. Ask him a question. That is the correct way to do it. Ask him a question.

MR. SUTCLIFFE: I'm sorry, Your Honor. I was just trying to answer his question. He was asking me a question. I didn't know I would be asked questions here.

Q You sit down on January 11th, you see a new e-mail address. Did you issue a subpoena that day like you did the other ones?

A I think my concern on that download was the fact that the website appeared to be password-protected, and then that's when I telephoned the United States Attorney's Office for further guidance.

Q Did they say, "Issue a subpoena for that new e-mail address so we can track this guy"?

A Again, the concern was about the password protection of the website, so that's why we issued the search warrant for the website.

Q Correct me if I'm wrong, you didn't issue the search warrant until February 1st; isn't that true?
A Unfortunately, search warrants are very difficult to write, so it does take some time.
Q In the meantime, you are looking for this guy. You testified you are looking for me. You are concerned. You are worried. There is thousands of potential social security numbers. Who knows what's going on behind this website?
Now, you've got to wait a couple of weeks -- is that your testimony? -- to get a search warrant?
A It takes time to write them.
Q You can issue a subpoena like that, can't you?
A I mean, you can request them, yes.
Q Sure. But you didn't request one that day, did you?
A For that e-mail address, I don't believe I did.
Q Were you afraid of getting information from that if you did?
A No.
Q Were you concerned that you might have to tie -- you might get the IP address 138?
A I wasn't sure what I was going to get.
Q Isn't it true that you didn't subpoena that e-mail address "evilgxhrdept@yahoo.com" -- you did not issue a subpoena for subscriber information on that until March 14, 2002?
I'll be glad to refresh your recollection.

Do you see March 14th? Do you see the e-mail address?

A Correct, I see that.

Q What was the registration IP?

A 24.61.143.138.

Q That's the one from Joe Shmoe; right?

A It was the one that was listed in that e-mail, yes.

Q That's also the one from Dave McDuff in Rochester, New Hampshire, the registration IP address also; correct?

A Correct.

Q But you waited until March.

You eventually issued a search warrant for that e-mail address "evilgxhrdept@yahoo.com" on March 22nd; correct?

A I believe that's right.

THE COURT: It doesn't matter for purposes of wherever we may be heading. Search warrants can only be issued by judicial officers. They can be requested by prosecutors and law enforcement officers.

Let's just assume that it wasn't until that date that it was either requested or issued.

You may proceed, Mr. Sutcliffe.

THE WITNESS: Again, I would like to refresh just to make sure that was what was issued.

THE COURT: It's not really --

THE WITNESS: Okay.

THE COURT: -- necessary.

Let's move on.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Now, this e-mail that came supposedly from "gary_winnick2002" that was forwarded to you by Mrs. Greenwood, you used this e-mail, true or not, to issue a subpoena and get an IP address; correct?

A I did.

Q That was forwarded to you on February 5th; correct?

A I believe that was the date we saw.

Q And it said, "Stop by and say hi"?

A I believe that was the text.

Q So that e-mail that you issued on the same day -- you issued a subpoena on the same day you received it from Mrs. Greenwood to get the IP address, but you didn't go -- but you felt that the two e-mails that you had earlier, the Joe Shmoe "evilgxhr@yahoo.com" and now the "evilgxhrdept@yahoo.com", those weren't worth issuing a subpoena at that time?

MS. DUARTE: Objection. Relevance. Asked and answered.

THE COURT: Okay. Sustained.

From here on in, I am specifically directing you to pursue other inquiries. It is not relevant to the claims or to the defenses in this case at what pace and in what sequence

this witness issued subpoenas and why he didn't issue subpoenas, when you evidently, by virtue of your statements and not just your questions, think he should have.

Don't pursue it anymore. We have consumed an unnecessary amount of time. I've given you plenty of opportunity. Now I can see that it is utterly irrelevant.

BY MR. SUTCLIFFE:

Q Did Mrs. Greenwood tell you that all of the social security numbers that were allegedly posted on this website were true and correct?

A I think we already saw that they were not.

THE COURT: That is not the question. He asked you a question that's different. Answer the question.

The question asked was what she told you. Listen carefully to the question and answer that question.

THE WITNESS: Yes, sir.

I don't specifically recall that.

BY MR. SUTCLIFFE:

Q Did she send you an e-mail on May 3rd regarding "Subject: social security confirmations"?

A If you could show me a document to refresh my memory, that would help.

Okay. Could you please ask the question again?

Q Sure. On May 3rd, she sent you an e-mail, "Subject: Social security confirmations"; correct?

A Correct.
Q Did you request confirmations of these alleged numbers that were posted on this website?
A I had.
Q Was it not true that there was -- on the second page of this e-mail, a lot of them listed no matches, incomplete matches?
A That's what was listed.
Q Right.

Now, the e-mail addresses "gary_winnick2002@yahoo.com" and "evilgxhrdept", you received a Zip disk with those two files, in text form, from another agent -- correct? -- after a search warrant was issued for them?

A From another agent?
Q From anybody in the FBI. You were given the contents of those two e-mail addresses; correct?
A Honestly, I don't recall. I remember receiving the information.
Q So you received information related to search warrants of these two e-mail addresses.

Did you read the contents of them?

A I believe that another agent may have reviewed those first before I did.
Q Is that a "yes"?

A I believe I did.
Q Thank you.
What was the relevance of viewing these search warrant e-mails? Was it relevant to your investigation of you believed identity theft had taken place?
A I believed it was relevant to the investigation.
Q You also believed it was relevant to Mr. Sutcliffe might have been sending e-mails which were threatening; correct?
A I think the concern was the threats in the website.
Q Okay. But potentially, he could have been sending e-mails -- correct? -- that were threatening?
A Potentially, you could have done that.
Q So that's why these two e-mail addresses were -- search warrants were issued; right?
A To obtain the contents of those e-mails.
MR. SUTCLIFFE: Your Honor, at this point, the defense moves, next in order, the two -- the contents of the "gary_winnick2002@yahoo.com" and "evilgxhrdept@yahoo.com" e-mails which were obtained pursuant to search warrants. They are marked as CD LA302.
MS. DUARTE: Your Honor, I would object unless I can see each e-mail. But, also, I need some clarification because I don't recall search warrants for that at all.
THE COURT: We'll take this up after we excuse the jury.

Could you please try to pursue a different area, and then I'll rule on that so we don't consume time. Thank you.

THE WITNESS: I believe these were --

THE COURT: There is no pending question.

BY MR. SUTCLIFFE:

Q Correct me if I'm wrong, when an e-mail is generated, electronically, when sent, is it date and time stamped?

A I believe so.

Q How does that occur?

A I don't know.

Q Is it a fair statement -- or is it a true statement that the sender has no control over the date and the time stamp generated, electronically, when they send an e-mail?

MS. DUARTE: Objection. He testified he doesn't know.

THE COURT: Sustained.

MS. DUARTE: And it's irrelevant.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q I have here two e-mails that were sent to you by Elizabeth Greenwood. One is Bates stamped 00054 --

THE COURT: Let's break them down one at a time unless they are so closely related, it would be easier.

MR. SUTCLIFFE: They are so closely related.

THE COURT: Then do it your way.

BY MR. SUTCLIFFE:

Q The first one in my right hand is 00054. The one in my left hand is 01524. They are both from Elizabeth Greenwood. They were both sent to you on Tuesday, February 5th. They both have the "Subject: Identity theft, Gary Winnick." They are identical. But one of them says "7:38" and one of them says "8:38."

Now, you printed these. Can you explain to me how they have two different time stamps at the top from when she sent it to you?

MS. DUARTE: Objection to relevance, Your Honor.

THE COURT: Sustained.

MR. SUTCLIFFE: I'm getting there, Your Honor.

THE COURT: The question is, can you explain? I'll permit an answer. "Yes" or "no"?

THE WITNESS: No, I can't.

THE COURT: Okay.

BY MR. SUTCLIFFE:

Q I've got two more documents here from Elizabeth Greenwood sent to you -- Bates stamped 00046 in my right hand and Bates stamped 01545 in my left hand, sent to you on January 22nd. This "subject" is "death threat." This one is 10:37 p.m. and this one is 11:37 p.m. They are identical.

Can you explain how those time stamps are altered?

A I cannot. I don't know that they are altered.

THE COURT: They are just different, Mr. Sutcliffe. Move on. There is no basis to know whether they were altered.

BY MR. SUTCLIFFE:

Q Can you explain the probability of a person sending the exact identical e-mail, exactly one hour apart, two different documents, on two different days?

MS. DUARTE: Objection. It's irrelevant.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q Would you agree it's astronomical?

MS. DUARTE: Same objection.

THE COURT: Sustained.

Move on, please.

BY MR. SUTCLIFFE:

Q This is Bates 00005. I'd like to show you a document. I'd like to refresh your recollection as to a report that you -- did you or did you not type a report on December 31, 2001?

A I know we've looked at one that I typed.

MR. SUTCLIFFE: May I show the witness, Your Honor?

THE COURT: Yes.

MR. SUTCLIFFE: Thank you.

Q Did you type this report?

A It appears I did.

Q And this report was typed December 31, 2001?

A That's the date listed.
Q And you called it a "Summary of Offense"; true?
A That's how it's listed in the report.
Q That's singular, not plural; correct?
A It's just "Offense," yes.
Q And generally speaking, this offense is potential social security fraud or identity theft; correct?
MS. DUARTE: Objection to relevance.
THE COURT: Well, I'll overrule that objection.
BY MR. SUTCLIFFE:
Q Did you put anywhere in there offense of any kind of threats?
A I don't recall listing that.
Q So the only -- when you say you don't recall listing it, you are looking at the document that you typed up for the summary of your case from October, whenever this investigation started, until December 31, 2001.
This is a summary of your case; correct?
A You are only showing me one page of the entire report.
MR. SUTCLIFFE: Your Honor, can the government turn over to me Bates 1 through 8? That's, I believe --
THE COURT: The government has represented it's turned over everything it has. So let's not go through gestures, please.
MR. SUTCLIFFE: I can look through my boxes.

THE COURT: You can do that at a break, then.

BY MR. SUTCLIFFE:

Q Is it a fair statement, Agent Cugno, as of December 31st, the Summary of Offense was potential social security fraud or identity theft, no threats at all?

A I'm sorry, I don't understand the question.

Q December 31st, you didn't list anything about a threat, did you?

A I don't believe I did in this report.

Q In New Hampshire, the second day after I was arrested, you came up there to testify. You testified that you had viewed a Webpage in a folder called "MagnumPI2001."

Do you recall that testimony?

A I remember something like that.

Q Right.

In there was a file called "MagnumPI_not.htm" that we were discussing; correct?

A I remember that Webpage.

Q Did you not testify that you had viewed that page and that there was two vehicles, and in one of those was a female sitting in the driver's seat?

A Correct.

Q And did you testify that this was Tracy Hall?

A That was the information provided to me.

Q That was information provided to you.

So is it a fair statement to say that, as you testified under oath in New Hampshire that this woman sitting in a vehicle was Tracy Hall, that was not the truth?

A To the best of my knowledge, when I testified, it was my understanding that it was her. We later then did correct that.

Q "We" corrected it. Okay.

When you say "corrected," did you correct the record in New Hampshire?

A I'm not sure where it was corrected, but I believe it was corrected.

Q Did you interview Tracy Hall on April 4th, several weeks after my arrest?

A That sounds about the time I interviewed her.

Q Had you just previously sent Mrs. Hall a photograph from the file "MagnumPI" related to the Webpage "MagnumPInot.htm"?

A I believe I did. I think I wanted her to view it to see if it was her.

Q Is it not true that you had copied that file on December 12, 2001?

A Again, I don't recall when the date was.

Yes, it appears that the Webpage I sent her was from the 12-12 download.

MR. SUTCLIFFE: Your Honor, move to enter this next in order for the defense.

MS. DUARTE: Objection, Your Honor. There is no

basis.

THE COURT: Sustained.

You've gotten the information that you were eliciting. It's unnecessary to corroborate it with the prior report. There is no issue as to the accuracy of the witness's testimony.

BY MR. SUTCLIFFE:

Q Did Mrs. Hall, in fact, inform you, after you testified in New Hampshire that she was the one sitting in this car to corroborate your story you were telling, that she was not, in fact, the woman sitting in the car that you testified to at the preliminary hearing after my arrest?

A I have to apologize. I don't understand the question.

THE COURT: Okay. The question is, sometime after Mr. Sutcliffe was arrested, did Tracy Hall tell you that she wasn't the person in the picture that you had identified her as being?

THE WITNESS: Yes.

BY MR. SUTCLIFFE:

Q Which you had copied 12-12-2001.

A The copy I sent her was from the 12-12-2001 download.

Q So you had this information as far back as then, and you had access to her before you testified; is that not true? You knew her phone number?

A I believe I did know -- I'm not sure. I believe I might

have.

Q You testified in New Hampshire that this woman sitting in this car was Tracy Hall and that was a lie. Someone told you a lie?

A Well, I don't believe that's true.

Q You don't believe that's true?

A I believe --

Q Who told you, then, that that was Tracy Hall?

A Mrs. Greenwood did.

Q Mrs. Greenwood did.

A That was from information that she had received, which she testified previously to.

Q Do you recall her testimony?

A Yes.

Q Did she say that -- didn't she, in fact, try to blame it on Mr. Labaton, that "Mr. Labaton told me"?

A I believe that was the source of her information.

Q Right.

When you interviewed Mrs. Greenwood, you took handwritten notes; correct?

A I believe I did.

Q Isn't it true that you wrote down, "Mrs. Greenwood told me that it is Tracy in that picture"? Isn't it true that you didn't write down, "Mrs. Greenwood told me Mark Labaton said that that's Tracy"?

A During an interview, I write down what the person I'm interviewing says.
Q Now, going back to December, did Mrs. Greenwood also send you an e-mail on December 17th, "I forgot about this one. Subject: Employee communications 'evilgx.com'", referencing the word "help"? I'll be glad to show you if you can't recall.
A Yes, it appears she did.
Q And in that "help," she says, "All these people, they want to contact the FBI and they are asking for your name and they are really angry"; correct?
A That's what she wrote.
Q Did you give her -- did you say, "Hey, give them my name"?
A I don't believe I requested that.
Q And down below this e-mail, at the bottom, that was being forwarded to Mrs. Greenwood, which she then forwarded to you, was, "There are many angry people out there"; correct?
A That's what this person, Joe, wrote.
Q Now, you came to interview Mrs. Greenwood on 12-28, approximately a week after the Joe Shmoe e-mail; correct?
A I think that was the time frame.
Q Was this in person or by phone?
A I don't recall.
Q You took notes of this?
A I believe I did.
Q Okay. Now, is this a copy of a 302 that you typed up

after your meeting?
A It appears to be.
Q And I'll direct your attention to --
THE COURT: Just ask the question. Then, if necessary, you can refer to the document.
BY MR. SUTCLIFFE:
Q Did Mrs. Greenwood tell you that a process server working for Global Crossing had her picture, personal information, and a picture of her vehicle posted on the website?
A Correct.
Q This was the picture we were just referring to in "MagnumPI" -- correct? -- Tracy, the process server?
A I don't know if she was referring to that exact picture from the 12-12 download.
Q Didn't she also -- you wrote down that she told you that this process server had called -- we're speaking about the one we were just talking about.
This process server, who had supposedly seen her -- who had her picture, her personal information, a picture of her vehicle posted on the website, she then went on to tell you, "This process server had called Child Protective Services on Sutcliffe's wife, who is an Israeli citizen"; is that not true?
A That is what she told me.
Q And then it goes on and says, "Because the process server saw the wife beating Sutcliffe's two-year-old daughter";

correct?
A That is also what she told me.
Q Did you write down in your notes who this process server was?
A I don't recall if I did.
Q But you didn't put in here, "Mrs. Greenwood noted that Mr. Labaton had said that"; right? She said it?
A Right. This is a summary of the interview with Mrs. Greenwood.
Q Right.

Now, also -- could I have a second, Your Honor?

THE COURT: Yes.

BY MR. SUTCLIFFE:
Q I'm going to direct your attention to the second page of this document.

Do you see in red where I have highlighted, "However, Global Crossing"? It starts off there.
A I do see that.
Q Did you type this document?
A I did.
Q So you said, "However" -- let me back it up. I'm going to read this paragraph.

Permission to read this paragraph, Your Honor? I don't want to enter the whole document. I just want to focus on this paragraph and I'm done.

THE COURT: Yes, go ahead.

MR. SUTCLIFFE: Thank you.

Q This is Mrs. Greenwood telling you this; correct?

"Global Crossing has attempted to serve Sutcliffe with an injunction they received restricting him from posting the sensitive and personal Global Crossing employee material on the website, but they were unable to serve him. Sutcliffe's attorney, Leslie McAfee, told Global Crossing his client has been evicted from his apartment and could not be located. 'However, Global Crossing has been able to locate Sutcliffe through an e-mail,' he said, to an upset Global Crossing employee in the Denver office. Greenwood said that 'Global Crossing believes Sutcliffe is now living in Massachusetts.'"

Did you type that?

A I did.

MR. SUTCLIFFE: Mr. Clerk, do you have a copy of 203? I can't find my copy. I'm in the middle of a paper rush.

MS. DUARTE: Your Honor, I believe 203 is the Joe Shmoe threat.

I would object to going over that line of questioning again.

THE COURT: I can't rule on objections until a question has been framed, although I can rule out a whole area of inquiry. Let's see what happens.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Joe Shmoe happens on December 21st; right?

THE COURT: Okay, Mr. Sutcliffe. We have established that he was told, as of December 28th, that Global Crossing believed that you were in Massachusetts.

Now, what's your next question? No speeches.

MR. SUTCLIFFE: It's not the 28th. It's the 21st.

THE COURT: December 21st. Let the record reflect whatever it is.

Now, what's your next question? He writes that down on December 21st.

BY MR. SUTCLIFFE:

Q Are these your handwritten notes, Agent Cugno --

A They appear to be.

Q -- of the meeting on 12-28 with Elizabeth Greenwood?

A It appears to be 12-28.

Q Right.

I'm going to direct your attention --

Your Honor, I would like this entered as Defendant's next in order.

THE COURT: First ask a question.

BY MR. SUTCLIFFE:

Q Did you type these notes up to reflect correctly what you've typed on this page we were just looking at? Are these the notes you referred to that you referenced when you typed up this document we were just reading from?

A Correct.

MR. SUTCLIFFE: May I now move it in, Your Honor?

THE COURT: No. You have to ask a question.

Is there something different in the notes?

BY MR. SUTCLIFFE:

Q Is there something different in these than what you've typed?

A I don't know, sir.

THE COURT: I think, on a relatively high note, it's time to let you go.

MR. SUTCLIFFE: Your Honor --

THE COURT: Not the rest of us.

We'll resume the questioning tomorrow morning at 8:30. As I told you, I expect to make good progress tomorrow.

Thank you for your attendance today. Please remember the admonition.

(Jury excused at 12:20 p.m. and the following proceedings had.)

THE COURT: Agent Cugno, please leave the room.

AGENT CUGNO: Yes, sir.

(Agent Jeffrey Cugno left the courtroom.)

THE COURT: Mr. Sutcliffe, what's your offer of proof as to why any of this is relevant?

MR. SUTCLIFFE: Can I ask why you are requiring me to --

THE COURT: Yes. Because there is an objection to

your pursuing this line of inquiry. I think it's inherently well taken.

What is the relevance in this case to when people had reason to think or stated that they believed that you were in Massachusetts? Tell me what the relevance is.

MR. SUTCLIFFE: Well --

THE COURT: What's your offer of proof?

MR. SUTCLIFFE: What it has to do with, Your Honor, is, the agent purposely did not look for me in New Hampshire. He purposely did not go after that 138. He purposely did not issue a search warrant for "evilgxhr@yahoo.com" because what he's doing is, he's playing fast and loose with the truth here, Your Honor. These are his handwritten notes.

THE COURT: Let's assume everything you said is right, that he purposely didn't do this. Tell me what the relevance is to this case.

MR. SUTCLIFFE: The relevance is that the agent has lied. I've got proof he lied right here. I'm about to show it. You cut me off right at the heart. I was right there, Your Honor.

THE COURT: I've heard about lots of lies that you have attempted to prove. Inconsistencies, even if they exist -- and I'm not finding that they do -- aren't the same thing as lies, and mistakes aren't either.

All you've succeeded in doing, in taking up several

minutes of precious time, is to establish that Cugno said that somebody was Tracy Hall and later learned that it wasn't.

Now, what's the relevance to Massachusetts in terms of the allegations against you and whatever your defense is to this case?

MR. SUTCLIFFE: The relevance is not Massachusetts. Right now, the relevance is Denver. I'll be glad to show Your Honor why it's relevant.

THE COURT: So the only explanation you have is that this shows -- three hours total, at least, of inquiry of various witnesses -- that Cugno was lying?

MR. SUTCLIFFE: Yes.

THE COURT: All these inquiries about when people had reason to think you were in Massachusetts and your apparent view that the FBI didn't proceed quickly enough and didn't conduct the investigation quite the way that you would have if you were in charge is meant to show that Cugno is a liar?

MR. SUTCLIFFE: No. It's meant to show that not only is Mr. Cugno a liar, Mr. Cugno is biased, prejudiced, and he's willfully fabricated evidence here.

THE COURT: Okay.

MR. SUTCLIFFE: I think --

THE COURT: I sustained the government's objection.

I will permit you to show the handwritten -- calm down, Mr. Sutcliffe. You can show him the handwritten letter

if you can establish that there is something inconsistent with what he said. You have a right to do that.

To show all of these other things about bias, it's -- the bias that you want to prove is inherent, as the courts have defined "bias," in the fact that he's the case agent; he is your adversary.

You are entitled to argue that. I assume that you will argue that. I don't think there will be any difficulty in demonstrating that, as the Court defines -- as the law defines "bias," he's hostile to you.

You've already proven that. And that would be true of most of the government's witnesses.

That's my ruling and we'll resume tomorrow at 8:30.

MR. SUTCLIFFE: Your Honor, one thing before you step down from the bench, please.

I want to let the Court know I want to revisit tomorrow the search warrant e-mails that we were discussing earlier that we had to put aside.

And, also, at this time, the defense would like to request, at the close of this trial, that the jury be given instructions on defense's reliance upon counsel.

Thank you, Your Honor.

THE COURT: Okay. What's the story on the e-mails?

MS. DUARTE: I don't think there were search warrants issued. I don't remember whether they were subpoenas or (d)

orders. But I'm fairly certain they were not search warrants. I don't really know what he's talking about.

THE COURT: Even assuming that they were obtained in some way other than search warrants, what's the relevance of these e-mails?

MS. DUARTE: Oh, I see. I'm sorry, your Honor. I thought you were addressing me.

MR. SUTCLIFFE: I'm putting it on the screen, Your Honor.

MS. DUARTE: I don't know what the relevance is, Your Honor. That's why I would ask to see them, although it's clear I obtained them and turned them over. I'm not going to argue authenticity or anything disingenuous.

I don't remember what was there, and I frankly don't know if it's relevant and doubt that it is, so I would want to see them one by one.

THE COURT: Well, whatever you are showing now, you can have it marked so that the record is complete. I find that it's totally irrelevant.

Let's give that a number. This is some 302 about an investigation by DuChene. We'll give that the next number.

What would that be, Mr. Clerk? 245?

THE CLERK: Correct.

(Defendant's Exhibit 245 marked for identification.)

THE COURT: 245 you may not inquire into.

What is the next e-mail?

MR. SUTCLIFFE: They were both submitted in two text files.

THE COURT: All that 302 says is that, pursuant to a Court order, something was served on "evilgxhrdept@yahoo.com".

MR. SUTCLIFFE: And a Zip disk was submitted containing the two files, and then it was reviewed.

And the agent has already testified he has looked at those two files.

THE COURT: Okay. That's fine. It's not going to be the subject of inquiry tomorrow.

What's the next one?

MR. SUTCLIFFE: The other one was just the Greenwood e-mails to the FBI agent.

THE COURT: Do you have them before you?

MR. SUTCLIFFE: I guess we were waiting on the computer people to fix --

THE COURT: The computer people were unable to accomplish what you want. The e-mails have been produced to you. Whatever is in the e-mails you have in hard copy. The end of inquiry on that.

We are adjourned until tomorrow morning.

I do intend to give the standard advice of counsel instruction, 5.9. I will insert it into the otherwise complete jury instructions in the appropriate place.

There is no need to argue about it tomorrow.

MR. SUTCLIFFE: Thank you, Your Honor.

THE COURT: Let's see how far it takes you.

MR. SUTCLIFFE: Thank you, Your Honor.

(Adjournment at 12:30 p.m., to be resumed on Thursday, December 4, 2003, at 8:00 a.m.)

C E R T I F I C A T E

I hereby certify that the foregoing is a true and correct transcript from the stenographic record of the jury trial proceedings in the foregoing matter.

Karen R. Pinn, RPR, CSR 5574
Court Reporter

October 11, 2004
October 11, 2004

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE A. HOWARD MATZ, JUDGE PRESIDING

UNITED STATES OF AMERICA, Plaintiff, vs. STEVEN WILLIAM SUTCLIFFE, Defendant.	Case No. CR 02-350(A)-AHM

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REPORTER'S TRANSCRIPT OF JURY TRIAL PROCEEDINGS

Los Angeles, California

Thursday, December 4, 2003

DAY 12

(Pages 2066-2196)

KAREN R. PINN, RPR, CSR 5574
Court Reporter

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LOS ANGELES, CALIFORNIA;

THURSDAY, DECEMBER 4, 2003; 8:10 A.M.

(Jury out.)

THE CLERK: Calling item No. 1, CR 02-350(A), U.S.A. v. Steven William Sutcliffe.

Counsel, state your appearances, please.

MS. DUARTE: Good morning, Your Honor.

Elena Duarte and Special Agent Frank Harrill on behalf of the United States.

THE COURT: Good morning.

MR. SUTCLIFFE: Good morning, Your Honor.

Steven William Sutcliffe, accused, present in court.

THE COURT: Good morning.

MR. REED: David Reed, advisory counsel.

THE COURT: Okay. Good morning.

I'm not sure what needs to be addressed at the moment except I do want to note that I incorporated the advice-of-counsel instruction into No. 23, I think it is, and arranged to have each side review it several minutes ago, and that's on page 23.

All of the rest of the instructions are exactly what I completed doing, with your involvement; but here is, for each of you, a complete set, including page 23.

This is for you and the court reporter.

Do you want to be heard about 23, Ms. Duarte?

MS. DUARTE: No, Your Honor. I don't have any objection to 23.

THE COURT: Mr. Sutcliffe?

MR. SUTCLIFFE: I have no objection, Your Honor.

THE COURT: Each of you -- Mr. Reed, I'll get you a set in a moment.

Each of you now has a complete set of the jury instructions. I intend to instruct the jury before closing argument. So as soon as the evidence is completed, I'll ask if the government has -- are you going to have any rebuttal?

MS. DUARTE: No.

THE COURT: Then I'll just go right to telling the jury that the evidence is over, and I'll start to read the jury instructions.

Is there anything else that we need to address right now?

MS. DUARTE: Nothing from the government.

MR. SUTCLIFFE: Yes, Your Honor.

I would like to renew my Rule 29 motion.

THE COURT: Okay. You have a right to do that.

MR. SUTCLIFFE: Thank you.

THE COURT: I'll excuse the jury and you should do that outside the presence of the jury, and I'll rule upon your motion. And if I deny it, then we will bring the jury in.

MR. SUTCLIFFE: Thank you.

THE COURT: Anything else? Okay.

We are going to have the jury in the box at 8:30 and we will resume then.

(Recess taken at 8:14 a.m. to 8:33 a.m.)

(Jury in.)

THE COURT: The jury is in the box. Each person is in his or her respective seat. The witness is on the stand.

AGENT JEFFREY CUGNO, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

THE COURT: I remind you, Mr. Cugno, that you are still under oath, and you have the continuing obligation to testify truthfully.

Do you understand that?

THE WITNESS: Yes, sir.

THE COURT: All right. You may proceed, Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

CROSS-EXAMINATION (Resumed)

BY MR. SUTCLIFFE:

Q Good morning, Mr. Cugno. How are you doing today?

A Good morning.

Q Mr. Cugno, I'd like to talk to you briefly about this statement, lie, whatever you want to call it, regarding Tracy being -- her picture being on this page called "MagnumPI" that was told to you by Elizabeth Greenwood.

Do you recall that conversation we had?

A I do.
Q Okay. Now, you said yesterday that you had subsequently found out, after you had testified, after I was arrested in New Hampshire, that this was Tracy in the car, but afterwards you said you corrected the record.
Do you recall that statement?
A Correct. I believe the Assistant United States Attorney Elena Duarte corrected that.
Q So you didn't correct the record. To your knowledge, the government corrected the record?
A Correct.
Q Could you tell the jury how they corrected that record?
A I'm not sure how that was done.
Q Isn't it true that -- one second, Your Honor.
When you issued the search warrant on January 31st or February 1st of 2002 for Hosting Solutions in Virginia, on page 6, Section F, you relied upon that lie told to you by Mrs. Greenwood to support your affidavit, signed under penalty of perjury, for probable cause to search that website, did you not?
MS. DUARTE: Objection, Your Honor. Misstates the evidence. He said he relied on the lie.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q You relied upon this half-truth, misrepresentation,

whatever you want to call it, by Mrs. Greenwood saying that Tracy was the one in the car and showed her personal information, amongst other things? You signed an affidavit as probable cause to support your search warrant for that website, stating that misstatement, mischaracterization, whatever you want to call it, on page 6, Section F, did you not?

A Without seeing the document, I won't be able to say for certain.

Q Sure.

THE COURT: You can display it.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Do you see Section F right here, "MagnumPI_.htm", which Mrs. Greenwood explained was driven by process servers and Greenwood noted the individual was Tracy Hall?

A That's correct. That's what I noted.

Q You didn't put in this declaration that Mrs. Greenwood had said that Mr. Labaton said that this was Tracy Hall; correct?

A No, I did not put that.

Q Did you inform the judge after the fact or do you know if the government informed the judge after the fact that misstatements of fact were placed in the search warrant? Has that official government record been corrected?

A Again, it was corrected by Assistant United States Attorney Elena Duarte. I'm not sure exactly what was done.

Q In the search warrant that you issued on March 25th or

26th, that also had that misstatement, mischaracterization, in there as support for probable cause to search my home.

Did the government or yourself inform the judge that that misstatement had -- was not true? Has that record officially been corrected? It's a public document; correct?

A Again, I believe it was corrected. I'm not sure.

Q This Criminal Complaint that you typed up to support arresting me, is it not a fact that it's also in there on page 17?

A I believe it is, but until I see it, I can't say for certain.

Q Did you tell the Honorable Judge Eick that you had placed misstatements in this Criminal Complaint to support arresting me?

A At the time that I swore out the affidavit?

Q After the fact, you said you corrected the record.

A Correct. It was corrected by the government.

Q So there is some official document somewhere saying Mr. Sutcliffe didn't post a picture of Mrs. Fraser within the website, that Mrs. Greenwood had misrepresented to you material facts in your investigation; is that what you are telling me?

A I personally did not correct the record.

Q Okay. What about the newspapers that published the story after my arrest where they said Mr. Sutcliffe had published the picture of Tracy Hall along with a threat to her?

MS. DUARTE: Objection. Irrelevant.

BY MR. SUTCLIFFE:

Q Have the newspapers been corrected as to this lie -- this misstatement? Excuse me.

MS. DUARTE: Objection. Irrelevant, Your Honor.

THE COURT: It also assumes facts not in evidence, and there is no foundation for the question.

On all three grounds I sustain the objection.

BY MR. SUTCLIFFE:

Q Okay. Agent Cugno, I'm going to address your attention --

I would like to publish Exhibit 24 at this time, Your Honor.

THE COURT: Yes, you may.

MR. SUTCLIFFE: Thank you.

THE COURT: You can remain seated if you are using the equipment.

MR. SUTCLIFFE: Thank you.

Q Agent Cugno, I'm going to direct your attention now to -- this is a page which is known as "gw.htm." The title of the page is called "Let's talk man to man." And it appears to have the name of Gary Winnick, Chairman, as well as some information on Mr. Winnick.

It starts out, "Gary, I really don't enjoy fighting over what's left of GX."

Do you see what I'm talking about?

A I do see that.
Q Do you see down here where it says "PS"?
A As I voiced earlier, the left-hand side of the screen is cut off for me, but I do see that it starts with s-dot. I am familiar with the page.
Q Do you see this hyperlink right here, "Maybe your friends have a better idea how we can work this out"?
A I do see that.
Q I don't believe you were here when we clicked on this link, but this is a link -- did you ever examine this link?
A I may have.
Q Do you recall seeing the name Camilla Parker Bowles at the bottom of the page that follows this link?
A No. I think I would have remembered that.
Q Is it fair to say, then, you haven't examined every single link within this domain?
A To the best of my ability, I did.
Q You don't remember seeing the name Camilla Parker Bowles, okay.

Right here where it says, "After I await to hear from you," it appears to show an e-mail address at the bottom, and it says, "'evilgxhrdept@yahoo.com' subject equal settlement of the issues."

Do you see that?

A I do.

Q Right here where it says, "PS: Keep your dogs at bay. I'm not armed," that's Count Three the defendant is charged with; correct?

A It's one of the counts. I'm not sure which number it is.

Q Then it goes on, "That goes double for the psycho chick and the $450 an hour attorneys"; right?

A It does.

Q And then there is another statement down here. "Please don't force me to do something I don't want to."

Could that be construed as a threat?

A Yes.

Q Okay. Let's follow that link.

(Playing audio.)

BY MR. SUTCLIFFE:

Q Do you recognize that sound from The Addams Family?

A It sounds like something from that.

Q Let's see what we've got here. It's a file called "SEC1," and it appears to start off "FYI" -- for your information. They seem to be talking about, "It seems that the 162(m) is really not a practical issue for us at this point. However, we might as well try to follow the rules unless they force us to do something we don't want to."

Down below that, there appears to be a message from Joe Teresio, March 22nd, to Mitchell Swiss, about "Subject: 162(m) limitation."

And then there seems to be another internal document regarding "Tax department: Andrew Katz." And then down here the comments are -- they are talking about the SEC, the Securities and Exchange Commission; correct?

A I believe that's what it's referring to.

Q This was just prior to Global Crossing being investigated -- or during Global Crossing being investigated by the SEC and the FBI; correct?

A I don't know that, personally.

Q Was Global Crossing investigated by the SEC?

A I don't know.

Q I'll refresh your memory.

You testified you viewed this website in its entirety; correct?

A I said to the best of my ability, I did.

Q Let me show you a page that we've all looked at several times which was published right at the time of my arrest.

(Playing audio.)

MR. SUTCLIFFE: Your Honor, the exhibit that was downloaded by the government on March 28th or 25th, right after my arrest, do we have a copy of that?

MS. DUARTE: Exhibit 23.

THE COURT: 23.

MR. SUTCLIFFE: May I have a copy of that, please?

THE COURT: Electronic evidence?

MS. DUARTE: It is, Your Honor. It's a CD.

THE COURT: Okay. Please make it available to Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you.

MS. DUARTE: I'm handing him a copy in evidence.

(Playing audio.)

BY MR. SUTCLIFFE:

Q This was the page that Mrs. Greenwood has testified that amounts to Count Four. We've looked at this page. It was pointed out, "Elizabeth, you now owe me $15,000 for violation of the contract. I'm coming to collect from you personally."

She said that she -- I won't talk about what she said she interpreted that to be, but we've looked at this page here before.

Do you see that?

A I do.

Q It says they want the documents about earnings and accounting practices?

A That's what it says.

Q Below that, there is another one from Associated Press, "Global Crossing must explain actions and congressional committee is looking into the bankrupt history and the compensation packages for the executives"?

A I see that.

Q Energy and Commerce committee, they are now seeking

records?
A I see that.
Q Are you telling me that you did not see this page or these stories ever during your investigation of my website?
MS. DUARTE: Objection. It's irrelevant whether he saw them.
THE COURT: Overruled.
THE WITNESS: I don't believe I said that.
BY MR. SUTCLIFFE:
Q Did you not see anything about the SEC in here?
A I've seen several mentions of the SEC in here.
Q Arthur Andersen was their accounting firm.
So there was a big investigation going on about the taxes and the compensation and employee packages the board of directors were receiving, and things like that; right?
A I don't specifically remember what the allegations were.
THE COURT: Ladies and gentlemen of the jury, whether or not there was an investigation and if there was, what happened as an outcome is irrelevant.
I've permitted the last few questions because I assumed that they were designed to test this witness's credibility and capacity to remember accurately.
But you are not to take into account the existence or outcome of the related litigation, although you may take it into account in evaluating whether or not the communications

alleged were threats within the meaning of the law that I will instruct you about shortly.

Now, please proceed. Move on to another topic.

BY MR. SUTCLIFFE:

Q Going back to this page that we were originally looking at, talking about accounting and all this, correct me if I'm wrong, you testified that -- "Please don't force me to do something I don't want to," which is written on Mr. Winnick's page -- it could be interpreted -- someone could come up and say that's a threat too; right?

A That's what I said.

Q Now, this "Keep your dogs at bay," did you form an opinion as to what that meant?

A It could have meant, "Mr. Winnick, keep your dogs at bay."

Q Like he's got real dogs?

A Correct.

Q It could also be a figure of speech, a parody, could it not?

A It could be.

Q Let's follow that link, "Keep your dogs at bay. I'm now armed."

(Playing audio.)

BY MR. SUTCLIFFE:

Q Here we have a series of pictures.

Do you see the female that's sitting in this picture

right here?
A I do.
Q Is that the female that was represented to be Tracy Fraser?
A I believe that's correct.
Q Do you see any personal information other than the license plates of these people who were published on this website?
A Not on the Webpage you are showing me.
Q Isn't it a fact you later learned that these were private investigators from Pinkerton Investigations that were hired by Global Crossing to follow myself and my wife and my child around?
A I don't know if I would characterize it like that. I believe they were trying to serve process on you.
Q Hadn't they already served process on me? Hadn't I already been served, according to Mrs. Hall, by October 17th?
MS. DUARTE: Objection to the relevance.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Do you see the date of this picture that's being taken?
A I do see it.
Q Is it 10-24-2001?
A That's what is listed there.
Q Which is after 10-17; correct?
A That is correct.

Q So is it fair to say that we're not talking about, literally, dogs? This hyperlink doesn't refer to dogs, does it?

A Not the animal the dog.

Q Right. It's a play on words. Okay.

Now, we've also heard testimony about Mr. Labaton. I'd like to show you a page here.

Before I do that, there is another page I wanted you to comment on. This is a page called "Integrity.htm." It's from 2002, January 25th, at 16:52, captured by Mr. Ramsey.

Now, I direct your attention to the bottom of this page. It starts off -- at the top, it says, "Integrity." Then it has a few definitions of what integrity is.

Down at the bottom it says, "Now they are stuck with me. At this juncture of the game, I won't settle until one of us is dead."

Do you see that?

A I do see that.

Q It says, "Literally..." Then below that it says, "The king is dead. Long live the king."

Did you form an opinion as to -- in fact, let me rephrase that.

You included these quotes in your affidavits and in your testimony as probable cause to believe threats were being made, did you not?

A I believe words to this effect.
Q Right.
A I don't know if it came from this Webpage, however.
Q "Until one of us is dead," let's follow that link. "Coming soon: More vanishing acts starring your capital." And it takes you to a page called "Megabucks.htm."
Do you see that?
A I do see that.
Q It's talking about Global Crossing and McLaw (phon) are the next two companies most likely to disappear, and it's written by a James J. Kramer.
So is it fair to say that "until one of us is dead," this is a figure of speech here, the company's vanished, monies vanished?
A That's where the link takes you to is this article.
Q It's not a threat of any type, is it?
A It could be interpreted as a threat.
Q Sure, it could be. If you had a goal to interpret things as threats, yeah, you could interpret almost anything as a threat.
Now, I'm going to --
THE COURT: Is that a question or is that a speech?
BY MR. SUTCLIFFE:
Q Isn't that true?
Excuse me, Your Honor. I apologize.

MS. DUARTE: Objection. Argumentative.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q I'm going to show you this page now that also has been modified. This is the identical page except for it now has a date of 2002, February 10th.

And down at the bottom, there is some new links. It's called -- "Now the king is dead. Long live the king" is now a link. And there is another phrase, "Now we'll kill the queen."

Could that be interpreted as a threat?

MS. DUARTE: Objection. Irrelevant.

THE COURT: Overruled.

THE WITNESS: It could be interpreted as a threat.

BY MR. SUTCLIFFE:

Q Did you view this page?

A This specific one does not look familiar to me.

Q You testified that you did use some of these quotes in here in your testimony to support -- to arrest me, to seize these documents, seize the website; correct?

A I said words to that effect. I'm not sure if they came from this Webpage.

THE COURT: It doesn't matter, Mr. Sutcliffe. He's told you he used words to that effect.

BY MR. SUTCLIFFE:

Q Now, you said that this could be interpreted -- someone could come up and say, "That's a threat too." Let's go to, "Now we'll kill the queen." Let's follow that link.

It seems to be a story talking about some guy named Li Ka-shing. "Li Ka-shing succeeds in his brazen bid to take over faltering telecom giant Global Crossing Limited."

Do you see that?

A I do see that.

Q It appears to be a story; right?

A Yes, it does.

Q And a bunch of hyperlinks goes back to "integrity" here, 1.5 billion over here, some other stories about bankruptcy filings.

Do you see that?

A I do see those hyperlinks.

Q Let's follow "The king is dead. Long live the king." There seems to be another story. "In a city of excessive riches, Gary Winnick once ruled as king."

Then it goes on to tell a story about Mr. Winnick, and it has a quote from Mr. Lodwrick Cook, who was the co-chairman of Global Crossing.

So is it fair to say that this is just another story, and it has nothing to do with dead, death, dying, threats, murder, kill?

A Not the Webpage you just showed me.

Q So "kill" doesn't mean kill in this one either, does it?
A Well, the Webpage that you showed me did not say that.
Q This page right here....
(Playing audio.)
BY MR. SUTCLIFFE:
Q This page right here that has a quote from Mrs. Greenwood that she testified, up here, at the top, above all of these stories, where it said, "Elizabeth, you now owe me $15,000 for violation of the contract. I'm coming to collect from you personally," did you follow that link?
A I might have.
Q It takes you back to the original contract at the beginning; correct?
A It appears to.
Q Now, in this website, there is also another -- when you downloaded -- do you see these pictures we were just looking at?
A I do.
Q Where do those pictures come from? They weren't within my website, were they?
A I did not make this download.
Q Somebody else captured somebody else's website?
A Special Agent Harrill, I believe, made this capture.
Q Now, on this page here, I'd like to draw your attention down to the bottom. I'd ask you -- you read this page;

correct?
A Yes.
Q Did you ever see the quote where it says, "You now owe me money. You've been slandering my name, and I'm coming to collect from you personally in a court of law and you can tell it to the judge"? Have you ever seen that quote on this page?
A Didn't we see that on the previous page?
Q Which one are you speaking of?
A I believe it was the Index 2, the 15,000.
Q I'm talking about on that page we just looked at for a second.

Did you ever see anything like that that said, "You now owe me a bunch money and I'm coming to collect from you personally in a court of law and you can tell it to the judge"?
A I don't recall.
Q Let me ask you about another one here.

This page right here, isn't it a fact that Mrs. Greenwood, when she was coming up with threats -- or coming up with things that she believed were threats, she told you that this part right here, "You can run, but you can never hide," that that was a threat?
A I don't know if at the time she had mentioned that that was a threat, to me.
Q Isn't it a fact that on March 25, 2002, at 1448 hours, Mrs. Greenwood sent you an e-mail and she said, "The site is up

again today. The page for me has new added threats. 'You have done enough damage to my family,'" meaning I'm talking to her, "'don't mess with my family anymore.'" She interpreted that as a threat. And then she also included, "Next to my home address," he added, "'You can run, but you can never hide.'"

Isn't that true, that she sent you that e-mail on that date?

A I don't know. I would have to look at it.

THE COURT: You can show it to him.

MR. SUTCLIFFE: Have they fixed the -- what I requested yesterday, Your Honor? I'm in a blizzard of paper here.

THE COURT: Well, it's on the hard copy. Show it to him.

MR. SUTCLIFFE: No. This is my own printout.

THE COURT: Then use your printout.

MR. SUTCLIFFE: Okay.

THE COURT: Go ahead.

BY MR. SUTCLIFFE:

Q I'll direct your attention to -- she actually sent you two e-mails, one marked 0325022348.eml and 0326020039.eml, March 25, 2002, at 1448 hours and March 25, 2002, at 1538, "Subject: New threats."

And right here, she said --

MS. DUARTE: Your Honor, objection to reading. He's

showing it to refresh his recollection.

THE COURT: Sustained.

Just look at that and tell us whether that refreshes your recollection.

THE WITNESS: This does not refresh my recollection.

THE COURT: Will the government stipulate to this?

MS. DUARTE: I will stipulate.

THE COURT: The government stipulates, ladies and gentlemen, that this was sent to Mr. Cugno by Ms. Greenwood.

Now, please move on.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Let's follow that link. There appears to be a page and it's called "Policy: We don't need no stinking policy" at the top. And then there appears to be some kind of message to Lodwrick Cook, Co-chairman, from Elizabeth Greenwood, Assistant General Counsel, from February 2002, regarding "stock options."

Do you see that?

A I do see that.

Q Other than talking about a ten billion valuation for stock options for Leo Hindery, do you see any threats on this page?

A From what I read, no.

Q Me, neither.

We were discussing Mr. Labaton earlier. Let me bring up one of these pages here.

(Playing audio.)

BY MR. SUTCLIFFE:

Q Isn't it a fact that Mrs. Greenwood said that this page here, which is called "Mark of the beast" -- let me get her exact quote.

Didn't Mrs. Greenwood send you an e-mail wherein she indicated that "If Sutcliffe could get more time, I could search through and come up with more threats. For example, he had a page for Mark Labaton," and then in quotes, "'In honor of the recently deceased,' and that this threat is particularly disturbing"? Didn't she say that to you in an e-mail?

A That does sound familiar.

Q Right. Let's follow that link.

(Playing audio.)

BY MR. SUTCLIFFE:

Q Do you recognize that as "Bart Simpson" laughing in the background? And do you see this as a story about Global Crossing sinking into Chapter 11?

A I do see that.

Q Now, when we left off yesterday -- one other question.

At the time you arrested Mr. Sutcliffe in New Hampshire, it was approximately 9:00 p.m. at night; correct?

A I believe that's about right.

Q As I recall, it was raining; correct?

A That's correct.

Q And he was exiting his house to go into his car?

A I believe you had already driven away.
Q Do you know where he was going?
THE COURT: It's irrelevant.
MS. DUARTE: Irrelevant.
BY MR. SUTCLIFFE:
Q Isn't it a fact that Mr. Sutcliffe was working third shift as a street sweeper for a landscaping company when you arrested him?
MS. DUARTE: Objection. Relevance.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Isn't it a fact that Mr. Sutcliffe had approximately $400 in his bank account when you arrested him?
MS. DUARTE: Your Honor, object and move to strike.
THE COURT: Sustained. Move to strike.
Mr. Sutcliffe, move on to a different line of inquiry. Those are totally irrelevant questions and the answers will be equally irrelevant.
BY MR. SUTCLIFFE:
Q Did you ever subpoena or search Mr. Sutcliffe's bank records after you arrested him?
MS. DUARTE: Same Objection, Your Honor. Irrelevant.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Did you ever ascertain -- try to ascertain where

Mr. Sutcliffe was working previous -- before he was arrested?

MS. DUARTE: Objection to relevance.

THE COURT: No. I'll overrule the objection.

You may answer that. Just "yes" or "no." That's all it calls for.

THE WITNESS: I believe I did.

BY MR. SUTCLIFFE:

Q Isn't it true that Mr. Sutcliffe was doing a lot of traveling at the time before he took this other third shift job?

A I believe that's what was reported to me.

Q And isn't it true that as part of that traveling, Mr. Sutcliffe traveled to Virginia and other states on the Eastern Coast?

A I don't recall exactly where you were traveling, but I believe it was the Eastern side, yes.

Q Do you have any proof that you can show this jury -- let me rephrase that question.

You issued a subpoena for AT&T after Mr. Sutcliffe's arrest; correct?

THE COURT: We've been through that. It's been asked and answered, and I already gave rulings yesterday as to what you would be permitted or precluded from doing.

MR. SUTCLIFFE: Your Honor, this is a different issue. It's totally different. I'll rephrase it so I can

elaborate so Your Honor will understand.

Q Isn't it true, Agent Cugno, you issued a subpoena to AT&T for the logs, connection times, dates, uploads and downloads of the AT&T Broadband modem in Mr. Sutcliffe's home?

A I might have.

Q Isn't it also true that AT&T responded that they had no copies of those logs?

A I don't recall what the response was.

Q Have you ever seen any copies of any logs of connection times, locations, or dates from AT&T?

A I believe I have, but I would need to see something to refresh my memory.

Q Okay. Can you offer any proof to this jury that Mr. Sutcliffe was not in Virginia in the month of January when this page was allegedly uploaded to the Web server in Virginia?

THE COURT: Do you understand the question?

THE WITNESS: I don't think I do.

THE COURT: You are allowed to say that if you -- a witness is allowed to say he doesn't understand the question if it isn't clear to him.

THE WITNESS: Yes, Your Honor.

THE COURT: Reframe the question.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Do you have any evidence that you can show this jury that Mr. Sutcliffe was not in Virginia at the time the Tracy account

was alleged to have taken place?
A I don't believe I can.
Q Okay. Now, do you recall an e-mail from Mrs. Greenwood sent to you on March 22nd, just prior to Mr. Sutcliffe's arrest, the "subject" was "Urgent: New York Times writing a story"?
A That sounds familiar.
Q And do you recall viewing within "evilgx" -- I'll move on. I'll find that later, Your Honor.
When we left off yesterday, we were talking about an interview you had with Mrs. Greenwood on 12-28.
Do you recall that?
A I do.
Q This was approximately a week later, after she had forwarded you an e-mail from Joe Shmoe.
Do you recall that?
A I do.
Q And during this interview, there was a discussion about, Mrs. Greenwood told you that this process server --
THE COURT: We went through that yesterday.
MR. SUTCLIFFE: I understand, Your Honor. I'm getting there.
Q Now, I'd like to show you your handwritten notes here. This is page 2, Bates No. 3148.
MS. DUARTE: They are on the jury's screen, Your

Honor. I'm not sure that they are in evidence.
BY MR. SUTCLIFFE:
Q I'm going to direct your attention to where it says, "Process server called Child Protective Services" in this statement right there where it is highlighted. "Track Sutcliffe to Mass."
MS. DUARTE: Objection to reading the document, Your Honor.
THE COURT: Sustained.
Just ask a question.
BY MR. SUTCLIFFE:
Q Do you recall writing that highlighted paragraph right there?
A I do.
Q What was the significance to you writing that paragraph right there? Was it important to you?
A Yes, I wrote it.
MR. SUTCLIFFE: Your Honor, I'd like to move this in as Defendant's next in order.
THE COURT: No. There is no basis for its admission, Mr. Sutcliffe. The motion is denied.
MR. SUTCLIFFE: Okay.
Q Did you write in this report of your interview with Elizabeth Greenwood on 12-28 --
THE COURT: Mr. Sutcliffe, if you want to establish

that he learned something at a particular time, just ask him.

Did you learn as of December 28th... whatever it is you want to prove to the jury he learned. That's the way you do it. It's the way you do it efficiently and correctly. If that's what you are trying to establish, please proceed in that fashion.

MR. SUTCLIFFE: Thank you, Your Honor.

Q Did you learn on --

THE COURT: What he wrote is not the issue.

BY MR. SUTCLIFFE:

Q Did you learn on 12-28 that Mr. Sutcliffe was in Mass based on the statement from Mrs. Greenwood that an e-mail --

THE COURT: Not what it was based on.

Did you learn it or not?

THE WITNESS: I did.

BY MR. SUTCLIFFE:

Q And you learned it based on her statement to you that she had learned that from an e-mail sent last week; correct?

A That's what I wrote.

Q That's what you wrote. Okay.

And you wrote it down in this report; correct?

A I believe I did.

Q Now, this e-mail she's referring to, did you ask her which e-mail she was talking about?

A I don't know if at the time I asked her that.

Q Did she indicate an e-mail that she was talking about?
A She might have. I don't believe I made a note in my notes there.
Q Correct me if I'm wrong, you are looking for me? You are looking for the defendant -- correct? -- at this point in time?
A Yes, I am.
Q And she's telling you that "He's in Massachusetts"; correct?
A That's where she believed you were.
Q Based on this e-mail from last week, the previous week?
A That's what she had noted.
Q Now, I'd like to direct your attention to page 1.
THE COURT: No. Just ask him the fact or a question about --
BY MR. SUTCLIFFE:
Q Did Mrs. Greenwood tell you that an employee from the Denver office had sent a threatening e-mail to Mr. Sutcliffe?
A Yes, I believe that's what she said.
Q Can you tell me why your notes say, "An employee from the Denver office has sent a threatening e-mail to" and then stops?
MS. DUARTE: Objection. It's irrelevant.
THE COURT: Sustained.
BY MR. SUTCLIFFE:
Q Did you white out that -- did you white it out in your notes?

MS. DUARTE: Same objection, Your Honor.

THE COURT: Sustained.

BY MR. SUTCLIFFE:

Q When you wrote this report, did you note that fact in here, that "An employee from the Denver office had sent a threatening e-mail to Mr. Sutcliffe"?

A I believe I did.

MS. DUARTE: Objection. Irrelevant, Your Honor.

BY MR. SUTCLIFFE:

Q When you wrote your summation of your report on December 31st, did you include mention of any threats to Mr. Sutcliffe?

A I don't believe I did.

Q Now, you said you believed that you did write in this report that "An employee from the Denver office had sent a threatening e-mail to Mr. Sutcliffe."

Let's look at the report you typed up from Mrs. Greenwood. I'm going to direct your attention to this paragraph right here.

One second, Your Honor.

I'd like to direct your attention to this last paragraph -- the second to the last paragraph here. Do you see that paragraph where it starts at "however"?

A Yes, I do see that.

Q Did you write that?

A I did.
Q Does that reflect exactly what you just testified to and what's in your records here?
A I said I believed I had put that, but apparently I did not include that.
Q Isn't it a fact that you put, "Mr. Sutcliffe threatened an employee in Denver"?
A It looks like I wrote --
Q "Yes" or "no," Agent Cugno, did you say in this report that "Mr. Sutcliffe threatened an employee in Denver"? "Yes" or "no"?
A That's not what that says in that line.
THE COURT: That's his answer. Just ask your next question.
BY MR. SUTCLIFFE:
Q Did you type in here that "Global Crossing was able to locate Sutcliffe through an e-mail he sent" -- "he" being Mr. Sutcliffe -- "to an upset Global Crossing employee in the Denver office"?
A That's what I wrote.
Q Well, correct me if I'm wrong, but your report that -- your handwritten note says, "An employee from the Denver office sent a threatening e-mail to," and then it kind of stops there. It's missing.
But that's what you are talking about -- right? --

"An employee from the Denver office sent a threatening e-mail"? But the way you wrote it up here says, "Global Crossing was able to locate Sutcliffe through an e-mail he sent to an upset Global Crossing employee in the Denver office."

That's not exactly what's true, in your notes, is it?

A No. It appears I made a mistake.

Q That's a big mistake, isn't it?

A I made a mistake.

MR. SUTCLIFFE: We all make mistakes.

Nothing further, Your Honor.

THE COURT: Anything from the prosecution?

MS. DUARTE: Could I have just a moment, Your Honor?

THE COURT: Sure.

MS. DUARTE: Very briefly, Your Honor.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MS. DUARTE:

Q Mr. Cugno, I just want to clear up an area that was addressed yesterday with Mr. Sutcliffe -- I'm sorry, Special Agent Cugno -- and that area was an online search for social security numbers.

Do you remember answering a question yesterday regarding whether you could find someone's social security number through the use of a search engine?

A I do.

Q Do you remember the inquiry that went -- do you remember you were asked about whether you could just type in a name and a number -- excuse me, whether you could just type in a name and retrieve a social security number from the Internet?
A Correct.
Q I want to clarify your answer.

Can anyone, as far as you know, type in a name and retrieve that social security number from the Internet?
A No.
Q Are there qualifiers to that?
A There are.
Q Could you explain those qualifiers to me, please?
A For instance, we're able to, through some of the tools that we have, retrieve that sort of information.

During the time that these postings were made, where people's names and social security numbers were listed, you probably would have been able to use those search engines if you used one of the person's names. It would probably also find, then, that number. So you would have then been able to find the person's social security number based on their name.
Q Let me just stop you and clarify.

So when you say "these people listed," do you mean these people whose names and numbers were already on the website "evilgx.com"?
A Correct.

Q So if they were already taken and posted on the website, regardless of whether or not they gave their permission, you would then be able to retrieve it from the search engine possibly; correct?
A That's my understanding.
Q But if their social security number had not been taken and posted on the Internet, is it your understanding that that retrieval would be so simple?
A Correct.
Q I'm sorry. Is it your understanding that that retrieval would be simple or difficult?
A It would be difficult.
Q So it's not just a matter of typing in the name if the number isn't already posted on there; correct?
A That's my understanding, yes.
Q And to the best of your understanding, does the Social Security Administration have its records of names and social security numbers public on the Internet such that anyone can search for any number?
A Not to my knowledge, they don't.
MS. DUARTE: I have nothing further. Thank you, Your Honor.
THE COURT: Okay. Go ahead.
MR. SUTCLIFFE: Thank you, Your Honor.
THE COURT: You are limited to what she inquired

into.

MR. SUTCLIFFE: I understand, Your Honor.

RECROSS-EXAMINATION

BY MR. SUTCLIFFE:

Q Agent Cugno, I'm holding pages from your testimony in New Hampshire two days after I was arrested. The U.S. Attorney is questioning you there.

Correct me if I'm wrong, he asked you --

MS. DUARTE: Objection to reading it. He needs to ask a new question, Your Honor.

THE COURT: That's the right way to do it. If you get a different answer, then you can refer to something that may have been published or said previously that might be impeaching.

Just ask him what you are trying to establish, please.

BY MR. SUTCLIFFE:

Q Did you or did you not testify in New Hampshire that a private citizen can seek and get -- successfully get somebody's social security number off the Internet by a search engine?

A I believe I might have.

MR. SUTCLIFFE: Nothing further.

THE COURT: Okay. You may step down, Agent Cugno. You are excused.

Any other witnesses, Mr. Sutcliffe?

MR. SUTCLIFFE: The defense respectfully rests. Thank you.

THE COURT: Thank you.

Any rebuttal?

MS. DUARTE: None, Your Honor.

THE COURT: Ladies and gentlemen, please return to the jury room for a few minutes. We won't be having a lengthy break. There are certain things I need to address. And then if you are needed again, I'll call you in.

(Jury out.)

THE COURT: I understand you'd like to make a motion, Mr. Sutcliffe.

MR. SUTCLIFFE: Yes, Your Honor. Thank you.

At this point, defense would like to renew its motion, under Rule 29, to dismiss -- specifically, I'd like to first address Counts -- the "I will kill you" count from Mrs. Hall.

The agent has just testified that he has no knowledge and could offer no proof that the defendant was not, in fact, in Virginia. He has no proof that the defendant was not in Virginia.

Under U.S. v. McCoy, 323 F.3d 1114, it's a Ninth Circuit 2003 case, this Court lacks jurisdiction, under the commerce clause, to proceed under that count.

That would also apply to the other counts if the

government cannot prove where the defendant was at the time of these alleged uploads and downloads onto the website. And I would respectfully request that the Court strongly consider dismissing that unless the government can explain how they have any proof, that they have shown in this trial, where, in fact, the defendant was.

If this was an intrastate case, then the government clearly lacks jurisdiction, and it's a local police issue. It's not a national issue.

THE COURT: McCoy was the case with the family that had a picture of the mother with the child; right?

MR. SUTCLIFFE: Yes, Your Honor.

THE COURT: I'm familiar with McCoy, and your reasoning is totally unpersuasive and unconvincing. So if that's the basis for dismissing Count One, I deny that.

MR. SUTCLIFFE: Okay. At this point, Your Honor, Mr. Cugno has definitely testified that he has created and fabricated evidence in his report to skew the truth.

He has filed affidavits. He has filed search warrants which contain misleading data, out-and-out -- they don't want to call them lies, but I'm going to call them lies, based on the agenda led by Mrs. Greenwood to come up with anything to shut down this site, and that was the reason that the FBI was brought in because they couldn't figure out any other way to shut down this website.

It was doing nothing unlawful. It was publishing information. Under the First Amendment, it's not against the law to publish information.

I find it very ironic that the members of this jury now are viewing this very same information which anybody could go to on this website and view.

Are we to never let them out of the jury room because they might commit a crime now, now that they are armed with this information? I don't think so.

The government has brought in nobody to show that Mr. Sutcliffe aided and abetted anybody or that any fraud was ever committed directly by Mr. Sutcliffe or indirectly through this website.

THE COURT: Whether fraud was committed is not an element of the allegations against you, though.

MR. SUTCLIFFE: The government has failed to prove that Mr. Sutcliffe unlawfully transmitted this information. And under the 1028 case -- count, that is one of the elements, that it had to have been done unlawfully.

The government has not proved that, and the defendant respectfully requests that Counts Five through Nine be dismissed. They've added nothing to their case from the time it appeared in New Hampshire, Your Honor.

As to Counts One through Four, clearly, the Court has discretion to dismiss those counts, that they lack reasonable

cause.

I find it very doubtful that the jury or this Court or anybody who heard the testimony of Mrs. Fraser could sit there with a serious face and say that they reasonably believed she was in fear of her life or she felt threatened by the statements. She didn't even know what year or what month this alleged threat to her took place.

Mrs. Greenwood, we have seen pages on there which clearly explained the context of the statement that "I'm personally coming to collect." The fact that she was able to come up with the words "Now a mafia-type threat," at the eleventh hour, does not negate the fact that, in its proper context, it was not a true threat.

THE COURT: Whether the witnesses are believable is a matter for the jury to resolve.

I find that the evidence is sufficient to entitle a reasonable jury reasonably to conclude that they are believable. I'm not going to interfere with the rights and the prerogatives of the jury to make that evaluation, so I deny the motion.

MR. SUTCLIFFE: I understand. But correct me if I'm wrong, Your Honor, what is a threat is a legal question and not a factual question; is that not true?

THE COURT: That's not true. The Court has the authority to throw out a case if the elements haven't been

established.

The elements have been established. Whether they are believed by the jury is something the jury will consider.

So I'm not going to go into a treatise about proper procedure and practice here, but your motion is not valid and I deny it.

Now, you can argue plausibility and believability of the witnesses. You can argue whatever you think is fair argument from the record as to Agent Cugno or anyone else, but that's not a basis to throw these charges out.

Anything further, Mr. Sutcliffe?

MR. SUTCLIFFE: No, Your Honor. Thank you.

THE COURT: Okay. Let's bring the jurors back in now.

Before we do that -- just a minute, Mr. Clerk -- I'm going to instruct the jury. The jurors are each going to be given a copy. Make sure that you have enough sets in the courtroom. You can go get those now.

There is one thing I feel compelled to say, although I'm sure there is not an issue here, because there is no reason to question the manner and the responsibility in which the case has been handled by the prosecution.

But I was given a printout of the PowerPoint presentation, I guess one would call it, and evidently the government intends to argue that there is no evidence of

reliance on the advice that was given by Mr. McAfee, and that is the government's right.

But I just want to remind the government, as I'm sure the government has already contemplated, that there is not to be any reference to the fact that Mr. Sutcliffe did not testify.

MS. DUARTE: Understood.

THE COURT: Okay. Let's bring the jurors in as soon as you are ready.

MS. DUARTE: Your Honor, will you be taking a recess between instruction and argument?

THE COURT: Yes.

I caution counsel, when they deliver their closing arguments, not to speak too quickly because when someone is the only speaker, it's really rough for the court reporter, so keep that in mind.

(Jury in.)

THE COURT: I'm about to read to you the jury instructions, but before I do, I want to explain a little bit that I think will help you understand how we pursue justice in the court system.

First, you should know that jury instructions are something that the judge works out with the parties to the case. There are certain standards or recurring instructions that higher courts propose as being correct or having been

previously approved, and judges and lawyers and parties frequently refer to those instructions. But in every case, a responsible judge has the obligation, in my view, to make sure, independently, and all over again, that the instructions that are about to be given correctly state what the law is.

So these don't come from nowhere. There are various forms of guidance. There are so many different laws and issues in the law, both civil and criminal, that very often there is no particularly single place that a judge can turn to to find the precise way to instruct a jury what the law is.

So what the judge does, in many cases, is invite and indeed instruct the parties to a case to submit proposed instructions. We did that in this case.

Each side has a right to ask the judge to look over a proposed instruction, and the side that's seeking to get the judge to give a proposed instruction has the obligation and the right to explain what the legal authority is for the judge to give that instruction, so then legal research is done.

Before any jury is instructed, the parties to the case receive the opportunity and engage in the opportunity, orally, to tell the judge what they think the instruction should be and the judge listens.

And then the judge puts together what the judge has decided, gives it back to the parties. They see exactly what you are about to see and they have it. And that's the way the

judge makes the final rulings.

So this is not something that is just snatched out of thin air nor does it come from Mount Olympus. It's a process that gets back to what I told you before you were ever actually picked as jurors. What we try to accomplish in our system of justice is something that gives all sides and all parties involved in any kind of lawsuit an honest basis to believe that they have a direct impact on how the case is handled, although the judge has the final responsibility to make sure it's handled properly.

Not all judges -- in fact, I'm not sure any other judges explain all of this to jurors, but I make it a point because I want to make sure you understand how the system works because you play such a central role.

I've already told you that the instructions which I'm about to read to you are the ones that you are actually required to apply. You took an oath to do so and there is no issue about that.

I have made available to each of you your own set of what I'm going to read. Practice and tradition and custom require me to read it, but I want you to do your best to follow what I'm saying. You are welcome to read along in the handout as I instruct you, orally, but you are not required to. If you just want to listen and think about what I say, you will have the opportunity to take back with you into the jury room these

instructions.

So it's going to be a lot of words and it's not the kind of thing most people talk about at dinner, so it's not the most easy thing to comprehend. We will help you by making sure that you can take back into the jury room with you what these instructions are. If you need to refer to them again, you'll have the opportunity to do so.

One other thing I want to mention before I do these instructions -- and we'll take a break afterwards -- when we return from that break, closing arguments will be given. After that, you'll be sent into the jury room to begin your deliberations. Lunch will be provided for you today at the expense of the court, and the courtroom deputy and the bailiff --

Have you arranged for the bailiff to be available?

THE CLERK: Yes.

THE COURT: We'll take care of and tell you all about the logistics of that.

Keep in mind that the physical evidence, as opposed to the electronic evidence, anything that has been received that either side or both sides, at different times, introduced into evidence, you will have the right to take back into the jury room to review again, if you want, but not the electronic evidence, because we don't have the equipment in there.

So I think most, if not all, of whatever you've been

given the opportunity to review electronically has been placed in hard copy form, so you'll be able to have it with you in the jury room. Don't expect to be able to access the electronic evidence, because the only place that that can be done is in the courtroom. Okay? That's a little bit of background I want to give you.

I am going to instruct you. A couple of things I'm going to say I've already told you about, but I'm going to repeat them again.

Members of the jury, now that you have heard all of the evidence, it's my duty to instruct you on the law which applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to find the facts from all the evidence in the case. To those facts, you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others. They are all equally important. You must not read into these instructions

or into anything the Court may have said or done any suggestion as to what verdict you should return. That is a matter entirely up to you.

The parties may properly refer to some of the applicable rules of law in their closing arguments to you. If, however, any difference appears to you between the law as stated by the parties and that as stated by the Court in these instructions, you, of course, are to be governed by the instructions given to you by the Court.

Neither are you to be concerned with the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base any part of your verdict upon any other view or opinion of the law than that given in these instructions of the Court just as it would be a violation of your sworn duty, as the judges of the facts, to base your verdict upon anything but the evidence received in the case.

You were chosen as jurors for this trial in order to evaluate all of the evidence received and to decide each of the factual questions presented by the allegations brought by the government in the indictment and the plea of not guilty by the defendant.

In deciding the issues presented to you for decision in this trial, you must not be persuaded by bias, prejudice, or sympathy for or against any of the parties to this case or by

any public opinion.

Justice through trial by jury depends upon the willingness of each individual juror to seek the truth from the same evidence presented to all the jurors here in the courtroom and to arrive at a verdict by applying the same rules of law as now being given to each of you in these instructions of the Court.

Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by the notes.

As you know, this is a criminal case. Plaintiff, United States of America, has accused Defendant, Steven William Sutcliffe, of violating two different federal laws. First, the government alleges in Counts One through Four that Mr. Sutcliffe transmitted in interstate commerce threats to injure various persons, intending those persons would feel threatened. The alleged threats were posted on an Internet website known as "evilgx.com".

Second, the government alleges in Counts Five through Nine that Mr. Sutcliffe transferred to the Internet the social security numbers of various individuals, or aided and abetted the transfer to the Internet of such numbers, and that in doing so he intended to aid and abet others who, with intent to deceive, would make false representations that these social

security numbers were assigned to people other than the persons to whom they actually had been assigned.

The indictment is not evidence. The defendant has pleaded not guilty to the charges contained in the indictment. The defendant is presumed to be innocent and does not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of the charges beyond a reasonable doubt.

The defendant is on trial only for the crimes charged in the indictment, not for any other activities.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If, after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it's your duty to find the defendant not guilty. On the other hand, if, after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it's your duty to find the defendant guilty.

A defendant in a criminal case has a constitutional right not to testify. No presumption of guilt may be raised, and no inference of any kind may be drawn, from the fact that the defendant did not testify.

A separate crime is charged against the defendant in each count. The charges have been joined for trial. You must decide the case of the defendant on each crime charged separately. Your verdict on any count as to the defendant should not control your verdict on any other count.

You are here only to determine whether the defendant is guilty or not guilty of the charges in the indictment. Your determination must be made only from the evidence in the case. The defendant is not on trial for any conduct or offense not charged in the indictment.

The evidence from which you are to decide what the facts are consists of: The sworn testimony of any witnesses, the exhibits which have been received into evidence, and any facts to which all the parties have stipulated.

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence and you may not consider them in deciding what the facts are. I will list these again for you:

Arguments and statements by the parties are not evidence. The parties are not witnesses nor are the lawyers. So statements by the lawyers and arguments by the lawyers also

are not evidence. What they have said in their opening statements, what they will say in their closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts, as you remember them, differ from the way the parties or the lawyers state them, your memory of them controls.

Questions and objections by the parties are not evidence. Parties have a duty to object when they believe a question is improper under the Rules of Evidence. You should not be influenced by the question, the objection, or the Court's ruling on it.

Testimony that's been excluded or stricken or that you've been instructed to disregard is not evidence and must not be considered. In addition, some testimony and exhibits have been received only for a limited purpose. Where I have given a limiting instruction, you must follow it.

Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

Now, evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another fact exists even though it has not been proved directly. You are to consider both kinds of evidence. The law

permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

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

In considering the testimony of any witness, you may take into account the opportunity and ability of the witness to see or hear or know the things testified to, the witness's memory, the witness's manner while testifying, the witness's interest in the outcome of the case, and any bias or prejudice, whether other evidence contradicted the witness's testimony, the reasonableness of the witness's testimony in light of all the evidence, and any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify.

There is nothing particularly different in the way that a juror should consider the evidence in a trial from that in which any reasonable and careful person would treat any very important question that must be resolved by examining facts, opinions, and evidence.

You are expected to use your good sense in considering and evaluating the evidence in the case for only those purposes for which it's been received and to give such evidence a reasonable and fair construction in light of your

common knowledge of the natural tendencies and inclinations of human beings.

If the defendant be proved guilty beyond a reasonable doubt, say so. If not proved guilty beyond a reasonable doubt, say so.

Keep constantly in mind it would be a violation of your sworn duty to base a verdict on anything other than the evidence received in this case and the instructions of the Court. Remember, as well, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witness or producing any evidence because the burden of proving guilt beyond a reasonable doubt is always assumed by the government.

Evidence that at some other time a witness, other than the defendant, has said or done something which is inconsistent with the witness's testimony at the trial, may be considered for the sole purpose of judging the credibility of the witness but may never be considered as evidence or proof of the truth of any such statement, unless the prior inconsistent statement was made under oath subject to the penalty of perjury at a trial, hearing, or other proceeding.

Where, however, the defendant made a prior statement, even an unsworn statement, in which he admitted something against his interest, or where the defendant knowingly engaged in conduct inconsistent with any testimony at trial -- and it

says in the instructions "he may have given at trial." But you've already been told that he had no obligation to testify and he chose not to. In any event, you may consider such a prior statement or conduct of the defendant as evidence of the truth of the fact or facts so admitted by that defendant or reflected in his conduct, as well as for the purpose of judging the credibility of that defendant as a witness.

The indictment charges that the offenses were committed on or about certain dates.

Although it is necessary for the government to prove beyond a reasonable doubt that the offenses were committed on dates reasonably near the dates alleged in the indictment, it is not necessary for the government to prove that the offenses were committed precisely on the dates charged. 3

Counts Five, Six, and Seven of the indictment allege that an approximate amount of social security numbers were involved in the crime charged. It is not necessary for the government to prove the exact precise amount of social security numbers alleged in the indictment.

An act is done knowingly if the defendant is aware of the act and does not act or fails to act through ignorance, mistake, or accident. The government is not required to prove that a defendant knew that his acts or omissions were unlawful. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding

whether a defendant acted knowingly.

The intent of a person or the knowledge that a person possesses at any given time may not ordinarily be proved directly because there is no way of directly scrutinizing the workings of the human mind. In determining the issue of what a person knew or what a person intended at a particular time, you may consider any statements made or acts done or omitted by that person and all other facts and circumstances received in evidence which may aid in your determination of that person's knowledge or intent.

You may infer, but you are certainly not required to infer, that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

It's entirely up to you, however, to decide what facts to find from the evidence received during this trial.

Intent and motive are different concepts and should never be confused.

Motive is what prompts a person to act or fail to act. Intent refers only to the state of mind with which the act is done or omitted.

Personal advancement and financial gain, for example, are two well-recognized motives for much of human conduct. These motives, however, may prompt one person to voluntary acts of good while prompting another person to voluntary acts of crime.

Good motive alone is never a defense where the act done or omitted is a crime. The motive of the defendant is, therefore, immaterial except insofar as evidence of motive may aid in the determination of the state of mind or the intent of the defendant.

You've heard testimony from a person -- I don't think it's more than one, but the written instructions say "persons" -- who, because of education or experience, are permitted to state opinions and the reasons for their opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

The defendant is charged in Counts One through Four of the indictment with making threats to injure the person of another in interstate commerce, in violation of Section 875(c) of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

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First, the defendant knowingly and intentionally transmitted a communication in interstate commerce.

Second, that communication threatened to injure a person. of another

Third, the defendant had the specific intent to threaten.

The government is not required to prove that the defendant intended to carry out the threat, or had the ability to do so, but it must prove that the defendant had the specific intent that the communication would threaten.

The government has not proved such specific intent if, in good faith, defendant, before acting, made full disclosure to an attorney of all material facts concerning the alleged communications, received that attorney's advice as to the specific course of conduct he engaged in concerning those communications, and reasonably relied on that advice in good faith.

A defendant may be found guilty of transmitting threats to injure even if the defendant personally did not commit the act or acts constituting the crimes but aided and abetted in their commission. To prove a defendant guilty of aiding and abetting, the government must prove beyond a reasonable doubt:

First, the crime of transmitting threats to injure was committed by someone.

Second, the defendant knowingly and intentionally aided, counseled, commanded, induced, or procured that person to commit the crime of transmitting threats to injure.

Third, the defendant acted before the crime was

completed.

It is not enough that the defendant merely associated with the person committing the crime, or unknowingly or unintentionally did things that were helpful to that person, or was present at the scene of the crime.

The evidence must show beyond a reasonable doubt that the defendant acted with the knowledge and intention of causing or helping that person commit the crime of transmitting threats to injure.

The First Amendment to the United States Constitution provides that the government may not abridge a citizen's right to speech and expression. Not all forms of written, printed, or oral speech are protected by this provision, however. As to Counts One through Four, the government has the burden of proving beyond a reasonable doubt that the alleged threats posted on the "evilgx.com" website are not protected speech and expression.

True threats are not protected by the First Amendment and are not free speech or expression. A statement is a true threat where a reasonable person would foresee that the listener will believe he or she will be subjected to physical violence upon his or her person.

Alleged threats should be considered in light of their entire factual context, including the surrounding events and reaction of the listeners. An absence of explicitly

threatening language does not preclude the finding of a true threat.

The mere fact that a communication actually induces or coerces action in the person to whom it is directed does not remove it from First Amendment protection, so long as the speaker does not threaten that he, or someone acting in concert with him, will resort to violence if the warning is not heeded.

The defendant is charged in Counts Five through Nine of the indictment with transferring social security numbers belonging to other persons, with the intent to aid and abet the crime of false representation of a social security number, in violation of Section 1028(a)(7) of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt.

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First, the defendant acted knowingly.

Second, the defendant transferred the social security number of another.

Third, defendant's transfer was in a manner affecting interstate commerce.

Fourth, defendant's transfer was without lawful authority.

Fifth, defendant acted with the intent to aid and abet the crime of false representation of a social security number.

The Internet is an instrumentality of interstate and foreign commerce.

The term "transfer" includes selecting the social security number and placing it or directing its placement on an online location where it is available to others.

Defendant is charged with the transfer of the social security number of another with intent to aid and abet the crime of false representation of a social security number, which is a violation of Title 42, United States Code, Section 408(a)(7)(B). The elements of the crime of false representation of a social security number are as follows:

First, for any purpose, the perpetrator falsely represented that a certain social security number was the social security number assigned to him or her by the Commissioner of Social Security.

Second, that the perpetrator knew that such social security number had not been assigned to him or her by the Commissioner of Social Security.

Third, the perpetrator acted with the intent to deceive.

A transfer or transmission is "in or affects interstate or foreign commerce" when it utilizes instrumentalities of interstate or foreign commerce.

A defendant may be found guilty of transferring social security numbers belonging to other persons even if the

defendant personally did not commit the act or acts constituting the crimes but caused the acts to be done or aided and abetted the act's commission. To prove a defendant guilty of causing the act or acts to be done, or aiding and abetting in their commission, the government must prove beyond a reasonable doubt:

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First, the crime of transferring, without lawful authority, the social security number of another was committed by someone.

Second, the defendant knowingly and intentionally caused or aided, counseled, commanded, induced, or procured that person to commit the crime of transferring, without lawful authority, the social security number of another.

Third, the defendant acted before the crime was completed.

It is not enough that the defendant merely associated with the person committing the crime, or unknowingly or unintentionally did things that were helpful to that person, or was present at the scene of the crime.

The evidence must show beyond a reasonable doubt that the defendant acted with the knowledge and intention of causing a person to commit or helping that person commit the crime of transferring the social security number of another.

The punishment provided by law for a crime is for the Court to decide. You may not consider punishment in deciding

whether the government has proved its case against the defendant beyond a reasonable doubt.

When you begin your deliberations, you should elect one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict, whether guilty or not guilty, must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you've considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. But don't come to a decision simply because other jurors think it's right.

It is important that you attempt to reach a unanimous verdict, but, of course, only if each of you can do so after having made your own conscientious decision. Don't change an honest belief about the weight and effect of the evidence simply to reach a verdict.

A verdict form has been prepared for you. It's a very simple page-and-a-half form. After you have reached unanimous agreement on a verdict, your foreperson will fill in the form. It, of course, will be available to you in the jury room. Each of you will have your own form to consider.

And after you have reached a unanimous verdict, your foreperson will fill in the form that's been given to you, sign and date it, and advise the bailiff that you are ready to return to the courtroom.

Now, I've just noticed that -- I'm sure that I or my staff are responsible for this -- there are some standard instructions not included in this set that you now have, but I want to tell you about them just for my own thoughts.

You are not to communicate with me except by a signed note. Once you begin to deliberate, if there are any questions or any facts or any developments that you wish to inform the Court about, you should do so in writing through a note signed by the foreperson.

You will have jury note forms available in court.

Never, under any circumstances, should anyone who writes a note -- and most of the time it would be the foreperson -- but never tell me how the jury stands. Don't say anything about what the vote is, which way the jury is leaning, who is -- or whether there is someone -- some specific person whose process of deliberation requires some review or attention. Don't specify any such people.

I will, if I get a note from you, bring the parties back and the lawyers and discuss the note with them before I respond to it, so that may take some time. There may be other things going on in the courtroom and the other parties may not

be in the courtroom.

In the event you submit a note, keep deliberating. Go about your deliberations, as best you can, until you get a response. When you do get a response, it will be here, in open court, or through a note that I return to you after reviewing it with the parties.

Please remember that it is extremely difficult and very time consuming for any court reporter to go back and find questions and answers that were given at an earlier stage in the trial. This is a relatively long trial. So don't expect that the capacity to listen to the evidence all over again by simply having the court reporter read her notes would be something readily available.

Those are the instructions that I wanted to tell you about. Even the ones I just mentioned that, for some reason, are not included here are binding on you.

We are going to take a 20-minute break. The alternates should return to the jury room and should remain present through the giving of closing arguments.

Don't discuss these instructions with each other. Don't discuss the case with each other until you are actually sent back to the jury room the next time to begin your deliberations.

Please remember the admonition. See you back here in 20 minutes.

(Jury out.)

THE COURT: Ms. Duarte, what's your time estimate for closing arguments, total? You can break it down as you choose, but what's your total estimate?

MS. DUARTE: Total estimate, including rebuttal, probably about 45 minutes, an hour at the most.

THE COURT: Okay. I'll give you up to an hour, and I'll give you up to an hour as well, Mr. Sutcliffe.

Try to organize and present your arguments accordingly. I don't step on a lawyer's toes in the middle of a sentence, but if I think that you are approaching that allotted time, I'll gently remind you about it.

MS. DUARTE: It may be less, Your Honor.

THE COURT: You are welcome to shift the lectern when you deliver your closing argument to address the jury. You, of course, may and should stand from counsel table as you are delivering your closing argument.

It would be unlikely -- I'm not sure if we'll finish closing arguments. I have another court meeting at, ostensibly, 12:10. I can get there a little bit late. We may have to finish the last part of closing arguments after the lunch break, but the jury will begin deliberations this afternoon.

See you back here in about 18 minutes.

(Recess taken at 10:09 a.m. to 10:28 a.m.)

(Jury in.)

THE COURT: Ms. Duarte, you may begin.

MS. DUARTE: Thank you, Your Honor.

Your Honor, may I ask that port 5 be enabled?

THE COURT: Yes.

MS. DUARTE: For the jury as well. Thank you.

May it please the Court, Mr. Sutcliffe. Ladies and gentlemen of the jury, "Let the games begin once again until death," that began defendant's domain list. And the "death" reference to the "games," it didn't link to an article you saw on Global Crossing's bankruptcy. It didn't link to a cute little reference to a song. The word "death" linked to the "Tracy Talk" threat that ended with "I will kill you." There was no reference to being "killed in court" with that threat.

That, ladies and gentlemen, is what "death" meant. It's what it meant to the people who saw it, it's what it meant to the victims who read it, and most importantly, critically, it's what it meant to the defendant, Mr. Sutcliffe.

Ladies and gentlemen, he knew what he was doing and he meant to do it. He was threatening people with threats of injury and death, threats of posting their social security number in a manner that it was sure to be used in fraud, taunting them with examples of how it could be used in fraud, taunting them with what was to come.

You saw evidence of all of that and you heard

evidence, which we're going to go through in just a minute, that he knew what he was doing and he meant to do it.

If he thought, ladies and gentlemen, that his victims deserved it somehow, or that that was the only way to make them stop, stop trying to take his website off the air, stop whatever they were doing that made him so angry, if he thought that was the way to do it, that did not make it okay. That did not make it legal.

Ladies and gentlemen, in every trial there are two areas of focus and they are the elements of the crimes, which you have just heard about in the instructions, and the evidence which is put in.

Now, the elements are criminal because they let you know what the government is required to prove and bears the burden of proving and what it is not required to prove. And the elements are contained in the instructions.

Now, the evidence is also another critical component because you look to how the evidence comes together to prove each element. And another factor on the evidence is the effect of the defense case on the evidence and on the elements.

Now, ladies and gentlemen, the defendant is under absolutely no obligation to produce any evidence or put on any case. None at all. The burden rests solely on the government as to each and every element.

But when the defendant does choose to put on a case,

as he did, I can comment on it. And I can let you know that just because the defendant puts on a case, that does not automatically generate a reasonable doubt.

A reasonable doubt is something that you may or may not conclude is there, after you hear all the evidence and you go back in the jury room and you begin your deliberations. That's when you decide whether or not the evidence, in its entirety, the government's case and the defendant's case, has generated a reasonable doubt as to any of the elements presented in this case.

I submit to you, ladies and gentlemen -- we'll talk more about this in a minute -- there is no reasonable doubt as to any of these charges, as to any of these elements.

The judge went through the elements with you earlier. And we learned that for a threat, we need to prove that the defendant knowingly and intentionally transmitted a communication in interstate commerce, that it threatened to injure, and that he had the specific intent to threaten.

Now, we also learned about a few, what I call nonelements, things that the government did not have to prove. I submit to you that there was some evidence of these elements listed. However, they are not elements. We are not required to prove them. And they include that the defendant intended to carry out the threat, and also that the defendant had the ability to carry out the threat. We do not need to prove those

things.

And you didn't hear anything in the instructions, ladies and gentlemen, either about the "UUIS" testimony presented by Mr. McAfee. Remember that, the acronym for what his idea of a threat was? You noticed you did not hear that in the instructions. The reason you didn't hear it is because it's not an accurate statement of the applicable law. The applicable law was given to you by the judge.

What you did hear in the instructions is that true threats -- what true threats really are. They are what a reasonable person would foresee, that the listener will believe that he or she will be subjected to physical violence upon his or her person, what a reasonable person would foresee, that the listener would think, when they heard and saw what you've seen presented in the evidence. That is the standard.

And you also heard that you are to consider context. The context is very important, including surrounding events and the reaction of the listeners. And you heard a lot of evidence during the course of this trial about the reaction of the listeners to those threats.

There is no explicitly threatening language required. There is no protection for threats that advocate action if the speaker threatens violence, even if the warning is not heeded. And you learned that true threats are not free speech.

So when we look at the evidence, in order to put it

with the elements of threats, we have to ask ourselves some questions: Who did it, first of all? Has the government proved that it was the defendant that did these things? And remember, all the elements are the government's burden, regardless of whether or not they appear to be contested.

So the first question would be, who did it? The second is, what did he do, if he did it? And the third is, what was his intent when he was doing it?

So let's start with the first question: Who did it? Well, ladies and gentlemen, I submit to you that the evidence has shown that Mr. Sutcliffe did it.

How did it show that? Well, he addressed his victims personally on the website. You saw evidence of that. He included details of their wrongs against him. He, in several instances, identified himself by name. He included details of his work at Global Crossing. You saw evidence that he wrote an entire letter chronicling the wrongs done to him by Global Crossing. And there were pictures of him on the website.

And I refer you, when you go back to deliberate, to Exhibits 11 and 19. I know it's been a long trial, and that's where you see that defendant had his own pictures on the website, including the picture of him picketing that advertised "evilgx.com".

Now, the picture on the website contains the other side of the picket sign. You heard testimony that it was

two-sided. However, you also heard testimony that that was him picketing and that the other side of the picket sign directed his viewers to "evilgx.com".

We have proven, ladies and gentlemen, that Mr. Sutcliffe had access to the information that appeared on "evilgx.com".

Exhibits 1 through 5, if you remember way back in the beginning of the trial, the testimony that went with them, they show that Mr. Sutcliffe worked on the computers containing the posted items.

Now, remember ladies and gentlemen, theft is not an element. It's not charged. We don't have to prove it. We don't have to prove that he stole the stuff. But, again, access. The fact that he had access to it shows his identification, shows it was most likely him that posted it.

We also learned that the IP address -- and you learned that that was kind of a telephone number for computers -- of a cable modem in New Hampshire came back to defendant's house, and that that cable modem IP address was associated with e-mails sent to Global Crossing from supposedly Gary Winnick and Richard Saly. And that's contained in Exhibits 21 and 22, and we have the records for you in there as well.

And you also saw from the records that the e-mail address "evilgxhrdept@yahoo.com" was repeatedly and

consistently accessed by the defendant's computer in New Hampshire, and these e-mails spoke about the website, they directed people toward the website, and they taunted their recipients with information about the website.

So what else did we learn about the defendant's identity? Well, we learned that a search of his residence in New Hampshire yielded evidence. And we know he lived here. We heard that from his wife, Orly Mann. We saw the utilities. We saw his license that contained that address. And there were identifying documents found, as well, at the house that linked Mr. Sutcliffe to the house. Those include documents that show his ties to Global Crossing, his ties to the Los Angeles address, you heard a little bit about, on South Bedford, and his ties to Mr. McAfee.

And, ladies and gentlemen, we are going to discuss Mr. McAfee a little bit more later in this presentation.

But let me just direct you, while I'm on it, to Exhibit 49, which I don't think you ever actually saw in court but is in evidence. Those were letters found, some letters found, at the defendant's house and included are a couple of letters from Mr. McAfee. And they reference his representation of the defendant in a landlord/tenant matter.

I want to direct your attention toward those letters because I think that they go toward my argument, which I will present to you, about Mr. McAfee, that he lacks credibility and

that he's not a professional, because those letters also evidence that fact. That's Exhibit 49.

Now, we've also learned that a gun, bayonet, and ammunition were found at Mr. Sutcliffe's apartment. And the judge has instructed you that those items are only to be considered as to the defendant's intent.

I submit to you that that intent is when he uttered statements like, "Have you ever been stabbed with a knife? I have, a big one. It hurts real bad," and "I am now armed." And note, that he did not qualify the "I am now armed with information" on the charged count.

We also learned, in the search of the New Hampshire residence, that a computer was found with multiple hard drives and multiple other electronic evidence.

And we learned from Mr. Siebert that there were specific file names spread among all the drives that had been intentionally saved, in his opinion, to those drives, in different forms, in different formats. And of those file names, we learned that 15,000, 15,000, matched Webpages downloaded from "evilgx.com".

And we learned that there were over 104,000 social security numbers found on defendant's computer. And we learned that -- I believe it's 24, but your recollection controls -- multiple copies of Ms. Greenwood's picture with her daughter spread out over the drives and among the evidence found in the

defendant's house.

So, ladies and gentlemen, I submit to you that the government has proven that it was the defendant who did the things that are charged in the indictment.

But the question next is, what did he do? Well, the evidence has shown that he transmitted threats on the Internet in interstate commerce.

Now, you've received instructions that the Internet is, in and of itself, an instrumentality of interstate commerce, but I submit to you that we also proved that threats themselves were transmitted interstate, as well, even though it's not necessarily what we had to prove.

We learned, you'll remember, from -- we heard from custodians and people that worked at these Web hosting groups. We heard from DirectNic in Louisiana, and they told you -- Mr. Monte White came out. He told you that Mr. Sutcliffe had registered his website in September of 2001, and that DirectNic had hosted that website and that their servers were in Louisiana, from October 1st to November 12th of 2001.

You also heard from Mr. Carr at Carolina Online in North Carolina, and that's where their servers were located, North Carolina. And he told you that he hosted the website from approximately December 6th to the 20th.

And I also direct you toward Defendant's Exhibits 209 and 235, because I think that those exhibits also add to the

proof that that website was hosted not only by Mr. Carr, but also by HostOnce in Australia during the same time period.

Then we heard from HostingSolutions in Virginia. And defendant's exhibits, as well as the government's, back that up, that they hosted the website from January 9th, 2002, through February 18th, 2002.

We heard from Web Group -- we saw records, excuse me, from Web Group -- that's Exhibit 44 -- that they were hosting the website from February 19th, 2002.

And you heard from a representative of AboveNet freeservers. Their server was in Utah. And they told you -- and you'll remember -- this is Exhibits 37 through 41 -- they actually had five separate websites, all "evilgx.com", but all hosting under different names and directions. Remember that? And those websites were open, at least one of them was, from March 4th through April 1st of 2002.

And the significance of that also is that the freeservers' host banner was seen on the Greenwood threat, which is Exhibit 19. So we know that when that Greenwood threat was posted, it was posted to Utah.

And all of these representatives that testified, testified that the manner in which to upload Webpages to the website that they hosted was by "FTP" -- File Transfer Protocol -- which is the transfer of the electronic data from one area to another.

So we look at the counts themselves. Count One is charged, "I will personally send you back to the hell from where you came." That count was charged as to October 24, 2001. The transmittal, according to DirectNic, would have been from Los Angeles to New Orleans.

Count Two, "I will kill you," charged as of January 31st, 2002, New Hampshire to Virginia, because of the testimony of HostingSolutions.

Now, also you heard about these two threats from Special Agent Cugno, who testified that he had looked through the uploads -- remember? -- and he could tell you the first time these threats appeared on the Internet.

And as to Count One, he told you that he first saw it on October 23rd. And as to Count Two, the evidence established that it was present for the first time right around January 22nd. So I submit to you that that is on or about the charged dates.

Count Three, "Keep your dogs at bay. I am now armed," charged February 13, 2002, again, during the time HostingSolutions was hosting the website.

And, again, Special Agent Cugno testified that the first sighting of that specific language was approximately February 10th of 2002.

And then Count Four, we have "Dead-icated" -- d-e-a-d -- "This is all far from over," accompanied by a

picture of Elizabeth Greenwood and her daughter. And don't forget the other critical components to this threat: "I am coming to collect from you personally," a map to her house, and the music, another voiceover from the movie "Cape Fear."

That threat was charged on March 17th, 2002, when it would have moved from New Hampshire, where the defendant was then located, over to where AboveNet was located. I think that's supposed to be Louisiana, but your recollection controls. But definitely out of state. And we see Defendant's Exhibit 231 also backs that up.

So those are the boring technical aspects of the elements. Those are actually what we had to go through, regardless of what was contested and what was not, to show you the basic elements of the crime.

But now we get to another element: Specific intent.

Ladies and gentlemen, the critical question is, what was the defendant's intent at the time he was doing this?

I submit to you that the evidence has shown that his intent was to intimidate, his intent was to threaten. We see that in a variety of ways. We see that in his use of the "dead" theme, d-e-a-d. He used it consistently. He used it a lot. You saw it on a lot of Webpages.

Even his disclaimer, you'll remember, appeared on a Webpage entitled "Dead-icated to Global's legal department." We saw that on the screen. The Greenwood threat, "Dead-icated

to Elizabeth Greenwood," dedicated to her and to others.

He said, as early as October -- late October 2001, "This has now become very personal." He personalized the situation. You see that in Exhibit 64. His threat to Ms. Greenwood, "I'm coming to collect from you personally."

And, ladies and gentlemen, there is a defense exhibit in evidence, Exhibit 214. It's very difficult to read. But if you look at it closely when you go back in the jury room, you will see that it says, in part, "We are seeking names and locations of all the employees, people associated with, something like that, of the Christensen, Miller law firm. All we need is the name and the last known county that they are in and we can take it from there." That's the kind of thing that was appearing on this website way early, way in the beginning, soliciting information on people for no apparent reason.

You heard evidence that the defendant was upset. He thought that they deserved it. He thought that the people at Global Crossing deserved whatever they got.

He told Richard Saly, when Richard Saly asked, "Are you threatening me?" he said, "You are a smart man. You figure it out."

He knew what he was doing, and he knew what he meant to do. He did it because he wanted them to stop. The evidence has shown he wanted them to leave his website alone. And the way to get them to leave him alone was to threaten and

intimidate them.

And how is that obvious, ladies and gentlemen? It's obvious because there was no other reason for him to say and do those things.

You have heard no evidence of any other credible reason why that stuff was on the website, in the manner that it was, at the time that it was.

If it wasn't for a threat, if it wasn't to intimidate, if it wasn't to encourage and explore the possibility of identity theft, what was it for?

Now, you also heard the elements of the second group of charges: Transferring social security numbers with the intent to aid and abet. And you heard the elements of that: That the defendant acted knowingly, that he transferred the number, that it was in a manner affecting interstate commerce -- again, over the Internet, sufficient for that -- that the transfer was without lawful authority, and that the defendant acted with the intent to aid and abet the crime of false representation of a social security number.

What have we shown? What has the government proven to you about these counts? Well, we have shown access to social security numbers, again, Exhibits 1 through 5.

Now, you also saw the exhibits that were full of names and social security numbers and other information. And you heard that all those social security numbers, from all

those exhibits that we showed you that are in evidence, were submitted to the Social Security Administration, and you see in Exhibit 47, that most of the social security numbers on the "evilgx.com" website were accurate. They were actually numbers that were assigned to different people.

And the testimony and the evidence shows no lawful authority. What did we hear about that? Well, we heard from Richard Saly and Janet Troxell at Global Crossing, who told you the careful, private manner in which these social security numbers were kept and maintained. We heard that, as well, from Liz Greenwood. We heard from her that she did not give permission for her social security number to be on that website or to be transferred or published in any way.

And we also heard not only how Global Crossing handled these numbers, but we heard testimony about the outrage that followed the posting of these numbers.

And who was that outrage from? Remember? The employees of Global Crossing, the people who had accessed the website for as little as two days. We heard defendant allege, it doesn't matter, it doesn't matter what it shows. The fact that so many people called and so many people complained, that they had to put two full-time employees at human resources just to handle the outrage, that shows just how critical and important the fact that defendant posted that information was, and the fact that nobody gave their permission to have their

number posted that way. They were outraged about it. There was no lawful authority for those postings. That much is clear.

We see defendant's acknowledgment on the website of the possible harm -- of the probable harm that he's doing with the posting of these numbers.

We see the reference to "uncomfortable." Do you remember that one? It's on Exhibit 11. He said, "It's come to our attention that some of you may feel uncomfortable seeing some numbers on the website." And then the "uncomfortable" link went to that article that we saw a lot, that article on identity theft.

Well, why would they feel uncomfortable? If there was any doubt, ladies and gentlemen, defendant showed them right there why they would, could, and should feel uncomfortable.

He did it when he addressed Tracy Hall. "You think seeing your license plate number is bad?" Remember that? That link went to a link that had not just the license plate number, but the name, the social security number, the spouse's name, the address, the kids' names, all kinds of information about the board of directors of Global Crossing. And in that same sentence, "It can get much, much worse," it went to the social security article again.

We saw in Exhibit 13 defendant taunted Christensen,

Miller; in particular, Mark Block, the attorney, put all his information up there and then, for the credit cards, for the bank information, and for three or four other categories -- you can look for yourselves; it's Exhibit 13 -- he said, "Omitted for the time being," implying that that information would soon be out on the website.

Again, he told Mark Labaton, in that same exhibit, "We will be publishing your personal information shortly. Please be patient." And if you look at that exhibit, I think that you'll see that he also said, "As you understand, there are many people in front of you." But that's from my memory. You have to look for yourselves. That's Exhibit 13.

We saw a list of dates of birth with names and the addresses of the people that would read it, "In America today, all you need is a date of birth and a social security number, and you can do almost anything," something to that effect. It's Exhibit 11.

Exhibits 11, 15, and 17 would all see these addresses to the people reading the website. We see the "opt-out" clause. Do you remember that? "If you don't like seeing your number up here, you can opt out. Oh, but, first, we have to do a background check and you have to submit the proper identification documents." Well, that's kind of a hollow offer to opt out.

Again, on Exhibit 17, the list of dates of birth,

which we heard encompassed 285 pages, although you only have the first page, we see that they are to "stay tuned and social security numbers will follow."

The links to the article on identity theft I've already mentioned, the dates of birth, place of birth, name, address, phone number links. Ladies and gentlemen, it is clear that this site had nothing to do with protecting social security numbers, nothing to do with protesting social security numbers. Everything to do with punishing Global Crossing, because he thought they deserved it, by putting those who continued to be employed by Global Crossing at a great risk.

Again, there is no other explanation. There is no other credible, plausible reason to do that. And defendant's own links and his own statements within those sites, within those pages, show you his intent.

So the individual counts, Count Five, the 15 social security numbers, charged on 10-24-01, again, the transmission, and, again, you heard from Special Agent Cugno that those 15 social security numbers were all accurate and that the transmission was actually on that date, 10-24-01.

Count Six, we have a hundred social security numbers charged. That was the count where you saw the card, the social security card, and then the list under it and the social security card linked to the article on identity theft. That's Exhibit 9.

But, again, you heard testimony that 120, actually over a hundred, social security numbers from that exhibit were correct, they were valid, and they were charged as transmitted on November 12th -- on or about November 12th.

Count Seven charges 1900 social security numbers posted on December 3rd, transmitted, and you heard Special Agent Cugno testify that over 1400 of those numbers were correct. And you also heard -- and you can see for yourself. Remember, that was that big long list that also had the -- what Elizabeth Greenwood told you were the out-of-the-country identifying information. So a large number of those numbers were actually out of the country and were not social security numbers.

For Count Eight, Gary Winnick's social security number is charged as being transmitted. That is also with the threat count. That's the same exhibit.

And Count Nine, Elizabeth Greenwood's social security number, and that's with her exhibit. That's with her threats exhibit, Exhibit 19.

I submit to you, ladies and gentlemen, that all of those counts have been proven. Shown the posting, no authority, the interstate commerce, the intent to aid and abet identity theft. Because, again, there was no other reason.

Now, I submit to you, ladies and gentlemen, that that's a summary of the evidence that the government has proven

in this case.

And now we have to look at the defense case and the defense arguments and see if they have an effect on the fact that the evidence has proven the elements.

So, first, we look at some of the defense case that came out. We heard a lot from defense about this disclaimer. He centered in -- your recollection controls, but I think he centered in on the fact that in his disclaimer he said something about he was "not vouching for the truth of the information posted." Remember that?

Well, what does that have to do with anything? I don't say that to be glib. My point to you is, that's a nonissue. He didn't have to vouch for the truth of it. You heard those numbers were real, and all the people that saw their numbers up there knew they were real. And the people that had the potential of downloading that information and using it to commit crimes, why would they care about reading a disclaimer? It's just a complete nonissue.

And if you want to look at the disclaimer, then look at paragraph 5 of it. It exempts the website for liability from violent acts committed by others. And this is the very website that enables violent acts, ladies and gentlemen, by publishing private information, including maps to houses and family information. So that's what this disclaimer is worth. Not a lot.

There was also the argument that the restraining order -- the TRO -- remember that order? -- somehow gave the defendant authority to do some of this. Not all of it, but perhaps some of it.

Well, there are several points to remember about that restraining order that make it a nonissue as well. It was obtained very early, you'll remember, in this whole thing, before any of the conduct that's charged. And the conduct that was being brought up at that time was nothing like the conduct we're seeing now.

Further, that TRO restrained the activity. It did not permit it. It permitted nothing. And it certainly, ladies and gentlemen, did not authorize the violation of federal law in publishing the social security numbers with the intent to aid and abet the felony. And that's what we saw defendant doing. And it certainly didn't authorize threats. It had nothing to do with threats.

Now we get to defendant's argument on advice of counsel. Advice of counsel, you heard, can go, in some instances, if you decide it's worthy of it, can go to negate specific intent. So it's very important that we look at it carefully and look at the evidence that was produced.

Now, the requirements of an advice of counsel defense are that defendant, in good faith, in good faith, followed advice of counsel before acting. Full disclosure of all

material facts is required by the defendant to his counsel, the fact that he received advice as to the specific course of conduct that he engaged in or followed, that he reasonably relied on that advice and that that reliance was in good faith.

Now, those are a number of components and they are very critical, so I want to go through them one by one when I wind up.

The first is the requirement that this occur -- ladies and gentlemen, the absolute requirement is that this consult occur before acting. What did we hear about that? Well, not a whole lot because McAfee, defendant's counsel, who testified as to this advice, couldn't remember, in most of the instances, when he gave the advice. When did he see it? Did he see the posting that he was supposed to be giving advice on on the website? Did he see it before it went on the website?

Well, ladies and gentlemen, if he saw it after it was posted to the website, no matter what he said about it, it's not before acting. That knocks it out right there. It doesn't matter what he said, thought, or counseled about it if he didn't do it before the defendant acted, and the act is the putting of the information or the threat on the website. So that was unclear.

You heard me ask Mr. McAfee, time and time again, when? Under what circumstances? Before or after? Was it by fax? Was it by telephone? Was it by e-mail? How did you see

it?

"Well, I don't know and, you know, I don't have my records with me." That was his response. So that evidence simply isn't there.

And we know for sure, and perhaps you have an even better recollection than I do of other events, but we know for sure that he didn't see the "I will kill you" threat, the threat to Tracy Hall, before Sutcliffe posted it. Because, remember, he told me, "I told him I was worried about it. Well, that's a paraphrase. I told him I had some concerns, and I told him to link the 'kill' -- remember the "kill" reference? -- link it to something else to make his motive clear."

"Well, did he take your advice?"

"No. He took it down. He took it down."

So it was already up when he gave the advice. It was already up on the Internet. And any and all of these Counts One through Nine that were already up on the Internet, that knocks it out right there. There is no defense to that because the conduct had occurred.

The next step, full disclosure of material facts: You heard me go through with Mr. McAfee what exactly he saw, and we heard no evidence that he saw the complete context of any of these threats. He testified that he only reviewed things that Sutcliffe sent to him and when Sutcliffe sent them

to him.

He received advice -- the requirement is that you receive advice as to the specific course of conduct that was followed. Again, very similar to full disclosure. What did you hear from Mr. McAfee about this very important fact, this very important component of this thing that is supposed to take away Mr. Sutcliffe's intent? What did you hear about that?

"Well, you heard that he never even saw the entirety of any of the social security number postings. Remember, I asked him that the second day? I think it was yesterday. I went through the links one by one.

"Well, did you see what he linked here to 'much, much worse'"?

"No, I don't remember that link."

"Did you see what he linked here?"

Ladies and gentlemen, without seeing that context, how can you possibly say you have full disclosure and you've advised on a specific course of conduct? Because it's that context that made this information contained in these counts so horrendous. The links were crucial.

And then you heard again that although Mr. McAfee said that he had advised the changing of the "kill" link, that was never changed. It was just taken down off the Internet. And, also, when we saw the "kill" link that Mr. McAfee was referencing, it didn't actually go, you'll remember, to the

"Tracy Talk" threat, the "I will kill you," it went over to a different Webpage. So it's unclear even what he meant to advise, but it is clear that he certainly didn't follow that advice, and he certainly didn't seek it prior to doing the act.

Reasonable reliance on that advice. Ladies and gentlemen, there is no evidence of reliance, and even if there were, how could that reliance be reasonable? There is no evidence -- because it doesn't make any sense to rely on limited, fragmented, too-late advice -- that "I will kill you" is not a threat. And it has to be in good faith.

Ladies and gentlemen, we didn't see a lot of good faith here. We saw that this claim of reliance came up for the convenience of Mr. McAfee and of the defendant.

And one of the things that leads us to see that this was for convenience sake was the fact that the entire assertion of advice of counsel lacks credibility and here's why: Let me just emphasize, ladies and gentlemen, this is above and beyond the fact that none of the evidence rises to the level required, even if taken at face value.

Let's talk for a minute about why you can't even take it at face value. It was a last-minute defense. And what do I mean by that? Well, Mr. McAfee himself testified -- do you remember? -- on the stand, when I asked him why he didn't have anything to back him up, if he counseled and advised this person on such critical things during that time period, where

is his proof? Where is something to back him up?

"Well, I haven't had time to find my records." Remember that?

And I said, "Well what have you been doing?"

And he said, "Well, I was surprised by this." He said he "found out two weeks ago" the first time.

I'm going to talk about what he said the second time in a minute. The first time he said he "found out two weeks ago."

Well, ladies and gentlemen this is the fourth week of trial. He told me he "found out two weeks ago." Does that make any sense if this were truly a professional, put-together, credible assertion? It doesn't make any sense.

And one of the things, ladies and gentlemen, that you are here to do is apply your common sense, and take a look at this case with that in mind.

Mr. McAfee first took the stand, you'll remember, and was proffered as an expert, but he couldn't qualify. Again, he said he "had only two weeks' notice."

Now, when I asked him yesterday, he told me he "had six months' notice." Do you remember that? So that changed a little bit. But, you know, it really doesn't matter because, if he had six months' notice, wouldn't he be more likely to be able to back up his claim, his very vague claim, that the defendant somehow relied on his counsel?

So there was nothing showing his whole "UUIS" theory of the acronym of what Mr. Sutcliffe needed to follow in order not to be really threatening with his threats.

And you also heard that Mr. McAfee had been advising Mr. Sutcliffe since at least 1999. Well, I submit to you, ladies and gentlemen, that all you learned is that he had been advising him on perhaps how to get away with this since 1999, because the significance of 1999, this whole thing didn't even start with Global Crossing until when? 2002 -- excuse me, 2001.

So he certainly wasn't advising him on Global Crossing threats in 2001. But he certainly testified that he's been advising him as to threats in general since 1999.

The advice itself was unreasonable. It was not about threats. It was how to maneuver around laws criminalizing threats.

And Mr. McAfee further had bias. He had a litigation history. You heard me ask him about it. He has pending litigation in this case that stands to earn he and the defendant money. He charged $25,000 for the one Complaint I discussed with him. We don't know what he charged in the other cases, but he certainly has a financial interest in continuing ongoing litigation.

And how do you continue and keep going with this litigation if the defendant is found guilty? It's hard to do.

You heard that he alleged multiple conspiracies. When he was wrong about his advice or when it appeared that he might be wrong, his response was to "sue judges," to name them as coconspirators in lawsuits of other people.

And you heard me ask him about malpractice. You heard him say that it didn't really matter. He had insurance.

I submit to you that those answers are not credible. They are not the answers of a credible professional, and that's what we learned about Mr. McAfee.

And, critically, ladies and gentlemen, we learned that Mr. McAfee knew how to define a threat correctly when it was in his interest to allege threats.

Do you remember I asked him about the fact that he tried to get a temporary restraining order against Tracy Hall? And what did he say he tried to get it for? That she said something to the effect of -- first of all, there was some limited testimony that "she would make his legal life miserable."

But, remember, I specifically asked him, "Didn't you say in your declaration that she said if you dragged her into this, you would be sorry"?

"Yes, that's what she said."

And from that he got a terrorist threat. He said that was a terrorist threat.

You heard me ask him about his papers. "Because it

was not political argument, idle talk, or gest," so when Tracy Hall says to him, "If you put me in the middle of this, you are going to be sorry," that's a threat. It doesn't matter if it's conditional then. That's a threat to Mr. McAfee.

He knew what a threat was. He knew it didn't have to be unconditional. And when it was in his best interests to allege it, we saw that he did.

This is during the exact same time period, ladies and gentlemen, that he was supposedly telling the defendant that "if it was conditional, it wasn't a threat."

We also heard that McAfee said "there was no place for threats in litigation, that they were illegal." His definitions, ladies and gentlemen, as are the definitions of the defendant, are self-serving and they are not credible.

We heard limited talk about the "killing in court." I remind you that the evidence showed that as of late October, at the latest November 6th, when they got the preliminary injunction, the litigation was over for McAfee and the defendant. Remember, McAfee said he only represented him for a very limited time. And there was no evidence about ongoing litigation after those orders were secured.

So "it was now personal," in Mr. Sutcliffe's own words. There was no reference that needed to be made to "killing you in court." There was no court. You didn't hear any evidence about any ongoing struggle.

What you heard evidence about was that despite the fact that nothing else was going on, Tracy Hall hadn't surfaced again, nothing else was going on in court, the defendant consistently escalated his threats.

Again, ladies and gentlemen, it all comes down to the evidence and the elements, what we're required to prove and what we're not.

And I submit to you, ladies and gentlemen, that the evidence in this case has shown that the defendant established "evilgx.com". He used it to threaten at least three people four times, as charged. He used it to transfer nearly 2,000 social security numbers, as charged.

Ladies and gentlemen, I submit to you that during the course of this four-week trial, we have proven that the defendant is guilty as charged. Thank you.

Thank you, Your Honor

THE COURT: Thank you, Ms. Duarte.

All right. Ladies and gentlemen, now we'll hear from Mr. Sutcliffe. And when he is finished, we will break for lunch.

Mr. Sutcliffe.

MR. SUTCLIFFE: Thank you, Your Honor.

Good morning, ladies and gentlemen of the jury. Well, you've been here with me. You've heard all of the evidence. You've seen the witnesses. You've seen them come

and go.

Before I start off my opening statement, I would like to make an announcement. If you are sensitive to certain words in the English language or if you consider yourself kind of a prude or object to certain words, I'd ask you to block your ears right now.

I'm about to use the "F" word. I'm about to use it frequently. And I intend to use this "F" word quite frequently in my statements here because I feel very passionate about this case, so you've been warned.

"Freedom," that's my "F" word.

Now, you don't have to raise your hands, but just how many of you thought I was saying a different "F" word?

THE COURT: There is no obligation to respond to even rhetorical questions.

So, Mr. Sutcliffe, proceed on a proper basis.

MR. SUTCLIFFE: Yes, Your Honor.

I'm not asking them to respond. I'm just asking them to think.

Freedom to think, freedom to speak, freedom to publish, freedom of ideas. These are things we hold very cherished in America. In fact, it's the first thing we hold cherished in the Bill of Rights that people die for.

They said that Congress shall make no law abridging the freedom of speech or of the press because that is too much

power to give to the federal government. Our forefathers didn't want the federal government telling us how we can think, telling us how we can speak, or telling us how we can publish. They left that to the states. States can handle that. Too much power in the federal government.

I'll explain why there is too much power and what this case is really about.

If you remember, when I first spoke with you, I said that what the government doesn't tell you is more important than what the government did tell you. I've tried to show you just a little bit of what the government didn't tell you. Like the government said, context is very important. If you take things out of context, sure, you can come up with -- you can bend the truth and the facts any way you want.

I don't have access to the resources of the federal government to parade 26 people in here, bend the truth, tell lies. They are too powerful. That's why Congress said we can't give the federal government that much power, especially when it comes to speech.

You've heard a lot of figures of speech. You've seen a lot of figures of speech within this website.

At the heart of the First Amendment, ladies and gentlemen, is the recognition of the fundamental importance of the free flow of ideas. Freedom to speak one's mind is not only an aspect of individual liberty, but it is essential to

the quest for truth and the vitality of society as a whole.

In the world debate about public affairs, many things that are done with motives that are less than admirable are nonetheless protected by this First Amendment.

Now, they want you to think that my intent, specific intent, was to do certain acts.

I'd like to publish a photo here, Your Honor.

THE COURT: You may.

MR. SUTCLIFFE: Thank you.

This is my daughter right there on the screen. She's only -- well, she's about five now. This is who they wanted to kill. And I'm speaking figuratively, as I usually do. They wanted to kill my family. They wanted to break up my family. They wanted to take my daughter away. They came up with lies to accomplish this. They would do anything they could to shut down my right to publish information I obtained after I had left this company.

This company was tanking. It was sinking. It was the largest corporate bankruptcy in the history of the United States. It only became No. 2 when Enron came along and then it became No. 3 after WorldCom came along.

I was predicting this on this website because I had a lot of -- I made a lot of friends when I worked in this company. I was a good employee. I worked hard. I made a lot of friends. And those friends said, "Hey, there is something

really bad going on in this company. Would you help us?"

"Sure, I will be glad to help you, yeah."

That was my motive, to expose this fraud and I declared it upfront. I didn't hide anything. I said, "Look, you send me anything, I'm going to publish it. I don't care what it is. That's my terms. If you don't like my terms, turn off the set. Go away. Don't come by."

That made Global Crossing very nervous. Well, they had good reason to be nervous, but not because of me threatening them.

Now, you've seen Mr. Saly come in. He filed a declaration in this temporary restraining order to stop me in the dissemination of the information.

The government said that he testified how they kept real good care of this information. Well, he admitted later on, and you heard the FBI say, that he came in way after the fact, after Mr. Sutcliffe was arrested, and said, "Whoops, I wasn't exactly truthful in declaration No. 9. I also had access to this information."

You saw Mr. Wieseltier, my original boss. He filed a false declaration because he had access. He didn't keep track of this access.

Ladies and gentlemen, Abraham Lincoln said that "Lawyers make their living with words."

The problem with this case is the government is

trying to make a case about words. And the problem is that the same word means different things to different people at different times and under different circumstances.

The real issue is, can we make laws to regulate words? Can we make laws to regulate ideas?

Now, if you are talking about action and conduct, well, that's a different animal. You can't hit someone in the head and you can't kick them in the shins because that's conduct.

But if you say it, the mere fact that you said, "I'm only kidding," does this create a condition to make it okay? Because if it doesn't, ladies and gentlemen, then everyone in here will be in prison eventually, I guarantee you that.

Who gets to decide when you are figuratively speaking? Have you ever heard someone say something and you got upset maybe and then you later learned that you misunderstood what they said? Or have you ever said something and somebody else got upset and later on they came to you and said, "Hey, I'm sorry. I apologize. I misunderstood what you said or what you meant"?

That's why our forefathers dealt with that issue in the First Amendment because that's too much power to give to the federal government to decide what your words mean.

If one day we wake up in America and somebody says to you -- and they are listening to your conversation, and they

hear you say, "Hey, I made $5,000 this month."

"Really? I made 10,000."

Then the next thing you know someone sends an e-mail to the government, "Hey, they are counterfeiting. They are making money."

Then you get arrested and you can't make bail. Your life is destroyed. Then when you finally get in front of the jury, you have to sit there and say, "Well, I meant 'earn.' They heard 'make.'"

You did say "make," didn't you?

"Yes, I did say 'make.'"

Oh, he must be guilty. You said, "make."

"Well, I meant 'earn.'"

"Well, that's not what you said."

It's a slippery slope, ladies and gentlemen.

"If your father sees this room, he's going to kill you; if your mother sees this mess, she's going to kill you," is that a threat? I don't think so.

Now, let's look at Counts One through Four. These are all words expressed under advice of counsel, words that were equivocal, not unequivocal, words that were conditional or qualified, not unconditional.

Now, the government seems to think that anytime you speak or anytime I speak, I have to qualify my words or else they can come up and say it's a threat.

"Well, you didn't qualify that. Did you make 10,000 last year?"

"Well, yeah, I made 10,000."

"Well, you didn't qualify that you meant 'earn.'" And off you go to jail.

Ladies and gentlemen, I submit that there were no threats here. I submit that there was a good attempt by Mrs. Greenwood to come up with threats so that Mr. Sutcliffe could get more time and this website could finally be shut down so she could reach her goal, which was to stop the publishing -- the exposing of the crimes by this company, as well as all -- there is a ton of information there. There is a labyrinth. You could get lost in this website.

You saw Mrs. Fraser. She took the stand. I took her right to the day of her alleged "I will kill you" threat. I walked her through the going into it, and then I put a sign in front of her -- it was the quote from Leo Hindery -- "We live and die together." It was four links on that page. That's all. Just four links.

I said, "Where do you want to go, Mrs. Fraser? Take me to any threat I made against you."

What did she do? She looked at the prosecutor. "Help. I don't know what to do. I wouldn't" -- she wouldn't know -- I couldn't have given her a brighter sign to click, but she couldn't even find it because this labyrinth that was

created, of information that was being submitted to this website, you could come in there and get totally lost and you might never find anything.

Even Agent Harrill, in the beginning, told you it took him a month just to find that original link that talked about how to protect your data and that he had to go and update the file.

Let's look at Five through Nine. I didn't see anybody come up on that stand and say, "Yeah, he aided me. Yeah, he abetted me. I got this information and I stole somebody's ID with it."

I didn't hear one person come in here and say that to me. I didn't hear one person come in this room and say, "Mr. Sutcliffe stole some identity." I didn't hear anybody say Mr. Sutcliffe stole one thing other than they say I stole this data. But I didn't hear anybody saying I stole anything with anybody's identity, that I ever created anybody's identity, that I ever used this information to create a false identity.

The FBI testified they found me in New Hampshire. I was there since November, registered with the public service. I had a driver's license. I wasn't trying to hide. I wasn't -- I didn't have a guilty mind. I didn't believe I was doing anything wrong. I was just publishing information, and it's not against the law -- and you heard the testimony. Greenwood knew it. It's not against the law to publish

information, and I hope I never wake up in my country where it is.

If only the government has that right and only the Tracy Frasers of the world have the right to go and get information on you and I, but you can't get that same information back on them, well, that's a one-sided fight. And I pray we never wake up in America in that kind of situation.

Would you be uncomfortable seeing your personal information on the Internet? Of course, you would. But there is no law against publishing it. Your banks do it. They trade your information like it's -- all day long.

I can assure you that your personal information is being bought and sold every day by your banks, by your credit card companies, hospitals, medical providers, magazine subscriptions. It's flowing all across this country.

Do you like it? No. But I don't see anybody here from the banks and the credit card companies alongside me.

Is there ID theft in this world? Is there identity theft? Sure, of course. But I'm not the poster child, ladies and gentlemen, for identity theft.

I'm the messenger, but I'm asking you right now, "Please don't kill the messenger." People do need to be aware of how dangerous it is out there with this information. People can get it. Anybody can get it. Like I said, it's all over the place.

I'm just trying to -- I was trying to show people -- you heard the testimony. It was 10,000 social security numbers.

Now, the government just threw a figure out there, when she was talking, 104,000. Well, that makes it sound a lot worse than what the actual testimony is.

Because, you'll recall, the computer expert who came over here said, us computer guys, we back up our data, so when there is multiple replications, yes, it's going to look like a multiple effect. However, at any given time, on this website -- we have seen and we have heard the testimony -- there was approximately 10,000, 7900, and 1900 social security numbers in two files, "Seeya" and "Titles of the Nobility."

THE COURT: Excuse me one minute, Mr. Sutcliffe.

If you could slow down a little bit, it would make the task of the court reporter more manageable.

MR. SUTCLIFFE: I apologize.

THE COURT: I know it's hard not to speak fast under these circumstances, but do your best to slow down.

MR. SUTCLIFFE: Thank you, Your Honor.

The testimony that we heard was that those two files appeared on this website. The testimony that we heard was that within two days, those files were gone. The testimony we heard, the facts are, those files never appeared back up on this website. That says a lot about intent right there.

Now, we also heard that, right after that happened, the website was -- it hit the news. Angry, angry people. Everybody was calling. They all want answers. Venom. "Flavor of the venom coming our way," Defendant's Exhibit 243, regarding information that was posted on this website.

242, angry and upset, venom.

Then what do we hear? We hear an e-mail arrives to the defendant, "I am going to personally kick your ass." We hear Mr. Cugno -- it was sent to Agent Cugno, the lead investigator.

What does he do? He goes to the website. He looks at the website. We've heard testimony that the Zip files that he produced, that were allegedly given to him by Mr. Ramsey, are missing from December 17th -- angry, venom, hate -- up until December 28th.

You know why? Because all of those e-mails, all of that venom, all of that hate came to "evilgxhr@yahoo.com", which was the only e-mail in that website requesting information on how to contact me.

It was all published on that website. Thousands of, "I'm going to kick your ass. You are dead." That's why those Zips are missing. That's what the government doesn't want you to know. That's what the government didn't -- I said the government doesn't tell you -- what they don't want to tell you is more important than what they did tell you.

You saw what he did with the testimony of Mrs. Greenwood right after that fact. He said he changed the Joe Shmoe e-mail which said, "I am going to kick your ass." He said, "Well, Mr. Sutcliffe threatened the Denver -- the office." That wasn't the truth at all, because he needed to keep this investigation going.

I don't know why he did that. I really don't care. But what they don't show you is more important than what they do show you.

They subpoenaed the two e-mail addresses, "Gary Winnick" and "evilgxhrdept", but never that "evilgxhr@yahoo.com". You know why? Because there is thousands or more e-mails, all with the same flavor, all with the same venom, just like Joe Shmoe.

I'm not saying it's right or it's wrong one way or the other. I support Joe Shmoe's God-given authority and to the Constitution to say, "If you publish it again, I'm going to personally kick your ass. My hat is off to you, Joe."

He never saw his information again because it was only up there for two days until it was verified that it was real. At the moment it was verified it was real, off it went.

You heard Mr. McAfee testify that people called him and they asked him, "Hey, this information being published about me is real. Would you get rid of it?"

"I'll contact my client. Client, get rid of it.

This guy wants to know if you would."

Done. Gone.

That's all anybody had to do. I always left my phone number, my mailing address. You can contact me. I'm not hiding.

So where is the fraud? Where is the evidence of fraud? I haven't seen it.

Now, you've been given jury instructions regarding these threats directed to others. Please keep in mind, ladies and gentlemen, that none of these --

THE COURT: Slow down a little bit. You are speaking quickly.

MR. SUTCLIFFE: I apologize.

THE COURT: We can hear you, but it's hard to transcribe, so it would be helpful to slow down.

MR. SUTCLIFFE: Thank you.

You heard about the Joe Shmoe that was directed directly to me and other e-mails. What you haven't seen is any direct communication from me to anybody else.

This website was open to anybody who agreed to the terms and conditions and freely chose to go there. Nobody forced anybody to go there. Nobody forced anybody to read this information.

The only direct communications that you heard about were e-mails that I sent saying, "Stop by and say hi." And

then, of course, Mrs. Greenwood said that was identity theft and fraud because I used Gary Winnick's name when I created the Yahoo! account.

We've already heard testimony that it's not against the law. We can be anybody we want on the Internet world. It's a free country. So, of course, that became a crime to Mrs. Greenwood. But you never saw any directed threats from me to anybody.

I allegedly had all this information; right? I had their phone numbers. I had their mailing addresses. I had their -- everything I could want about them. Did anybody come in here and say, "He called me"? Did anybody come in here and say, "He sent me a letter"? Did anybody come in here and say, "He sent me an e-mail"? No.

You heard Mrs. Greenwood testify there was not even a restraining order to prevent me from going to her house, calling her, sending her a letter. Was she that afraid? No. She didn't take any precautions at all. Her goal was to come up with things that could be interpreted as threats. And we've seen a lot of those.

I don't mean to belabor this point, but in America, it is not against the law to publish information. If you go onto the Internet or you go into your library, which the Internet basically has become, you will find page after page of information on how to steal, on how to cheat, on how to lie, a

lot about sex, but that's another issue, at least to the Internet. You can learn how to build a bomb. You can learn how to murder somebody. It's all out there. It's information. It's not against the law to publish information.

We've heard of -- the U.S. Attorney said that links were critical in this website and it makes her case. That's like saying a book and another book makes the case.

Now, you've got to bring the whole library in. You've got to look at the whole library. You can't just take one book out and say, "Oh, this and this makes the case."

You saw how many links were on these pages. If you follow them around, you are going to make a daisy chain and you will get the big picture. But they won't give you the big picture. They want to take little selected pages, little selected links, take things out of context: "In honor of the deceased," the most egregious threat. Sure. They can do that all day long on this website.

We don't allow the government in America to tell us what we can and what we cannot read. That's not American. That's something they do in China and Afghanistan and other third world Communist countries.

You can go to any website and find any of this information that was published on "evilgx.com", I guarantee you.

You heard Mrs. Greenwood testify that she had

slandered my name, defamed my family, libeled me in newspapers, but she took that statement -- it was on her own page -- "I'm coming to collect from you personally in a court of law and you can tell it to the judge," she took that out of context and she didn't want to talk about that.

And she referred to another page, which says, "You owe me 15,000. I'm coming to collect from you personally," and she said that that's a "mafia-type" threat. Okay.

She didn't tell you about the other page. I had to show you that one myself. That's why I said, what the government and the other people don't tell you is more important than what they do tell you.

Let me surmise up Mrs. Greenwood's case against me. "My goal is to shut this website down. I can't do it based on this temporary restraining order. He has the right to publish. So if I don't get my way, I'm going to yell bloody murder," and that's what she did.

Her and Mark Labaton found that one comment I was talking about, "Marky Mark, if you think I'm going to let you kill me in a court of law, like you said, it's never going to happen." And they found the Tracy threat and they said, "Oh, 'kill' means 'kill.' It only means 'kill.' That's all it could mean is 'kill.' We'll call it murder." She sent off an e-mail, "He's threatening to murder the process server."

She continued on and on, coming up with more threats,

coming up with more threats, coming up with anything she could to get this website off the air.

The Tracy Frasers of this world, they deal in information. She's a private investigator. She deals in information. But she doesn't think that you should have the same access to the information that she does -- that she gets for a living, even though she wasn't really a private investigator. She was lying about that, too. But I find that very ironic. That's such a double standard.

The government, the banks, the corporations, they trade and publish your information every day to others, but they don't believe that you should have access to the same information.

Now, some of the things that you are supposed to consider as to what a threat is is whether I had the intent to threaten, and you can take into consideration all kinds of things.

One thing I'd like you to strongly consider in your deliberations is, specifically with Tracy, I said, "Tracy" -- "Mrs. Fraser," excuse me, I said, "was the 'I will kill you' threat before" -- first, I asked her, "What year was it? 2000?"

"I don't know."

"2001"?

"I don't know."

Okay. I showed her a fax she had sent that didn't contain any threats, just some information that she had copied from the website. It was dated December 5, 2001.

I said, "Mrs. Fraser, was the 'I will kill you' threat before this fax or after this fax?"

And what did she say? "Oh, clearly before."

"Clearly"?

"Yes, clearly."

And I wrote it down.

Does that sound like somebody who is reasonably frightened or threatened by a statement she allegedly saw? I don't even think she saw it, but that's my own opinion.

I don't think you can reasonably say that she was threatened by that. She didn't even know not only what month, she was off by the whole year. That's all I'm going to say about that subject.

To close out, ladies and gentlemen, I'd like to leave you with some lyrics that my wife and I used to use. We had a little thing on the wall. It was from a song by Tim Hardin. We used to look at it whenever we'd have a fight. The words go like this -- I'm going to probably butcher this song, so please forgive me.

"If I listened long enough to you, I'd find a way to believe that it's all true. Knowing that you lied straight-faced while I cried, still I look to find a reason to

believe."

Now, I don't know if you've ever heard that song. It was one of our favorite songs. Because that's what you do with somebody that you love. If they lie to you, you still look for a reason to believe because you want to believe, even though you know they are lying.

But that, ladies and gentlemen, is not what you are supposed -- you are not supposed to do that in a criminal case. You are supposed to look at their case and you are supposed to look for reasons to disbelieve, to not believe what they've paraded as evidence and the facts that they have tried to put out of context and misskew the truth. That's what you do in a criminal case, you look for reasonable doubt to believe their case.

Somebody you love, yeah -- you look for a reason to believe, even though you heard the lies, because that's what you do with somebody you love. That's not what I ask you to do in this case.

With that, I've taken up enough of your time. I appreciate your sitting there through all of this trial, and I thank you very much.

THE COURT: Okay, Mr. Sutcliffe.

The court reporter has told me that she can keep going. She's valiant. So I think, instead of breaking for lunch now, we should give the prosecutor the last opportunity.

The prosecutor gets to, in any case, deliver the last word because the prosecution has the burden of proof.

I told both sides how much time I would allot to them, and the prosecutor has a certain amount of time left. Mr. Sutcliffe came in within the time allotted to him. So if we hear from the prosecutor now, then we can break for lunch. And when you return, you can begin deliberating. So that's what we'll do.

With that, you may proceed, Ms. Duarte.

MS. DUARTE: Ladies and gentlemen of the jury, I have just a few words to say in rebuttal. I'm not going to take much of your time.

First of all, Mr. Sutcliffe is absolutely right about at least one thing. Context does matter. So, again, when you go back in the jury room and you look at the context of the charged threats, take a look at it again and note the "dead, death, stabbing, hell, stalking." That's the context of the charged threats.

Just because some of that website was not threatening, doesn't mean he didn't do what he's charged with doing.

And also take note of the fact that some items on those websites were linked to things that were harmless. Those aren't charged. Those don't matter. All they do is prove that had Mr. Sutcliffe wanted to qualify the threats that are

charged, he knew how to qualify them. He could have qualified them. He knew how to make them less threatening and he didn't do that on the ones that are charged, the ones that you are going to consider later today.

I'll just remind you, ladies and gentlemen, that nowhere in the instructions will you see that the government is required to prove identity theft, because we are not; that we are required to prove fraud was actually committed using the numbers, because we are not. I ask that you keep that in mind.

And I also ask, when you consider Mr. Sutcliffe's intent, which you will do, that you keep in mind the following: When you consider whether the defendant knew what threats were and he intended to threaten, that he has made a great deal out of the Joe Shmoe threat. You remember Joe Shmoe? "I'm going to personally... if you don't take my information down."

He made so much of that Joe Shmoe threat, which you can see in Exhibit 76, and one of his as well, 203 I think it is, that you heard evidence that on the seized computer from his house, he had constructed part of a website. It wasn't posted yet.

Mr. Siebert talked about it. And its hard copy is Exhibit 76. And in that portion of the website that was under construction, he had a whole category called "Threats of the death." Do you remember that? And the "threats" portion linked to the Joe Shmoe threat, "I will kick your..." and the

"death" portion linked back to the threat against Tracy Hall.

"Threats of the death, death threats," no reference to litigation, no reference to anything but pure threats, because he knew what he was doing and he meant to do it.

Thank you. I have nothing further.

THE COURT: Okay. Would our bailiff please step forward.

(Bailiff sworn.)

THE CLERK: Please state your full name for the record.

BAILIFF YOUNG: Robert Young.

THE COURT: Before we adjourn, let me explain what the status of Ms. Hermansen and Ms. Wigglesworth will be. You've been very responsible and commendable for participating for a period that was longer than predicted as alternate jurors.

Now that the initial 12 jurors who were called are still available to complete their responsibilities, it would not be possible or lawful to permit you to participate in deliberations, so you can be excused now, but with this admonition and a couple of qualifications: Sometimes, although it's unusual, people who have previously served as alternates are asked to come back and rejoin the jury, at which point deliberations begin all over again, under certain very unusual circumstances, very, very unlikely.

Until there is a verdict in this case or until the jurors are discharged, I need to instruct you to continue to remember the admonition and not talk about the case with other people.

We will call you. I think the clerk either has, or can get from you, telephone numbers or a way to communicate with you, as a simple courtesy to let you know what the verdict is if a verdict is returned.

If you don't hear from us, there won't be a need for you to come back. But once you are informed of what the verdict is, there are no limitations whatsoever in your ability to discuss the case, the evidence, the arguments and all of that with other people.

It's a little bit of an imposition, but I have to ask you to remember to keep that admonition until you hear from us as to what the verdict is.

Now, I think you should have a right, and I'm giving you the right, to join your fellow jurors at lunch at the court's expense.

I'm instructing all the jurors not to talk about anything to do with the case: The arguments, the evidence, how you are leaning, anything else. Don't start picking a foreperson until you come back from lunch and retire to the jury room. It's at that point that Ms. Wigglesworth and Ms. Hermansen would have to go off on their separate ways.

If either of you or both of you wish to join your fellow jurors at lunch, you are more than welcome to do so.

I want to personally thank you, the alternates, for the devotion that you have shown in carrying out your responsibilities and your oath.

With that, I'll excuse the jurors. You should go back into the jury room. The bailiff will tell you what the arrangements are for lunch.

From here on in, the schedule that you follow, I can adapt to. But what I recommend that you do is start deliberations not later than 9:00, but preferably at 8:30. You seem to have had no difficulty arranging to be here.

If you come for deliberations at 8:30 and you arrive not before 8:00, I can assure you that by 8:00, someone will be here to let you in, assuming that you don't reach a verdict this afternoon. Then you'll have a break for lunch.

During the course of deliberations, if you want to stop talking about the case and just stretch your legs or take a break, that's something jurors typically do. You are entitled to do that.

The day tomorrow, for reasons not related to this case, cannot go past 4:00. So if this jury is still deliberating tomorrow, start deliberations at 8:30 and be prepared to cease deliberations at 4:00.

If the jury has not returned a verdict by the end of

tomorrow, I will tell you what the arrangements will be for next week, but you would be expected to come back on Monday. I'm just giving you advance plan. I'm not sure any of this will be necessary. But once the jury is deliberating, then it would be expected to show up again on Monday.

I want to personally thank the jurors, all of you, for being about as responsible and reliable a jury as I can ever remember. Your work isn't finished. I'll talk to you again at a later stage. But on behalf of the system, I want to thank you for everything that you have displayed so far.

With that, you are excused.

(Jury out.)

THE COURT: I know that you are in the building, Ms. Duarte, and so you are easily accessible.

I'm instructing and requesting the representatives of the marshal service to keep Mr. Sutcliffe here in the building. We will continue today until 4:30. If there is no verdict by then, then have him back here tomorrow, because he needs to be present in case there is a note from the jury or any other development. Please bring Mr. Sutcliffe back tomorrow by 8:00.

Any questions that anybody has?

Mr. Sutcliffe needs to remain in the courtroom while the exhibits are cleared. What that means is, before we send anything to the jury to look at, we've got to make sure we've got the right exhibits that have all been received. That's

something the clerk will go over with you when I leave the bench.

Ms. Duarte.

MS. DUARTE: The matter of the weapon and the ammunition, do you want those to remain in the custody of the case agent?

THE COURT: Yes. I don't want those going back into the jury room.

MS. DUARTE: I didn't think so, but you hadn't mentioned it.

THE COURT: Those will not go back into the jury room.

Any other questions?

All right. Thank you.

There is one other thing. I'm not sure if you've been given it yet, but I printed out -- or caused to be printed out what has been numbered Court's Instruction 27. It would be sent in to the jurors with their jury instructions. It's the part that I recited out of memory, almost verbatim, about notes, communications, and the like.

I'll ask the clerk to show it to each side. If you have no objection, just tell the clerk. And you can keep your copies for yourself and we have copies for the others here.

Okay. Thank you.

(Lunch recess at 11:55 a.m. to 1:30 p.m.,

at which time the jury begins deliberations to 3:38 p.m.)

(Jury out.)

THE COURT: Let the record reflect that the government team is here, Mr. Sutcliffe and Mr. Reed are here as well.

I think you've been informed that I received jury note No. 1, which says that the jury has reached a unanimous verdict. So I'll bring the jury in and take their verdict.

Will either side wish me to poll the jury?

MS. DUARTE: No, Your Honor.

MR. SUTCLIFFE: Yes, Your Honor, please.

THE COURT: The jury will be polled. Let's bring the jurors in.

(Jury in.)

THE COURT: I've received the first note signed by your foreperson, indicating that the jury has reached a unanimous verdict.

Is that indeed the case, Ms. Lewis-Fine?

JUROR LEWIS-FINE: Yes.

THE COURT: I'm going to read -- I'm going to direct you to hand the verdict form to the clerk. Let's do that first.

I'll look it over and then I'll read it aloud. That's called publishing it. And after I do that, I will ask

each of you by name whether this is your verdict. That's the question I'll put to you. And if you voted for the verdict, as I read it aloud, then you would simply say "yes." It's a way of making sure that each of you individually concurs in and have voted for the verdict, whatever it is.

The verdict form seems to be in order and it reads as follows: We, the jury in the above-entitled cause of action, find the Defendant, Steven William Sutcliffe, guilty as charged in Count One, guilty as charged in Count Two, not guilty as charged in Count Three, guilty as charged in Count Four, guilty as charged in Count Five, guilty as charged in Count Six, guilty as charged in Count Seven, guilty as charged in Count Eight, and guilty as charged in Count Nine.

It's properly signed by the foreperson.

All right. Ms. Wanner, is that your verdict?

JUROR WANNER: Yes.

THE COURT: Ms. Vargas?

JUROR VARGAS: Yes.

THE COURT: Ms. Gonzalez?

JUROR GONZALEZ: Yes.

THE COURT: Mr. Ramirez?

JUROR RAMIREZ: Yes.

THE COURT: Ms. Gilmore?

JUROR GILMORE: Yes.

THE COURT: Mr. Dayoan?

JUROR DAYOAN: Yes.

THE COURT: Ms. Medina, is that your verdict?

JUROR MEDINA: Yes.

THE COURT: Ms. Triska?

JUROR TRISKA: Yes.

THE COURT: Mr. Cleek?

JUROR CLEEK: Yes.

THE COURT: Ms. Lewis-Fine?

JUROR LEWIS-FINE: Yes.

THE COURT: Mr. Vinas?

JUROR VINAS: Yes.

THE COURT: Mr. Lee?

JUROR LEE: Yes.

THE COURT: All right. The verdict will be entered as the verdict of the jury and judgment will be entered accordingly.

Let me say the following to you, members of the jury. Again, I want to thank you very much for your service as jurors. You already know how much I respect the way you've gone about your duties. That's not a commentary on the correctness or incorrectness of your verdict, but upon your diligence in carrying out your responsibilities.

The admonition I talked to you about on several occasions no longer is binding. You can discuss the case with others if you choose to, but you don't have to.

You may be requested to discuss aspects of the trial with the parties. You don't have to. You are entitled to, if you want to, and they don't have a legal barrier to seek some kind of information.

I will make myself available in a few minutes for those of you who wish to stay on for just a few more minutes who wish to speak to me about your service on the case.

When I meet with jurors, there are very real limitations on what I can say and what questions I can answer, but many jurors, and I, find it interesting and worthwhile to discuss the nature of jury service and certain aspects of a case that are appropriate to discuss.

So in just a few minutes, I will be back in the jury room. If anyone is there, we can spend a few minutes discussing aspects of your jury service.

Again, I thank you on behalf of my staff and on behalf of the court system for your service. You are now excused and you may retire to the jury room.

(Jury out.)

THE COURT: Everyone may be seated. There are a couple of administrative matters that I want to touch on.

First, let's get a date for sentencing.

THE CLERK: Your Honor, 18 weeks would be Monday, March 22nd, at 3:00 p.m.

THE COURT: Okay. That's when the sentencing will

be, Monday, March 22nd, at 3:00 p.m.

Mr. Reed, I'm not going to relieve you of your duties as standby counsel. I am requesting that you discuss with Mr. Sutcliffe whether he wants you to prepare the appropriate materials, or any materials, for purposes of sentencing. And if he agrees to have you do so, then I think it would be in his interests and I would prefer that you do so.

I will allow you to confer with him about that aspect of the remaining part of the case. And whatever the signal is that Mr. -- or statement is that Mr. Sutcliffe gives to you, just file a one-sentence status report with the -- you don't even have to do that. Just let the clerk know whether you have been engaged to handle the sentencing materials.

Even if his decision is to not request you or authorize you to handle the materials on sentencing, I may do some research and determine whether that's a right that he has. If he has that right, I'll respect it. If not, I may require you to perform additional services for purposes of sentencing.

MR. REED: Yes, Your Honor.

THE COURT: That's the way we'll proceed on that.

Any order about the evidence will be issued probably tomorrow. I have to review a previously entered protective order. I don't want the proceeding to end without publicly mentioning, and I intend to follow this up with a written reference, the splendid and exemplary assistance that various

other agencies and individuals involved in the criminal justice process have provided, very much including the warden and officials at MDC, the marshals, the CSOs who have been important in this case, James Settle, who I see is here, and his entire team of people at the Management Information Service and Space and Facilities. There is an individual who provided civilian clothing for Mr. Sutcliffe. I'm grateful for that assistance.

I just think it's important to acknowledge the singular role that many other people played in the case.

Is there anything that needs to be said by either of the parties?

MS. DUARTE: Does the Court want a proposed for the order it's issuing or is it going to do it on its own?

THE COURT: Concerning the evidence?

MS. DUARTE: Concerning a --

THE COURT: You can submit a proposed order.

MS. DUARTE: Okay.

THE COURT: In fact, that would be helpful.

Can you do that by tomorrow?

MS. DUARTE: I can do that tomorrow. Is there any time certain that you need it tomorrow?

THE COURT: No. The earlier the better because it's a headache to have to maintain custody of the various unusual evidence and equipment that's been used in this case.

MS. DUARTE: I'll get it in tomorrow.

THE COURT: Anything from you, Mr. Sutcliffe?

MR. SUTCLIFFE: Other than I reserve my right to appeal the verdict.

THE COURT: Of course, that's your right.

The judgment won't be entered until sentence is imposed. So your time to file a notice of appeal has not yet begun.

MR. SUTCLIFFE: Correct me if I'm wrong, Your Honor, but can I -- well, I'll discuss it further.

THE COURT: Okay. We're adjourned.

(Proceedings concluded.)

C E R T I F I C A T E

I certify that the foregoing is a true and correct transcript from the stenographic record of the jury trial proceedings in the foregoing matter.

Karen R. Pinn, RPR, CSR 5574
Court Reporter

October 11, 2004
October 11, 2004