

1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF ARIZONA

3
4 Manuel de Jesus Ortega Melendres,)
et al.,)
5)
Plaintiffs,) No. CV 07-2513-PHX-GMS
6)
vs.) Phoenix, Arizona
7) November 12, 2015
Joseph M. Arpaio, et al.,) 9:07 a.m.
8)
Defendants.)
9)

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14 REPORTER'S TRANSCRIPT OF PROCEEDINGS

15 BEFORE THE HONORABLE G. MURRAY SNOW

16 (Evidentiary Hearing Day 19, Pages 4298-4503)

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18 **AMENDED TRANSCRIPT**

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25 Proceedings taken by stenographic court reporter
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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
2090	E-mail chain between Dennis Montgomery to Mike Zullo with a subject line "Judge Snow" dated 2/2/2015 (MELC202222-24)	4437
2256	E-mail from David Webb to 1tick@earthlink.net-PROJECT dated 6/29/2014 (MELC202132)	4415
2258	E-mail from David Webb to "Mike" RE: Work dated 10/30/2014 (MELC202283) 2259 E-mail from David Webb RE:DC dated 11/2/2014 (MELC198252)	4417
2269	E-mail from David Webb to Mike Re: Lawsuit dated 1/22/2015 (MELC200001-03)	4441
2271	E-mail from David Webb to Mike re: Work dated 2/2/2015 (MELC202285-89)	4459
2273	E-mail from David Webb to Mike Re: No Work dated 2/11/2015 (MELC201828)	4438

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
2274	E-mail from David Webb to Mike Re: Arpaio dated 2/27/2015 (MELC202148)	4465
2278	E-mail from David Webb to Mike Re: Place yet dated 3/31/2015 (MELC202249-50)	4465
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2873B	Audio Clip 2 from Audio Mike Zullo on Freedom Friday with Carl Gallups	4467
2960	E-mail chain, last from Mike Zullo to David Webb re Work dated 7/8/2014 (ZULLO_002995)	4416
2964	E-mail chain, last from David Webb to Mike Zullo re Creditors scrutinize ex-billionaire's assets dated 11/4/2014 (ZULLO_002647 - ZULLO_002648)	4438
2965	E-mail chain, last from David Webb to Mike Zullo re Judge dated 11/5/2014 (ZULLO_002742 - ZULLO_002743)	4439
2966	E-mail chain, last from Mike Zullo to David Webb re Sheriff dated 12/9/2014 (ZULLO_002875 - ZULLO_002876)	4344
2967	E-mail chain, last from David Webb to Mike Zullo re Arpaio dated 12/16/2014 (ZULLO_000090 - ZULLO_000094)	4350
2968	E-mail chain, last from Mike Zullo to David Webb re Good Call dated 1/6/2015 (ZULLO_002711)	4360
2969A	Email chain, last from David Webb to Mike Zullo re Mike Flynn dated 1/7/2015 (ZULLO_001764 - ZULLO_001765) REDACTED	4440

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
2970	E-mail chain, last from Mike Zullo to David Webb re Updates dated 1/19/2015 (ZULLO_002947 - ZULLO_002950)	4368
2971	E-mail chain, last from David Webb to Mike Zullo re James Risen dated 1/26/2015 (ZULLO_001520 - ZULLO_001523)	4458
2972	E-mail chain, last from David Webb to Mike Zullo re Arpaio dated 5/22/2015 (ZULLO_000125 - ZULLO_000128)	4466
2977	Audio File (ZULLO_003715)	4471
2978	Audio File (ZULLO_003716)	4469
2979	Audio File (ZULLO_004643)	4419
2980	Audio File (ZULLO_004644)	4481
2981A	Excerpt of PX 2981, Audio File	4487
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2982	Photograph (ZULLO_004649)	4468

P R O C E E D I N G S

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THE COURT: Please be seated.

THE CLERK: This is CV 07-2513, Melendres, et al., v. Arpaio, et al., on for continued evidentiary hearing.

09:07:26

Counsel, please announce your appearances.

MS. WANG: Cecillia Wang of the ACLU for plaintiffs. Good morning, Your Honor.

THE COURT: Good morning.

MR. YOUNG: Good morning, Your Honor. Stanley Young and Michelle Morin, Covington & Burling, for plaintiffs.

09:07:36

THE COURT: Good morning.

MR. POCHODA: Good morning, Your Honor. Dan Pochoda from the ACLU of Arizona for plaintiffs.

THE COURT: Good morning.

09:07:45

MR. KILLEBREW: Good morning, Your Honor. Paul Killebrew, Cynthia Coe, and Maureen Johnston for the United States.

THE COURT: Good morning.

MR. MASTERSON: Good morning, Judge Snow. John Masterson, Joe Popolizio for Sheriff Arpaio and the individual contemnors, and with us is Holly McGee.

09:07:51

THE COURT: Good morning.

MR. WALKER: Good morning, Your Honor. Richard Walker on behalf of Maricopa County.

09:08:00

1 THE COURT: Good morning.

2 MR. McDONALD: Good morning, Your Honor. Mel McDonald
3 making a special appearance for Sheriff Joe Arpaio.

4 THE COURT: Good morning.

5 MR. MURDY: Good morning, Your Honor. Craig Murdy on 09:08:08
6 behalf of Brian Sands.

7 THE COURT: Good morning.

8 MS. IAFRATE: Good morning, Your Honor. Michele
9 Iafrate on behalf of Sheriff Arpaio and the alleged unnamed
10 contemnors. 09:08:19

11 THE COURT: Good morning.

12 I was informed before coming out that the parties
13 wanted a sidebar, is that correct?

14 MS. WANG: Yes, Your Honor.

15 THE COURT: Before we have a sidebar, I gather that -- 09:08:25
16 I've read the motion and the response filed last evening, so I
17 take it that Exhibits 2947 and 2948 are withdrawn by the
18 plaintiffs, is that correct?

19 MR. YOUNG: Yes, Your Honor.

20 THE COURT: All right. And just to make that clear, 09:08:41
21 that's withdrawn in response to the motion filed by the
22 defendants.

23 MR. YOUNG: Correct, Your Honor.

24 THE COURT: All right. Sidebar it is, then.

25 (Bench conference on the record.) 09:08:55

1 MR. MASTERSON: Just briefly, Judge. I got an e-mail
2 from Ms. Wang this morning that they intend to call
3 Lieutenant Sousa in rebuttal. The problem is that
4 Lieutenant Sousa has to leave this morning at 10:45. His
5 wife's having a surgery. Tomorrow he's got his mother-in-law
6 having a surgery, so he's going to be gone tomorrow.

09:09:27

7 So I mentioned that to Ms. Wang this morning, and she
8 said she only has, like, one question for him.

9 MS. WANG: It's going to be probably less than two
10 minutes of testimony.

09:09:43

11 THE COURT: Okay. So we're going to take rebuttal
12 before the rebutted testimony is issued?

13 MR. MASTERSON: No, I don't think -- no, I think it's
14 to rebut testimony that's already come forth --

15 MS. WANG: It is.

09:09:51

16 MR. MASTERSON: -- at least as I understand it.

17 THE COURT: Okay.

18 MR. MASTERSON: But if we can just call him and get
19 him done then that way, we at least got one -- another witness
20 down.

09:10:00

21 THE COURT: Yeah. Well, sounds good to me if nobody
22 has any objection to it. So do we want to call him now before
23 we --

24 MS. WANG: Sure.

25 THE COURT: -- put Mr. Zullo --

09:10:07

1 MS. WANG: -- that makes sense.

2 THE COURT: -- back on the stand?

3 MS. WANG: Yeah.

4 THE COURT: All right.

5 MR. MASTERSON: Judge, I'm just going to ask Mr. Zullo 09:10:13
6 to step outside.

7 THE COURT: Okay. Thank you.

8 (Bench conference concluded.)

9 THE COURT: Lieutenant Sousa, thanks. We're going to
10 take you out of order as a rebuttal witness for the plaintiffs. 09:11:12
11 Unless you'd like to be re-sworn, I'm going to consider you
12 still under oath.

13 Do you understand that you're still under oath?

14 THE WITNESS: Yes, sir.

15 THE COURT: All right. Thank you. 09:11:24

16 MS. WANG: Your Honor, plaintiffs have very brief
17 rebuttal examination for Lieutenant Sousa. May I hand up a
18 previous deposition transcript to him?

19 THE COURT: You may.

20 MS. WANG: Thank you. 09:11:56

21 JOSEPH SOUSA,
22 recalled as a witness herein, having been previously duly
23 sworn, was examined and testified further as follows:

24 DIRECT EXAMINATION

25 BY MS. WANG: 09:12:16

1 Q. Good morning, Lieutenant Sousa.

2 A. Good morning, ma'am.

3 Q. Sir, you're currently still a lieutenant with MCSO,
4 correct?

5 A. Yes, ma'am. 09:12:22

6 Q. And in that capacity you supervise sergeants, correct?

7 A. Yes, ma'am.

8 Q. And in turn, the sergeants are line supervisors for
9 deputies, correct?

10 A. Yes, ma'am. 09:12:31

11 Q. Now, as part of the Melendres litigation injunction, MCSO
12 sergeants are now required to make notes on their supervision
13 of deputies, correct?

14 A. Yes, ma'am.

15 Q. And that is done in an application called BlueTeam,
16 correct? 09:12:44

17 A. Yes, ma'am.

18 Q. And you have discussed with various sergeants at MCSO the
19 process -- the requirement of making supervisor notes in
20 BlueTeam, correct? 09:13:00

21 A. Yes, ma'am.

22 Q. And you have heard MCSO sergeants express resistance to
23 making those supervisor notes on occasion, correct?

24 A. Yes, ma'am.

25 Q. You've heard sergeants say that they're too busy to do it, 09:13:09

1 correct?

2 A. Yes, ma'am.

3 Q. And that they have too many other things to make the
4 supervisor notes in BlueTeam, correct?

5 A. In the beginning, yes, ma'am. 09:13:20

6 Q. All right. And you've heard various sergeants make
7 comments like that, correct?

8 A. Yes, ma'am.

9 MS. WANG: All right. That's all I have for you,
10 Lieutenant. Thank you. 09:13:30

11 MR. MASTERSON: I have nothing.

12 MR. WALKER: No questions, Your Honor.

13 MR. MURDY: No questions, Your Honor.

14 THE COURT: All right. You can step down, Lieutenant.
15 Thank you. 09:13:40

16 I assume, then, we're going to resume with Mr. Zullo?

17 MR. YOUNG: Yes, Your Honor.

18 Your Honor, we were going to play some audio today.

19 We did have transcripts done of the audio, and the audio
20 consists of Exhibits 2977 through 2981. 09:14:20

21 I have the transcripts available and could hand them
22 up to the Court.

23 I will say -- and I could make them available to the
24 witness or witnesses as well.

25 I will say that the transcripts do have many errors in 09:14:43

1 them, not through the fault the court reporters, who did a fine
2 and quick job with these, but just because of the nature of the
3 sound recordings.

4 So I make those available to the Court if the Court
5 wishes to have them, but I do want to express that caveat about 09:15:00
6 the inaccuracies that do occur in them, and obviously, we will
7 rely on the evidence itself.

8 THE COURT: Well, if and when I admit these exhibits,
9 it is the recording themselves that's the exhibit. I don't
10 mind having a look at the transcript, unless any of the parties 09:15:20
11 have an objection to me looking at the transcript, in which
12 case I'm not going to do it.

13 So Mr. Masterson, what's your druthers?

14 MR. MASTERSON: Well, Judge, for one thing, what I'd
15 like to know is, I took a quick glance through some of the 09:15:35
16 transcripts and I note that someone has decided who the
17 speakers are, and I'd like to know who that person is.

18 THE COURT: Yeah, and, in fact, maybe it's just easier
19 if I don't look at the transcript. I mean, we've had one -- I
20 can't remember, we've had two videotapes -- or two audiotapes 09:15:52
21 on which we've identified Sheriff Arpaio or had him identified.

22 I'm not sure we've had anybody else identified on the
23 record, have we?

24 MR. YOUNG: On those audios, no. And in answer to
25 Mr. Masterson's questions, the court reporters did that based 09:16:08

1 on what was said on the transcripts, as I understand it. I
2 certainly did not have any input into that.

3 THE COURT: Okay. So it's your understanding that
4 whoever transcribed them made that determination based on the
5 content of the recordings themselves? 09:16:22

6 MR. YOUNG: That is my belief.

7 MR. MASTERSON: Judge, I'd prefer that the Court
8 didn't look at the transcript.

9 THE COURT: All right. I won't look at them.

10 MICHAEL ZULLO, 09:16:33

11 recalled as a witness herein, having been previously duly
12 sworn, was examined and testified further as follows:

13 DIRECT EXAMINATION CONTINUED

14 BY MR. YOUNG:

15 Q. Good morning, Mr. Zullo. 09:16:40

16 A. Good morning, sir.

17 THE COURT: Mr. Zullo, I understand you asked if
18 you're still under oath and I thank you for clarifying. You
19 are still under oath, sir.

20 THE WITNESS: Thank you, sir. 09:16:48

21 THE COURT: Thank you for seeking the clarification.

22 BY MR. YOUNG:

23 Q. Mr. Zullo, in May 2015 you gave some materials relating to
24 the Seattle investigation to Chief Bill Knight of the Bureau of
25 Internal Oversight, correct? 09:17:07

1 A. Sir, I assert my Fifth Amendment.

2 Q. Let's take a look at Exhibit 2985, which is not in
3 evidence, but I'm going to ask you some questions based on it.

4 On the page that ends in nine three zero, toward the
5 top there's a statement there, feel free to look at it if you
6 want, but my question is: Is it correct that on May 7, 2015,
7 at 1330 hours, you delivered two portable thumb drives to the
8 office of Chief Knight?

09:17:31

9 A. Assert my Fifth, sir.

10 Q. Did you tell Chief Knight that files on the thumb drives
11 were responsive to certain requests made by the monitor
12 regarding the Seattle investigation?

09:17:53

13 A. Assert my Fifth, sir.

14 Q. Let's look at Exhibit 2256 now.

15 THE COURT: Let me ask, I've forgotten: Is 2985 in
16 evidence?

09:18:06

17 MR. YOUNG: It is not, Your Honor. Two nine -- yes,
18 it is not.

19 BY MR. YOUNG:

20 Q. You have Exhibit 2256 on the screen in front of you.
21 That's a June 29, 2014 e-mail that Mr. Montgomery sent to you,
22 correct?

09:18:23

23 A. Assert my Fifth, sir.

24 Q. There's an e-mail address on it, 1tick@earthlink.net.

25 That's your e-mail address, correct?

09:18:42

1 A. Assert my Fifth, sir.

2 Q. Mr. Montgomery forwarded you an e-mail that he had drafted
3 to himself, correct?

4 A. Assert my Fifth, sir.

5 Q. In that e-mail, Mr. Montgomery told you that Sergeant
6 Anglin and others had been trying to shut the project down, is
7 that right?

09:18:59

8 A. Assert my Fifth, sir.

9 Q. And that project is the one that was supposed to produce
10 information on Judge Snow, correct?

09:19:14

11 A. Assert my Fifth, sir.

12 Q. You were told by Mr. Montgomery that Anglin had told
13 Mr. Montgomery not to produce information on Judge Snow, is
14 that right?

15 A. Assert my Fifth, sir.

09:19:28

16 Q. And that there were other people who were criticizing
17 Mr. Montgomery for not producing information on Judge Snow, is
18 that right?

19 A. I assert my Fifth, sir.

20 Q. Mr. Montgomery told you -- well, let me actually ask it
21 this way: You understood that Chief Sheridan had said that he
22 did not want to go in front of Judge Snow and be accused of
23 retaliating against him, is that correct?

09:19:43

24 A. I assert my Fifth.

25 MR. MASTERSON: Objection, foundation.

09:20:08

1 THE COURT: Sustained.

2 BY MR. YOUNG:

3 Q. Did you understand from any source that Chief Sheridan did
4 not want to go in front of Judge Snow and be accused of
5 retaliating against him?

09:20:31

6 A. I assert my Fifth, sir.

7 Q. You had a disagreement with Sergeant Anglin about whether
8 Mr. Montgomery should be working to find information on
9 Judge Snow, correct?

10 A. I assert my Fifth, sir.

09:20:39

11 Q. Sergeant Anglin actually tried to take you off the case, is
12 that right?

13 A. I assert my Fifth, sir.

14 Q. You spoke to Sheriff Arpaio about that, is that correct?

15 A. I assert my Fifth, sir.

09:20:51

16 Q. And then Sheriff Arpaio and Chief Sheridan took Sergeant
17 Anglin off the case and put you back on, correct?

18 A. I assert my Fifth, sir.

19 Q. Did you request that Sergeant Anglin be removed from the
20 case so that Mr. Montgomery would be allowed to continue
21 searching for information about Judge Snow?

09:21:08

22 A. I assert my Fifth, sir.

23 MR. YOUNG: Your Honor, we said this in our written
24 motion. I am going to move for the admission of Exhibit 2256

25 based on the adverse inferences that we believe should be drawn

09:21:30

1 from Mr. Zullo's refusal to testify, and also based on the
2 earlier testimony from Detective Mackiewicz and Sergeant Anglin
3 about the ltick@earthlink.net e-mail and the David Webb e-mail,
4 which is Dennis Montgomery.

5 THE COURT: You're going to move for the admission of 09:21:57
6 2256, you said?

7 MR. YOUNG: I do, Your Honor.

8 THE COURT: All right. I think as I indicated
9 yesterday, and maybe we need to be more precise about time
10 limits, but you did file the motion. I appreciate it. 09:22:08

11 Mr. Masterson, I indicated I was going to give to Mr. Masterson
12 and any other parties who wished to a chance to respond to your
13 written motion, and it seemed to me that part of that, as it
14 relates to the admission -- I guess I want to clarify.

15 There are two parts to that motion. One is, to the 09:22:25
16 extent that you are going to move exhibits, I appreciate you
17 clarifying that in Mr. Zullo's testimony. I'm going to require
18 rather speedy written responses, and we can talk about what
19 amount of time you need if you want to respond, in light of the
20 questions to the admission of the exhibits. 09:22:42

21 I would like to consider -- I guess I would like to
22 consider that separately from any adverse inferences that you
23 might want to assert should be drawn from Mr. Zullo's
24 testimony, if any, apart from the admission of exhibits. That,
25 I think, we can handle in oral argument, or your final oral 09:23:03

1 presentations to the Court after testimony is through.

2 But as it pertains to whether or not I'm going to
3 admit certain exhibits, I would like to rule on that prior to
4 the final oral argument so you know what it is you're arguing
5 about.

09:23:21

6 Does everybody understand what I just said? Because
7 it may not have been the clearest.

8 MR. YOUNG: Yes, Your Honor.

9 MR. MASTERSON: I don't.

10 THE COURT: Okay.

09:23:29

11 MR. MASTERSON: And the part I don't understand is, do
12 you -- are you going to determine all objections to the
13 particular exhibit after written memoranda from the parties?

14 THE COURT: I am. That's my intent.

15 MR. MASTERSON: So you don't want me -- I mean,
16 obviously, I would have a foundational objection here, but I
17 may have a hearsay objection, relevance objection, a 403
18 objection.

09:23:47

19 Do you want to have all those in writing --

20 THE COURT: Well, why don't you make those now. I'll
21 rule on those now.

09:23:59

22 MR. MASTERSON: Okay.

23 THE COURT: Just the adverse inference part.

24 In other words, to the extent -- I'll rule on all your
25 other objections to the extent I can.

09:24:11

1 MR. MASTERSON: Except for foundation.

2 THE COURT: Except for the foundation, and on which --
3 yeah. To the extent that the foundation objection may be
4 influenced by an adverse inference to be drawn by the
5 invocation of the Fifth Amendment.

09:24:26

6 MR. MASTERSON: Okay. Got you.

7 THE COURT: Okay.

8 MR. MASTERSON: Then with respect to this one, I have
9 an objection on relevance, hearsay, 403.

10 THE COURT: That is 2256?

09:24:35

11 MR. MASTERSON: No, wait. Isn't this 2985?

12 Sorry, Judge. You're right.

13 THE COURT: Okay. Those objections are overruled.
14 Relevance, hearsay, and 403 are overruled.

15 MR. MASTERSON: And foundation, separate and apart
16 from what will be decided later.

09:25:01

17 THE COURT: Foundation, separate and apart from what
18 will be decided later, is overruled, and based on the testimony
19 that we've had about what Mr. Zullo's e-mail address was.

20 Mr. Walker.

09:25:30

21 MR. WALKER: Yes, Your Honor. Thank you.

22 I just want a little bit of clarification to be sure I
23 understand correctly.

24 So what you're looking for in the near term is
25 briefing on adverse inferences going to the admissibility of

09:25:40

1 the document.

2 THE COURT: Yes. Let me just restate it and see if
3 that helps you. And we need to set a deadline.

4 Mr. Young, during his testimony today, is going to
5 move certain exhibits. You're going to make all the objections
6 you have to those exhibits. 09:25:57

7 With respect to any foundational objections, or with
8 respect to any argument that Mr. Young might make, the
9 foundation is provided by an adverse inference coming from the
10 invocation of the Fifth Amendment. I want that issue briefed. 09:26:14
11 And I'm going to hold in abeyance my final admission of any
12 documents allowing any party who wants to brief that question
13 to brief it in response to Mr. Young's motion already on file.

14 But I don't intend to give you a very long -- a super
15 long time to file it. I want to rule on whether or not I'm
16 going to admit exhibits prior to having you make your final
17 oral presentations so you know what exhibits have been
18 introduced and what exhibits I'm going to consider. 09:26:32

19 That does not prevent you at that time from arguing
20 that I should or should not draw any other adverse inferences,
21 assuming that I've drawn any up to that point relating from his
22 testimony. 09:26:49

23 Does that help clarify it for you?

24 MR. WALKER: Yes. Thank you, Your Honor.

25 THE COURT: All right. 09:27:02

1 Are you all right and understand what's going on here,
2 Mr. Murdy?

3 MR. MURDY: I do, Your Honor.

4 THE COURT: How about the Department of Justice?

5 MR. KILLEBREW: Yes, Your Honor.

09:27:11

6 THE COURT: All right. How much time do you want to
7 get this -- I realize that you're going to have to have the
8 questions, the specific questions, to be able to argue about
9 adverse inferences as it pertains to the admission --
10 admissibility of even evidentiary exhibits, so you can't have
11 that till you get the transcript. I understand everybody's got
12 dailies, so you'll get the transcript tomorrow.

09:27:19

13 How much time do the parties want to file their
14 response to Mr. Young's motion?

15 MR. MASTERSON: A week, Judge?

09:27:36

16 THE COURT: Well, let me ask this. I see -- and I'm
17 glad to see that Chief Deputy Sheridan is able to be with us.
18 I assume we're going to have his testimony after we're through
19 with Mr. Zullo's?

20 MR. MASTERSON: Not necessarily.

09:27:54

21 MR. YOUNG: Actually, Your Honor, we do plan to recall
22 Sheriff Arpaio to the stand, as I mentioned much earlier in the
23 hearing. Based on subsequent discovery which was delivered
24 late from Mr. Zullo, we do now believe that we need to call
25 Sheriff Arpaio back to the stand.

09:28:11

1 THE COURT: All right.

2 MR. YOUNG: So we'll have him after Mr. Zullo.

3 THE COURT: All right. And then we'll have, maybe,
4 Chief Deputy Sheridan, maybe not Chief Deputy Sheridan?

5 MR. MASTERSON: That is correct.

09:28:19

6 THE COURT: Okay.

7 MR. MASTERSON: And I brought Ms. Wang up to date on
8 the status of that.

9 THE COURT: All right. Do we have any other witnesses
10 other than possibly Chief Deputy Sheridan?

09:28:26

11 MR. MASTERSON: We do not.

12 THE COURT: How about the County?

13 MR. WALKER: Yes, Your Honor. Cynthia Goelz will be
14 called.

15 THE COURT: All right. Do we think we can accomplish
16 that today and tomorrow?

09:28:34

17 MR. YOUNG: Yes, from the plaintiffs' standpoint.

18 MR. MASTERSON: Well, I -- I don't know how long the
19 plaintiffs are going to take --

20 THE COURT: Okay.

09:28:53

21 MR. MASTERSON: -- with their examinations.

22 THE COURT: How long do you anticipate your testimony
23 taking?

24 MR. MASTERSON: With Sheriff Arpaio?

25 THE COURT: No, with Chief Deputy Sheridan.

09:28:59

1 MR. MASTERSON: Right now, I do not anticipate calling
2 Chief Deputy Sheridan.

3 THE COURT: Okay. Well, I'll just say I don't intend
4 to allow plaintiffs to ask any questions of Sheriff Arpaio
5 except those that relate to newly discovered evidence since the 09:29:09
6 time he last testified, which hasn't been that long ago. So
7 I -- I mean, I don't know the extent to which there is such
8 evidence.

9 How long do you anticipate having Sheriff Arpaio on
10 the stand? 09:29:22

11 MR. YOUNG: Well, part of that depends on what happens
12 with Mr. Zullo. We do have some audio that would probably take
13 perhaps an hour and a half.

14 THE COURT: All right. Well, I guess --

15 MR. YOUNG: And there are some other questions, so 09:29:38
16 maybe two hours. Two hours.

17 THE COURT: All right. I guess we'll just have to see
18 where we're going. The reason why I asked is, I have next
19 Friday open, and I kind of thought we could schedule the
20 oral -- final oral presentations next Friday if we don't need 09:29:49
21 that for testimony.

22 So I would like to have you know what exhibits I'm
23 going to admit and what exhibits I'm not going to admit before
24 next Friday, so I'm thinking more like Wednesday.

25 MR. MASTERSON: Here's the problem I have, Judge. And 09:30:06

1 if I understood you correctly -- well, is the only briefing
2 we're going to be doing with respect to inferences, whether
3 it's next Wednesday or a week, is that going to be with respect
4 to the admission of documents based on the inference?

5 THE COURT: Yes.

09:30:25

6 MR. MASTERSON: So then I assume then they will -- my
7 assumption is plaintiffs will also be moving the Court for
8 inferences related to testimony, or questions asked of
9 Mr. Zullo for which he invokes his Fifth Amendment privilege.

10 THE COURT: I presume they might.

09:30:46

11 I don't know whether you intend to do that or not,
12 Mr. Young.

13 MR. YOUNG: We do. And we will do that in argument.

14 THE COURT: That would be my preference. Do you have
15 a preference to do it in writing?

09:30:55

16 MR. MASTERSON: I do, yes.

17 THE COURT: Well, I'll tell you what. You can respond
18 in writing, if you wish. And if you want to make the motion in
19 writing, I'll let you do that, but I'm not going to require you
20 to do that. If you just want to make the motions as part of
21 your oral presentation, I'll let you respond in writing. I'm
22 not going to give you a great deal of time to do that, but it
23 is going to take me some time to do findings of fact and
24 conclusions of law in this case.

09:31:12

25 Why don't we continue with the testimony of Mr. Zullo,

09:31:25

1 and why don't we handle this scheduling stuff when we're not
2 having him here sitting to us -- or listening to us do all
3 this.

4 BY MR. YOUNG:

5 Q. Mr. Zullo, let's take a look at now at Exhibit 2960. 09:31:42

6 That's dated about a week later on July 8, 2014, a little more
7 than a week. That's an e-mail exchange that you had with
8 Mr. Montgomery on July 8 at 8:55 a.m. is his e-mail to you, and
9 9:06 a.m. is your e-mail back to him, correct?

10 A. I assert the Fifth, sir. 09:32:11

11 Q. And that's part of the discussion that you were having with
12 Mr. Montgomery about Sergeant Anglin telling Mr. Montgomery
13 that Chief Sheridan didn't want Mr. Montgomery working to get
14 information on Judge Snow, correct?

15 A. I assert the Fifth, sir. 09:32:28

16 Q. Okay. In fact, Mr. Montgomery told you that he had, in
17 response what Sergeant Anglin told him, dumped the information
18 he had accumulated about Judge Snow.

19 MR. MASTERSON: Objection, foundation, hearsay.

20 MR. YOUNG: Just asking about what he heard from 09:32:48

21 Mr. Montgomery; it's not for the truth of the matter asserted.

22 MR. MASTERSON: What's it for, then?

23 THE COURT: Give me one second.

24 (Pause in proceedings.)

25 THE COURT: Well, I'm not sure it matters if it is for 09:33:25

1 the truth of the matter asserted. The objection's overruled.

2 THE WITNESS: Sir, could you repeat your question?

3 MR. YOUNG: Yeah. You -- actually, could we have the
4 question read back?

5 THE WITNESS: I'm going to take the Fifth, anyway,
6 so -- if it's too much trouble.

09:33:43

7 BY MR. YOUNG:

8 Q. Well, Mr. Zullo, you were concerned when you heard from
9 Mr. Montgomery that he had dumped the information relating to
10 Judge Snow, correct?

09:33:55

11 A. I assert the Fifth, sir.

12 Q. Now, you did understand that Mr. Montgomery was in the
13 process of redoing the original work in order to obtain the
14 information about Judge Snow that he had dumped in response to
15 what Sergeant Anglin told him, correct?

09:34:11

16 MR. MASTERSON: Objection, foundation.

17 THE COURT: Gary, would you reread that question,
18 please.

19 (The question was read by the court reporter.)

20 THE COURT: Overruled.

09:34:43

21 THE WITNESS: I assert the Fifth, sir.

22 BY MR. YOUNG:

23 Q. The same is true with respect to the information relating
24 to the Department of Justice, Lanny Breuer, and Eric Holder,
25 right? You were concerned that Sergeant Anglin had told

09:34:59

1 Mr. Montgomery to stop pursuing that information, correct?

2 A. I assert the Fifth, sir.

3 Q. In response to hearing that information, you asked
4 Mr. Montgomery when Sergeant Anglin told Mr. Montgomery to dump
5 that information and stop pursuing that information, is that
6 right? 09:35:23

7 A. I assert the Fifth, sir.

8 Q. You also asked whether Brian Mackiewicz was present when
9 Sergeant Anglin told this to Mr. Montgomery, is that right?

10 A. I assert the Fifth, sir. 09:35:35

11 Q. At this time, July 8, 2014, your desire was to have
12 Mr. Montgomery continue to search for information about
13 Judge Snow, the Department of Justice, Lanny Breuer, and Eric
14 Holder, correct?

15 A. I assert the Fifth, sir. 09:35:56

16 Q. You don't have any reason to doubt that this is an e-mail
17 that you sent and received from Mr. Montgomery during the
18 course of your work on the Seattle investigation, correct?

19 A. I assert the Fifth, sir.

20 MR. YOUNG: Okay. Your Honor, I can do this with each 09:36:20
21 of the documents. I do move for the admission of Exhibit 2960.

22 MR. MASTERSON: Objection, foundation, hearsay,
23 relevance, 403.

24 THE COURT: The latter three objections are overruled.

25 And I would like you to make a motion for each 09:36:37

1 exhibit, even though I'm going to reserve on the foundational
2 grounds, because that will give all parties a chance to make
3 any other objections that they want to make and I can rule on
4 those objections at this time, which will focus the remainder
5 of the briefing.

09:36:52

6 MR. YOUNG: Understood, Your Honor.

7 Your Honor, I'm going to ask that a video -- an audio,
8 rather, be played. It's Exhibit 2979.

9 I'm going to ask you to listen to it, Mr. Zullo. It's
10 about 11 minutes long. And I'm going to ask you in particular
11 about some references at about a minute 30 and at about 8
12 minutes and 30 seconds. And my question is going to be whether
13 those are references to Judge Snow.

09:37:19

14 So Mr. Klein, could you play Exhibit 29 --

15 THE COURT: Let me just ask before it's played. Is
16 there going to be any objection if I do not request the court
17 reporter to try to transcribe the text of the -- the text of
18 the recording? Or are you going to request that he do that?

09:37:42

19 If so, you may come to realize, you're the one that
20 said you've already had difficulty getting an accurate
21 transcript from whoever you hired to do the transcript. I'm
22 not sure that you -- I'm not sure whether it makes any sense to
23 ask my court reporter to do it on the fly just from listening.

09:38:01

24 Are you going to request that? If you're going to
25 request that, you're going to have to take whatever he can give

09:38:15

1 you.

2 MR. YOUNG: Well, I understand that, Your Honor, and
3 it seems to me that it's better to have what he can provide,
4 what he can do, than -- than not --

5 THE COURT: All right.

09:38:30

6 MR. YOUNG: -- have anything.

7 THE COURT: Let just consult with him for a second,
8 please, before we play the exhibit.

9 MR. YOUNG: Sure.

10 (Off-the-record discussion between the Court and the
11 court reporter.)

09:38:51

12 THE COURT: All right. Mr. Masterson, did you have
13 anything you wanted to say? You were just reaching for the
14 mike. I thought you were --

15 MR. MASTERSON: I was actually just reaching for the
16 water.

09:38:57

17 THE COURT: Oh, sorry.

18 All right. Mr. Walker?

19 MR. WALKER: Yes, Your Honor, just a question, and
20 that is I presume the court reporter's not going to be in a
21 position to draw conclusions in terms of attribution who the
22 speakers are, is that --

09:39:06

23 THE COURT: I don't see how he can be. So he's just
24 going to put "speaker," and I don't think he's going to

25 indicate who the speaker is, or if it's a different speaker, or

09:39:20

1 anybody else.

2 It seems to me that's one issue, and the other is,
3 you're just going to get what you get. And I will consider the
4 recordings as the evidence if they are admitted into evidence,
5 and that will be based on who and what you may be able to
6 identify based on this or other testimony.

09:39:37

7 MR. YOUNG: Well, given that, Your Honor, and if Your
8 Honor will be, as I suspect Your Honor will, be able simply to
9 listen to the recordings, then because if those do come in
10 evidence then perhaps it will not be necessary to have the
11 court reporter transcribe.

09:39:58

12 And there may be particular points when I will ask
13 questions of the witness, and obviously those will be based in
14 part on what at least I hear in the recordings, and those will
15 be transcribed, so perhaps we can have Mr. Moll --

09:40:15

16 THE COURT: I'll say that if you interrupt the
17 recording --

18 MR. YOUNG: Yes.

19 THE COURT: -- I'll have the court reporter write down
20 whatever you say when you interrupt the recording and ask a
21 question based upon it. All right?

09:40:25

22 MR. YOUNG: Thank you, Your Honor.

23 THE COURT: Then are we all right if the court
24 reporter does not otherwise attempt to transcribe the --
25 whatever is on the recording?

09:40:35

1 MR. MASTERSON: I have no objection to that.

2 MR. WALKER: No objection, Your Honor.

3 MR. MURDY: No objection, Your Honor.

4 THE COURT: All right.

5 MR. YOUNG: All right. Let's at least start the
6 recording of -- and that's Exhibit 2979. I may stop it at a
7 certain point in order to ask a question about who the voices
8 are.

09:40:46

9 MR. KLEIN: 2980?

10 MR. YOUNG: 2979. No, I'm actually going to go with
11 2979 first.

09:41:02

12 (Audio clip played.)

13 MR. YOUNG: Stop it there.

14 (Audio clip stopped.)

15 BY MR. YOUNG:

09:42:00

16 Q. Mr. Zullo, we just heard someone say, quote, They gave him
17 cash to go to Lockheed, end quote.

18 That's you, correct?

19 A. Take the Fifth, sir.

20 MR. YOUNG: Let's resume.

09:42:15

21 (Audio clip played.)

22 (Audio clip stopped.)

23 BY MR. YOUNG:

24 Q. Mr. Zullo, there was someone on the recording just now who
25 asked: Why would they tell you to slow it down?

09:43:27

1 That's you asking that question, correct?

2 A. Take the Fifth, sir.

3 Q. Then there was someone in response who said: Well, it's
4 because the time that they were asking at that time, I'm doing
5 Snow stuff. That is Mr. Montgomery, correct?

09:43:45

6 A. Take the Fifth, sir.

7 MR. MASTERSON: Objection. Your Honor, I object to
8 Mr. Young guessing or identifying at the identity of persons on
9 there with respect to his questions.

10 THE COURT: Overruled.

09:44:01

11 BY MR. YOUNG:

12 Q. And then we heard a response to that which is, quote, son
13 of a bitch, end quote.

14 That was you, correct?

15 A. Take the Fifth, sir.

09:44:13

16 MR. YOUNG: All right. Let's continue with the
17 recording.

18 (Audio clip played.)

19 (Audio clip stopped.)

20 BY MR. YOUNG:

09:44:33

21 Q. Now, you were talking to Mr. Montgomery in this recording
22 about information, or stuff, related to Judge Snow, correct?

23 A. Take the Fifth, sir.

24 Q. Did you make this recording of a conversation between you
25 and Mr. Montgomery during the course of your work on the

09:44:54

1 Seattle investigation?

2 A. Take the Fifth, sir.

3 Q. This was a recording that you made on either a cell phone
4 or some other recording device, correct?

5 A. Take the Fifth, sir.

09:45:07

6 MR. YOUNG: All right. Let's continue with the
7 recording.

8 (Audio clip played.)

9 (Audio clip stopped.)

10 BY MR. YOUNG:

09:47:15

11 Q. There was a reference there to the month being April.

12 This recording was made by you in April 2014, correct?

13 A. Take the Fifth, sir.

14 Q. This was at a time where you were having some dispute over
15 whether Mr. Montgomery ought to be allowed to continue
16 searching for information about Judge Snow, correct?

09:47:30

17 A. Take the Fifth, sir.

18 MR. YOUNG: Let's continue.

19 (Audio clip played.)

20 (Audio clip stopped.)

09:48:16

21 BY MR. YOUNG:

22 Q. So Mr. Zullo, you were talking to Mr. Montgomery about how
23 you found out about Brian Mackiewicz and Travis Anglin telling
24 Mr. Montgomery to stop investigating Judge Snow, and you found
25 it out through Dennis Montgomery's daughter, is that right?

09:48:36

1 A. I'm taking the Fifth, sir.

2 Q. And you were expressing to Mr. Montgomery amazement that
3 you had found out in that way, and Mr. Montgomery responded to
4 you that Detective Mackiewicz talked a lot to your daughter --

5 A. I am taking the Fifth, sir.

09:48:55

6 Q. -- or his daughter, is that right?

7 MR. MASTERSON: Object. Objection, hearsay.

8 THE COURT: Overruled.

9 THE WITNESS: Taking the Fifth, sir.

10 MR. YOUNG: Let's continue.

09:49:10

11 (Audio clip played.)

12 (Audio clip stopped.)

13 BY MR. YOUNG:

14 Q. Now, you just referred to talking to Joe on Wednesday in
15 that recording. That was Sheriff Arpaio, correct?

09:49:55

16 A. Take the Fifth, sir.

17 Q. Okay. You were planning to talk to Sheriff Arpaio about
18 this issue of whether Mr. Montgomery would be allowed to
19 continue with his work, is that right?

20 A. Take the Fifth.

09:50:07

21 Q. You also referred in the conversation that we just heard
22 right now to Klayman. That's Larry Klayman, correct?

23 A. Take the Fifth, sir.

24 (Audio clip played.)

25 (Audio clip stopped.)

09:51:38

1 BY MR. YOUNG:

2 Q. The Tim that's referred to there, that's Tim Blixseth, is
3 that correct?

4 A. Assert the Fifth, sir.

5 Q. He was having some litigation issues at that time, is that
6 right?

7 A. Assert the Fifth, sir.

8 MR. YOUNG: Let's continue with the recording.

9 (Audio clip played.)

10 (Audio clip stopped.)

11 BY MR. YOUNG:

12 Q. Now, you were talking to Mr. Montgomery at this point in
13 the conversation about the kind of information, whether it be
14 phone records, e-mails, financial data, as well as the
15 quantity, you know, a thousand versus 20 million, is that
16 right?

17 A. Taking the Fifth, sir.

18 Q. Mr. Montgomery was trying to explain to you why it couldn't
19 be done quickly the way you wanted it, is that right?

20 MR. MASTERSON: Objection, foundation.

21 THE WITNESS: Taking the Fifth, sir.

22 THE COURT: Wait a minute. Let me rule on that.

23 (Pause in proceedings.)

24 THE COURT: Sustained.

25 MR. YOUNG: Let's continue with the -- actually, if we

09:51:47

09:52:43

09:52:57

09:53:11

09:53:35

1 could back up a few seconds and then continue.

2 (Audio clip played.)

3 (Audio clip stopped.)

4 BY MR. YOUNG:

5 Q. So you would hear from Mr. Montgomery that his work was
6 going slowly in part because of his health problems, correct?

09:54:50

7 A. Taking the Fifth, sir.

8 Q. And Mr. Montgomery threatened to go to Sheriff Arpaio and
9 to cut off Carl Cameron, is that right?

10 A. Taking the Fifth, sir.

09:55:11

11 Q. Carl Cameron was a Fox News network journalist who had been
12 talking to Mr. Montgomery and who, at least at one point, was
13 thinking about running a story about what Mr. Montgomery was
14 doing, correct?

15 MR. MASTERSON: Objection, relevance, foundation.

09:55:28

16 THE COURT: If you know the answer -- you know the
17 answer to the question, you may answer it.

18 THE WITNESS: Could you state the question again,
19 please?

20 I want to clarify, Judge. Are you telling me that I
21 can answer this question and not --

09:55:47

22 THE COURT: No, I'm just -- I'm ruling on the
23 objection.

24 THE WITNESS: Oh, I'm sorry.

25 THE COURT: I'm not directing you --

09:55:51

1 THE WITNESS: You're not directing? Okay. Don't even
2 worry about it. Taking the Fifth.

3 MR. YOUNG: We're going to continue with the recording
4 now, and I'm going to ask you whether the references about for
5 getting someone and hammering someone are references to Judge
6 Snow. So please listen to this, Mr. Zullo.

09:56:04

7 (Audio clip played.)

8 (Audio clip stopped.)

9 BY MR. YOUNG:

10 Q. Mr. Zullo, you were talking to Mr. Montgomery about someone
11 telling Mr. Montgomery that he should forget about Judge Snow,
12 correct?

09:56:51

13 A. Taking the Fifth, sir.

14 Q. And the reference to "hammer," when Mr. Montgomery says,
15 "He's the one guy you can hammer with," and I'm not saying
16 everything that he said, you understood that to be a reference
17 to Judge Snow, correct?

09:57:17

18 A. Taking the Fifth, sir.

19 MR. YOUNG: Let's continue.

20 (Audio clip played.)

09:57:32

21 (Audio clip stopped.)

22 BY MR. YOUNG:

23 Q. So you told Mr. Montgomery that contrary to what
24 Detective Mackiewicz had said, Sheriff Arpaio, Joe, had not
25 thrown you out over this issue, is that correct?

09:58:35

1 A. Taking the Fifth, sir.

2 Q. And then Mr. Montgomery went on to discuss a phone
3 conversation that he had with Sheriff Arpaio when he took the
4 phone away from Detective Mackiewicz during a call that
5 Detective Mackiewicz was having with Sheriff Arpaio, is that
6 right? 09:58:54

7 A. Taking the Fifth, sir.

8 (Audio clip played.)

9 (Audio clip stopped.)

10 MR. YOUNG: Your Honor, I move for the admission of 10:00:21
11 Exhibit 2979.

12 MR. MASTERSON: Objection, foundation, relevance,
13 hearsay, 805, 403.

14 THE COURT: Relevance is overruled. Hearsay is
15 overruled. 403 is overruled. 805 I am taking under 10:00:44
16 advisement. There may well be hearsay within hearsay. I can't
17 really tell that until I can identify who the speakers are.

18 So I'm taking that under advisement, along with the
19 foundation objection.

20 MR. YOUNG: Your Honor, will we have a chance to argue 10:01:18
21 that point?

22 THE COURT: You will.

23 MR. YOUNG: Well, let me simply say Rule 801(d)(2).

24 THE COURT: 801(d)(2)?

25 MR. YOUNG: As to both participants -- 10:01:34

1 THE COURT: Right.

2 MR. YOUNG: -- in that conversation.

3 THE COURT: Except for I have to know who the
4 participants are. And that was the basis for my statement to
5 Mr. Masterson. Unless I know that the participants were
6 involved in the Seattle operation, I can't determine whether or
7 not they're agents of the defendant.

10:01:45

8 MR. MASTERSON: I also don't -- I don't want to
9 testify and try to identify anyone, so I'm not going to, but it
10 also sounded to me like there were more than two people
11 recorded.

10:02:00

12 THE COURT: Yeah. And that's going to pose an
13 interesting question, which I will address with the parties at
14 a later date.

15 BY MR. YOUNG:

10:02:21

16 Q. There's a location in that tape where you said, "My God,
17 Dennis," in response to something he said, is that right?

18 A. Taking the Fifth, sir.

19 Q. Wasn't that Dennis Montgomery?

20 A. Taking the Fifth, sir.

10:02:37

21 Q. You refer to Sheriff Arpaio occasionally as "the boss,"
22 correct?

23 A. Taking the Fifth, sir.

24 Q. That's who you're talking about when you use that term in
25 your discussion with Mr. Montgomery, correct?

10:02:58

1 A. Taking the Fifth, sir.

2 Q. Let's go on now to Exhibit 2258.

3 Actually, before we do that, I have another audio to
4 play. Apologies to Mr. Klein for skipping around.

5 It's Exhibit 2980. This is about 10 and a half
6 minutes long, but we'll just play the first couple of minutes
7 of it. 10:03:37

8 And Mr. Zullo, I'm going to ask you whether you can
9 identify that as the transcription of a telephone call that you
10 made to Mr. Montgomery. So let's start with 2980. 10:03:56

11 (Audio clip played.)

12 (Audio clip stopped.)

13 BY MR. YOUNG:

14 Q. So that's you talking to Mr. Montgomery, correct,
15 Mr. Zullo? 10:05:26

16 A. Taking the Fifth, sir.

17 Q. Okay. Mr. Montgomery was on a telephone, on the telephone,
18 and you were recording from wherever you were sitting at the
19 time, is that right?

20 A. Taking the Fifth, sir. 10:05:38

21 Q. And then you and Mr. Montgomery were talking about
22 something to the effect that's -- that "Sheridan said to go do
23 it, but they can't be involved in it," is that correct?

24 A. Taking the Fifth, sir.

25 Q. There was something that you were working on with 10:05:54

1 Mr. Montgomery that Sheridan -- that is, Chief Deputy
2 Sheridan -- said you should do, but that he, and maybe others,
3 can't be involved in it, is that right?

4 A. Taking the Fifth.

5 MR. MASTERSON: Objection, foundation. 10:06:11

6 THE COURT: Overruled. Except to the extent that
7 you've otherwise preserved.

8 MR. YOUNG: Your Honor, I'm not going to play all the
9 rest of it, but I will move for the admission of Exhibit 2980.

10 MR. MASTERSON: Well, I'm going to object to 10:06:37
11 foundation, relevance, hearsay, 805, and 403 on the portion
12 that I heard, and reserve any other objections to the portion I
13 did not hear. And 805.

14 THE COURT: Well, the 805, my ruling's going to be the
15 same as before. The other rulings are the same as before. 10:07:01

16 So I'm going to overrule -- I'm going to overrule
17 foundation, except to the extent you've preserved it. Overrule
18 relevancy, and overrule 403. Did you make that one?

19 MR. MASTERSON: Yes.

20 THE COURT: Okay. 10:07:17

21 BY MR. YOUNG:

22 Q. Now let's go to Exhibit 2258, which is an October 30, 2014
23 e-mail.

24 MR. YOUNG: Well, yeah, we don't need to publish it,
25 but I would like to have it on the screen so that the witness 10:07:40

1 can look at it.

2 BY MR. YOUNG:

3 Q. Exhibit 2958 is an e-mail exchange that you had with
4 Mr. Montgomery on October 30, 2014, correct?

5 A. Taking the Fifth, sir. 10:07:58

6 Q. You have no questions about the genuineness of this e-mail,
7 correct?

8 A. Taking the Fifth, sir.

9 Q. In that e-mail string, at 11:35 a.m. Mr. Montgomery refers
10 to some work that he regrets that you will be unable to finish,
11 to work together to finish, correct? 10:08:11

12 A. Taking the Fifth, sir.

13 Q. Okay. And then you disagreed with him, is that right?

14 A. Taking the Fifth, sir.

15 Q. And then Mr. Montgomery told you that he could see that the
16 sheriff was being pounded by the Court. You understood that to
17 be this Court and Judge Snow, correct? 10:08:27

18 A. Taking the Fifth, sir.

19 Q. And then Mr. Montgomery told you that someone should have
20 let him help finish the work, is that right? 10:08:50

21 A. Taking the Fifth, sir.

22 Q. That work related to Judge Snow, correct?

23 A. Taking the Fifth, sir.

24 MR. YOUNG: Your Honor, I move for the admission of
25 Exhibit 2258. 10:09:03

1 MR. MASTERSON: Objection, foundation, hearsay,
2 relevance, 403.

3 THE COURT: Overruled. Except with respect to the
4 preserved objection.

5 BY MR. YOUNG:

10:09:38

6 Q. Let's now go to Exhibit 2964. The next exhibit is at 2964.
7 It's a November 4, 2014 e-mail. This is an e-mail string you
8 had that date with Mr. Montgomery, correct, Mr. Zullo?

9 A. Taking the Fifth, sir.

10 Q. In your e-mail to Mr. Montgomery, with the time stamp

10:09:58

11 3:41 p.m., you refer to some software that you want

12 Mr. Zullo -- Mr. Montgomery to get you, correct?

13 A. Taking the Fifth, sir.

14 Q. You said -- actually, you had on that day, November 4,
15 2014, a two-hour meeting with Sheriff Arpaio as to which the
16 topic was the work that you were doing with Mr. Montgomery,
17 correct?

10:10:24

18 A. Taking the Fifth, sir.

19 Q. Sheriff Arpaio told you on that day, November 4, 2014, to
20 get -- to have Mr. Montgomery get him -- get you -- the

10:10:45

21 software, and that Mr. Montgomery will keep being paid, is that
22 right? You received that instruction from Sheriff Arpaio on
23 that date, correct?

24 A. Taking the Fifth, sir.

25 Q. Do you have any reason to doubt the authenticity of the

10:11:06

1 exhibit, 2964?

2 A. Taking the Fifth, sir.

3 MR. YOUNG: Your Honor, I move for the admission of
4 that exhibit.

5 MR. MASTERSON: Objection, foundation, relevance,
6 hearsay, 805, 403. 10:11:22

7 THE COURT: The objections are overruled.

8 MR. YOUNG: Let's go to Exhibit 2965.

9 And Your Honor, my understanding, you've overruled the
10 objections that were just stated on the record here, but as
11 with all these exhibits that Mr. Zullo's refusing to testify as
12 to, the motion to admit them remains pending, pending the -- 10:11:57

13 THE COURT: Yes, I just don't want to keep saying it
14 every time, but you have a continuing -- I'm not going to admit
15 any exhibits at this point pending my determination as to the
16 adverse invocation for foundation. I am ruling on the other
17 objections. 10:12:17

18 BY MR. YOUNG:

19 Q. Looking at Exhibit 2965, that's an e-mail the next day that
20 you had with Mr. Montgomery, correct, Mr. Zullo? 10:12:36

21 A. Taking the Fifth, sir.

22 Q. Okay. You have no reason to doubt the authenticity of this
23 November 5, 2014 e-mail exchange that you had with
24 Mr. Montgomery, correct?

25 A. Taking the Fifth, sir. 10:12:52

1 Q. On the second page of that exhibit, in the middle there's a
2 12:28 November 5, 2014 e-mail in which you indicate that you're
3 going to speak to the Sheriff Arpaio at 4 p.m. that day.

4 You did speak with the sheriff that afternoon,
5 correct?

10:13:15

6 A. Taking the Fifth, sir.

7 Q. And that was about the software that you were discussing
8 with Mr. Montgomery that you wanted him to supply, is that
9 correct?

10 A. Taking the Fifth, sir.

10:13:28

11 Q. Then up above at the top of that page in your 1:02 p.m.
12 e-mail, you told Mr. Montgomery that you needed verification of
13 what he was doing, is that right?

14 A. Taking the Fifth, sir.

15 Q. Then going back to the first page at 2:40 p.m., about in
16 the middle of the page, you told Mr. Montgomery that you're not
17 going to discuss money with him without a verification, is that
18 right?

10:13:43

19 A. Taking the Fifth, sir.

20 Q. In early November 2014 you wanted Mr. Montgomery to provide
21 something to allow you to conclude that the information that
22 he'd previously provided was accurate, is that correct, sir?

10:14:02

23 A. Taking the Fifth, sir.

24 MR. YOUNG: Your Honor, I move for the admission of
25 2965.

10:14:23

1 MR. MASTERSON: Objection, foundation, relevance,
2 hearsay, 403.

3 THE COURT: Overruled.

4 BY MR. YOUNG:

5 Q. Let's go to Exhibit 2966.

10:14:36

6 2966, Mr. Zullo, is a December 9, 2014 e-mail exchange
7 that you had with Mr. Montgomery, correct?

8 A. Taking the Fifth, sir.

9 Q. This e-mail string is authentic, correct?

10 A. Taking the Fifth, sir.

10:14:58

11 MR. YOUNG: Your Honor, I move for the admission of
12 Exhibit 2966.

13 MR. MASTERSON: Just one second, Judge.

14 THE COURT: Sure.

15 MR. MASTERSON: No objection.

10:15:21

16 MR. WALKER: No objection.

17 THE COURT: Is there no objection even as to the Fifth
18 Amendment?

19 MR. MASTERSON: Even as to the Fifth Amendment.

20 THE COURT: All right. So this is 2966? 2966 is
21 admitted.

10:15:32

22 (Exhibit No. 2966 is admitted into evidence.)

23 MR. YOUNG: Well, maybe we can publish that exhibit.

24 THE COURT: Is that 2966?

25 MR. YOUNG: Yes, Your Honor.

10:15:49

1 THE COURT: 2966 is admitted.

2 BY MR. YOUNG:

3 Q. So going to the bottom of the page --

4 MR. YOUNG: And I suppose we can publish this exhibit
5 now, Your Honor. 10:16:06

6 THE COURT: You may.

7 BY MR. YOUNG:

8 Q. Going down to the bottom of the first page and the top of
9 the second, you told Mr. Montgomery that he had an extremely
10 short window of opportunity to work in, and that the choice was 10:16:24
11 his. And all that he had to do was to produce what he said he
12 was going to produce in exchange for the dollars that he had
13 received, is that right?

14 A. Taking the Fifth, sir.

15 MR. YOUNG: Why don't we put up the top of the next 10:16:44
16 page as well.

17 BY MR. YOUNG:

18 Q. You told Mr. Montgomery, you stressed to him, that time was
19 of the essence, is that right?

20 A. I'm sorry, sir. Was that -- 10:16:57

21 Q. You told -- on December 9, 2014, you told Mr. Montgomery
22 that time was of the essence.

23 A. Taking the Fifth, sir.

24 Q. You also told him that you'd been instructed to write up a
25 final report to be ready to hand over to a different agency 10:17:14

1 regarding the work that he was doing, is that right?

2 A. Taking the Fifth, sir.

3 Q. Was that true?

4 A. Taking the Fifth, sir.

5 Q. You wanted Mr. Montgomery to accelerate his efforts,
6 correct?

10:17:28

7 A. Taking the Fifth, sir.

8 Q. Let's move to Exhibit 2967.

9 This is an e-mail string that you had with
10 Mr. Montgomery on December 16, 2014, correct?

10:17:59

11 MR. YOUNG: Your Honor, I think we need the screen
12 activated for the witness and counsel.

13 BY MR. YOUNG:

14 Q. Exhibit 2967 is an e-mail exchange that you had with
15 Mr. Montgomery on December 16, 2014, correct?

10:18:36

16 A. Taking the Fifth, sir.

17 Q. It's an authentic e-mail, isn't it?

18 A. Taking the Fifth, sir.

19 Q. The e-mail accurately summarizes what you were feeling at
20 that time as far as Mr. Montgomery was concerned, correct?

10:18:51

21 A. Taking the Fifth, sir.

22 Q. Mr. Zullo, I'm going to play a portion of the deposition
23 that you gave earlier this week, and it's going to be page 63,
24 line 8, to page 64, line 19.

25 MR. YOUNG: And Your Honor, just to let you and

10:19:13

1 counsel know, I'm going to ask for admission of the deposition
2 testimony, in view of Mr. Zullo's refusal to testify and his
3 resulting unavailability. And I believe that the testimony is
4 therefore admissible as prior testimony, given that
5 unavailability. So I'm going to play the testimony and ask for 10:19:40
6 that admission.

7 Mr. Klein.

8 (Video deposition clip played as follows?)

9 "Question: Now, in a later e-mail on December 16, and
10 the time stamp on that is 1:54, it's at the bottom of page 10:19:57
11 Zullo 000090, you tell Mr. Montgomery, quote, LOL, exclamation
12 points, you mean the phony information you handed MCSO about
13 Snow... LOL. Dennis, you don't fool me. You think you do...
14 making up e-mails as you went along, please, exclamation
15 points, end quote, and it goes on. 10:20:28

16 "Was it your belief at that point that Mr. Montgomery
17 was and had been giving you false information about Judge Snow?

18 "Answer: Taking the Fifth.

19 "Question: Then Mr. Montgomery tells you, quote, Go
20 coerce someone else. I'm tired of your threats and innuendos. 10:20:56
21 Go back to spying on Judge Snow and the court monitor. Seems
22 like you have no regard for the law, end quote.

23 "Was Mr. Montgomery accurate when he said that you had
24 been spying on the court monitor as well as Judge Snow?

25 "MR. MASTERSON: Form, foundation. 10:21:19

1 "THE WITNESS: I'm taking the Fifth.

2 "Excuse me. I'm sorry. It's just a joke. I'm sorry.

3 "Question: Well, I understand you're taking the
4 Fifth, but these are important questions --

5 "Answer: I'm not talking about your question. It's 10:21:34
6 just this whole e-mail chain is just bullshit.

7 "Question: Well, then you responded to Mr. Montgomery
8 at 2:17 p.m., quote, LOL whatever. You made it all up, Dennis.
9 We know it... Nite, end quote.

10 "Did that accurately reflect your view as to what 10:21:58
11 Mr. Montgomery had been giving you?

12 "Answer: It is so hard for me to keep taking the
13 Fifth.

14 "I don't know where I put myself, Mr. Young, if I
15 answer anything on this. I think that document pretty much 10:23:18
16 tells you where I was as far as he was concerned."

17 (Video deposition clip concluded.)

18 MR. YOUNG: Your Honor, I'm going to move for
19 admission into evidence the deposition testimony we just heard.

20 THE COURT: Any objection? 10:23:45

21 MR. MASTERSON: No objection.

22 MR. WALKER: No objection, Your Honor.

23 MR. MURDY: No objection, Your Honor.

24 THE COURT: The deposition testimony is admitted.

25 Are you going to mark it as an exhibit? 10:23:53

1 MR. YOUNG: Did the court reporter take it down as it
2 was being played?

3 THE COURT: I'm sure he did.

4 MR. YOUNG: If Your Honor would like, we could put it
5 in as an exhibit. 10:24:06

6 Well, the deposition testimony, I was thinking of just
7 relying on the transcript.

8 THE COURT: That's fine.

9 MR. YOUNG: I am now going to move as to Exhibit 2967,
10 which is what Mr. Zullo was talking about in his deposition, to 10:24:16
11 admit into evidence.

12 THE COURT: All right. Well, I'm going to accept into
13 evidence, then, the substantive nature of the deposition that's
14 just been transposed -- or just been transcribed by the court
15 reporter. 10:24:33

16 MR. YOUNG: Thank you.

17 Based on that testimony, we move the admission of
18 Exhibit 2967.

19 MR. MASTERSON: Objection, foundation, relevance,
20 hearsay, 403. 10:24:46

21 THE COURT: Overruled.

22 MR. YOUNG: Your Honor, I know that's part of our
23 motion and Your Honor has not ruled on that motion. At this
24 point, without prejudice to that motion, which we'll still have
25 pending if you deny my current motion, I do move for the 10:25:04

1 admission of 2967, not based on any adverse inference, but on
2 the testimony that Mr. Zullo gave during his deposition that
3 this document accurately summarized what he was feeling at that
4 time as far as Mr. Montgomery was concerned --

5 THE COURT: I am going to admit the exhibit. I will 10:25:24
6 hear from you, Mr. Masterson, before finally ruling. But it
7 seems to me after admitting the deposition exhibit there is
8 foundation, there is authentication, and so I'm going to admit
9 the exhibit unless you can tell me why I shouldn't.

10 MR. MASTERSON: Withdrawn. 10:25:53

11 THE COURT: Exhibit 2967 is admitted.

12 (Exhibit No. 2967 is admitted into evidence.)

13 MR. YOUNG: May we publish the exhibit, Your Honor?

14 THE COURT: You may do so.

15 BY MR. YOUNG: 10:26:06

16 Q. Now, Mr. Zullo, on the second page of that exhibit,
17 Mr. Montgomery, at 2:41 p.m., stated to you, quote: "MCSO
18 pursued sensitive information against Judge Snow, and we both
19 know it."

20 That's a true statement, correct? 10:26:22

21 A. Taking the Fifth.

22 Q. And then he says: "In fact, you" -- that is you,
23 Mr. Zullo -- "produced some of that information to the D.C.
24 judge in August."

25 That's also a true statement, correct? 10:26:41

1 A. Taking the Fifth.

2 Q. You did meet with Judge Lamberth in Washington, D.C., in
3 connection with your work with Mr. Montgomery, correct?

4 A. Taking the Fifth.

5 Q. And you gave Judge Lamberth information about Judge Snow
6 that you had obtained from Mr. Montgomery, correct?

10:26:53

7 A. Taking the Fifth, sir.

8 Q. That information related to an alleged wiretap that
9 Mr. Montgomery had told you about that Judge Snow had ordered
10 with respect to Sheriff Arpaio and Chief Sheridan, is that
11 correct?

10:27:13

12 A. Taking the Fifth, sir.

13 Q. Now, you responded to Mr. Montgomery by telling him that
14 you thought that the information that you had been giving --
15 and I'm going to actually look at the bottom of the first page
16 of the exhibit now --

10:27:37

17 This is your e-mail with the time stamp 1:54 p.m. You
18 said some things about Mr. Montgomery in your first paragraph,
19 and then in your second paragraph you refer to, quote, the
20 phony information, end quote, that Mr. Montgomery had given to
21 you and MCSO about Judge Snow.

10:28:00

22 You felt that the information you'd gotten from
23 Mr. Montgomery, at least so far, was phony with respect to
24 Judge Snow, is that right?

25 A. Taking the Fifth, sir.

10:28:20

1 Q. You told him and you believed as of December 16, 2014, that
2 Mr. Montgomery had been making up e-mails as he went along, is
3 that right?

4 A. Taking the Fifth, sir.

5 Q. You thought that -- and I'm referring, again, to that
6 e-mail at the bottom of the page, and the e-mail continues on
7 the top of the next page of Exhibit 2967.

10:28:30

8 Let's put that up on the screen.

9 In your e-mail to Mr. Montgomery of 1:54 p.m. on
10 December 16, you told him that he had given you a cut-and-paste
11 crap -- or cut-and-paste crap on some worthless drives, is that
12 right?

10:29:01

13 A. Taking the Fifth, sir.

14 Q. You told Mr. Montgomery that he had just given you smoke
15 and mirrors, which sucked when all the smoke cleared, is that
16 right?

10:29:22

17 A. Taking the Fifth, sir.

18 Q. You also referred to some ex-NSA people, and those were
19 Mr. Drake and Mr. Wiebe, who exposed Mr. Montgomery's deception
20 in about 17 minutes, is that right?

10:29:39

21 A. Taking the Fifth, sir.

22 Q. Then on December 16 at 3:05 p.m., going back to the first
23 page, Mr. Montgomery, the e-mail at 2:17 p.m. -- no, actually
24 3:05 p.m. We do both of those -- let's look at both of those
25 on the screen: 3:05 p.m. and 2:17 p.m.

10:30:04

1 And there may be a time zone difference here that
2 accounts for the time stamp sequence, but Mr. Montgomery told
3 you that he was tired of your threats and innuendos, and then
4 he said to you, quote: Go back to spying on Judge Snow and the
5 court monitor. Seems like you have no regard for the law, end
6 quote.

10:30:29

7 Mr. Montgomery told you that, right?

8 A. Taking the Fifth, sir.

9 Q. In fact, you and Detective Mackiewicz had talked to
10 Mr. Montgomery about having him obtain information about the
11 court monitors, correct?

10:30:43

12 A. Taking the Fifth, sir.

13 Q. And then you told Mr. Montgomery in response: LOL,
14 whatever. That stands for "lots of laughs," is that right?

15 A. Taking the Fifth, sir.

10:31:03

16 Q. You're not going to answer that question?

17 A. I'm not answering any questions.

18 Q. And then you told Mr. Montgomery that he had made it all
19 up, and that you and others knew that, is that right?

20 A. Taking the Fifth, sir.

10:31:15

21 MR. MASTERSON: Your Honor, could we have a sidebar,
22 please?

23 THE COURT: Yeah.

24 (Bench conference on the record.)

25 MR. MASTERSON: First off, Mr. Young just asked a

10:31:49

1 question along the lines of "You had conversations about with
2 the monitor" -- or, excuse me. "You had conversations with
3 Mr. Montgomery about spying on the monitor."

4 Now, I know what that sentence says in that record,
5 but he's got to have a good faith basis to ask a question. And 10:32:07
6 the question he asked was something about a conversation that
7 this witness or Mr. Montgomery had about spying on the
8 monitors.

9 There's nothing in the record about anybody, there's
10 no allegation about anybody spying, investigating anything with 10:32:23
11 the monitors. He just made that up. He has to have a good
12 faith basis to ask even a question of this witness, who he
13 knows is going to invoke the Fifth Amendment, about activities
14 such as spying on the monitors.

15 THE COURT: I don't have a copy of the exhibit. 10:32:37

16 Do you have a hard copy --

17 MR. YOUNG: It's not in that exhibit. There will be a
18 subsequent exhibit. I do have foundation for that question,
19 and I'll be happy to point that out once that other exhibit is
20 discussed. 10:32:49

21 THE COURT: All right. I think you're going to need
22 to do that, because you do have to have a good faith basis to
23 be asking questions, particularly in a setting where you know
24 that the witness is likely to invoke the Fifth.

25 MR. YOUNG: Understood, Your Honor. 10:33:03

1 THE COURT: I'll ask you to do that.

2 Do you want to do it now?

3 MR. YOUNG: Sure, if the Court would like.

4 THE COURT: Go ahead.

5 MR. McDONALD: Can we take a recess now? It's 10:30. 10:33:10

6 THE COURT: Yeah. Why don't we take a break, 15
7 minutes. And if you guys want to talk about it, we can do it
8 now or we can do it later, depending on whether you come to an
9 understanding and wish to withdraw whatever you have to say,
10 or -- 10:33:25

11 MR. MASTERSON: Right.

12 THE COURT: -- your objection or --

13 MR. MASTERSON: Sounds good.

14 THE COURT: -- whatever. Okay.

15 MR. MASTERSON: Thank you, Judge. 10:33:26

16 THE COURT: Thank you.

17 (Bench conference concluded.)

18 THE COURT: We'll take the morning break for 15
19 minutes. Thank you.

20 (Recess taken.) 10:50:09

21 THE COURT: Please be seated.

22 Mr. Young.

23 MR. YOUNG: Thank you, Your Honor.

24 BY MR. YOUNG:

25 Q. So 2967, the e-mail exchange that you had with 10:50:18

1 Mr. Montgomery, Mr. Zullo, in that string Mr. Montgomery
2 mentioned something about spying on the court monitor. And
3 I'll ask you again: Did you in fact, along with
4 Detective Mackiewicz, have a discussion with Mr. Montgomery in
5 which the topic of Mr. Montgomery's collecting information on 10:50:40
6 the court monitors was at least mentioned?

7 A. Taking the Fifth, sir.

8 MR. YOUNG: Your Honor, I'm going to ask that an audio
9 clip be played. It is 2981B. It is a portion of Exhibit 2981,
10 which is a subject of our written motion. It appears at these 10:51:02
11 approximate time stamps: 56 minutes and 30 seconds to 57
12 minutes 55 seconds.

13 Mr. Zullo, I'm going to ask you to listen to the
14 recording and tell me whether that's a conversation among you,
15 Detective Mackiewicz, and Mr. Montgomery. 10:51:27

16 (Audio clip played.)

17 MR. YOUNG: Stop there.

18 (Audio clip stopped.)

19 BY MR. YOUNG:

20 Q. Mr. Zullo, you said to Mr. Montgomery in the clip that we 10:52:28
21 just heard "details on Arpaio's own would be interesting,"
22 correct?

23 A. Taking the Fifth, sir.

24 Q. Then Detective Mackiewicz said, quote, "monitors, Arpaio's,
25 whatever," end quote, correct? 10:52:47

1 A. Taking the Fifth, sir.

2 Q. Well, you didn't raise any objection when
3 Detective Mackiewicz raised the issue of having Mr. Montgomery
4 help obtain information about the monitors, is that right?

5 A. Taking the Fifth, sir.

10:53:00

6 Q. That recording is one that you made. It's a portion of a
7 recording that you made involving a conversation between -- or
8 among -- you, Mr. Montgomery, and Detective Mackiewicz, is that
9 right?

10 A. Taking the Fifth, sir.

10:53:20

11 Q. You did that while you were meeting with Mr. Montgomery
12 during the course of the Seattle investigation?

13 A. Taking the Fifth, sir.

14 MR. YOUNG: Your Honor, I move for the admission of
15 Exhibit 2981B.

10:53:31

16 MR. MASTERSON: Objection, foundation, relevance,
17 hearsay, 805, 403.

18 THE COURT: Foundation except as reserved is
19 overruled. Relevance is overruled. 403 is overruled. 805 I
20 will take under advisement.

10:53:53

21 MR. MASTERSON: Also, I just want to note that my
22 objections are to what I heard. What else might be on the
23 audio, I'll reserve objection.

24 THE COURT: We're just talking about 2981B, just to
25 make it clear.

10:54:10

1 MR. MASTERSON: I just don't know if that was all of
2 2981B.

3 THE COURT: Is that all of 2981B?

4 MR. YOUNG: No. Actually, perhaps I better have
5 Mr. Klein play the whole thing again. I did cut it off to ask 10:54:17
6 some questions about the reference to monitors. I'm going to
7 now ask that the whole thing be played --

8 THE COURT: All right.

9 MR. YOUNG: -- for 2981B.

10 MR. KLEIN: From the beginning? 10:54:31

11 MR. YOUNG: From the beginning.

12 (Audio clip played.)

13 (Audio clip stopped.)

14 BY MR. YOUNG:

15 Q. Mr. Zullo, you, in your conversation with Mr. Montgomery 10:56:07
16 and Detective Mackiewicz, said that the thought process behind
17 the whole thing, the whole project with Mr. Montgomery, was to
18 demonstrate to somebody else that you had information through
19 Mr. Montgomery that would show that the sheriff's rights had
20 been violated, and that would be a useful tool for the sheriff 10:56:24
21 to have. That was what you were thinking, correct?

22 A. I take the Fifth, sir.

23 Q. Well, what did you mean when you said the thought
24 process -- that was the thought process behind the whole thing?

25 A. I take the Fifth, sir. 10:56:49

1 Q. Detective Mackiewicz, in that conversation that we just
2 heard a portion of, said that, quote, "Obviously, Mike and I
3 and the sheriff aren't terrorists."

4 That's a reference to you and Detective Mackiewicz and
5 Sheriff Arpaio, correct? 10:57:34

6 A. Take the Fifth, sir.

7 MR. YOUNG: Your Honor, I'm going to renew again or
8 restate my motion, which is also in the written document to
9 admit 2981B. And I think Your Honor has already ruled on the
10 objections previously made, so we'll await the Court's ruling. 10:57:57

11 THE COURT: Yes, unless you have any new ones to make,
12 Mr. -- based on hearing the entire tape, Mr. Masterson.

13 MR. MASTERSON: No, they would be the same objections.

14 THE COURT: All right.

15 BY MR. YOUNG: 10:58:19

16 Q. Sir, we were looking at a December 16, 2014 e-mail,
17 Exhibit 2967, in which you and Mr. Montgomery were having a bit
18 of a dispute and in which you asserted that Mr. Montgomery had
19 been providing made-up, false, cut-and-paste crap, is that
20 right? 10:58:39

21 A. Taking the Fifth, sir.

22 Q. Let's go to Exhibit 2968. And since this is not in
23 evidence, we can just have it on the screen but not for the
24 gallery.

25 Mr. Zullo, this is a January 6, 2015 e-mail exchange 10:59:11

1 that you had with Mr. Montgomery, correct?

2 A. Taking the Fifth, sir.

3 Q. That's your e-mail address on that and that's

4 Mr. Montgomery's e-mail address, correct?

5 A. Taking the Fifth, sir. 10:59:26

6 Q. You had this e-mail exchange in connection with your work

7 with Mr. Montgomery on the Seattle investigation, correct?

8 A. Taking the Fifth, sir.

9 MR. YOUNG: I move for the admission of 2968.

10 MR. MASTERSON: No objection. 10:59:42

11 MR. WALKER: No objection, Your Honor.

12 MR. MURDY: No objection, Your Honor.

13 THE COURT: Exhibit 2968 is admitted.

14 (Exhibit No. 2968 is admitted into evidence.)

15 BY MR. YOUNG: 10:59:51

16 Q. So on January 6, as indicated in this e-mail, you had a

17 phone call with Mr. Montgomery, correct?

18 A. Taking the Fifth, sir.

19 Q. Okay. And then you told him that you were glad the

20 fighting is over, correct? 11:00:02

21 A. Taking the Fifth, sir.

22 Q. And then Mr. Montgomery agreed that the fighting was over,

23 and you said, Great, is that right?

24 A. Taking the Fifth, sir.

25 Q. So something happened in between your December 16 e-mail in 11:00:19

1 which you were telling him that he had been giving you crap and
2 your January 6 e-mail in which you said it was great that the
3 fighting was over, is that right?

4 A. Taking the Fifth, sir.

5 Q. Are you going to tell us what that was that happened that
6 caused that to happen? 11:00:40

7 A. Why don't you? You've been telling me everything you think
8 is going on.

9 Q. Well, I'm asking you, Mr. Zullo. What happened --

10 A. I'm taking the Fifth, sir. 11:00:51

11 Q. Let's look at Exhibit 2969.

12 Now, at the bottom of the first page of that exhibit
13 you wrote an e-mail to Michael Flynn, correct?

14 A. Taking the Fifth, sir.

15 Q. Mr. Flynn had been a lawyer for Mr. Montgomery, correct? 11:01:23

16 A. Taking the Fifth, sir.

17 MR. YOUNG: Your Honor, I'm going to read a portion of
18 Mr. Zullo's deposition. It's page 67, lines 17 through 20.

19 And based on Mr. Zullo's invocation of the Fifth, I'm going to

20 ask for the admission of this testimony from his deposition, 11:01:53

21 which was on November 9, 2015. Again, page 67, lines 17

22 through 20.

23 "Question: Now, in your January 7, 2015, 3:06 p.m.

24 Mountain Time e-mail to Mr. Flynn, actually Mr. Flynn had

25 previously been a lawyer for Mr. Montgomery, correct? 11:02:10

1 "Answer: Yes."

2 MR. YOUNG: I move for the admission of that
3 testimony, Your Honor.

4 THE COURT: Any objection?

5 MR. MASTERSON: Objection, foundation, hearsay,
6 relevance, 403.

11:02:28

7 THE COURT: Do you have any foundation?

8 MR. YOUNG: Well, Your Honor, at least according to
9 this exhibit, which I recognize is not in evidence, Mr. Zullo
10 was e-mailing Mr. Flynn and would know who he was.

11:02:45

11 THE COURT: Well, I'm going to defer any objection --
12 or any ruling on admitting this deposition testimony until I
13 determine whether there's an adequate basis for foundation.

14 BY MR. YOUNG:

15 Q. So looking at that e-mail that you wrote to Mr. Flynn,
16 Mr. Zullo, you told him that Mr. Montgomery was continuing to
17 work with the Sheriff's Office at this time, and "this time"
18 being January 7, is that right?

11:03:02

19 A. Taking the Fifth, sir.

20 Q. Mr. Montgomery was continuing to work with the Sheriff's
21 Office and you at that time, correct?

11:03:19

22 A. Taking the Fifth, sir.

23 Q. Now, you forwarded that e-mail string to Larry Klayman and
24 Mr. Montgomery at 2:07 p.m., correct?

25 A. Taking the Fifth, sir.

11:03:39

1 Q. And then you had some discussion about Mr. Flynn with
2 Mr. Montgomery, correct, as shown in the rest of the e-mail
3 string?

4 A. Taking the Fifth, sir.

5 MR. YOUNG: Your Honor, I move for the admission of
6 2969. 11:03:52

7 MR. MASTERSON: Objection, foundation, relevance,
8 hearsay, 403, and 805.

9 THE COURT: I'm sorry, I just want to make sure that
10 I'm correct. Is 2969 the exhibit that's still up on the
11 screen? 11:04:21

12 MR. YOUNG: Yes. It's a January 7, 2015 e-mail
13 exchange.

14 THE COURT: All right. 805 is admitted. Relevance is
15 admitted. 403 -- I'm sorry. 805 is overruled. 403 is
16 overruled. Relevance is overruled. 11:04:34

17 MR. MASTERSON: Judge, just so -- and I'm not
18 questioning the ruling, just does -- did the Court see page 2
19 of the exhibit that's not on the screen?

20 THE COURT: I didn't see page 2. I didn't know there
21 was a page 2. I'll take a look at it. 11:04:49

22 (Pause in proceedings.)

23 THE COURT: All right. Do you want -- you've got page
24 2 up on the screen, so you can see it, Mr. Young?

25 MR. YOUNG: Yes. 11:05:20

1 THE COURT: Do you see the part where it talks about
2 what Tim told?

3 MR. YOUNG: Yes. And my motion for admission of
4 Exhibit 2969 can omit that initial e-mail, which is on the
5 second page of that exhibit. 11:05:33

6 THE COURT: So we're not going to consider the second
7 page of the exhibit?

8 MR. YOUNG: Well, we should consider the part that
9 says "Mike" at the top of the second page, because that's the
10 end of the e-mail that's on the first page. But the e-mail 11:05:45
11 that's below the line and the indication "sent from my iPhone
12 January 7, 2015, 2:54 p.m., e-mail from Michael Flynn" need not
13 be part of the motion.

14 THE COURT: Well, then do you want to redact that from
15 the exhibit? 11:06:05

16 MR. YOUNG: We can do that.

17 THE COURT: And admit a separate exhibit that's had it
18 been redacted?

19 MR. MASTERSON: Judge, and I believe the e-mail is not
20 from this witness; it's from a different Mike. 11:06:15

21 MR. YOUNG: I agree with that. That's the e-mail on
22 the second page.

23 THE COURT: The e-mail on the second page --

24 MR. YOUNG: Correct.

25 THE COURT: -- is the one that I'm not going to 11:06:27

1 consider.

2 MR. MASTERSON: Oh, okay. I thought he was trying to
3 say we were going to consider part of it and not part of it.

4 THE COURT: No. I think all he was saying was that
5 the top line on the second page belonged to the first page of
6 the e-mail. 11:06:35

7 MR. MASTERSON: Understood.

8 MR. YOUNG: Your Honor --

9 THE COURT: So I am not going to admit 2969, I'm going
10 to require you to provide a redacted 2969A, and then I 11:06:45
11 will overrule the objections, except for as it pertains to page
12 2 that Mr. -- I'm sorry, that have been made, but those will be
13 redacted, and then you can reserve, as you have with the
14 others, foundation.

15 MR. YOUNG: Your Honor, you've took under advisement 11:07:18
16 the motion to admit the deposition answer that I read.

17 THE COURT: I did.

18 MR. YOUNG: I'm going to make a further argument, with
19 your permission.

20 THE COURT: All right. But can we make it after -- I 11:07:30
21 mean, can we get through the testimony with Mr. Zullo and can
22 you make that -- or do you need that --

23 MR. YOUNG: Be very short, Your Honor.

24 THE COURT: All right.

25 MR. YOUNG: The foundation argument was the one that 11:07:39

1 you reserved. That was not made during the deposition, and
2 therefore has been waived.

3 THE COURT: Mr. Masterson.

4 MR. MASTERSON: Your Honor, could I have the page of
5 the deposition again, please? 11:07:52

6 MR. YOUNG: Page 67, lines 17 through 20.

7 MR. MASTERSON: So is the only portion of the
8 deposition testimony being offered is page 67, lines 17 through
9 20?

10 THE COURT: That was the only portion offered. 11:08:40

11 MR. MASTERSON: No objection.

12 THE COURT: All right. Then that portion of the
13 deposition is admitted as substantive testimony. But I'm still
14 going to require you to resubmit a 2969A. And then that will
15 be in the same status as every other exhibit, except for those 11:09:01
16 that have been admitted without objection.

17 MR. YOUNG: Thank you, Your Honor.

18 BY MR. YOUNG:

19 Q. Let's look at Exhibit 2970. Exhibit 2970 is a January 19,
20 2015 e-mail exchange between you and Mr. Montgomery, correct? 11:09:26

21 A. Taking the Fifth, sir.

22 Q. Okay.

23 THE COURT: I'm sorry. I didn't get the number on
24 this one.

25 MR. YOUNG: 2970. 11:09:35

1 THE COURT: Thank you.

2 BY MR. YOUNG:

3 Q. In the first e-mail at the top of the first page, you told
4 Mr. Montgomery that you were trying to protect him and get him
5 to the judge. That judge was Judge Lamberth, correct? 11:09:59

6 A. Taking the Fifth, sir.

7 Q. Mr. Zullo, I'm going to play for you another portion of
8 your deposition. It's page 68, line 21, through page 69, line
9 1.

10 MR. YOUNG: And, Judge, I'm going to ask for the 11:10:32
11 admission of this deposition testimony that we're about to
12 hear, based on Mr. Zullo's invocation of the Fifth.

13 (Videotaped deposition played as follows:)

14 "Question: At the top of the first page in the e-mail
15 that you wrote to Mr. Montgomery on January 19, 2015, at 11:11:01
16 12:57 p.m., you told Mr. Montgomery, quote, 'It was me who
17 tried to protect you and get you to the judge,' end quote.

18 "That's Judge Lamberth, correct?

19 "Answer: Yes, sir."

20 MR. YOUNG: Your Honor, I move for the admission of 11:11:24
21 that testimony.

22 MR. MASTERSON: No objection.

23 MR. WALKER: No objection.

24 MR. MURDY: No objection, Your Honor.

25 THE COURT: That deposition testimony is admitted. 11:11:31

1 MR. YOUNG: Based on that testimony, I'd move for the
2 admission of Exhibit 2970.

3 MR. MASTERSON: Objection, foundation, relevance,
4 hearsay, 403.

5 THE COURT: I'm going to overrule the objections and 11:11:56
6 admit 2970. I think the witness indicating that he did mean a
7 particular judge in reference to the e-mail provides both
8 authentication and foundation, and so the exhibit is admitted.

9 (Exhibit No. 2970 is admitted into evidence.)

10 MR. YOUNG: Your Honor, may we publish that exhibit? 11:12:17

11 THE COURT: You may.

12 BY MR. YOUNG:

13 Q. We could look at the e-mail that you wrote. It's at the
14 top of the first page.

15 Mr. Zullo, you were trying to protect Mr. Montgomery,
16 correct? 11:12:34

17 A. Taking the Fifth, sir.

18 Q. And you stopped somebody from going to the feds because it
19 would hurt Mr. Montgomery, is that right?

20 A. Taking the Fifth, sir. 11:12:48

21 Q. Who did you stop from going to the feds?

22 A. Taking the Fifth, sir.

23 Q. How did you stop them from going to the feds?

24 A. Taking the Fifth, sir.

25 Q. Now, you also told Mr. Montgomery that you wanted to get 11:13:01

1 this back on track. That's the work that you were doing with
2 Mr. Montgomery, correct?

3 A. Taking the Fifth, sir.

4 Q. You wanted to protect Mr. Montgomery and stop others from
5 going to the feds about him, that is, federal law enforcement,
6 because you wanted to keep getting Mr. Montgomery's help, is
7 that right? 11:13:17

8 A. Taking the Fifth, sir.

9 Q. Let's move to Exhibit 2269.

10 This should not be published. 11:13:53

11 If we could show the bottom of the first page of
12 Exhibit -- well, let's actually ask about whole thing first.

13 Exhibit 2269 is an e-mail exchange you had with
14 Mr. Montgomery just a few days later on January 22, 2015,
15 correct? 11:14:18

16 A. Taking the Fifth, sir.

17 Q. You don't have any reason to doubt the authenticity of this
18 e-mail?

19 A. Taking the Fifth, sir.

20 MR. YOUNG: I move for the admission of the e-mail,
21 Your Honor, 2269. 11:14:25

22 MR. MASTERSON: Objection, foundation, relevance,
23 hearsay, 403.

24 THE COURT: Relevance and 403 are overruled.

25 BY MR. YOUNG: 11:15:05

1 Q. Mr. Zullo, down at the bottom of the first page, in the
2 1:12 p.m. e-mail that you wrote to Mr. Montgomery, you said
3 that you met with the sheriff yesterday, that is, January 21,
4 2015. You did meet with the sheriff on that day, correct?

5 A. Taking the Fifth, sir.

11:15:23

6 Q. You met with him about the work that Mr. Montgomery was
7 doing, correct?

8 A. Taking the Fifth, sir.

9 Q. And you indicated to Mr. Montgomery that the sheriff was
10 hoping that you could get Mr. Montgomery where he needed to go,
11 correct?

11:15:32

12 A. Taking the Fifth, sir.

13 Q. That's a reference to the work that you were doing with
14 Mr. Montgomery, correct?

15 A. Taking the Fifth, sir.

11:15:44

16 Q. Let's go to Exhibit 2971. This is a January 26 e-mail that
17 you wrote -- actually, Mr. Montgomery wrote to you in response
18 to an e-mail that you had written to him, is that right?

19 A. Taking the Fifth, sir.

20 Q. There's no question as to your authenticity of this
21 document, is that right?

11:16:26

22 A. Taking the Fifth, sir.

23 Q. Now, on January 26 at 10:28 a.m. -- this is the e-mail on
24 the second page of the exhibit -- you wrote that you were
25 waiting for a meeting with the sheriff to discuss some idea

11:16:48

1 relating to Mr. Montgomery, correct?

2 A. Taking the Fifth, sir.

3 Q. You in fact -- did you have such a meeting with the sheriff
4 on January 26?

5 MR. MASTERSON: Your Honor, I'm going to object to 11:17:02
6 counsel testifying. I'm looking at page 2 of the e-mail, and
7 he said the phrase "other idea," but then he adds words to it.

8 So if he can just read the e-mail, that's fine; if he
9 adds words, that's testifying.

10 THE COURT: I'm going to overrule the objection to 11:17:20
11 the extent that it involved that particular question.

12 BY MR. YOUNG:

13 Q. Did you have such a meeting, Mr. Zullo?

14 A. Taking the Fifth, sir.

15 Q. Now, going back to the first page of the e-mail, at 11:17:37
16 11:01 a.m. you told Mr. Montgomery that without the sheriff,
17 any hope of immunity -- that's immunity for Mr. Montgomery --
18 is dashed. That was your view at the time, right?

19 A. Taking the Fifth, sir.

20 Q. You were dangling the hope of immunity for Mr. Montgomery 11:18:03
21 in order to entice him or incentivize him to continue to work
22 with you, is that right?

23 A. Taking the Fifth, sir.

24 MR. YOUNG: Your Honor, I move for the admission of
25 Exhibit 2971. 11:18:16

1 THE COURT: How many pages is the exhibit?

2 MR. YOUNG: It is three pages long.

3 MR. MASTERSON: Objection, foundation, relevance,
4 hearsay, 403.

5 THE COURT: Relevance and hearsay are overruled. And 11:18:34
6 the rest of 2971 is taken under advisement as the others have
7 been, unless otherwise specifically admitted.

8 BY MR. YOUNG:

9 Q. Let's go to Exhibit 2271 now.

10 Exhibit 2271 is a set of e-mails that you exchanged 11:19:06
11 with Mr. Montgomery on February 2, 2015, correct?

12 A. Taking the Fifth, sir.

13 Q. These are e-mails that you exchanged with Mr. Montgomery
14 during the course of your work on the Seattle investigation?

15 A. Taking the Fifth, sir. 11:19:24

16 Q. There's no question as to authenticity, correct?

17 A. Taking the Fifth, sir.

18 MR. YOUNG: Your Honor, I move for the admission of
19 Exhibit 2271.

20 THE COURT: How many pages? 11:19:45

21 MR. YOUNG: The exhibit is five pages long.

22 MR. MASTERSON: Objection -- I'm sorry.

23 MR. YOUNG: We can flip through the rest of them on
24 the screen, Your Honor, if you'd like.

25 THE COURT: Well, depending upon Mr. Masterson's 11:20:01

1 objection, I may have you do that.

2 MR. MASTERSON: Foundation, relevance, hearsay, 403.

3 THE COURT: Overruled. Foundation is reserved.

4 BY MR. YOUNG:

5 Q. Let's go to the fourth page of the exhibit, which is page 11:20:27

6 MELC202288. And Mr. Montgomery wrote you an e-mail at

7 11:02 a.m. on February 2nd, 2015. I want to focus on that.

8 Mr. Montgomery was doing two things for you as of

9 early February 2015, and one of those was the BC, or birth

10 certificate, is that correct? 11:20:58

11 A. Taking the Fifth, sir.

12 Q. Okay. The other project, aside from the birth certificate,

13 that you were working on with Mr. Montgomery, was some data

14 mining project. In fact, Mr. Montgomery says it's, quote,

15 "data mining data for Arpaio," end quote, is that correct? 11:21:14

16 A. Taking the Fifth, sir.

17 Q. That data related, at least in part, to the banking

18 investigation that you had tried to get help from

19 Mr. Montgomery, is that right?

20 A. Taking the Fifth, sir. 11:21:31

21 Q. Let's go to Exhibit 2090. Exhibit 2090 is another e-mail

22 string that consists of e-mails that you exchanged with

23 Mr. Montgomery on February 2, 2015, correct?

24 A. Taking the Fifth, sir.

25 Q. This is a genuine copy of that e-mail exchange, is that 11:22:03

1 right?

2 A. Taking the Fifth, sir.

3 Q. Done in the pursuit of your Seattle investigation work,
4 correct?

5 A. Taking the Fifth, sir. 11:22:17

6 Q. Let's go to the back of that e-mail string.

7 And actually, if we could focus on the first -- the
8 bottom of the page that ends in 223 and the top of the page
9 that ends 224.

10 On February 2, 2015, at 6:41 p.m., Mr. Montgomery sent 11:22:53
11 you an e-mail attaching -- or linking to a story about the
12 contempt proceeding in this case, correct?

13 A. Taking the Fifth, sir.

14 Q. And he told you that it looked like perhaps Sheriff Arpaio
15 was trying to solve his differences with Judge Snow, is that 11:23:17
16 correct?

17 A. Taking the Fifth, sir.

18 Q. And then Mr. Montgomery asked you whether he should keep
19 processing the data, is that correct?

20 A. Taking the Fifth, sir. 11:23:31

21 Q. And he asked you whether it would just upset the judge more
22 if the work that he was doing with you was ever disclosed, is
23 that correct?

24 A. Taking the Fifth, sir.

25 Q. There was some data that you were having Mr. Montgomery 11:23:45

1 process that would become less useful if the contempt
2 proceeding were to disappear, is that correct?

3 A. Taking the Fifth.

4 MR. MASTERSON: Objection, foundation.

5 THE COURT: Overruled.

11:24:02

6 THE WITNESS: I answered you: Take the Fifth.

7 BY MR. YOUNG:

8 Q. All right. And then let's look at the top two-thirds of
9 that page ending in 223. In response to Mr. Montgomery's
10 question about whether Sheriff Arpaio was trying to solve his
11 differences with Judge Snow, you responded to him that you were
12 sure he was, is that right?

11:24:27

13 A. Taking the Fifth, sir.

14 Q. And then he asked you for clarification whether you meant
15 he was solving his differences with Snow, is that correct?

11:24:43

16 A. Taking the Fifth, sir.

17 Q. And then at 6:21 p.m. on February 2, you said, and I'm not
18 going to repeat all of your language, but you said basically:
19 No, he's not solving it. You said that they were looking to
20 get rid of the contempt charge, is that right? You told
21 Mr. Montgomery that?

11:25:05

22 A. Taking the Fifth, sir.

23 Q. And then you told Mr. Montgomery that "this guy" is never
24 going to leave him alone.

25 You're referring to Judge Snow there, correct?

11:25:18

1 A. Taking the Fifth, sir.

2 Q. All right. Well, let's go up to the next e-mail, which is
3 7:29 p.m. on February 2. Mr. Montgomery then said that he
4 understood, and he asked you whether it was your desire for him
5 to keep processing the data, or should he just work on the
6 birth certificate, is that right? 11:25:39

7 A. Taking the Fifth, sir.

8 Q. Then going to the bottom of the first page of the exhibit,
9 you sent an e-mail back to Mr. Montgomery at 7:32 p.m. on
10 February 2nd, 2015, that he should work on the -- 11:25:58
11 Mr. Montgomery should work on the birth certificate first to
12 get the sheriff back, and then we will go for the data.

13 And then you told him that you would share your plan
14 with him, Mr. Montgomery, once you got the sheriff back in the
15 game, is that right? 11:26:20

16 A. Taking the Fifth, sir.

17 Q. Then at 8:14 p.m., in the middle of the first page, you
18 told Mr. Montgomery that your plan was going to kill two birds
19 with one stone, is that right?

20 A. Taking the Fifth, sir. 11:26:38

21 Q. One of those stones was the birth certificate, correct?

22 A. Taking the Fifth, sir.

23 Q. The other stone -- well, the other bird, actually, forgive
24 me -- the other bird that you were going to kill with the stone
25 was Judge Snow, correct? 11:26:51

1 A. Oh, Dear God. Taking the Fifth, sir.

2 Q. Well, are you willing to tell us what the birds were?

3 A. Taking the Fifth, sir.

4 MR. YOUNG: Your Honor, if I failed to do so before,
5 I'll do it now. I move for the admission of Exhibit 2090. 11:27:11

6 MR. MASTERSON: Objection, foundation, relevance,
7 hearsay, 805, 403.

8 THE COURT: Where's the 805 material?

9 MR. MASTERSON: Did you ask me where?

10 THE COURT: Yeah. 11:27:29

11 MR. MASTERSON: There's the reference, I don't know
12 what to call this, but www.rawstory, joe-arpaiio-hope-to-dodge,
13 et cetera.

14 THE COURT: Yeah. I'm going to overrule that because
15 I don't think it's being admitted for the truth of the matter 11:27:38
16 asserted. So everything's overruled, and you maintain your
17 foundation objection.

18 BY MR. YOUNG:

19 Q. I'm now going to ask you to listen, Mr. Zullo, to
20 Exhibit 2981A. And I'm going to ask you whether that's a 11:27:56
21 discussion that you had with Mr. Montgomery.

22 It's again part of a larger exhibit, 2981. I'm going
23 to focus on a portion of that, which I'll say, for the benefit
24 of everyone, is starting at 8 minutes and 55 seconds, and it
25 goes to 10 minutes and 50 seconds of Exhibit 2981. 11:28:22

1 (Audio clip played.)

2 (Audio clip stopped.)

3 BY MR. YOUNG:

4 Q. Mr. Zullo, that was you talking to Mr. Montgomery, correct?

5 A. Taking the Fifth. 11:30:34

6 Q. Okay. You asked Mr. Montgomery with respect to the
7 information you were hoping that he would give you how you
8 could destroy someone with that information, correct?

9 A. Taking the Fifth.

10 Q. One of the things that Mr. Montgomery told you was that you 11:30:48
11 could destroy someone using the information that he was
12 promising you by uploading links to pornography that would get
13 them accused of child pornography, right?

14 A. Taking the Fifth.

15 Q. "Pedophile" actually is the word that Mr. Montgomery used, 11:31:08
16 right?

17 A. Taking the Fifth.

18 Q. You discussed that with Mr. Montgomery?

19 A. You heard it.

20 Q. And he said that in response to a question that you asked 11:31:18
21 him, correct?

22 A. Taking the Fifth, sir.

23 Q. You also asked Mr. Montgomery how you could financially
24 destroy someone with the information that you were asking

25 Mr. Montgomery to give you, correct? 11:31:34

1 A. Taking the Fifth, sir.

2 Q. And he responded that he could get someone in trouble with
3 the IRS for tax evasion if he could get access to their bank
4 accounts, which is what you were hoping he would do, correct?

5 A. Taking the Fifth, sir.

11:31:57

6 MR. MASTERSON: Your Honor, I object to that last
7 question. That's argumentative. There's no basis in fact for
8 it.

9 THE COURT: It is. It's argumentative, and I won't
10 consider it.

11:32:11

11 BY MR. YOUNG:

12 Q. Now, Sheriff Arpaio testified that in early February 2015,
13 you were talking to him and he was talking to you about what
14 Mr. Montgomery was doing.

15 Do you have any basis for disagreeing with that?

11:32:31

16 A. Taking the Fifth, sir.

17 Q. In fact, Sheriff Arpaio admitted that in February 2015 he
18 was talking to you, or may have been talking to you, about
19 Judge Snow in connection with the banking investigation, and
20 that you were trying to track down information about that
21 matter.

11:32:50

22 Do you have any basis to disagree with Sheriff Arpaio
23 on that issue?

24 A. Taking the Fifth, sir.

25 Q. Let's look at Exhibit 2273.

11:33:06

1 MR. YOUNG: Oh, actually, before we do that, Your
2 Honor, I move for the admission of Exhibit 2981A, based on
3 Mr. Zullo's testimony just now that we heard it.

4 THE COURT: The question was: You discussed that with
5 Mr. Montgomery? And the answer was: You heard it. 11:33:34

6 Mr. Masterson?

7 MR. MASTERSON: Objection, foundation, relevance,
8 hearsay, 403.

9 THE COURT: I'm going to take it under advisement as
10 to foundation. I'm not -- I'm not sure whether, in isolation, 11:33:48
11 it's sufficient foundation.

12 I'm overruling the other objection.

13 BY MR. YOUNG:

14 Q. Let's look at Exhibit 2273. That's an e-mail a little
15 more -- about a week and a half later, February 11, 2015. 11:34:32

16 That's an e-mail exchange you had with Mr. Montgomery in
17 connection with your work on the Seattle investigation,
18 correct?

19 A. Taking the Fifth, sir.

20 Q. It's an authentic e-mail? 11:34:43

21 A. Taking the Fifth, sir.

22 Q. You were talking about what Mr. Montgomery should do, and
23 he asked you whether you were talking about the birth
24 certificate stuff and not Judge Snow info, is that right?

25 A. Taking the Fifth, sir. 11:35:07

1 Q. You knew what the Judge Snow info was when you got that
2 e-mail, correct?

3 A. Taking the Fifth, sir.

4 MR. YOUNG: Your Honor, I move for the admission of
5 Exhibit 2273. 11:35:20

6 MR. MASTERSON: Objection, foundation, relevance,
7 hearsay, 403.

8 THE COURT: Overruled, with the maintained reservation
9 as to foundation.

10 BY MR. YOUNG: 11:35:34

11 Q. Let's go to Exhibit 2274.

12 Exhibit 2274 is also an e-mail exchange that you had
13 with Mr. Montgomery, this time on February 27, 2015, correct?

14 A. Taking the Fifth, sir.

15 Q. No question as to authenticity, correct? 11:35:52

16 A. Taking the Fifth, sir.

17 Q. You're continuing at that time to talk about whether the
18 contempt proceeding in this case could somehow be worked out,
19 is that right?

20 A. Taking the Fifth, sir. 11:36:04

21 Q. Okay.

22 MR. YOUNG: I move for the admission of Exhibit 2274.

23 MR. MASTERSON: Objection, foundation, relevance,
24 hearsay, 805, 403.

25 THE COURT: Is the 805 material referring to the news 11:36:16

1 article that's attached?

2 MR. MASTERSON: Yes, sir.

3 THE COURT: I'm going to -- I don't believe that's
4 being admitted for the truth of the matter, so I'm overruling
5 all objections except for the foundation one. 11:36:27

6 BY MR. YOUNG:

7 Q. Now turn to Exhibit 2278. That's an e-mail exchange you
8 had with Mr. Montgomery on March 31, 2015, correct?

9 A. Taking the Fifth, sir.

10 Q. There's no question as to the authenticity or the fact that 11:36:47
11 you wrote that e-mail, or those e-mails, and Mr. Montgomery
12 wrote those e-mails to you during the Seattle investigation,
13 correct?

14 A. Taking the Fifth, sir.

15 MR. YOUNG: I move to admit Exhibit 2278. 11:37:01

16 MR. MASTERSON: Just one second, please, Judge.

17 (Pause in proceedings.)

18 MR. MASTERSON: Objection, foundation, relevance,
19 hearsay, 403.

20 THE COURT: Overruled, with a reservation as to 11:37:23
21 foundation.

22 BY MR. YOUNG:

23 Q. Let's go to Exhibit 2279.

24 Exhibit 2279 is an April 20 -- at least at the top is
25 an April 20, 2015 e-mail that you sent to Larry Klayman and 11:37:46

1 Mr. Montgomery in response to an e-mail that he wrote to you
2 that same day -- well, actually -- yeah. It's an e-mail
3 exchange that you had, at least on the first page, with Larry
4 Klayman, who was the lawyer for Mr. Montgomery, correct?

5 A. Taking the Fifth. 11:38:08

6 Q. And then it attaches some other e-mails that date back to
7 April 9, is that right?

8 A. Taking the Fifth, sir.

9 Q. Also among you and Mr. Klayman and Mr. Zullo, and also
10 Brian Mackiewicz, is that right? 11:38:27

11 A. Taking the Fifth, sir.

12 Q. You were asking in your e-mail to Mr. Klayman for
13 Mr. Montgomery to finish his work, and you asked for a response
14 by close of business on Wednesday, April 22, 2015, correct?

15 A. Taking the Fifth, sir. 11:38:45

16 Q. You don't have any basis on which to question the
17 authenticity of this e-mail, is that right?

18 A. Taking the Fifth, sir.

19 MR. YOUNG: Your Honor, I move for the admission of
20 Exhibit 2279. 11:39:02

21 MR. MASTERSON: Objection, foundation, relevance,
22 hearsay, 403.

23 THE COURT: Same ruling. Those objections are
24 overruled.

25 BY MR. YOUNG: 11:39:13

1 Q. Let's look at Exhibit 2972.

2 Now, this is also an e-mail exchange, this time May
3 22, 2015, that you had with Mr. Montgomery, correct?

4 A. Taking the Fifth, sir.

5 Q. In that e-mail you discussed with Mr. Montgomery the
6 testimony that Sheriff Arpaio and Chief Sheridan had given in
7 this case about Mr. Montgomery's work, is that right?

11:39:37

8 A. Taking the Fifth, sir.

9 Q. Did Dennis Montgomery tell you he was upset that Sheriff
10 Arpaio and Chief Sheridan had called his information junk?

11:40:02

11 A. Taking the Fifth, sir.

12 Q. Did you tell Mr. Montgomery that you had talked to Sheriff
13 Arpaio and Chief Sheridan on May 21, 2015, and told them that
14 you would not be testifying to the same thing that they had
15 testified to with respect to that subject?

11:40:24

16 A. Taking the Fifth, sir.

17 Q. Now, you were actually just saying that in order to keep
18 Mr. Montgomery working for you on the birth certificate,
19 correct?

20 A. Taking the Fifth, sir.

11:40:40

21 Q. You did not actually believe that as to Judge Snow -- well,
22 actually, let me ask you: Did you actually believe as to Judge
23 Snow that Mr. Montgomery's information was not junk?

24 A. I want to answer you so bad, Mr. Young. I am taking the
25 Fifth.

11:41:15

1 Q. Did you actually have a discussion with Sheriff Arpaio and
2 Chief Sheridan on that subject?

3 A. I'm taking the Fifth.

4 MR. YOUNG: Your Honor, I move for the admission of
5 Exhibit 2972. 11:41:39

6 MR. MASTERSON: Objection, foundation, relevance,
7 hearsay, 805, 403.

8 THE COURT: Can you point me out -- point out the 805
9 material?

10 MR. MASTERSON: I'm looking on page 1, Judge, down 11:42:04
11 toward the bottom about a statement made by Arpaio and
12 Sheridan. And then an implication, I guess, also from those
13 same two persons.

14 THE COURT: Well, that wouldn't be hearsay, right? So
15 I'm going to overrule the objection. And you can reserve the 11:42:28
16 foundation.

17 MR. MASTERSON: Thank you.

18 BY MR. YOUNG:

19 Q. Mr. Zullo, you've talked with a radio personality named
20 Carl Gallups about the birth certificate investigation that you 11:42:49
21 have been working on, is that right?

22 A. Taking the Fifth, sir.

23 Q. I'm going to show you Exhibit 2823. That is taken from a
24 YouTube website, and it discusses a live Q and A that you did
25 with Carl Gallups on July 14, 2015. 11:43:18

1 Did you have such a discussion with Carl Gallups on
2 July 14, 2015?

3 A. Taking the Fifth, sir.

4 Q. And your interest, at least in Mr. Montgomery's work, was
5 in part to preserve the credibility of the work you were doing
6 with Mr. Montgomery on the birth certificate, correct?

11:43:39

7 A. Taking the Fifth, sir.

8 Q. It would be important for you not to allow critics of the
9 birth certificate investigation to undermine the credibility of
10 that investigation by attacks on Mr. Montgomery, correct?

11:43:58

11 A. Taking the Fifth, sir.

12 Q. I'm going to play Exhibit 2873B. It's a sound file. I'll
13 represent to you it's taken from YouTube. And I'm going to ask
14 you whether that is part of your discussion on July 14, 2015,
15 with Mr. Gallups.

11:44:25

16 (Audio clip played.)

17 (Audio clip stopped.)

18 BY MR. YOUNG:

19 Q. That's you talking to Carl Gallups, correct, Mr. Zullo?

20 A. Taking the Fifth.

11:45:09

21 MR. YOUNG: Your Honor, based on an adverse inference,
22 I'm going to move for the admission of Exhibit 2873B. It is
23 not part of our written motion, so I'm going to make that
24 motion here.

25 THE COURT: I'm going to still let Mr. Masterson

11:45:27

1 respond as part of -- in response to your written motion, to
2 the extent we're talking about adverse inferences for
3 foundation.

4 Do you have other objections, Mr. Masterson.

5 MR. MASTERSON: Yes, Judge. Foundation, relevance -- 11:45:42
6 relevance, hearsay, 403.

7 THE COURT: The others are overruled, but I'll let you
8 reserve as to foundation.

9 BY MR. YOUNG:

10 Q. I'm going to go back now in time, back toward the beginning 11:45:55
11 of the work with Mr. Montgomery.

12 You were present during at least part of the meeting
13 that Sheriff Arpaio had with Mr. Montgomery at a hotel in
14 Phoenix on December 9, 2013, correct?

15 A. Taking the Fifth, sir. 11:46:16

16 Q. You took a photograph of the two of them during that
17 meeting, correct?

18 A. Taking the Fifth, sir.

19 Q. Okay. I'm going to show you Exhibit 2982.

20 And we'll blow it up so that we focus on two people. 11:46:37

21 That's Sheriff Arpaio and Mr. Montgomery, correct?

22 A. Taking the Fifth, sir.

23 Q. You took that photo, correct?

24 A. Taking the Fifth, sir.

25 Q. In fact, you took it at 1:19 p.m. on December 9, 2013, 11:46:48

1 based on the metadata of the photograph that you handed over to
2 the Jones, Skelton law firm, correct?

3 A. Taking the Fifth, sir.

4 Q. Now, you also recorded some meetings in -- actually, a
5 meeting in October 2013 involving yourself,

11:47:10

6 Detective Mackiewicz, Sheriff Arpaio, and Timothy Blixseth, is
7 that right?

8 A. Taking the Fifth, sir.

9 Q. That was the meeting where Timothy Blixseth introduced to
10 Sheriff Arpaio Dennis Montgomery, and what Mr. Blixseth said he
11 could do, is that right?

11:47:32

12 A. Taking the Fifth, sir.

13 Q. There are a couple of audio recordings, and those were
14 among the items you recently gave to the Jones, Skelton law
15 firm, correct?

11:47:47

16 A. Taking the Fifth, sir.

17 MR. YOUNG: I'm going to ask that Exhibit 2978 be
18 played. And it's about 20 minutes long, so I'm just going to
19 ask for it to be played. And I'll ask you, Mr. Zullo, whether
20 that is a meeting in which you participated and as to which you
21 or someone else made a recording.

11:48:07

22 THE COURT: That is exhibit what, again?

23 MR. YOUNG: 2978.

24 THE COURT: All right. That will take us through the
25 lunch break, and so is that a good point to break for lunch?

11:48:19

1 MR. YOUNG: Yes, we can -- after we finish with that
2 audio, we can break for lunch, Your Honor.

3 THE COURT: All right.

4 (Audio clip played.)

5 (Audio clip stopped.)

11:48:43

6 BY MR. YOUNG:

7 Q. Mr. Zullo, we just listened to just a bit of that at the
8 beginning. The first person to speak on Exhibit 2978, that's
9 Timothy Blixseth, correct?

10 A. Taking the Fifth.

11:48:52

11 Q. Then the second person to speak was Sheriff Arpaio,
12 correct?

13 A. Taking the Fifth, sir.

14 Q. And then the third person to speak was Brian Mackiewicz, is
15 that right?

11:48:56

16 A. Taking the Fifth, sir.

17 MR. YOUNG: Let's keep playing the audio.

18 (Audio clip played.)

19 (Audio clip stopped.)

20 BY MR. YOUNG:

12:08:28

21 Q. Mr. Zullo, that's an audio you made of part of the meeting
22 in which you participated with Sheriff Arpaio,
23 Detective Mackiewicz, and Timothy Blixseth, correct?

24 A. Taking the Fifth, sir.

25 Q. At the very end, that's Sheriff Arpaio who says, quote,

12:08:41

1 "We're experts at this shit," end quote, correct?

2 A. Taking the Fifth, sir.

3 MR. YOUNG: Your Honor, this would be a fine time for
4 a lunch break.

5 THE COURT: All right. Take a lunch break. We'll be 12:08:55
6 back at 1:30.

7 (Lunch recess taken.)

8 THE COURT: Please be seated.

9 Mr. Young, you ready to proceed?

10 MR. YOUNG: Yes, Your Honor. 13:37:18

11 THE COURT: Please do so.

12 MR. YOUNG: Thank you.

13 BY MR. YOUNG:

14 Q. Mr. Zullo, the audio recording we were listening to, 2978,
15 that was a meeting that occurred, that you were part of, that 13:37:28
16 Sheriff Arpaio and Detective Mackiewicz and Timothy Blixseth
17 were also in, that occurred in October 2013, correct?

18 A. Taking the Fifth, sir.

19 Q. I'll tell you that Sheriff Arpaio testified earlier that he
20 met once with Timothy Blixseth. 13:37:47

21 Do you have any reason to contradict that?

22 A. Taking the Fifth.

23 MR. MASTERSON: Objection, foundation.

24 THE COURT: Overruled.

25 THE WITNESS: Taking the Fifth, sir. 13:38:01

1 BY MR. YOUNG:

2 Q. Based on some calendar -- well, one calendar entry, Sheriff
3 Arpaio testified that that meeting likely was on October 18,
4 2013.

5 Does that sound right to you? 13:38:16

6 A. Taking the Fifth, sir.

7 MR. YOUNG: Your Honor, I move to admit Exhibit 2978.

8 MR. MASTERSON: Objection, foundation, relevance,
9 hearsay, 403.

10 THE COURT: Okay. Foundation objection's preserved; 13:38:36
11 all the others are overruled.

12 BY MR. YOUNG:

13 Q. I want to go back to the photograph we looked at earlier,
14 which is Exhibit 2982. I did ask you some questions about it
15 earlier, Mr. Zullo. 13:38:49

16 MR. YOUNG: And Your Honor, I would move to admit that
17 photograph.

18 MR. MASTERSON: Objection, foundation.

19 THE COURT: I'm going to -- I'm going to reserve the
20 foundational objection, as I did -- 13:39:22

21 I don't know, was that part of your motion?

22 MR. YOUNG: I don't think it was part of our motion,
23 Your Honor.

24 THE COURT: If it is, I'm going to just treat it with
25 the rest of the motion. 13:39:33

1 MR. YOUNG: Yes. Thank you, Your Honor.

2 Your Honor, I have another audio that I want to play
3 that's about an hour long. I'm only going to play the first
4 portion of it for Mr. Zullo, and I'm going to ask him some
5 questions about it. It is 2977. 13:39:49

6 (Audio clip played.)

7 (Audio clip stopped.)

8 BY MR. YOUNG:

9 Q. Mr. Zullo, this is the beginning of another sound recording
10 of the meeting that you were in along with Sheriff Arpaio, 13:40:36
11 Timothy Blixseth, and Detective Mackiewicz in October 2013,
12 correct?

13 A. Taking the Fifth, sir.

14 Q. The voice we just heard talking about possible indictment
15 of Mr. Montgomery, that was Timothy Blixseth, correct? 13:40:49

16 A. Taking the Fifth, sir.

17 MR. YOUNG: Okay. Let's keep going with the
18 recording.

19 (Audio clip played.)

20 (Audio clip stopped.) 13:41:38

21 BY MR. YOUNG:

22 Q. So the voice we just heard starting to ask some questions
23 of Mr. Blixseth, that was Detective Mackiewicz, correct?

24 A. Taking the Fifth, sir.

25 Q. And there was someone who said: Don't count on Arizona. 13:41:48

1 There ain't no attorney general that would have the balls.

2 That was Sheriff Arpaio, correct?

3 A. Taking the Fifth, sir.

4 Q. That meeting was in Sheriff Arpaio's office, correct?

5 A. Taking the Fifth, sir.

13:42:11

6 MR. YOUNG: Your Honor, I move for the admission of
7 Exhibit 2977.

8 MR. MASTERSON: Well, to the part I heard, objection,
9 foundation, relevance, hearsay, 403.

10 THE COURT: The relevancy objection's preserved. If
11 you have other objections to the remainder of the recording,
12 would you please put them in the written motion?

13:42:29

13 MR. MASTERSON: Yes, sir.

14 THE COURT: Thank you.

15 MR. YOUNG: Your Honor, at this time I have no further
16 questions of Mr. Zullo.

13:42:45

17 Mr. Zullo, thank you very much for your time.

18 THE COURT: Mr. Masterson.

19 CROSS-EXAMINATION

20 BY MR. MASTERSON:

13:43:36

21 Q. Good afternoon, Mr. Zullo.

22 A. Good afternoon.

23 Q. You have invoked your constitutional rights under the Fifth
24 Amendment several times, both yesterday and today.

25 Would you please tell us why you are doing that?

13:43:53

1 A. As I put forth in a few motions, I just don't have adequate
2 time to secure competent counsel that understands the
3 complexity of this matter. It was never my intention to take
4 the Fifth. I have to now to protect myself. I have no
5 representation.

13:44:18

6 Q. Why do you feel at risk?

7 A. In an earlier pleading, the ACLU and Covington put a
8 footnote in paying special attention to Judge Snow's mindset
9 that we may have violated certain espionage statutes, statutes
10 involving trying to disrupt a federal proceeding. I mean, just
11 hellacious, hellacious accusation. And that was my concern.
12 That was never the intention of what we were doing.

13:44:40

13 Q. So are you invoking your constitutional rights under the
14 Fifth Amendment because of that document filed by the ACLU?

15 A. Yes, sir.

13:45:07

16 Q. Do you still have your deposition up there, sir?

17 A. I don't know, sir.

18 Q. Could you take a look, please? Dated November 9, 2015.

19 I have one if you don't.

20 A. I don't believe I have it. I have a whole bunch of folders
21 here. I don't know if --

13:45:34

22 MR. MASTERSON: Judge, may I give the witness a copy
23 of his depo, please?

24 THE COURT: You may.

25 (Pause in proceedings.)

13:46:10

1 MR. MASTERSON: Here you go, sir. (Handing).

2 THE WITNESS: Thank you.

3 BY MR. MASTERSON:

4 Q. Could you please turn to page 71, sir.

5 Are you there?

13:46:33

6 A. Yes, sir, I'm sorry.

7 Q. I'm looking at page -- or, excuse me, page 71, line 11,

8 Mr. Young asked you the question: "In that investigation you

9 were hoping that Mr. Montgomery would find further verifiable

10 information about Judge Snow, is that correct?"

13:46:50

11 MR. YOUNG: Your Honor, objection.

12 THE COURT: What's the basis?

13 MR. YOUNG: Hearsay.

14 THE COURT: Do you have a response, Mr. Masterson?

15 MR. MASTERSON: Well, the response is Rule 32. I can

13:47:06

16 use -- use this question. Mr. Young asked the question.

17 Certainly, Mr. Young didn't give any objection to the question.

18 I objected. I'm withdrawing the objection.

19 It is also asking for the witness's present sense

20 impression or mental impression at the time the question was

13:47:31

21 asked.

22 THE COURT: Show me in Rule 32 where --

23 MR. MASTERSON: Well, it says I can use deposition

24 testimony for any purpose.

25 THE COURT: I believe that's in the state rules. Is

13:47:56

1 it in the federal rules?

2 MR. MASTERSON: That's a good question.

3 THE COURT: I'm looking for that now. It says: At a
4 hearing or a trial. It says all or part of the deposition may
5 be used against a party on these conditions, and it lists three 13:48:07
6 conditions. It doesn't say may be used for any purpose.

7 Now, I'm not saying it doesn't say that. It might say
8 that somewhere in the rule. But your citation to Rule 32
9 doesn't overcome, at least unless you can show me, the hearsay
10 exception. 13:48:25

11 MR. MASTERSON: Well, I think I have a hearsay
12 exception on 803(1) and (3).

13 THE COURT: Eight oh --

14 MR. MASTERSON: 801 -- no, 803(1) and (3).

15 THE COURT: Are you asking for a present sense 13:48:44
16 impression?

17 MR. MASTERSON: At the time the question was asked.

18 THE COURT: I'll hear the question.

19 MR. MASTERSON: Excuse me?

20 THE COURT: I didn't hear the whole question. 13:48:52

21 MR. MASTERSON: Oh, the question is: "In that
22 investigation you were hoping that Mr. Montgomery would find
23 further verifiable information about Judge Snow, is that
24 correct?"

25 THE COURT: That's no present sense impression or 13:49:02

1 existing mental condition. Overrule -- or sustained.

2 BY MR. MASTERSON:

3 Q. Mr. Zullo, let me ask you this way: Do you remember your
4 deposition on November 9, 2015?

5 A. Yes. 13:49:49

6 Q. Do you remember Mr. Young asking you the question: "In
7 that investigation you were hoping that Mr. Montgomery would
8 find further verifiable information about Judge Snow, is that
9 correct?"

10 Do you recall that question? 13:50:06

11 A. Yes.

12 Q. Did you answer that question at your deposition?

13 A. Yes.

14 Q. What was your answer?

15 A. "Hell, no." 13:50:15

16 Q. Did you say "no, no," twice more in response to that
17 question?

18 A. I don't recall. I may have.

19 Q. Can you take a look at the deposition transcript, please,
20 line 16 -- 13:50:30

21 A. I guess I did, yeah.

22 MR. YOUNG: Your Honor, I'm going to renew the
23 objection. Mr. Masterson has just had Mr. Zullo report what
24 Mr. Zullo supposedly said in the deposition. That's just
25 having him repeat the hearsay, and I'll move for it to be 13:50:58

1 stricken.

2 MR. MASTERSON: Your Honor, it refreshed his
3 recollection of his testimony at his deposition. He testified
4 what he said at his deposition.

5 THE COURT: It's stricken. Objection sustained. 13:51:10

6 BY MR. MASTERSON:

7 Q. Mr. Zullo, as you're sitting there right there, right now
8 today, in the investigation, the Seattle investigation, were
9 you hoping to find verifiable information about Judge Snow?

10 A. No, sir. 13:51:54

11 But, Your Honor, I need to ask -- I don't understand.
12 I've invoked my Fifth Amendment. I don't understand what's
13 going on here at this point.

14 THE COURT: Well, you are the one who chooses whether
15 you will invoke the Fifth Amendment or whether you will not 13:52:09
16 invoke the Fifth Amendment, so I can't give you legal advice on
17 that.

18 THE WITNESS: I understand that, sir.

19 THE COURT: But I will say that you have the right to
20 invoke the Fifth Amendment with respect to any question that 13:52:20
21 any party asks you. And if you -- and there, you know, based
22 on how you choose and do not choose to invoke the Fifth
23 Amendment, there may be consequences to that as well.

24 THE WITNESS: Um-hum.

25 THE COURT: But I can't advise you on that, either. 13:52:35

1 Those have to be your choices.

2 THE WITNESS: Okay.

3 MR. MASTERSON: Judge, I'm not certain that I got an
4 answer. Could I ask Mr. Moll to read back the question? I
5 think I heard an answer before the witness's question to you. 13:52:49

6 THE COURT: You may do that.

7 (The court reporter read the record as follows:)

8 "Question: Mr. Zullo, as you're sitting there right
9 there, right now today, in the investigation, the Seattle
10 investigation, were you hoping to find verifiable information 13:51:47
11 about Judge Snow.

12 "Answer. No, sir.

13 "But, Your Honor, I need to ask -- I don't
14 understand."

15 MR. MASTERSON: Thank you, Mr. Zullo. No further 13:53:32
16 questions.

17 THE COURT: Mr. Walker?

18 MR. WALKER: I have no questions, Your Honor.

19 THE COURT: Mr. Murdy.

20 MR. MURDY: No questions, Your Honor. 13:53:40

21 THE COURT: Mr. Young.

22 MR. YOUNG: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. YOUNG:

25 Q. Mr. Zullo, in response to Mr. Masterson's questions, you 13:53:54

1 referred to some hellacious accusations that you perceived to
2 have been leveled against yourself, is that right?

3 A. Yes, sir, that's right.

4 Q. Okay. And those accusations were that you had been
5 investigating Judge Snow, among other things, correct?

13:54:10

6 A. It's contained in that footnote, sir.

7 Q. And then you said it was never your intention, or never the
8 intention of what you were doing, is that right?

9 A. Correct.

10 Q. Okay. Let's go back to Exhibit 2079, which has been
11 admitted into evidence, so I'm going to ask that it be shown to
12 the gallery as well.

13:54:26

13 And at the first page, in your text message to
14 Sergeant Anglin on New Year's Day 2014, you referred to
15 Mr. Montgomery's mapping out of cell phone calls and line calls
16 back to 2009 involving Judge Snow, correct?

13:54:54

17 A. Correct.

18 Q. So you were hoping that Mr. Montgomery would provide
19 information about Judge Snow, is that right?

20 A. No, sir.

13:55:12

21 Q. Well, you knew that Mr. Montgomery was mapping out
22 cell phone calls and in line calls involving Judge Snow, is
23 that right? At least that's what he told you.

24 A. Yes.

25 Q. Is that what you thought --

13:55:30

1 A. That's what he told us, yes.

2 Q. And you were talking to the sheriff almost every day
3 because he was calling you wanting updates, right?

4 A. Yes, sir.

5 Q. Now, let's go back to Exhibit 2256, which is a June 29,
6 2014 e-mail between you and Mr. Montgomery. And there you talk
7 about -- actually, Mr. Montgomery tells you: On the one hand,
8 Anglin tells him -- and I'm paraphrasing here -- not to produce
9 information on Judge Snow.

13:55:47

10 You see that?

13:56:21

11 A. Yes, sir.

12 Q. And then he tells you that he's being attacked for not
13 producing information on Judge Snow, correct?

14 MR. MASTERSON: Objection, beyond the scope of the
15 cross-examination.

13:56:34

16 THE COURT: Overruled.

17 THE WITNESS: That is what he is saying, sir.

18 BY MR. YOUNG:

19 Q. Okay. At least -- well, you were talking to Mr. Montgomery
20 about producing information on Judge Snow, correct?

13:56:49

21 A. Mr. Young, Judge Snow was a victim. In that database, like
22 I'm a victim, like Donald Trump is a victim, like Sheriff
23 Arpaio is a victim, like Michele Iafrate is a victim.

24 Judge Snow was in a database from 2009. Had nothing
25 to do with this Melendres thing that I didn't know anything

13:57:07

1 about. He was a victim, and he was one victim that
2 Mr. Montgomery identified as having sensitive information
3 believed to be obtained. The judge's IRS information and the
4 judge's banking information.

5 Now, maybe you'll understand the crux of my question 13:57:24
6 to him that you tried to lambast me with and say I was trying
7 to destroy this man. I have nothing against this man. He was
8 a victim. Like 151,000 other people in this county. That's
9 what we were looking for. All this CIA nonsense had no
10 interest for us. 13:57:45

11 My job was to befriend this guy. Make him think we
12 cared. All we cared about were 151,000 people in Maricopa
13 County, and quite honestly, if Sheriff Arpaio's phones were
14 tapped. That was it.

15 Sir, you were a victim. I never did anything to hurt 13:58:01
16 this man.

17 Q. And the way you found out that he was a victim was that you
18 asked Mr. Montgomery to search his data to see whether Judge
19 Snow was there, is that right?

20 A. Mr. Young, we were looking for high-profile people in 13:58:19
21 Phoenix, Arizona. Mr. Montgomery represented to us that he had
22 judges, federal judges. I asked him: Federal judges in
23 Maricopa County? He said: Yes.

24 I don't know any federal judges. As a matter of fact,
25 Judge Snow now is the only federal judge I know in Maricopa 13:58:35

1 County.

2 I asked Detective Mackiewicz a question: Hey, who is
3 the federal judge with this Melendres thing? Brian didn't
4 know. I didn't know. I attempted to look at it on my phone.
5 Unfortunately, I was a little stubborn. I refused to believe I 13:58:52
6 needed these. I couldn't really see.

7 Q. You're talking about your glasses?

8 A. Glasses, yes. On an iPhone, the smaller one. Believe me,
9 it was a bad day.

10 Montgomery found I believe originally Judge Silver. I 13:59:04
11 didn't know. Brian said: No, that's not it. We're looking
12 some more. Montgomery finds Snow, Murray Snow. I go: Brian,
13 is that it? He goes: I don't know.

14 I'm looking around, looking around. Finally I find an
15 article that says Murray Snow. I go: Yeah, I guess that's it. 13:59:24
16 He puts it into the machine and it doesn't really come back.
17 And he's still on the Internet looking around and he goes: No,
18 it's not Murray, it's Gordon. I had no idea.

19 He puts in Gordon Murray Snow, and within four
20 minutes -- and it took a while, it was longer than any other 13:59:46
21 one, it comes up four minutes, Gordon Murray Snow, a Phoenix
22 address unknown to me, a phone number unknown to me.

23 And I'm, like: Okay, so you've got this Judge Snow in
24 your database. He says: Yeah, but there's more. And he
25 showed me symbols on the side of this, and he says: You're 14:00:02

1 going to see these. When it says this, I don't remember what
2 they are. Let's use "I" for IRS. IRS. And he said: This is
3 for banking.

4 I asked him, I go: Are you telling me that in your
5 database, these 425 hard drives, you have Judge Snow, a federal 14:00:18
6 judge's private, private information? And he goes: Yeah,
7 harvested by the government. That's what the man told me.
8 That's what we were pursuing for over a year.

9 Q. And did you tell Sheriff Arpaio that you'd found some
10 information in Mr. Montgomery's possession relating to 14:00:39
11 Judge Snow?

12 A. Oh, it's even better than that. I met with Sheriff Arpaio
13 and Chief Sheridan and we sat down. And the plan was and the
14 decision was, not even talking about the flow chart -- which,
15 by the way, I got a direct stand-down order from the sheriff 14:00:52
16 twice, and Chief Sheridan, never to pursue this judge like you
17 so wrongly accuse me of.

18 The plan going forward was to get Montgomery to give
19 us this IRS information, this banking information on this
20 judge, walk across the street, go to his chambers, knock on his 14:01:08
21 door, and see if he could verify it. Because if he could, it
22 opened up one hell of a door for us to go to the federal
23 government having Montgomery in possession of stuff that nobody
24 on this planet should have. It would prove a breach of banks;
25 it would prove a breach of a government facility. 14:01:26

1 That's the nefarious stuff that you don't understand.
2 It wasn't happening the way you laid out here for four hours.
3 Nobody was trying to hurt this judge, including the sheriff.
4 So much to everyone's astonishment, he didn't do that.

5 Q. So did you discuss with Sheriff Arpaio and Chief Deputy
6 Sheridan the plan to try to get Montgomery to give you the IRS
7 and banking information for Judge Snow so that you could
8 accomplish what you just described?

14:01:46

9 A. Absolutely.

10 Q. When did you first discuss this plan with Sheriff Arpaio
11 and Chief Sheridan?

14:02:02

12 A. It had to be in the beginning, sir. You know, I wasn't
13 involved the whole time.

14 Q. Well, let me -- let me ask you this. I'll show you an
15 exhibit we looked at yesterday briefly. It's 2074.

14:02:17

16 And actually, I want to focus a little bit on the date
17 at the top as well. It's at --

18 Have you seen this document, by the way? It's on the
19 screen. It's a list of information relating to the DOJ and
20 Arpaio and various people in the DOJ.

14:02:43

21 Have you seen that document before?

22 A. Yes, I believe I did, I believe I do.

23 Q. I'll tell you that Sheriff Arpaio testified that Dennis
24 Montgomery faxed this to him on November 5th, 2013.

25 A. Okay.

14:03:03

1 Q. Taking that date as the -- sort of a milestone or milepost,
2 did the plan to get the IRS and banking information relating to
3 Judge Snow in order to protect him arise before or after that
4 date?

5 A. I can't be certain, sir, because this would have been about 14:03:20
6 four or five days into us originally meeting this guy. I know
7 that the judge's information didn't come forth right away.
8 Neither did Sheriff Arpaio's out of that database, nor did
9 mine. So I can't tell you. I really -- I just -- I don't
10 know. I don't know. 14:03:50

11 Q. Well, how did the idea of finding the name of the judge who
12 was working on the Melendres case originally come up?

13 A. I don't think it was so much an idea. Like I said, it was
14 high-profile people. This was a database that was in 2008. I
15 think anything from 2007 to 2009. There would be no 14:04:10
16 interaction between Arpaio or Judge Snow at that time. It was
17 merely looking for a federal judge by name, which I didn't know
18 any.

19 I mean, this man represented a lot of things to us.

20 He represented that he had the information on Ruth Bader 14:04:29

21 Ginsburg. He represented he had --

22 Q. Wait. When you say "he represented" --

23 A. Mr. Montgomery represented.

24 Q. Yes. Thank you.

25 A. That he had information on the chief justice of the Supreme 14:04:39

1 Court. I mean, there was just a lot. And, you know, he was --
2 he was telling us all these high-profile people that didn't
3 matter to us.

4 We were worried that this guy has identities --
5 actually, it's almost a half a million people in just the state 14:04:57
6 of Arizona. And when I'm talking identities, I'm not talking
7 about little blips of pieces of information; full identities
8 and birth dates and Social Security numbers.

9 Which goes back to the question that you nefariously
10 pointed to me as if I was some kind of deviant, is what could 14:05:13
11 you do with that information?

12 He was in possession of that as far as I was
13 concerned. That was very concerning to me, that he had this
14 kind of information. So asking for the judge was nothing more
15 than an attempt to get high-profile people. He had John 14:05:26
16 McCain's information. And I don't remember if John McCain had
17 banking information attached to it or not.

18 But that was the only -- Judge Snow, for all intents
19 and purposes, with all due respect, Your Honor, you were a blip
20 on this radar screen of a year. It was three weeks Montgomery 14:05:43
21 kept telling us: Judge Snow, Judge Snow, Judge Snow. We had
22 hands off, hands off, hands off.

23 And to your other point, why I said son of a bitch
24 when I learned of this thing that I hadn't been there, is
25 because I was so taken back by what Montgomery said, because we 14:05:58

1 had a stand-down, hands off on Judge Snow. I didn't know what
2 was going on, I wasn't part of that investigation then, but I
3 wasn't going to blow up what they were doing, either. I didn't
4 know what was happening. I had to play the game.

5 But I was startled when he said Judge Snow. Because I 14:06:14
6 knew we weren't supposed to do anything with Judge Snow.
7 You've got this so backwards.

8 Q. Well, did the investigation into Judge Snow as a victim of
9 the banking breach ever come to an end?

10 A. Sir, I don't believe we had information about Judge Snow as 14:06:31
11 a victim of the bank -- you know, as a matter of fact, sir, it
12 never dawned on me to even ask to look for Judge Snow and what
13 banking stuff MCSO had, because we weren't doing anything with
14 Judge Snow.

15 These were specific records that Montgomery asserted 14:06:49
16 to us that he had. And in my mind, that would have taken care
17 of multitude of problems. Having a sitting federal judge that
18 all of a sudden we have a guy in Seattle has his most sensitive
19 information. I could -- especially now knowing this judge? I
20 think the FBI probably would have walked in the door before we 14:07:08
21 would have left, once we went and verified if this is his
22 information.

23 The other thing I want you to understand is this was
24 always going to the FBI. Always going to go to the FBI. We
25 had a problem with Montgomery. We needed Montgomery to go in a 14:07:23

1 cooperative state, because he holds the key to unlocking these
2 hard drives. Without him, you can't unencrypt them. Our goal
3 was to get Montgomery to the federal government in a
4 cooperative manner so the people that have the authority to
5 deal with this could.

14:07:42

6 It's not our fault the FBI falsely raided his house
7 and he doesn't want to work with them. That wasn't our fault.
8 Hence is why we went to Judge Lamberth. We didn't know what to
9 do with this man, knowing he may have this kind of information.

10 And there's things that I'm not going to talk about,
11 because I'm sure you've kept them out of this courtroom. There
12 are some things this man said, I don't know if they're true; I
13 pray to God they're not true. But we needed to get him
14 someplace where he would cooperate. If that guy thinks he
15 could get immunity, have at it, 'cause somebody else is going
16 to have to do that, not us.

14:08:00

14:08:16

17 This was a brain damage dance for me to dance with
18 this guy for a year. I don't get paid. I don't make any money
19 doing this. I did it because this is my community. And you're
20 sitting here trying to paint me a criminal. I need -- I need
21 to stop, sir. I need to stop.

14:08:36

22 Q. Well, this is not a criminal proceeding --

23 A. You know what? What is this, sir? Come on. What is it, a
24 star chamber? What is it? It's nothing. Every time it's
25 something pertaining to my rights, it becomes nothing. Don't

14:08:57

1 my rights matter? Don't the rights of every person in this
2 room matter? This judge's rights matter. He was a victim as
3 far as we were concerned.

4 Q. Okay. Well, in your discussion with Mr. Montgomery I'm a
5 little bit confused, and maybe you can help me with it. 14:09:15

6 Who was it, as between you and Mr. Montgomery, who
7 first raised Judge Snow's name?

8 A. I was asking the name of the judge. Montgomery came up
9 with the name. I couldn't see my phone. I didn't know Judge
10 Snow. It had nothing to do with this. I mean, I even saw -- I 14:09:33
11 think, you know, whatever the New Times writes, you're making
12 some allegation that we were pressing this guy right up until
13 two weeks before your contempt hearing.

14 Sir, I have to tell you, I didn't know when your
15 contempt hearing was. I don't know who the monitors were. I 14:09:49
16 know the names of the monitors now as a result of this. And
17 Mackiewicz didn't say "monitors." I think he meant
18 "monitored," monitoring the sheriff's phones. 'Cause that's
19 what Montgomery was talking to us about.

20 All these e-mails that you've taken out of context, 14:10:05
21 there were probably -- if you've got 735 e-mails, there were
22 probably 2,000 telephone calls. I lived with this guy in my
23 head day in, day out. Telephone calls at 7:00 in the morning,
24 11:00 o'clock in the morning, 2 o'clock in the morning,
25 8 o'clock at night, 9 o'clock at night. That's all I had to 14:10:26

1 hear was this guy and his CIA tale of woe.

2 And my job was to do some research so I could converse
3 with him. Because at any given time Detective Mackiewicz may
4 have to turn on this guy. And I was the guy to befriend him.
5 I had to learn stuff I didn't want to know about, read stuff I
6 didn't care to know about and do it. And that's what I did. 14:10:44

7 Nobody in this agency has used this database to hurt
8 anyone. We don't even use the database. Investigating it the
9 first four, five days we were up there, that's all we did. We
10 didn't use it. We didn't take it and go: Ooh, look what could 14:11:04
11 we get? We didn't use it at all. It's just the information
12 he's giving us.

13 And what this is tantamount to, quite honestly, sir,
14 is like the sheriff is the bank teller who gets handed the
15 stickup note. Because he gets handed the stickup note, all of 14:11:20
16 a sudden you're charging with facilitation and conspiracy to
17 commit bank robbery. He's just a guy who got information.

18 You heard the first tape. That's how this stuff came
19 in to us. There's another tape that you didn't play where he's
20 telling us about -- and I didn't know who Lanny Breuer was or 14:11:35
21 Covington; I didn't know any further this. He calls us in the
22 hotel. And you could hear Detective Mackiewicz say: We don't
23 know what he's talking about. We had nothing to do with any of
24 this. This was this guy's agenda.

25 So we had to take his agenda and try to utilize it to 14:11:51

1 get what we needed to protect our residents. And that's all
2 this was. This whole CIA stuff is this guy. So if that meant
3 we had to get him someplace to some judge to further that
4 cause, I was willing to do it; the sheriff was willing to do
5 it; the chief deputy was willing to do it. 14:12:11

6 The one thing the chief deputy said right away when he
7 saw that flowchart is he said: No way. We are not going down
8 this road. And when the chief deputy gives you a direct order,
9 there's no doubting you got a direct order. We were not going
10 down that road. 14:12:30

11 We didn't know what to make of that stuff with
12 Montgomery. We didn't know what to do with the phone calls.
13 That e-mail that you showed me, he was mapping out phone
14 numbers trying to find the breaches that he alleged took place
15 of the Maricopa County Sheriff's Office servers, the Attorney 14:12:44
16 General's Office servers, the county attorney general -- the
17 county attorney's servers. I mean, he was telling us all kinds
18 of breaches. And during the course of this he found breaches
19 of Phoenix, Arizona, the mayor's office.

20 Now, sir, I don't know if that's real. Because we 14:13:00
21 didn't investigate it. We were collecting and relieving him of
22 information. The full intention was to bring it to the FBI.
23 As a matter of fact, those NSA guys, when we cracked open those
24 drives, the direct order from Chief Sheridan in Sheriff
25 Arpaio's office was: You go over there. If there is anything 14:13:21

1 that they remotely think is classified privilege, mark the
2 drive, seal the box, and go right to the FBI office and drop it
3 off, and don't leave there till you tell them exactly what is
4 going on. That was the direct order we were under.

5 Those drives didn't contain anything. And some other 14:13:40
6 day I'll tell you the story how I knew they were going to be a
7 bunch of bullshit before we went.

8 Q. So going back to my earlier question, Mr. Zullo --

9 A. You'll have to tell me what the question is, sir, 'cause --

10 Q. Well, I'll just ask another question. 14:13:58

11 So you were the one who first came up with the idea of
12 finding information about the judge in the Melendres case, you
13 talked about that to Mr. Montgomery, and then he's the one who
14 actually came up with the name through some search of the
15 Internet. Is that what happened? 14:14:15

16 A. Sir, the way you're portraying it isn't the way it
17 happened.

18 Q. Well, tell me how it happened.

19 A. I just told you. It wasn't looking for this particular
20 man. I don't know any federal judges. It's the one that came 14:14:26
21 to mind. That was it. I knew we had a federal judge with --
22 with Arpaio's problem. I didn't know who it was. I -- when he
23 told me the name Snow, I didn't even think that was the real
24 name. I didn't know who it was. It wasn't that we targeted
25 Judge Snow to target Judge Snow. Judge Snow is not a target. 14:14:44

1 I didn't think his information was even going to be in there,
2 to be honest with you.

3 Q. Well, you targeted the judge in the Melendres case, right?
4 I mean, that's --

5 A. It is a judge for the reason why I'm telling you. There 14:14:56
6 was no nefarious reason to ask about this judge. I didn't know
7 enough to ask about him particularly. It could have been some
8 other judge. I didn't know who he is. I don't know who he is.

9 Q. All right. Well, you found that Mr. Montgomery had
10 information about the judge in the Melendres case whose name 14:15:24
11 you realized was Judge Snow, is that right?

12 A. Yes, sir.

13 Q. Did you then tell that fact to Sheriff Arpaio and Chief
14 Sheridan?

15 A. I believe the information was relayed originally by phone 14:15:36
16 saying: You're not going to believe this. Judge Snow is a
17 victim.

18 Q. Okay. And how -- can you tell me, in relation to November
19 5, 2013, when that would have been?

20 A. Sir, I don't have a time line. All I can tell you, it had 14:15:51
21 to be -- there was holidays involved here. I don't know if it
22 was in November, December; I just don't remember.

23 Q. Was it before a meeting, which is the one mentioned in your
24 text messages to Sergeant Anglin, where you were on the phone
25 with Detective Mackiewicz and Mr. Montgomery, and there were a 14:16:20

1 number of other people on the line including lawyers in
2 Phoenix? Were you part of that call?

3 A. I was. I don't know if that information surfaced then. I
4 don't -- I don't know.

5 We went out there originally for three days and stayed 14:16:38
6 something like 17, so I don't know exactly when that call went.

7 Judge Snow was not a big factor in everything we were
8 hearing. He was just another victim like 151,000 other people
9 in this county.

10 Q. Well, going back to Exhibit 2056, that is an e-mail that 14:17:01
11 you received from Mr. Montgomery, correct?

12 Let's give Mr. Klein a chance to pull it up. 2256.

13 A. Yeah, Counselor, this is out of the mind of Mr. Montgomery.
14 I don't know what's reality and what isn't in a lot of these
15 things. I have no idea. And in June 29th, I don't believe I 14:17:43
16 was back in this, or just getting back into this, and this is
17 what he sends me. I can't tell you if this happened or not.

18 Q. Well, he did send it to you, right?

19 A. Yes.

20 MR. YOUNG: Okay. Your Honor, I move for the 14:18:03
21 admission of Exhibit 2256.

22 THE COURT: The exhibit is admitted.

23 (Exhibit No. 2256 is admitted into evidence.)

24 THE COURT: Do you have an objection you want to make,
25 Mr. Masterson? 14:18:13

1 MR. MASTERSON: I do not.

2 THE COURT: The exhibit's admitted.

3 BY MR. YOUNG:

4 Q. Then Exhibit 2960, that's another e-mail string that you
5 had with Mr. Montgomery on July 8, 2014, correct? 14:18:26

6 A. Yes, it is, sir.

7 MR. YOUNG: I move for the admission of Exhibit 2960.

8 THE COURT: Exhibit 2960 is admitted.

9 (Exhibit No. 2960 is admitted into evidence.)

10 BY MR. YOUNG: 14:18:48

11 Q. The next exhibit I'd like you to look at again, Mr. Zullo,
12 is Exhibit 2258. Is that an e-mail exchange that you had with
13 Mr. Montgomery on October 30, 2014?

14 A. It's an e-mail sent to me by Mr. Montgomery.

15 Q. Right, which responded to an e-mail that you had sent to
16 him, correct? 14:19:20

17 A. I don't think so, sir. I don't know where that is.

18 Q. Well, if you look at the middle e-mail of that string,
19 there's something --

20 A. Well, I'm responding, sir -- excuse me. 11:35 a.m. he 14:19:32
21 sends me this bottom e-mail. I don't see it till 12:14
22 unless -- yeah, it has to be 12:14 p.m., and then I just
23 responded "not true." And then he sends me this other, this
24 other one up top there. I don't know what this means.

25 Q. Okay. Well, that's a set of three e-mails that you 14:19:53

1 exchanged with Mr. Montgomery, correct?

2 A. Yeah. So what you'll find out, sir, and you'll see in
3 this, is the majority of e-mails are Mr. Montgomery e-mailing
4 me.

5 MR. YOUNG: Your Honor, I move for the admission of
6 2258. 14:20:04

7 THE COURT: Is that 2258?

8 MR. YOUNG: Yes. And I hope I'm not duplicating an
9 earlier admission.

10 THE COURT: I thought it was -- I thought you said
11 2960, but if it's -- 14:20:15

12 MR. YOUNG: Oh, I apologize if I got the number wrong.
13 The one we're looking at on the screen is 2258.

14 THE COURT: All right. Thank you.

15 2258 -- 14:20:29

16 MR. MASTERSON: No objection.

17 THE COURT: -- is admitted.

18 (Exhibit No. 2258 is admitted into evidence.)

19 BY MR. YOUNG:

20 Q. Now, earlier we listened to an audio, we can play it again
21 if you'd like, that perhaps you'll remember it. It's
22 Exhibit 2979, where there's a reference to Mr. Montgomery. He
23 says he's doing Snow stuff. 14:20:44

24 Do you recall that audio?

25 A. Yes. 14:21:06

1 Q. That's a recording that you made of a discussion that you
2 had with Mr. Montgomery, correct?

3 A. Yes.

4 Q. Do you remember approximately when that was?

5 A. Is that the April one? 14:21:19

6 Q. Well, yeah. Actually, there is a reference to April in
7 that.

8 A. That's the one I'm referring to, if that's what you're
9 asking me.

10 MR. YOUNG: Okay. Your Honor, I move for the
11 admission of Exhibit 2979. 14:21:32

12 THE WITNESS: But sir, for clarification, Snow stuff
13 is the same information I told you about. There was nothing
14 else -- nobody was targeting this judge. Nobody was -- we
15 didn't target anybody. We didn't look into anybody's personal
16 life. It was that information that was critical to us, and
17 especially the fact that he is a sitting judge, a federal
18 judge. That had a lot of weight with us. 14:21:48

19 BY MR. YOUNG:

20 Q. Okay. Just to clarify, you referred to what you discussed
21 earlier. The Snow stuff was the IRS -- 14:22:05

22 A. IRS, and he alleged that he had his banking information.

23 MR. YOUNG: Your Honor, I move for the admission of
24 Exhibit 2979.

25 MR. MASTERSON: I object to certain of the information 14:22:21

1 in that exhibit on the basis of hearsay. And I believe I
2 already made a relevance objection to that which was overruled,
3 so I'm not going to remake that one.

4 THE COURT: Yeah, the relevance objection's overruled.

5 The exhibit is going to be admitted to the extent that 14:22:38
6 Mr. Zullo has indicated he made it and what it was.

7 I don't know whether or not there are other
8 participants in that conversation and who they were, but I'm
9 going to admit the exhibit to the extent that I can understand
10 and have a basis for understanding -- well, I'm going to admit 14:22:59
11 the exhibit. I'm not going to admit it all for the truth of
12 the matter asserted if I can't ascertain who's speaking.

13 MR. YOUNG: Well, Your Honor, perhaps we should play
14 it again so that Mr. Zullo --

15 THE WITNESS: Your Honor, I have to ask you, at some 14:23:14
16 point in time I really want to stop answering questions. It's
17 like I'm going over stuff now that I don't -- I don't know what
18 I'm doing.

19 THE COURT: Well, I appreciate the difficulty you're
20 in, Mr. Zullo, but you cannot invoke the Fifth and not invoke 14:23:24
21 the Fifth. And once you begin discussing something, you've
22 discussed it. And so --

23 THE WITNESS: I thought it was a question-per-question
24 basis. I thought that's what you just said to me.

25 THE COURT: Well, sir, I'm not your legal counsel. 14:23:45

1 THE WITNESS: Oh, I see. Okay. Well, I don't have
2 counsel.

3 THE COURT: I know you don't. And it is on a
4 question-by-question basis. But you have to be consistent in
5 your invocation. All right?

14:23:58

6 So do you want to play that again?

7 MR. YOUNG: Yes, Your Honor.

8 And Mr. Zullo, I'm going to ask you to listen to
9 Exhibit 2979, and I'm going to ask you about who the
10 participants in that discussion were.

14:24:14

11 So, Mr. Klein, if we could start from the beginning.

12 (Audio clip played.)

13 (Audio clip stopped.)

14 BY MR. YOUNG:

15 Q. There was someone, Mr. Zullo, who asked: When you went to
16 L.A. to do the -- do you want me to say where? Who was that?

14:25:06

17 A. That would have been Mr. Montgomery's son-in-law.

18 Q. And what was his name?

19 A. Ish something. I don't remember his last name.

20 Q. And what was his purpose in asking that, if you know?

14:25:28

21 MR. MASTERSON: Objection, foundation.

22 BY MR. YOUNG:

23 Q. What was going on in this conversation?

24 THE COURT: Well, I'm going to overrule the objection
25 because he said "if you know."

14:25:41

1 Do you know?

2 THE WITNESS: I don't even understand the question.

3 BY MR. YOUNG:

4 Q. There's a reference to Lockheed in the discussion. What
5 was that about? What was the role of Lockheed in this
6 discussion? 14:25:54

7 A. My understanding was Mr. Montgomery had access to a
8 facility at Lockheed that had a supercomputer, that he could
9 take these drives that he was trying to decipher for us and do
10 it exponentially quicker, just because of the sheer horsepower 14:26:13
11 of this computer. That's my understanding.

12 Q. And there's a reference to the L.A. thing in that
13 discussion. What was that?

14 A. Well, I think that is the same thing. I just categorized
15 it like that. 14:26:29

16 Q. And the purpose for having Mr. Montgomery have access to
17 this computing capacity was to facilitate the investigation
18 into the banking identity theft issue, is that right?

19 A. No, sir. You have to understand that the way
20 Mr. Montgomery was doing this, it was -- it's called packet 14:26:45
21 reconstruction. And I don't know, I'm no computer science guy,
22 but my understanding is this information, once it's harvested,
23 it's harvested in packet form. And those packets have to be
24 compiled back together. And those packets could be on various
25 drives. So my understanding is this computer would have 14:27:05

1 allowed him to do that a lot faster.

2 MR. YOUNG: Your Honor, may I have a moment?

3 THE COURT: You may.

4 (Pause in proceedings.)

5 MR. YOUNG: Your Honor, may we have a sidebar? 14:27:33

6 THE COURT: Yes.

7 (Bench conference on the record.)

8 MR. YOUNG: Your Honor, obviously this is going to
9 take longer because there's been a change during the lunch
10 hour. Mr. Zullo's now answering questions. 14:28:01

11 I would note that it's my understanding that Mr. Zullo
12 was doing -- is answering questions voluntarily. Now, it is
13 our understanding that he does have the right to invoke the
14 Fifth Amendment as to any particular question, even if he's
15 answered previous questions on the same subject. And I think 14:28:20
16 it would be our understanding that with each successive
17 question, he does have the right to invoke the Fifth, and if he
18 chooses not to, he's waived it as to that particular question.

19 THE COURT: Well, that's what I -- did I not say that?

20 MR. YOUNG: That's my understanding of the argument on 14:28:39
21 that, and I just want to make sure --

22 THE COURT: Do you have a different view,
23 Mr. Masterson?

24 MR. MASTERSON: Well, I have a different view on the
25 law as to -- 14:28:51

1 THE COURT: That's what I mean.

2 MR. MASTERSON: Let me explain. As to what it does
3 when he answers a question. I do not disagree that he waives
4 as to that specific question. I have no disagreement with
5 that.

14:29:07

6 THE COURT: Okay.

7 MR. MASTERSON: I think -- I mean, in candor to the
8 Court, my opinion is that it's a broader waiver than even that.

9 THE COURT: Yeah. And it seems to me that in his
10 response, that was very lengthy, he did raise a number of the
11 tape recordings and exhibits that -- and he did refer to them
12 in that answer that he previously had invoked the Fifth with
13 respect to.

14:29:23

14 Do you disagree with that?

15 MR. MASTERSON: No, Judge. I'll just tell you what my
16 understanding of the law is and then you guys can disagree, or
17 certainly you can disagree with me.

14:29:38

18 My understanding of the law is that he is free to
19 invoke the Fifth Amendment as to any question he chooses. If,
20 however, he answers a question, an incriminating question, then
21 it's my understanding -- or my opinion, anyway -- that he is
22 compelled to answer questions concerning the details of that
23 particular answer for which he waived his Fifth Amendment
24 right.

14:29:56

25 THE COURT: Well, I think maybe what we ought to do is

14:30:18

1 take a break. I'm going to go take a look at what the Fifth
2 Amendment waiver amounts to --

3 MR. MASTERSON: You know what? I have a -- I have a
4 trial memo I can get to you that might be of some assistance.

5 THE COURT: Anybody object? 14:30:30

6 MR. MASTERSON: And I've got copies for everybody.

7 MR. YOUNG: No. And we do have a case which might be
8 illuminating which is United States versus Seifert, 648 F.2d
9 557 Ninth Circuit (1980).

10 THE COURT: Is that in your trial memo? 14:30:44

11 MR. MASTERSON: I don't know.

12 THE COURT: Well, go get your trial memo. Let's take
13 a look at it.

14 (Bench conference concluded.)

15 THE COURT: Mr. Zullo, I'm going to take a break, and 14:30:59
16 I'm going to tell you why I'm going to take the break. You do
17 have a right to invoke Fifth Amendment. I'm not trying to
18 prevent you from invoking the Fifth Amendment any time you
19 wish.

20 But there is an effect, if you begin to answer 14:31:11
21 questions, on how much and what then you need to answer. And
22 in light of your voluntary answers to the last number of
23 questions you've received, I think that that -- that I have a
24 question about how far I can go in compelling you to answer if
25 you get asked a follow-up question, and I want to just be sure 14:31:32

1 that I am comfortable with the contours of that, so I'm --

2 THE WITNESS: Could I note, Your Honor, just for the
3 record, make sure I -- I probably misunderstood the prior
4 direction when I was advised by you that it was question upon
5 question.

14:31:51

6 THE COURT: Well, that means you can take the Fifth
7 with respect to every question that you're asked.

8 THE WITNESS: I understand. I don't think I
9 understood it.

10 THE COURT: Well, now I'm going to tell you that
11 because you have voluntarily answered some of the questions,
12 then you may receive follow-up questions. And I just want to
13 be comfortable that I'm correct in the law, or as correct as I
14 can be, in determining whether or not you're going to have to
15 answer those questions.

14:32:00

14:32:15

16 THE WITNESS: Okay, sir.

17 THE COURT: So I'm going to take about a -- I think
18 I'm going to take a half an hour break and we're going to
19 reconvene here at 3 o'clock. All right? Thank you.

20 THE WITNESS: Thank you.

14:32:28

21 THE COURT: Is this the authority, Mr. Masterson, that
22 you wanted to provide me?

23 MR. MASTERSON: I did, yes.

24 THE COURT: All right. Mr. Young, you had a case you
25 wanted to provide me?

14:32:38

1 MR. YOUNG: Yes, Your Honor. And I haven't, I have to
2 say, done extensive research on this myself, so I don't know
3 whether this is complete or even -- well, I don't know whether
4 it's complete. But the case I would cite is United States
5 versus Seifert, 648 F.2d 557, Ninth Circuit (1980).

14:32:51

6 THE COURT: 648 F.2d?

7 MR. YOUNG: 648 F.2d 557.

8 THE COURT: All right. Thank you.

9 (Pause in proceedings.)

10 THE COURT: Did you want to file this memorandum?

14:33:36

11 MR. MASTERSON: We can do it two ways, Judge. I did
12 provide two copies, so we could file one of those, or we could
13 give a call back to the office and have them e-file it.

14 THE COURT: I'll let you file this one.

15 MR. MASTERSON: Thank you.

14:33:49

16 (Recess taken.)

17 THE COURT: Please be seated.

18 All right. Here's how we're going to proceed,
19 Mr. Zullo.

20 You're correct when you said --

15:05:49

21 MS. IAFRATE: May I have a moment?

22 THE COURT: Oh, I'm sorry. I didn't realize everybody
23 wasn't here. I apologize.

24 (Pause in proceedings.)

25 THE COURT: I'm going to try to, in fairness, explain

15:06:15

1 some things to you without being your lawyer.

2 THE WITNESS: Okay, sir.

3 THE COURT: So if any of the attorneys object and
4 think I'm starting to cross the line, please stop me, or let me
5 know your objection.

15:06:27

6 You're correct that when you invoke the Fifth
7 Amendment, you invoke it on a question-by-question basis.
8 That's a basic rule.

9 THE WITNESS: Um-hum.

10 THE COURT: When you answer a question voluntarily
11 that is put to you, that may result in a waiver, to some extent
12 or to a larger extent, depending upon the question. But that
13 does not prevent you from seeking to invoke the Fifth Amendment
14 on any further questions that you're asked. Just the burden
15 falls to me to determine whether or not testimony that you've
16 already given allows the parties to ask -- to make further
17 inquiry about something that you've already said.

15:06:42

15:07:10

18 A second problem -- and so a second problem that has
19 arisen because of your testimony is this. Normally, the party
20 who calls you gets to call you first. Then the other parties
21 have a chance to cross-examine. And then the party who called
22 you is given a chance to ask you questions on redirect just by
23 way of rebuttal.

15:07:29

24 What happened in this case, as far as I recollect, is
25 that it was actually on redirect -- you answered a few of

15:07:48

1 Mr. Masterson's questions, there weren't very many, but there
2 were a few on cross-examination. No other party had any
3 questions for you.

4 Then on redirect -- as I recall, at least -- when
5 Mr. Young was asking you some questions in follow-up of what 15:08:04
6 Mr. Masterson was asking you, you volunteered a great deal of
7 information.

8 That information that you volunteered might have some
9 general implications for the investigation as a whole; it might
10 not. And it also might have some specific implications for 15:08:19
11 some of the exhibits that you took the Fifth Amendment as to
12 this morning.

13 But I went -- I tried to, didn't have much time -- I
14 tried to go back briefly and look at everything that you said
15 in your answers to Mr. Young, and I can't really ascertain, I 15:08:35
16 have no degree of comfort that I could ascertain necessarily in
17 a general sense that I can tell you now: You've waived this;
18 you haven't waived that. So how we're going to proceed, I
19 believe, is this way.

20 I'm going to allow Mr. Young to ask you questions. 15:08:55
21 I'm going to remind you that you have a right to invoke the
22 Fifth Amendment as to any question he asked.

23 Then what I propose to do is when you've exhausted
24 your questions, Mr. Young, we'll see if any of other parties
25 have any follow-up questions they want to ask. Again, 15:09:13

1 Mr. Zullo, you're entitled to invoke the Fifth Amendment as to
2 any question they ask.

3 Rather than try to decide on the fly whether or not
4 there has been a waiver -- either large or small, based on the
5 testimony that Mr. Zullo has given -- all parties are receiving
6 dailies, right? 15:09:30

7 All right. So you can -- you can make application to
8 the Court that we recall Mr. Zullo, if he continues to invoke
9 the Fifth Amendment, based on the waiver on what he has already
10 testified to. 15:09:49

11 Now, that poses a few additional questions, or
12 problems, Mr. Young, because normally, he's answering now your
13 questions on redirect, and he's answered a great deal of them.
14 I'm not sure that I wouldn't entertain a motion by defendants,
15 in light of the fact that he's now coming forward with this on
16 redirect, to have -- it's one of those unusual circumstances
17 where I might give them recross, and then allow you final
18 redirect. 15:10:05

19 Unfortunately for you, Mr. Zullo, that may require you
20 to come back another day. 15:10:19

21 THE WITNESS: I was almost out, Judge.

22 THE COURT: Yeah, you almost were, but it's the
23 decision -- you understand --

24 THE WITNESS: I do, sir.

25 THE COURT: -- that I'm proceeding the way I'm 15:10:27

1 proceeding in order to protect, to the maximum extent possible,
2 your Fifth Amendment rights.)

3 THE WITNESS: I appreciate that, sir. I understand.

4 THE COURT: Do you have any questions about what I've
5 just said, or any objections, Mr. Young? 15:10:40

6 MR. YOUNG: None, Your Honor. We agree with that, the
7 procedure.

8 THE COURT: Mr. Masterson?

9 MR. MASTERSON: I do have a question, Judge, but I --
10 I think we should do it at sidebar rather than discuss it in
11 front of the witness. 15:10:47

12 THE COURT: That's all right. Do you want to do it
13 now? Would it be helpful to do it now?

14 MR. MASTERSON: I think it would be.

15 THE COURT: All right. Let's do it, then. 15:10:55

16 (Off-the-record discussion between the Court and the
17 court reporter.)

18 (Bench conference on the record.)

19 THE COURT: The court reporter just wanted me to tell
20 you a matter of business: You don't have a daily order form
21 in. If you want one, you'll need to put one in. 15:11:22

22 MR. MASTERSON: Oh, okay.

23 THE COURT: Okay.

24 MR. MASTERSON: We'll do that.

25 THE COURT: All right. 15:11:29

1 MR. MASTERSON: I thought we did, but something must
2 have changed.

3 Anyway, I took a look at the case that Mr. Young gave
4 you --

5 THE COURT: Yeah. 15:11:36

6 MR. MASTERSON: -- at our break. I'm a little
7 concerned about the lawyers asking questions, and I know the
8 Court said you're going to make the ruling on each question,
9 but I looked at the case and the paragraph I'm talking about,
10 and I'm sure you just read it, is our rule is that whatever the 15:11:56
11 standard of waiver for defendants who voluntarily testify, an
12 ordinary witness may pick the point beyond which he will not
13 go --

14 THE COURT: Right.

15 MR. MASTERSON: -- and refuse to answer any questions 15:12:08
16 about a matter already discussed, even if the facts revealed
17 are incriminating, as long as the answer sought may tend to
18 further incriminate him.

19 THE COURT: Right.

20 MR. MASTERSON: I'm a little concerned about me asking 15:12:19
21 questions of him if he chooses -- if he invokes. But it is my
22 understanding you're going to make the ruling, though?

23 THE COURT: No. Maybe I didn't explain it very well,
24 it's good to explain it.

25 What I'm going to do is I'm going to allow him to 15:12:36

1 invoke.

2 MR. MASTERSON: Okay.

3 THE COURT: In large part, based on the paragraph you
4 just read.

5 MR. MASTERSON: Okay. 15:12:44

6 THE COURT: It seems to me he can still invoke.

7 MR. MASTERSON: Okay.

8 THE COURT: And if his answer in fact has any tendency
9 to further incriminate him, then that invocation is
10 appropriate. 15:12:53

11 My concern is he already sort of went off on the
12 free-form answers, which everybody let him go off on earlier in
13 the redirect, and I am not going to be able to try to
14 reconstruct whether there's some sort of a waiver without
15 looking at what you're going to point to and say: This 15:13:05
16 question is appropriate because he waives -- or he's going -- I
17 mean, this answer allows further inquiry.

18 So I'm actually, I'm sorry, going to ask you to
19 brief -- I'm going to ask you to state the -- I'm going to ask
20 Mr. Young first to state the questions he has now. I'm going 15:13:19
21 to allow Mr. Zullo to invoke. If Mr. Young -- and I'm going to
22 probably sustain his invocation today.

23 MR. MASTERSON: Okay.

24 THE COURT: Then if Mr. Young believes that he has
25 waived as to any particular question that I sustained, for, you 15:13:33

1 know, temporary purposes today, then I'm going to let Mr. Young
2 file a brief -- a pleading saying: This is the question and
3 this, his answer here from the transcript, indicates that he
4 has waived and I should be allowed to ask this specific
5 question.

15:13:54

6 MR. MASTERSON: Okay. I understand now.

7 THE COURT: Okay.

8 MR. YOUNG: Your Honor, I see an issue, which is that
9 I had a lot of questions this morning --

10 THE COURT: Um-hum.

15:14:02

11 MR. YOUNG: -- and I'm not sure that what I need to do
12 now is ask every one of those questions again.

13 THE COURT: I don't think you need to ask every one.

14 I think we can shortcut this by if you start asking questions,

15 Mr. Zullo does not voluntarily answer, I think you can just

15:14:15

16 say: Are you going to reinvoke as you did this morning?

17 Will that be acceptable to you?

18 MR. MASTERSON: Yeah, that's fine with me, Judge.

19 THE COURT: All right. Is that fine with everybody

20 else here?

15:14:29

21 THE COURT REPORTER: I didn't hear that.

22 THE COURT: All parties agreed that it's acceptable,

23 if Mr. Zullo indicates he's going to reinvoke to the same

24 extent he did this morning, that we won't -- Mr. Young won't be

25 required to re-ask every single question that he asked this

15:14:39

1 morning.

2 However, Mr. Young, just so you're aware, if you're
3 going to say that he waived based on what he said in redirect,
4 you're going to have to point to the specific question that you
5 did ask this morning, is that clear?

15:14:53

6 MR. YOUNG: Yes.

7 THE COURT: All right.

8 MR. MASTERSON: And just so everyone knows, I think
9 the case law does say that you can't blanket invoke the Fifth.

10 THE COURT: It does say that.

15:15:02

11 MR. MASTERSON: So we're all understanding that we're
12 going to move past that rule.

13 THE COURT: Yes.

14 MR. MASTERSON: Okay.

15 THE COURT: And I think that it's common sense that --

15:15:08

16 MR. MASTERSON: I understand.

17 THE COURT: -- we do that.

18 Now, I don't know -- I'm not going to require -- as I
19 said, I think it's only fairness to allow the defendants to
20 re-question based, to some extent, potentially, at least, on
21 the answer given, but I may allow re-redirect, too. But if
22 you --

15:15:20

23 MR. YOUNG: Did you mean plaintiffs, Your Honor? I
24 mean, I can --

25 THE COURT: Yes. Yes. That's what I meant. Thank

15:15:34

1 you. I'm sorry. But if you have questions that you know
2 you're going to want to ask based on what Mr. Young has already
3 asked him, then I expect you to ask those today. And if he
4 invokes the Fifth, the same procedure will go for you, which is
5 you will have to specify what he already said in his redirect,
6 Mr. Young, that allows you to ask the question you're asking.

15:15:51

7 MR. MASTERSON: I've got that. And then my
8 understanding would also be that if Mr. Young then -- well,
9 Mr. Young, I assume, will be filing a brief if he desires to
10 ask additional questions.

15:16:06

11 THE COURT: Right.

12 MR. MASTERSON: And the Court will rule whether
13 there's been a waiver on that question.

14 I assume that I could then follow up on -- where are
15 we?

15:16:16

16 THE COURT: The answer.

17 MR. MASTERSON: -- recross.

18 THE COURT: Yeah. I think so. But again, that's
19 going to be still a somewhat sensitive inquiry.

20 MR. MASTERSON: Understood, yeah.

15:16:24

21 THE COURT: I think it will be more focused then, so I
22 think I'll probably be able to have more confidence doing it
23 from the bench at that time. But the briefing will allow me to
24 focus on the question, focus on the answer, and the extent to
25 which I'm going to call allow you to cross-examine and

15:16:35

1 determine whether or not it has any tendency to further
2 incriminate Mr. Zullo.

3 MR. MASTERSON: Okay.

4 THE COURT: Okay?

5 MR. YOUNG: Thank you, Your Honor.

15:16:46

6 (Bench conference concluded.)

7 THE COURT: All right, Mr. Zullo. I'm just going to
8 repeat what I said to you earlier, make sure you understand.

9 You have the right to voluntarily answer the questions
10 if you want, but you also have the right to invoke the Fifth
11 Amendment if you wish to do so. If you do choose to invoke the
12 Fifth Amendment, I've just discussed with the parties what I
13 tried to discuss clearly in open court, which I'm going to
14 repeat again.

15:17:02

15 If you do invoke the Fifth, my tendency is going to be
16 to let that stand for today. And then if the parties are going
17 to assert that they have a right to an answer to their specific
18 question in light of testimony that you've already voluntarily
19 given, they're going to file a brief with me, I'm going to make
20 a determination whether they can answer that question, and then
21 we'll have to have you back.

15:17:17

15:17:33

22 THE WITNESS: Okay, sir.

23 THE COURT: Do you understand that?

24 THE WITNESS: I do, yes.

25 THE COURT: All right. Thank you.

15:17:40

1 MR. YOUNG: Thank you, Your Honor.

2 BY MR. YOUNG:

3 Q. Let's take a look, Mr. Zullo, at Exhibit 2090, two zero
4 nine zero. That's a February 2, 2015 e-mail string between you
5 and Mr. Montgomery, correct? 15:18:00

6 A. Yes, sir.

7 Q. That e-mail was written -- that e-mail string was written
8 by you and also Mr. Montgomery in the course of the Seattle
9 investigation, correct?

10 A. Yes, sir. 15:18:12

11 MR. YOUNG: Your Honor, I move for the admission of
12 Exhibit 2090.

13 MR. MASTERSON: Objection, founda- -- well, objection,
14 relevance, 403.

15 THE COURT: Overruled. The Exhibit 2090 will be
16 admitted. 15:18:26

17 (Exhibit No. 2090 is admitted into evidence.)

18 BY MR. YOUNG:

19 Q. Let's turn now to Exhibit 2273.

20 Mr. Zullo, that's an e-mail string between you and
21 Mr. Montgomery dated February 11, 2015, correct? 15:18:40

22 A. Yes, sir.

23 Q. And that was written during the course of your work on the
24 Seattle investigation, correct?

25 A. Yes, sir. 15:19:00

1 MR. YOUNG: I move for the admission of Exhibit 2273.

2 MR. MASTERSON: Objection, relevance, 403.

3 THE COURT: Overruled. The exhibit is admitted.

4 (Exhibit No. 2273 is admitted into evidence.)

5 BY MR. YOUNG:

15:19:17

6 Q. Let's go now to Exhibit 2964.

7 Mr. Zullo, Exhibit 2964 is an e-mail string dated
8 November 4, 2014, between you and Mr. Montgomery, correct?

9 A. Yes, sir.

10 Q. And that was done during the course of your work on the
11 Seattle investigation?

15:19:51

12 A. Yes, sir.

13 MR. YOUNG: I move for the admission of Exhibit 2964.

14 MR. MASTERSON: Objection, relevance, 805, 403.

15 One second, Judge, please.

15:20:15

16 (Pause in proceedings.)

17 MR. MASTERSON: Withdraw the 805, so just relevancy
18 and 403.

19 THE COURT: Overruled. The exhibit is admitted.

20 Exhibit 2964 is admitted.

15:20:29

21 (Exhibit 2964 is admitted into evidence.)

22 BY MR. YOUNG:

23 Q. Let's go to Exhibit 2965. Exhibit 2965 is a November 5,
24 2014, e-mail string between you and Mr. Montgomery written

25 during the course of the Seattle investigation, correct?

15:20:46

1 A. Yes, sir.

2 MR. YOUNG: Your Honor, I move for the admission of
3 2965.

4 MR. MASTERSON: Objection, relevance, 403.

5 THE COURT: Overruled. Exhibit 2965 is admitted. 15:21:05

6 (Exhibit No. 2965 is admitted into evidence.)

7 BY MR. YOUNG:

8 Q. Let's go to Exhibit 2967.

9 Actually, I believe that one's admitted already.

10 Let's go to 2968. That's a January 6, 2015 e-mail 15:21:27
11 exchange between you and Mr. Montgomery, correct?

12 A. I don't know if that's the complete e-mail exchange, but
13 that portion does look correct.

14 Q. Well, I'm actually told that 2968 has been admitted
15 already, so we'll go on to the next one. 15:21:56

16 2969. That is a January 7, 2015 e-mail string between
17 you and Mr. Zullo at the top, and then there's an e-mail at the
18 bottom of the first page from you to Mr. Flynn.

19 And we're going to exclude the very last e-mail in the
20 string, which is a January 7, 2015 2:54 p.m. e-mail written by 15:22:28
21 Mike -- Michael Flynn. But all the rest are e-mails that you
22 either wrote or received during the course of the Seattle
23 investigation, correct?

24 A. Yes, sir.

25 MR. YOUNG: I move for the admission of 2969. 15:22:43

1 MR. MASTERSON: My understanding is that, as we
2 discussed last time, the second -- I don't know if it's the
3 whole page, but that bottom paragraph is being removed, so my
4 sole objection is relevance and 403.

5 MR. YOUNG: I move, just to clarify, for admission of 15:23:00
6 the redacted version of that exhibit that we will submit.

7 THE COURT: You move for the admission of 2969A, which
8 is going to be the redacted version, as Mr. Masterson just
9 explained.

10 MR. YOUNG: I so move, Your Honor. 15:23:17

11 THE COURT: All right. And you state your objections.

12 MR. MASTERSON: Relevance, 403.

13 THE COURT: Overruled. Exhibit 2969A, as it has been
14 described to you, which is removing the last paragraph, is
15 admitted. 15:23:29

16 (Exhibit No. 2969A is admitted into evidence.)

17 BY MR. YOUNG:

18 Q. Let's go to Exhibit 2269. Exhibit 2269 is a January 22
19 e-mail exchange between you and Mr. Montgomery, correct?

20 A. Yes, sir. 15:23:52

21 Q. That was done during the Seattle investigation?

22 A. You know, sir, you categorize it as the Seattle
23 investigation. For all intents and purposes, the Seattle
24 investigation I believe ended almost a year to the day, I think
25 in October of '14. What was going on with Mr. Montgomery at 15:24:21

1 that point in time was monitoring him based on some discussions
2 we had with Judge Lamberth and trying to propel Mr. Montgomery
3 forward.

4 This was really monitoring him and trying to get him
5 to ever produce what he had promised us. There was really no
6 investigation going on at that time. 15:24:41

7 Q. All right. Well, let's -- it is an e-mail string between
8 you --

9 A. Yeah, I just want to clarify that for you.

10 Q. Understood. 15:24:54

11 MR. YOUNG: Your Honor, I move for the admission of
12 Exhibit 2269.

13 THE COURT: 2269?

14 MR. YOUNG: Yes.

15 THE COURT: I thought 2269 was just the exhibit we
16 decided that you were going to admit 2269A but not 2269. Maybe
17 I -- oh, I'm sorry. That was 2969. I apologize. 15:25:03

18 2269?

19 MR. MASTERSON: Objection, relevance, 403.

20 THE COURT: Overruled. Exhibit 2269 is admitted. 15:25:26

21 (Exhibit No. 2269 is admitted into evidence.)

22 BY MR. YOUNG:

23 Q. So Mr. Zullo, you were just mentioning a monitoring project
24 relating to Judge Lamberth.

25 What was that? 15:25:39

1 A. I didn't mention a monitoring project; we were monitoring
2 Mr. Montgomery --

3 Q. Right. Right. What --

4 A. -- trying to propel him forward.

5 Q. That's what I was asking about. What were you monitoring
6 Mr. Montgomery for, and how did that relate to Judge Lamberth?

15:25:49

7 A. Mr. Montgomery -- this portion of what we were doing here
8 was basically starving out Mr. Montgomery. Mr. Montgomery
9 obviously had no income, and we knew at some point in time he
10 was going to have to choose which way he was going to go:
11 working with the federal government or not.

15:26:07

12 Ultimately, we were hoping he was going to choose to
13 work with the FBI, which ultimately he did. He got production
14 immunity on 600 million records. That was just part of that
15 strategy of starving him out. I was in contact with Larry
16 Klayman at that time, so I had some indication of where
17 Montgomery was headed, what he was thinking.

15:26:23

18 The whole purpose of this was to get him to the
19 federal government on some cooperative level. It was a long
20 way around the mountain, but ultimately it worked.

15:26:40

21 Q. What do you mean by starving him out?

22 A. He has no income, and he wasn't going to get any other
23 revenue from the Maricopa County Sheriff's Office after
24 October. So you'll see in some of these e-mails where he's
25 kind of begging and telling me that he's got no food, no

15:26:55

1 Internet or whatnot. None of that was going to matter. Nobody
2 was going to come to his aid. Nobody was going to get back on
3 the bandwagon with him. He was going to have to fend for
4 yourself.

5 And I don't care who you are. After -- without ample 15:27:08
6 savings, after a while you have to make some tough decisions,
7 and I guess he made his.

8 Q. What was the subject matter of the discussion with
9 Judge Lamberth and the cooperation with the FBI that you just
10 mentioned, if I'm not mistaken? 15:27:22

11 THE WITNESS: If I -- if I could ask you, Your Honor,
12 that conversation, that was in the judge's chambers. I don't
13 know if that's privileged; I don't know what that is.

14 THE COURT: Well, sir, you don't have a basis as far
15 as -- I mean, I think I'm going to -- you can choose whether or 15:27:35
16 not you're going to answer, but --

17 THE WITNESS: Okay.

18 THE COURT: -- if you're not going to answer, it has
19 to be on the basis of a privilege that belongs to you.

20 THE WITNESS: I understand. 15:27:48

21 I don't think I have that basis. I don't think
22 there's anything the Fifth Amendment protects in that
23 conversation.

24 So I'm sorry, sir. Could you ask me again?

25 BY MR. YOUNG: 15:27:59

1 Q. Yes. You mentioned some discussion involving
2 Mr. Montgomery with Judge Lamberth, and some work that you
3 wanted to get Mr. Montgomery to do with the FBI.

4 A. Okay.

5 Q. Okay. What was the subject of that --

15:28:10

6 A. Yeah, let me -- let me back up for you.

7 The Sheriff's Office was in a little bit of a quandary
8 as far as Montgomery was concerned. Our intent was to
9 corroborate private parties' information to kind of validate
10 all this other I Spy stuff he was talking about, because we
11 don't have the ability to do that.

15:28:28

12 In that quandary, we didn't know where to turn with
13 him. He would not cooperate. He told us right up he would not
14 cooperate with the FBI because of what they did to him, he
15 would not cooperate with the Department of Justice because of
16 what they did to him, and he was always crying for this
17 immunity thing. Well, we don't have the ability to guaranty
18 him -- or anyone -- any kind of immunity.

15:28:45

19 It was at that point in time, I think it was around
20 August, I was there unrelated. It was on the birth certificate
21 issue.

15:28:58

22 Q. August of 2014?

23 A. Yes, I believe so, yeah. These years blend in for me.

24 I was there, and basically the Sheriff's Office was
25 cutting him off and he was pretty much finished. I had concern

15:29:16

1 with that, and my concern was based on a lot of representations
2 that Mr. Montgomery made, the information, such as the judge,
3 judge's information and many others being a victim in there, I
4 didn't know if it was a prudent idea for us just to kind of put
5 this thing in a box and just throw it to the FBI to get it off 15:29:38
6 our plate.

7 I went to see the sheriff and chief deputy, and I knew
8 that I had the ability to get Mr. Montgomery where he wanted to
9 go and that was before a federal judge. And in my thought
10 process, if this guy is willing to sit in front of a federal 15:29:53
11 judge and throw this stuff up, let's see him do it. That's how
12 Mr. Klayman got involved is I knew Mr. Klayman would have a
13 connection for us to take this guy there.

14 And please excuse me for using the term "this guy."
15 I'm from New Jersey; that's what we do. 15:30:13

16 We made arrangements. I believe we -- myself,
17 Detective Mackiewicz, and Mr. Klayman -- it took a prior
18 initial meeting with Judge Lamberth, explained to him what we
19 thought we had but we weren't sure. There was a subsequent
20 meeting where we did bring Mr. Montgomery, who was recently out 15:30:34
21 of the hospital. It was on recommendation from the Maricopa
22 County Sheriff's Office that he does not travel.

23 We were reluctant to put him in a plane. He has a
24 brain aneurysm. We didn't pay for it. He found his own way
25 there. We are basically carrying him through the metal 15:30:53

1 detectors out of his wheelchair. I mean, he made a pretty big
2 endeavor to get there.

3 Once we get him there, he produces documents. He took
4 documents. We did not -- he alleges we gave stuff to the
5 judge; we didn't give anything to the judge. He threw out his 15:31:07
6 story. He threw out his documents. I do believe that
7 flowchart was part of that. And he, you know, said what he
8 said to say.

9 The understanding there was, with Judge Lamberth, that
10 Detective Mackiewicz and I and Mr. Klayman were going to come 15:31:23
11 back the following week and discuss what our options were. We
12 went back that third time and we did tell Judge Lamberth that
13 we cannot vouch for Mr. Montgomery. That we were at this point
14 in time unable to corroborate anything substantial outside of
15 some limited banking information, some limited passport 15:31:48
16 information, and complete identities. And when I say that, I'm
17 talking about Social Security numbers and individuals all
18 coinciding with each other.

19 And we were not comfortable, quite honestly, at that
20 point. We wanted time to go back and see what we could get 15:32:06
21 from Mr. Montgomery that might shore this up a little bit.

22 In the discussions, the judge basically told us:
23 Look, you've got three -- three places you could go: FBI, DOJ,
24 or a -- some kind of congressional committee, or something to
25 that effect. 15:32:29

1 Mr. Montgomery opted for the congressional committee,
2 which wasn't something that we actually believed was ever going
3 to happen, but it's something that he was looking for. So if
4 he thought he had the potential for that, maybe he would
5 cooperate with us and finally give us something that we would 15:32:43
6 have enough credibility with to go to the FBI and go: Whoa.
7 Take a look at this. How do you guys, you know, want to play
8 this? We never got that from Mr. Montgomery.

9 Subsequently, we were waiting for Mr. Montgomery to
10 basically come to the place where he had no roof over his head. 15:33:04
11 Mr. Flynn owned the house that Montgomery was in. It is such a
12 convoluted story. It was Montgomery's -- he lost it in a
13 bankruptcy. Flynn buys the assets. And then he buys this \$3
14 million house in Yarrow Point for \$20,000 in back taxes, and
15 he's got Montgomery is in there. Flynn has been trying to 15:33:29
16 throw Montgomery out. I had to, for three months, jockey these
17 players apart from each other and keep Montgomery in that house
18 so he can keep those machines going, and keep reducing the
19 stuff that the Sheriff's Office was looking for. And I was
20 successful in keeping him in that house for about a year. 15:33:51

21 Eventually, we closed our end of this thing down after
22 discovering those 50 hard drives -- or whatever they were,
23 whatever number -- had actually no valuable information on them
24 whatsoever. We closed our end down. He was now with Larry
25 Klayman. And let me -- let me back up a little. I know it's a 15:34:12

1 little scattered. I'm a little tired.

2 It was a calculated decision by the Maricopa County
3 Sheriff's Office that once we introduced Mr. Klayman, we would
4 lose control of this CI, because Mr. Klayman would take the
5 position as his attorney, and eventually we were going to
6 come -- become, you know, adversarial. 15:34:28

7 But it was a risk that we believed was worth it.
8 Because the big concern here was if this guy has the ability to
9 do what he is saying, if he is truly the individual that
10 created the hacking software -- not the harvesting, the hacking 15:34:45
11 software -- he truly would have ability to hack into any place
12 at will. And we needed to get him, again, cooperatively to the
13 federal government.

14 We didn't have enough at that time to go to the FBI
15 and say: Hey, guys, we got this. What can we do? There was 15:35:04
16 nothing. There was nothing here. It was so limited.

17 So that was the play was to try to get Mr. Montgomery
18 to cooperate, willingly turn over information. He had
19 originally wanted to turn over I think it was 425 hard drives
20 to the Maricopa County Sheriff's Office. I read in newspaper 15:35:26
21 articles where it was alleged we were buying information from
22 Montgomery. That's not true. Montgomery wanted to surrender
23 that information to us. The information wasn't even usable in
24 the form it was; it's in this packet configuration and had to
25 be processed. 15:35:45

1 So we weren't buying or utilizing Montgomery, quote,
2 for information that he was already giving us; we were
3 utilizing him for the processing of that information so it
4 could be in a readable form. Much like on some of the small
5 amount of records on the little thumb drive I think you guys
6 have where you see the calls, the telephones, to, from, name,
7 address. That's the way that we wanted to get this
8 information. E-mails, from our understanding, could be
9 reconstructed to basically contain almost the complete e-mail.

15:36:02

10 Just to jump ahead for you so you understand the
11 mindset that was here, I located the NSA people that actually
12 built the harvesting software. And what had happened was I was
13 out of this --

15:36:19

14 Q. And who were they?

15 A. That's Kurt Wiebe, Thomas Drake. Thomas Drake I think was
16 prosecuted. William Binney. I was out of this from
17 February -- I want to say February 12th, I don't remember, to
18 just about the end of June, with one little spurt -- excuse me.
19 I think the end of July, with one little spurt --

15:36:42

20 Q. That's 2014.

15:37:04

21 A. Yeah, this is all '14. So I was just monitoring
22 Montgomery, feeding information to the detectives and whatever
23 he was crying to me about during that time.

24 When I got back in, we did have a meeting with the
25 sheriff and the chief deputy, and I thought we needed to do

15:37:22

1 everything we could to try to corroborate the information that
2 Montgomery was giving us. And part of that did include those
3 hard drives.

4 I sat down on a Sunday, I want to say it was September
5 20th or 21st, a Sunday afternoon. I had a thumb drive that had 15:37:38
6 Mr. Montgomery's free talk on it with the AG's office. I had
7 time lines that he had created. We requested him to create
8 time lines of his CIA activity and his employment stuff,
9 because it was just so much. There's no way for us to really
10 do it. 15:38:01

11 I was looking at those, and I was looking at
12 especially his work flow, and it was starting to become
13 apparent to me that this guy was taking credit for building the
14 computer that did all the harvesting, but there was nothing in
15 there indicating he was the one that actually built the 15:38:22
16 harvesting program. He does show that he built this program
17 that's -- that's apparently called the Medusa that I believe is
18 the breaching component to what's being -- or was utilized when
19 he was working for the government.

20 So in doing that, I just started to try to research, 15:38:39
21 you know -- well, let me back up. I was listening to his free
22 talk, and he made one passing comment. It said that there were
23 other whistle-blowers in 2002 but nothing came of it. When he
24 said that, and I'm looking at the time line, something didn't
25 sit right with what he was doing and another whistle-blower. 15:39:08

1 He never told us about any other whistle-blower.

2 Subsequently, I do all these Google searches and I end
3 up finding Mr. Binney, I believe, was first one, Kurt Wiebe was
4 the second, and then Thomas Drake ultimately from there.

5 Q. What is Mr. Binney's first name? 15:39:26

6 A. William. These gentlemen, I believe, are all three ex-NSA
7 employees. They actually did build the software that collected
8 bulk data. I believe it was called Thin Thread. It had a
9 Fourth Amendment protection in it. In other words, the bulk
10 collection was all encrypted, and it would require then a FISA 15:39:49
11 court order to unencrypt it, and then they could access as much
12 information as they wanted to.

13 So I believe -- I believe that very evening I called
14 Detective Mackiewicz and I talked to Chief Sheridan on the
15 phone and I was trying to explain this to them. I said: We 15:40:09
16 need to get together and decide if we're going to do something
17 with this. I believe the next morning we're -- myself,
18 Detective Mackiewicz, chief deputy, and the sheriff are in his
19 office, and I'm explaining to him what I found and what I think
20 we can do here. 15:40:29

21 I did tell the sheriff that -- I wanted to brace him,
22 and I said: Sheriff, I just want you to understand that this
23 could really blow up and this stuff could be nothing but
24 garbage, and we've wasted a lot of time if that's the case.

25 And the sheriff said: You gotta do what you gotta do. That's 15:40:46

1 when we got the order from the chief deputy that if there was
2 anything on these drives, that we needed to go right to the FBI
3 if we did locate them.

4 Q. And when was that meeting that you just referenced?

5 A. That had to be September, September 20 something. 15:41:00

6 Q. Of 2014?

7 A. Of '14. Yeah, 'cause if this thing ended in October it
8 had to -- it was right around -- couple weeks right before that
9 ended. Flew back out to Seattle -- no, excuse me, flew back
10 out to Washington, D.C., with Detective Mackiewicz. We had 15:41:22
11 contacted I believe it was Kurt Binney, and they did agree to
12 meet with us.

13 Detective Mackiewicz and I met with them. We told
14 them what we had, what we were working on, and we asked them,
15 said: We don't want you to do anything that you don't want to 15:41:38
16 do, but we have this guy representing A, B, C, D, E. We don't
17 know if we have anything on these drives. We don't know if
18 there is really anything worth anything on these drives. We've
19 just gotten through a year of basically him producing
20 information that had no variable origin whatsoever. They 15:41:53
21 agreed to take a look at it.

22 My mind's a little fuzzy. I don't know if we went
23 then or we flew back; I don't remember exactly how that
24 transpired. But ultimately, detec- -- well, we had to come
25 back, because ultimately Detective Mackiewicz and I had to 15:42:11

1 transport 50 hard drives, and not have them leave our sight
2 because they were evidence, from the Sheriff's Office to
3 Seattle -- excuse me, to Washington. I think we went back to
4 Seattle and then back to the Sheriff's Office. I think that's
5 how we did it. 15:42:32

6 We took those hard drives. The following morning
7 after our arrival we met with Mr. Binney, Mr. Drake, at the
8 airport coffee shop. I think it was in Maryland. And
9 ultimately we ended up at Mr. Wiebe's home and we started
10 plugging in the hard drives. 15:42:56

11 Detective Mackiewicz, the night before, ate something
12 and had food poisoning. He was really, really ill. So he was
13 pretty much curled up on the couch kind of one-eyeing
14 everything that was going on.

15 And I opened up the box. We took the drive. I stood 15:43:10
16 there as we plugged every drive in, so these drives are never
17 out of our control. And it didn't take them long to start
18 saying: This is nonsense. There's no origin. There's no
19 nothing here. You don't know what any of this is. None of
20 this is worth anything. And ultimately, that's how every 15:43:25
21 drive, it was determined there wasn't anything of any value on
22 the drive.

23 Q. Are you finished with your answer?

24 A. Well, I might as well just tell you the whole story so you
25 could just slay me later with it. 15:43:41

1 Q. I'm interested in the facts, Mr. Zullo.

2 A. Well, it's the -- it's facts. My memory's just kind of
3 getting a little clearer right here.

4 Prior we did -- we did go to Seattle first to see

5 Mr. Montgomery. We had a meeting scheduled to go see 15:43:57

6 Mr. Binney. Detective Mackiewicz and I used to take

7 Mr. Montgomery to a Mexican restaurant. And we took him that

8 day, and he was, you know, in pretty bad shape. He was

9 paralyzed almost on one side. And we were sitting there, and I

10 was diagonally across from Mr. Montgomery, and he didn't know 15:44:25

11 anything about us locating the former NSA employees.

12 So as we were eating, I had told Brian before we went

13 in: I want to spring this on him and see his reaction and see

14 what he does. So as we're having lunch, again,

15 Detective Mackiewicz is directly across him but I'm diagonal, 15:44:43

16 and I tell him, I said: Dennis, I think I have a great idea.

17 I think we could enlist the help of William Binney, yada, yada.

18 I told him who all these people were. They've agreed to help

19 us. I said: I think what we could do is we can take you with

20 us to Maryland and we can open up these drives. And once these 15:45:06

21 drives, anything on these drives point to what you're saying,

22 we're going to have a golden ticket in getting a judge to put

23 us in the right direction of where we have to go.

24 He nods yes, but I can see from the bottom of his

25 neck, the top of his ears to his temples, it goes cherry red. 15:45:24

1 And I know this guy is dying now that I did this. I know he
2 was nervous about this. As we were leaving the restaurant, we
3 dropped him off.

4 Once we dropped him off in the car, I said to
5 Detective Mackiewicz, I go: Did you see that? He goes: I 15:45:44
6 couldn't see anything. I just saw his face. I described to
7 him what I saw, and I said: Brian, he's going to pull a
8 diversion. He's going to do anything he can to get out of
9 going with us to open up those drives. Like clockwork, all of
10 a sudden: My doctor won't let me go. Or I'm too sick. I 15:46:01
11 can't go.

12 Jumping ahead, once we open up the drives and realized
13 they were nothing -- there was nothing there, I got on the
14 phone with Mr. Montgomery and I made one statement to him. I
15 said: Dennis, today is a very, very bad day for you. And his 15:46:18
16 reply to me was: Can we work this out?

17 Now I knew that he had intentionally given the
18 Sheriff's Office 60 worthless drives. There was just nothing
19 of value on those things. Made it very difficult for us to do
20 anything with this guy. Even though he's maintaining he has 15:46:42
21 all this information and he can prove it and he can prove it,
22 there was no real -- nowhere else for us to really go, except
23 the fact that he's got people's identities, and he's got a lot
24 of them.

25 You have to understand, sir, when we walked into this, 15:46:58

1 we don't know what we're dealing with, we don't know who he is.

2 Q. How did you know that he had any identification information
3 at all if the information he had given you was worthless?

4 A. I'm glad you ask. When I was out of this, there were three
5 phone conversations I had with Detective Mackiewicz. He had 15:47:14
6 called me up and he said: Hey, I want to let you know, I did a
7 sampling of the identity information with the Social Security
8 numbers, and they're 100 percent accurate. Now, I don't know
9 how large the sampling was.

10 I had another telephone call from Detective 15:47:31
11 Mackiewicz, and he was working with some -- I think it was
12 banking or investment information that Montgomery had given
13 him. And he called me up, he said: Hey, you're not going to
14 believe this. He goes: I'm going through some of these
15 banking things, and these things are -- they're older. So it's 15:47:51
16 very difficult to go back with people and ask: Is this your
17 account, or whatnot? He said: I ran across three people in
18 Seattle that invested in a movie production. The movie was
19 called Lord of the Protector, or something like that. And he
20 said: And there's a couple people in Arizona that had made the 15:48:11
21 same investment. And this is in Dennis's database.

22 And I'm like: Well, Brian, what does -- you know,
23 what does it really mean? Aside from, okay, he's got some
24 things, but he doesn't have it the way he represented it to us.

25 And then there was another real interesting call. 15:48:29

1 Apparently, Detective Mackiewicz had information given to him
2 by Montgomery, and I -- I've never seen it. I understand that
3 he went to see an executive at Microsoft, that Montgomery
4 had -- I'm assuming it's in a list of other things -- provided
5 him this individual's banking information. And Detective
6 Mackiewicz made an appointment, went to see this executive.

15:48:53

7 Again, the information was older, but I believe the
8 way it -- it ran was the executive told him it's quite possible
9 that was his account. It was a business account. He said it
10 was quite possible he had that money, and I believe it was over
11 a million dollars.

15:49:14

12 But then Brian showed him his own password, and that
13 executive got extremely, extremely agitated and told Brian:
14 How did you get this? Nobody could get this. This thing is so
15 encrypted, nobody can get this. How did you get this?

15:49:36

16 And that was something else that came back that
17 Montgomery said he had, people's passwords, and here was a very
18 encrypted password where somebody that obviously knows computer
19 stuff working for Microsoft truly believed that that password
20 was impenetrable. And that was in some of the information.

15:49:55

21 Q. Well, can you bring us to the end of the story as far as
22 Mr. Montgomery's concerned? You mentioned that he had been
23 working or ended up working with the FBI?

24 A. Yes.

25 Q. How did he get there?

15:50:07

1 A. My understanding is in August of this year, Mr. Montgomery,
2 through the assistance of his now-attorney, Mr. Klayman, had a
3 meeting with the FBI, and the FBI and DOJ have given
4 Mr. Montgomery, I don't know what it is, production immunity, I
5 don't know what that is, and he has turned over over 600
6 million records under the very same scenario that he told us
7 how he acquired them. That's my understanding.

15:50:30

8 Q. Okay. All right. Well, let's -- thank you very much,
9 Mr. Zullo.

10 A. You take a lot of my time, so I'm going to take a little of
11 yours.

15:50:53

12 Q. No, I appreciate it, but I realize it's probably going to
13 be not as exciting, but I'm going to ask you to look at
14 Exhibit 2971.

15 A. Yeah.

15:51:04

16 Q. That's an e-mail string that consists of e-mails between
17 you and Mr. Montgomery dated January 25 and 26, 2015, correct?

18 A. Yes, sir.

19 MR. YOUNG: I move for the admission of 2971.

20 MR. MASTERSON: Objection, relevance, 403.

15:51:40

21 THE COURT: Overruled. Exhibit 2971 is admitted.

22 (Exhibit No. 2971 is admitted into evidence.)

23 BY MR. YOUNG:

24 Q. Next is Exhibit 2271. That's a February 2, 2015 e-mail
25 exchange between you and Mr. Montgomery, correct?

15:51:54

1 A. Yes, sir.

2 MR. YOUNG: I move for the admission of Exhibit 2271.

3 MR. MASTERSON: Objection, relevance, hearsay.

4 Oh, excuse me. Withdraw hearsay. Relevance, 403.

5 THE COURT: Overruled. The exhibit, Exhibit 2271, is 15:52:17
6 admitted.

7 (Exhibit No. 2271 is admitted into evidence.)

8 BY MR. YOUNG:

9 Q. So if you look at the e-mail on 288, which is the
10 second-to-last page of the exhibit, Mr. Montgomery refers to a 15:52:31
11 data mining data for Arpaio.

12 Do you see that?

13 A. Yes, sir.

14 Q. What was that about?

15 A. Data mining is a term Mr. Montgomery uses. In the 15:52:44
16 representations to us, Mr. Montgomery had indicated that he
17 believed that Sheriff Arpaio's, and the Maricopa County
18 Sheriff's Office bank of phones, were illegally wiretapped.

19 He also told us that he believed he had voice packets
20 contained in that data. And data mining was him trying to go 15:53:10
21 through the data to retrieve those voice packets. He had told
22 the sheriff that he could hear his own voice if he recovered
23 these. And that was something that was, I think, important to
24 the sheriff, because it was something the sheriff could get his
25 arms around. The technology of this thing is so advanced, I 15:53:31

1 don't -- I don't understand it; I'm sure the sheriff doesn't.
2 That's the data mining that he was referring to.

3 I did confirm with Mr. Wiebe that, in fact, packets do
4 look and appear different if they are audio. So there was
5 some -- some indication that Montgomery was being, you know, 15:53:51
6 truthful with us about having different looking packets.
7 That's what he said.

8 Q. Now, I want to go back, actually, to the -- the discussion
9 that you had with Judge Lamberth. You mentioned that the
10 flowcharts were part of the meeting with Judge Lamberth. 15:54:07

11 Are those the flowcharts that mention Judge Snow and
12 the Department of Justice and Covington & Burling and Jon Kyle?

13 A. Yes, sir. Those charts were created by Mr. Montgomery.

14 Q. Okay. Did you ever at any time learn of any information
15 that there was any truth or value in those charts? 15:54:26

16 A. No, we never did anything with it. We were told, once we
17 produced those and we sat in the office with the chief deputy,
18 not to go near it. We didn't look at it again.

19 Q. Okay.

20 A. He would send it, he would try to update it, and he would 15:54:39
21 send them, but they just, you know, were just another piece of
22 information he was sending.

23 Q. Are you still of the view that those are things that
24 Mr. Montgomery just made up?

25 A. Sir, to be honest with you, I can't say that, 'cause we 15:54:54

1 never looked into it; we never investigated it.

2 Q. Well, we looked at an earlier e-mail where you told
3 Mr. Montgomery that he just made those things up.

4 Has anything changed in that view on your part?

5 A. I don't have that e-mail in front of me, but what I think I 15:55:10
6 was referring to was the personal information, the sensitive
7 information that he told us he had on Judge Snow. That was the
8 stuff. I didn't care about that flowchart or those telephone
9 numbers. I mean, what can you do with them?

10 But when he represented to us that he had that 15:55:27
11 information, I wasn't going to let that go. You want to tell
12 us that you have this, you better be able to produce this.

13 Q. Okay. So you concluded at some point that the information
14 Mr. Montgomery said he had about Judge Snow's IRS and banking
15 information just was something that he'd made up, is that 15:55:43
16 right?

17 A. I would at this point in time say that. He never, ever
18 produced anything.

19 Q. Okay. When did you come to that conclusion?

20 A. That conclusion was probably early on. I didn't want to 15:55:56
21 take that off the table again for fear that he may -- might
22 have it. You know, we just didn't know.

23 I can't tell you exactly when I came to that
24 conclusion. I was not a proponent of just accepting things
25 from Mr. Montgomery. 15:56:20

1 Q. What did you tell Sheriff Arpaio and/or Chief Sheridan
2 about your conclusion that the information that Mr. Montgomery
3 said he had about Judge Snow's IRS and banking information was
4 actually just made up?

5 A. I don't have a recollection of when I would have done that. 15:56:37
6 I'm sure we had discussions about he doesn't have it. I don't
7 know -- I don't know when that would have happened.

8 It had -- that had to have been -- you have to
9 understand, I was out for five months, so it had to be August,
10 September, October, I don't know. 15:57:07

11 Q. Did you ever tell Sheriff Arpaio and/or Chief Sheridan
12 that, in fact, Mr. Montgomery was misleading you when he said
13 he had banking and IRS information?

14 A. I wouldn't have used the word "misleading"; I would have
15 said he's never made -- he never produced it. We don't think 15:57:22
16 he's got it.

17 Q. Well, did you ever tell that to Sheriff Arpaio or Chief
18 Sheridan?

19 A. I don't recall. I may have, I don't recall.

20 Q. When was the last time you spoke to either Sheriff Arpaio 15:57:33
21 or Chief Sheridan about any potential IRS or banking
22 information that Mr. Montgomery had pertaining to Judge Snow?

23 A. Would have to be, I would assume, 214.

24 Q. Approximately when?

25 A. You know what, sir? I don't -- I don't have an exact date, 15:57:57

1 I don't know.

2 Q. What was their response, whenever it happened, to your
3 informing them that, in fact, Mr. Montgomery really did not
4 have any banking or IRS information relating to Judge Snow?

5 A. I don't recall a specific response, because that 15:58:16
6 information or that topic would have come up just during
7 general conversations about this. It wasn't that we ran there
8 and said: Oh, my God, Sheriff. They don't have anything on
9 Judge Snow. It wasn't like that. He's never produced it.

10 The sheriff was very conscious of, you know: He says 15:58:32
11 he has this and he doesn't give it to us. He says he has this
12 and he doesn't give it to us. The sheriff kind of would list
13 it in his mind. But I don't recall any specific reaction to
14 him not having something. It was kind of commonplace.

15 Q. Can you tell me everything you can remember about any 15:58:50
16 discussion you had with Sheriff Arpaio or Chief Sheridan about
17 banking or IRS information relating to Judge Snow?

18 A. That I told them that Mr. Montgomery had relayed to us that
19 he had Judge Snow. Judge Snow was a victim in the database.

20 That he goes even beyond what normal victim, if you will, has 15:59:12
21 in there. That he's one of many, but sporadic people, that it
22 indicates that they have harvested his IRS tax returns and his
23 banking information. That would have been early on. It had to
24 be before February, obviously.

25 In the course of things, I'm sure there was 15:59:36

1 discussions asking if he ever produced it, and I would just
2 keep telling them no. You know, he's never produced it. I
3 haven't stopped asking him for it but he's never produced it.
4 Just doesn't have it.

5 Q. I think you said something to the effect that this was 15:59:48
6 an -- not -- beyond a normal victim. Is that what you said?

7 A. Yes.

8 Q. What did you mean by that?

9 A. Mr. Montgomery said not every person in that database had
10 IRS information taken. You have in your possession a video, 16:00:03
11 short clips, that shows this machine running. If you look at
12 the bottom, you'll see every -- and I don't know how many,
13 'cause it's happening so fast -- every once in a while you'll
14 see a dollar amount as far as IRS information. And that's not
15 every one of these. It could go for a little while and then 16:00:25
16 bang, you'll see one.

17 And it's -- what that's indicating, according to
18 Mr. Montgomery, is that's the information that was taken,
19 that's the dollar amount on a tax return or something to that
20 effect. So it's not every specific person. 16:00:40

21 Q. Do you recall anything else that you discussed with either
22 Sheriff Arpaio or Chief Sheridan about any alleged banking or
23 IRS information that Mr. Montgomery said he had about
24 Judge Snow?

25 A. No, there was -- there wasn't anything else. 16:00:56

1 MR. YOUNG: Excuse me, Your Honor.

2 (Pause in proceedings.)

3 BY MR. YOUNG:

4 Q. Let's turn to Exhibit 2274. That's an e-mail string
5 between you and Mr. Montgomery, correct, Mr. Zullo?

16:02:07

6 A. Yes, Counsel. Mr. Montgomery would monitor the news from
7 his residence in Seattle and send me the articles in these
8 little blurbs. It's not me informing him; it's him informing
9 me.

10 MR. YOUNG: I move for the admission of 2273 -- 74.

16:02:27

11 MR. MASTERSON: Objection, relevance, 403.

12 THE COURT: Overruled. Exhibit 2274 is admitted.

13 (Exhibit No. 2274 is admitted into evidence.)

14 BY MR. YOUNG:

15 Q. Let's look next to Exhibit 2278. That's a March 31, 2015
16 e-mail exchange between you and Mr. Montgomery, correct?

16:02:42

17 A. Yes, sir.

18 MR. YOUNG: I move for the admission of Exhibit 2278.

19 MR. MASTERSON: Objection, relevance, 403.

20 THE COURT: Overruled. Exhibit 2278 is admitted.

16:03:13

21 (Exhibit No. 2278 is admitted into evidence.)

22 BY MR. YOUNG:

23 Q. Let's go next to Exhibit 2279. That's an April 20, 2015
24 e-mail string involving you and Larry Klayman and Dennis

25 Montgomery, correct?

16:03:38

1 A. Yes, sir.

2 Q. And actually Brian Mackiewicz, further on down in the
3 string.

4 MR. YOUNG: I move the admission of 2279.

5 MR. MASTERSON: Objection, relevance, 403. 16:04:00

6 THE COURT: Overruled. Exhibit 2279 is admitted.

7 (Exhibit No. 2279 is admitted into evidence.)

8 BY MR. YOUNG:

9 Q. Next is Exhibit 2972. That's an e-mail exchange that you
10 had with Mr. Montgomery on May 22, 2015, correct? 16:04:24

11 A. Yes, sir.

12 MR. YOUNG: I move for the admission of 2972.

13 MR. MASTERSON: Objection, relevance, 403.

14 THE COURT: There are multiple pages to this exhibit?

15 MR. YOUNG: Yes, Your Honor. There are four pages to
16 it so far as I can tell. 16:04:52

17 THE COURT: Overruled. The exhibit is admitted.

18 (Exhibit No. 2972 is admitted into evidence.)

19 BY MR. YOUNG:

20 Q. Now, you listened earlier, Mr. Zullo, to 2873B, which was
21 part of your discussion with Carl Gallups? 16:05:18

22 A. Yes.

23 Q. Do you recall that?

24 A. Yes, sir.

25 Q. That was you talking to Mr. Gallups? 16:05:31

1 A. Yes, sir, it was.

2 Q. That was around July 15, 2015?

3 A. I'll take your word for it; I don't know.

4 Q. Actually, July 14.

5 MR. YOUNG: Now, I move for the admission of 2873B. 16:05:41

6 MR. MASTERSON: Objection, relevance, hearsay, 403.

7 THE COURT: I'm not sure I remember the whole exhibit.

8 Hearsay involves what Mr. Gallup said?

9 MR. MASTERSON: Yes, Judge.

10 THE COURT: Okay. I'm going to admit the exhibit, but 16:06:05

11 as it pertains to what Mr. Gallup said, I'm not going to admit

12 it for truth of the matter asserted. I'm going to overrule the

13 other objection.

14 (Exhibit No. 2873B is admitted into evidence.)

15 BY MR. YOUNG: 16:06:19

16 Q. And then back to the photograph, 2982, Exhibit 2982.

17 Did you take that photograph, Mr. Zullo?

18 A. Yeah, you have the metadata, came out of my phone.

19 Q. And that was a photo with Sheriff Arpaio with

20 Mr. Montgomery at a hotel in Phoenix on December 9, 2013, 16:06:40

21 correct?

22 A. Yes, sir.

23 Q. Okay.

24 MR. YOUNG: I move for the admission of Exhibit 2982.

25 MR. MASTERSON: No objection. 16:06:51

1 THE COURT: 2982 is admitted.

2 (Exhibit No. 2982 is admitted into evidence.)

3 BY MR. YOUNG:

4 Q. Do you remember what hotel that was?

5 A. The Carefree Conference Center. 16:07:00

6 Q. Now, we listened to a recording, and I'm going to refer to
7 Exhibit 2977. It was about a 20-minute recording.

8 You recall we heard that this morning, Mr. Zullo?

9 A. Yes, sir.

10 Q. Okay. That was a discussion involving mostly Mr. Blixseth. 16:07:18

11 The sheriff was there, Detective Mackiewicz was there, and you
12 were there, correct?

13 A. Yes, sir.

14 Q. Did you record that --

15 A. Yes, sir. 16:07:32

16 Q. -- meeting?

17 How did you record that meeting?

18 A. Voice notes on an iPhone.

19 Q. Did that meeting happen about October 18, 2013?

20 A. Yeah, most likely. 16:07:43

21 MR. YOUNG: Your Honor, I move for the admission of
22 Exhibit 2978.

23 Well, I'm first moving as to 2978, which is the
24 20-minute recording we heard the entirety of this morning.

25 THE COURT: That's exhibit what? 16:08:12

1 MR. YOUNG: 2978.

2 THE COURT: All right.

3 MR. MASTERSON: That's the entire one we heard? Is
4 that what you said?

5 MR. YOUNG: Yeah, it's the 20-minute one we heard just 16:08:22
6 before the lunch break this morning.

7 MR. MASTERSON: No objection.

8 THE COURT: Exhibit 2978 is admitted.

9 (Exhibit No. 2978 is admitted into evidence.)

10 BY MR. YOUNG: 16:08:37

11 Q. Now, I'm going to ask you to listen to the next recording,
12 which is Exhibit 2977. It -- actually, were you only in one
13 meeting involving both Mr. Blixseth and Sheriff Arpaio?

14 A. Yes, sir.

15 Q. Okay. So if there were two recordings, and we're about to 16:08:58
16 listen to the second one --

17 A. It's all the same. That would all be the same.

18 MR. YOUNG: All right. Now, this meeting, this
19 recording actually goes on for about an hour, Your Honor, and
20 what I propose to do is to play almost all of it. There are a 16:09:13

21 couple of portions where it seems that they're fixing the
22 computer machinery and we don't need to listen to those. And
23 those are at about 13 minutes to 15 minutes and 40 seconds, and
24 then again at 16 minutes and 33 seconds to about 18 minutes.

25 So I'm going to ask Mr. Klein to play the recording, 16:09:40

1 except for those portions. Is that acceptable?

2 MR. MASTERSON: Sure.

3 THE COURT: Okay. That will probably take us to the
4 end of the day.

5 MR. YOUNG: Yes, Your Honor. 16:09:56

6 THE COURT: Okay.

7 MR. YOUNG: Well, maybe what I'll do is I'll play a
8 little bit and ask Mr. Zullo to identify it, have it admitted,
9 and then there may be certain sections that I'll direct us to.
10 Maybe that will have a better chance of getting us to the end
11 of the day, because I do have some questions along the way. 16:10:17

12 So Mr. Klein, could you start playing 2977.

13 (Audio clip played.)

14 (Audio clip stopped.)

15 BY MR. YOUNG: 16:10:57

16 Q. The first voice that we just heard, Mr. Zullo, is Timothy
17 Blixseth, correct?

18 A. Yes, sir.

19 Q. He's talking about the fruit of the poisonous tree, and
20 what happens if the feds indict Mr. Montgomery, right? 16:11:05

21 A. Yes, sir.

22 Q. And then the second voice we hear, "Don't count on
23 Arizona," that's Sheriff Arpaio.

24 A. Yes, sir.

25 MR. YOUNG: Let's keep going. 16:11:14

1 (Audio clip played.)

2 (Audio clip stopped.)

3 BY MR. YOUNG:

4 Q. Now we've got someone asking Mr. Blixseth what he does for
5 a living to make all his money. That's Detective Mackiewicz,
6 correct?

16:12:02

7 A. Yes, sir.

8 (Audio clip played.)

9 (Audio clip stopped.)

10 BY MR. YOUNG:

16:12:28

11 Q. Is this the beginning of a recording that you made of a --
12 actually, another portion of the meeting on October 18, 2013,
13 among Sheriff Arpaio, Timothy Blixseth, yourself, and
14 Detective Mackiewicz?

15 A. I would assume it's all the same meeting, sir, yes.

16:12:43

16 MR. YOUNG: Your Honor, I move for the admission of
17 Exhibit 2977.

18 MR. MASTERSON: Objection, relevance, 403, hearsay.

19 THE COURT: I'm going to overrule the objections with
20 the understanding that as it pertains to anything said by
21 Mr. Blixseth, it's not being admitted for the truth of the
22 matter asserted.

16:13:06

23 MR. MASTERSON: I'd also like to reserve -- if we're
24 going to listen to the whole thing, then, I may make additional
25 objections as we go, but --

16:13:19

1 THE COURT: That's perfectly fine.

2 MR. MASTERSON: If we don't listen to parts, then I'll
3 reserve objections as to those parts.

4 THE COURT: All right.

5 MR. YOUNG: So in the interest of trying to pick the 16:13:30
6 most interesting parts of this recording, I'm going to ask
7 Mr. Klein to play Exhibit 2977 starting at about 6 minutes and
8 44 seconds.

9 MR. MASTERSON: I'm sorry, Counsel. I'm sorry to
10 interrupt. 16:13:46

11 Judge, a question, please.

12 THE COURT: Sure.

13 MR. MASTERSON: I just said I was going to object, but
14 that would probably really slow things down if I start to
15 object every time maybe some other person -- 16:13:55

16 THE COURT: Can you make a notation?

17 MR. MASTERSON: Yeah, and then can I maybe just raise
18 them tomorrow or whenever?

19 THE COURT: Yes, you can. And to the extent you want
20 to stop it -- I mean to the extent you want a cognizable ruling 16:14:06
21 on what is hearsay and what I'm going to consider for the truth
22 of the matter asserted and what I'm not, Mr. Young, you might
23 stop the recording and ask who's speaking so I can know.

24 MR. MASTERSON: And if there's something glaring I
25 need to raise right then, I will do that, too. 16:14:23

1 THE COURT: All right. Thank you.

2 MR. YOUNG: So let's play a little bit starting at 6
3 minutes and 44 seconds.

4 (Audio clip played.)

5 (Audio clip stopped.)

16:15:42

6 BY MR. YOUNG:

7 Q. Mr. Zullo, there was a link between these two things, what
8 Mr. Blixseth was bringing to the MCSO with respect to
9 Mr. Montgomery, and the birth certificate investigation the
10 sheriff was just talking about on this recording, in the sense
11 that the initial contact with Mr. Blixseth, at least in part,
12 derived from the birth certificate investigation, is that
13 correct?

16:15:59

14 A. Yeah, but it was also more than that, sir.

15 Q. And in what way?

16:16:11

16 A. I was contacted by Mr. Blixseth prior to this meeting that
17 he had this type of information regarding residents of Maricopa
18 County. And he had indicated, too, that this former contractor
19 for the CIA may have some information, too, as far as the birth
20 certificate was concerned.

16:16:32

21 Q. Okay. And you later did work with Mr. Montgomery on the
22 birth certificate issue, correct?

23 A. Yes.

24 Q. Are you still working with him on that issue?

25 A. No, sir.

16:16:41

1 Q. Now, there's been a mention of Fox and Carl Cameron. That
2 was someone, Carl Cameron, who was looking into the story
3 involving Mr. Montgomery, correct?

4 A. Yes, sir.

5 Q. He never did run a piece on this issue, is that right? 16:16:59

6 A. No, sir.

7 Q. In fact, you heard from him that he actually did not
8 believe Mr. Montgomery's story and, therefore, he was dropping
9 the idea of running the story on this issue, is that right?

10 MR. MASTERSON: Objection, foundation, hearsay. 16:17:19

11 THE COURT: I'm going to overrule the foundation, but
12 sustain the hearsay.

13 MR. YOUNG: All right. Let's start playing at about
14 15 minutes and 40 seconds.

15 (Audio clip played.) 16:18:10

16 (Audio clip stopped.)

17 BY MR. YOUNG:

18 Q. So that's Mr. Blixseth telling Sheriff Arpaio that he's got
19 a fraud case with this information involving these 900 million
20 records, is that right? 16:19:15

21 MR. MASTERSON: Objection, hearsay.

22 MR. YOUNG: Not for the truth of the matter asserted.

23 THE COURT: All right. I'm going to overrule the
24 objection and not consider it for the truth of the matter.

25 THE WITNESS: Yeah, pretty much appears that's what 16:19:26

1 he's saying.

2 THE COURT: For what it's worth, I don't think I'm
3 going to consider what Mr. Blixseth says for the truth of the
4 matter unless there's some reason why -- Mr. Young establishes
5 why I should, but merely to provide context or whatever else. 16:19:45

6 Are you going to try and establish some sort of agency
7 relationship between the MCSO and Mr. Blixseth?

8 MR. YOUNG: No, Your Honor.

9 THE COURT: Okay.

10 MR. YOUNG: Let's start again at 2745, and we're going 16:20:13
11 to let it run for a few minutes to about 30 minutes and 21
12 seconds. So 2745.

13 (Audio clip played.)

14 (Audio clip stopped.)

15 BY MR. YOUNG: 16:20:52

16 Q. Okay. Mr. Zullo, that's you saying that Trump's name is
17 all over this, is that correct?

18 A. Yes, sir.

19 MR. YOUNG: Actually, back up a little bit and keep
20 going. 16:21:04

21 (Audio clip played.)

22 (Audio clip stopped.)

23 BY MR. YOUNG:

24 Q. Okay. That's Sheriff Arpaio asking Timothy Blixseth about
25 whether he's got any advice from lawyers about the propriety of 16:23:00

1 what's being proposed, is that right?

2 MR. MASTERSON: Objection, foundation.

3 THE COURT: Overruled.

4 THE WITNESS: I don't know what that really was. A
5 lot of times the sheriff kind of breaks out into some kind of
6 levity. I don't know if he was serious. I don't know what
7 that was about.

16:23:10

8 BY MR. YOUNG:

9 Q. Well, would you agree with me that it was Sheriff Arpaio's
10 voice who said, quote: Are you getting advice from lawyers,
11 end quote? That was Sheriff Arpaio.

16:23:22

12 A. That was Sheriff Arpaio, yes.

13 MR. YOUNG: Let's back up a little bit and keep going.

14 (Audio clip played.)

15 (Audio clip stopped.)

16:24:12

16 MR. MASTERSON: Excuse me. Let me interrupt.

17 I'm not sure it matters, because I think the Court
18 said it's not considering for the truth of the matter asserted,
19 but I want to throw in a foundational objection to what sounds
20 like legal opinions from a couple different folks.

16:24:25

21 THE COURT: Yeah, I'm not going to -- I like my own
22 versions of the law. Sometimes I'll listen to yours as well,
23 and sometimes to the plaintiffs', but I don't think there's any
24 foundation for legal opinions, and I'm not going to give them
25 any credence.

16:24:43

1 BY MR. YOUNG:

2 Q. Well, before we pick up, we've now heard twice someone say
3 that the information from Mr. Montgomery apparently was
4 obtained through illegal means.

5 Now, that was Detective Mackiewicz, correct? 16:24:59

6 MR. MASTERSON: Judge, that's one of the objections as
7 well, to the foundation of whether there's anything illegal
8 about --

9 THE COURT: All I really want to know is if he can
10 identify who said it. 16:25:09

11 MR. YOUNG: That's the question.

12 THE WITNESS: Am I just answering, Judge, on who said
13 it --

14 THE COURT: Yes.

15 THE WITNESS: -- 'cause -- 16:25:18

16 THE COURT: Yes.

17 THE WITNESS: That was Detective Mackiewicz.

18 MR. YOUNG: Okay. Let's continue from where we
19 stopped.

20 (Audio clip played.) 16:25:32

21 (Audio clip stopped.)

22 BY MR. YOUNG:

23 Q. The sheriff just referred to the DOJ lawsuit, correct? In
24 the segment that we just heard, relating to Carlotta Wells of
25 the Civil Division of the Department of Justice? 16:27:26

1 A. I don't believe that had to do with anything here. I think
2 that had to do with Mr. Montgomery's legal woes with the DOJ
3 and Carlotta Wells. I don't believe that had any inference to
4 what was going on.

5 Q. Well, why don't we listen again, because I think -- and 16:27:39
6 it's my question to you -- it's the sheriff who says, quote: I
7 think she was involved in our DOJ investigation. And then she
8 divorced herself, and the other guy is now something, and I --
9 there's another question, I guess, we can listen to it again,
10 but I think there's a mention of Thomas Perez, who was the head 16:28:00
11 of the Civil Rights Division of the Justice Department.

12 So can we go back to 2934 and play that next minute or
13 so again?

14 (Audio clip played.)

15 (Audio clip stopped.) 16:28:29

16 BY MR. YOUNG:

17 Q. So did you hear the reference there to the DOJ
18 investigation by Sheriff Arpaio?

19 A. I heard reference to a DOJ investigation. I don't know
20 which one he's talking about. 16:29:17

21 Q. Okay. Well, did you hear Sheriff Arpaio say, "Well,
22 Carlotta was my gal for a while," at the very end?

23 A. Yes, I did.

24 Q. Now let's go to 33 minutes, and we're going to go for about
25 three minutes to about 36 minutes. 16:29:40

1 (Audio clip played.)

2 (Audio clip stopped.)

3 BY MR. YOUNG:

4 Q. So during the discussion that Mr. Blixseth had with you and
5 Detective Mackiewicz and Sheriff Arpaio, you heard Mr. Blixseth
6 say that -- and again, this is not for the truth of the matter
7 asserted -- but you heard him say that Dennis Montgomery had
8 hacked into the e-mails of Lanny Breuer and Eric Holder at the
9 Department of Justice, correct?

16:32:54

10 A. Yes, that's what he says on that audiotape.

16:33:12

11 MR. YOUNG: Now let's keep going from that same point.

12 (Audio clip played.)

13 (Audio clip stopped.)

14 BY MR. YOUNG:

15 Q. So there's some discussion among Sheriff Arpaio,
16 Mr. Blixseth, and Detective Mackiewicz about what to do with
17 this information if the Sheriff's Office didn't want to handle
18 it, right?

16:36:30

19 A. Yes.

20 Q. And there are several suggestions: the feds, the attorney
21 general, Senator McCain, and those are shot down by the
22 sheriff, correct?

16:36:44

23 A. I don't believe I agree with your characterization that
24 they're shot down by the sheriff. As a matter of fact, the
25 sheriff was one that was always saying: This has to go to the

16:37:04

1 feds.

2 Q. And then at the end of the segment we just heard,
3 Detective Mackiewicz is again saying that, "Well, they're going
4 to say that Montgomery stole the information."

5 Did you hear that? 16:37:21

6 A. I heard that. I don't know the context that you're
7 describing it to me, but I did hear him say that, yeah.

8 MR. YOUNG: Actually, I have another segment to play
9 that's a little farther back. Starting at page -- actually,
10 it's 19 minutes and 30 seconds. Could we go back to that? 16:37:45

11 (Pause in proceedings.)

12 MR. YOUNG: How about 19 minutes and 13 seconds.

13 (Audio clip played.)

14 (Audio clip stopped.)

15 BY MR. YOUNG: 16:38:41

16 Q. Okay. Sheriff Arpaio said during that meeting to all of
17 you who were at the MCSO that he wanted to keep this very
18 quiet, is that right?

19 A. Yes, sir, but you have to understand the context of what
20 that meant. 16:38:55

21 Q. Well, what did that -- what was the context of what that
22 meant?

23 A. Well, it was no secret to Maricopa County Sheriff's
24 higher-ups that we had a leak in our agency, and this kind of
25 information I don't think it was something the sheriff wanted 16:39:08

1 paraded around that we were working that way. Ultimately,
2 that's how you found out about it.

3 MR. YOUNG: All right. So I want to go now to
4 Exhibit 2980. And let's start off with the beginning of that.

5 (Audio clip played.)

16:40:05

6 (Audio clip stopped.)

7 BY MR. YOUNG:

8 Q. Mr. Zullo, that's a recording of a call that you made to
9 Mr. Montgomery, correct?

10 A. Correct.

16:40:50

11 Q. How did you make that recording?

12 A. I don't know if I remember how I made it. I don't -- I
13 don't remember.

14 MR. YOUNG: Your Honor, I move to admit Exhibit 2980.

15 MR. MASTERSON: Objection, relevance, hearsay, 403.

16:41:12

16 THE COURT: What's the hearsay?

17 MR. MASTERSON: I'm not arguing, but I disagree with
18 the Court's 801(d)(2), I think, decision --

19 THE COURT: You're just preserving the objection?

20 MR. MASTERSON: Correct.

16:41:35

21 THE COURT: Okay. Overruled. Exhibit 2980 is
22 admitted.

23 (Exhibit No. 2980 is admitted into evidence.)

24 MR. YOUNG: Your Honor, I'm going to play the entirety
25 of that exhibit. It's about 10 minutes long. And I'll ask

16:41:46

1 Mr. Klein to start off from the point that we left off.

2 (Audio clip played.)

3 (Audio clip stopped.)

4 BY MR. YOUNG:

5 Q. You're asking Mr. Montgomery about Sergeant Anglin, is that 16:46:48
6 right? At this point was someone showing up late?

7 A. Yes, Counsel, but let me -- before you go on with this,
8 it's not uncommon for Mr. Montgomery to spin up tales. It's
9 not uncommon. So in order to understand the context of what
10 he's saying later on, none of this bore any truth. 16:47:07

11 But it was getting to a place where you will see in
12 e-mails where he makes outlandish accusations when he gets
13 backed into a corner. Obviously, he was mad at these people.
14 He was mad at these detectives. I don't know why, 'cause I
15 wasn't there, but it's not unusual for him to take an element 16:47:27
16 of truth and spin a lot of nonsense around it.

17 Q. Approximately when did this conversation that we're
18 listening to take place?

19 A. I don't know. You'll have to look on whenever that
20 recording was created, whatever date. 16:47:39

21 Q. Well, it was during the time that Sergeant Anglin was
22 working on this matter, is that correct?

23 A. He would have to be, yeah.

24 Q. Okay. So sometime in the first five months of 2014?

25 A. It would have to be after February, 'cause I wasn't there. 16:47:52

1 Q. Okay. So assuming that Sergeant Anglin stopped working on
2 it in May, sometime approximately in the February to May
3 time frame 2014?

4 A. No, I'm sorry. No, I think it would actually have to be a
5 little after that, 'cause I was up there in April. I don't
6 know, March, April, May, I don't know. 16:48:14

7 MR. YOUNG: All right. Let's keep playing.

8 (Audio clip played.)

9 (Audio clip stopped.)

10 MR. MASTERSON: Objection, foundation. 16:52:52

11 THE COURT: Well, I believe he said "I don't know."
12 That's the last thing I heard, wasn't it?

13 MR. MASTERSON: You're right. I just was making my
14 objection when he said that, but the question --

15 THE COURT: All right. Well, I -- 16:53:36

16 MR. MASTERSON: -- was: Why did someone else do
17 something?

18 THE COURT: Yeah. And he said, "I don't know," and
19 that's the last thing I heard, and so I'm not sure that there's

20 any foundational objection to be made to the answer if the 16:53:47

21 witness answered -- or if Mr. Montgomery answered, I don't
22 know.

23 MR. MASTERSON: I think you're right. I just started
24 my objection before I heard the "I don't know" part.

25 THE COURT: All right. 16:53:57

1 MR. YOUNG: Can we back up a little bit and then start
2 playing and perhaps play to the end?

3 THE COURT: Sure.

4 MR. YOUNG: Not too far, just a second or two, if you
5 can do that, Mr. Klein. 16:54:07

6 (Audio clip played.)

7 (Audio clip stopped.)

8 MR. MASTERSON: Judge, I think he says "I don't know,"
9 and then he says "I guess" and then gives some speculation.

10 THE COURT: And then he speculates. 16:54:30

11 MR. MASTERSON: Yes.

12 THE COURT: I'll treat it as speculation.

13 MR. YOUNG: Well, as long as we're paused on this
14 point, may I ask the witness a question?

15 THE COURT: You may. 16:54:42

16 BY MR. YOUNG:

17 Q. There's some discussion there about Chief Sheridan,
18 Mr. Zullo. Did you hear that?

19 A. Yes, I did.

20 Q. And then you were talking -- you were asking Mr. Montgomery 16:54:49
21 about something that somebody told, perhaps told Mr. Montgomery
22 that Sheridan said to do, and then you asked: That doesn't
23 mean Sheridan knew.

24 What was that all about?

25 A. It wasn't uncommon when we were up there to make 16:55:09

1 representations to Mr. Montgomery that the sheriff wanted
2 something, or the chief deputy wanted something, or the chief
3 deputy wasn't happy, and they would have no knowledge that we
4 were doing that. We would do that as some type of leverage.

5 When Mr. Montgomery made the assertion to me that the
6 chief deputy knew, I don't believe that for one second. But
7 that's what he was told.

8 Q. Knew what?

9 A. Knew that he was doing something in L.A. with this drive.

10 I didn't believe it for one -- that's why I went back at him,
11 and I asked him again: Well, how do you know? How do you
12 know? How do you know? He doesn't know. You don't know what
13 he's telling you.

14 Q. Did you ever talk to Chief Sheridan --

15 A. I most certainly did, sir.

16 Q. All right. Well, let's play to the end.

17 (Audio clip played.)

18 (Audio clip stopped.)

19 BY MR. YOUNG:

20 Q. Now, earlier in that audio, Mr. Zullo, there was a
21 discussion in which you repeated something that Mr. Montgomery
22 told you, which is: Sheridan said to go do it, but they can't
23 be involved in it. What was that about?

24 A. I have no idea.

25 Q. Now, earlier today we listened to Exhibit 2981A in which

16:55:27

16:55:41

16:55:52

16:56:53

16:57:10

1 you asked Mr. Montgomery how you could destroy someone using
2 information he had access to?

3 A. Yes.

4 Q. That was a question and answer that you had with
5 Mr. Montgomery, correct?

16:57:31

6 A. Correct.

7 MR. YOUNG: Okay. I move for the admission of
8 Exhibit 2981A.

9 MR. MASTERSON: Just give us one second, please,
10 Judge.

16:57:44

11 (Pause in proceedings.)

12 MR. MASTERSON: Objection, relevance, 403.

13 THE COURT: Overruled. Exhibit 2981A is admitted.

14 MR. MASTERSON: And I'm assuming, Judge, that hearsay,
15 if -- the same rulings stand on hearsay statements made in
16 their -- I'm preserving the --

16:58:17

17 THE COURT: Exactly. To the extent -- we're not going
18 to have to listen to the whole exhibit for you to reserve any
19 hearsay objections if you think there are people in that -- in
20 that that are unidentified or that are not agents of the MCSO.

16:58:32

21 MR. MASTERSON: Correct. And then I have the -- my
22 respectful disagreement on the 81(d)(3) rulings.

23 THE COURT: Yes, that you're preserving.

24 MR. MASTERSON: Correct.

25 MR. YOUNG: Now, let's play --

16:58:47

1 THE COURT: Is that (d) (3) or (d) (2)? I think it's
2 (d) (2), I'm not sure, but whatever.

3 Go ahead.

4 MR. YOUNG: Your Honor, I had moved for the admission
5 of Exhibit 2981A. 16:58:57

6 THE COURT: And I believe I've admitted that.

7 MR. YOUNG: Thank you.

8 THE COURT: If I haven't, I admit it now. 2981A is
9 admitted.

10 (Exhibit No. 2981A is admitted into evidence.) 16:58:12

11 BY MR. YOUNG:

12 Q. Now, you remember hearing another segment this morning as
13 part of the discussion between you and Mr. Montgomery in which
14 I thought I heard the word "monitors" and you disagreed.

15 Do you remember that clip? 16:59:19

16 A. Yes, I do.

17 Q. That was part of a discussion between you and
18 Mr. Montgomery, correct?

19 A. Yes.

20 Q. Okay. 16:59:26

21 MR. YOUNG: I move for the admission of 2981B.

22 MR. MASTERSON: Relevance, 403, hearsay.

23 THE COURT: 2981B is admitted with the previous
24 caveats.

25 BY MR. YOUNG: 16:59:41

1 Q. Going back to your phone discussion that we listened to,
2 which is 2980, Mr. Montgomery talked to you about something
3 relating to \$50,000 and renting the computers.

4 Do you recall that?

5 A. Yes, sir. 17:00:06

6 Q. What was that about?

7 A. When he was processing this information, it was a very
8 laborious task, and he tried to convey to us that, you know,
9 for about \$50,000, I could build a computer system that could
10 make this go a lot faster. 17:00:26

11 Q. And what happened with that suggestion?

12 A. Nothing, nobody -- we didn't buy him anything.

13 MR. YOUNG: Your Honor, I have no further questions of
14 Mr. Zullo at this time.

15 THE COURT: All right. Looks like a good time to end 17:00:37
16 for the day.

17 Now, this is redirect of Mr. Zullo, but as I've
18 previously said, in light of his extensive testimony on
19 redirect, it seems to me to be only fair to give the defendants
20 an opportunity to do recross, and then I'll allow you, if you 17:00:49
21 wish, some additional redirect. We'll begin that tomorrow
22 morning.

23 I take it -- and I don't know, I guess I'll just ask,
24 Mr. Young --

25 You'll be here tomorrow morning, Mr. Zullo? 17:01:03

1 THE WITNESS: I don't think I have a choice.

2 THE COURT: Thank you.

3 Is there anything left to your motion?

4 MR. YOUNG: I'll have to check it. I think most of
5 the exhibits that are listed in our motion have now been 17:01:14
6 admitted. I do think there are some additional documents that
7 I actually did not prepare today to ask Mr. Zullo about and I
8 was just going to rely on our written motion. But I'll go back
9 and I can raise those --

10 THE COURT: Well, let me suggest -- I don't know, 17:01:32
11 Mr. Masterson. I don't want to be making suggestions to
12 parties about how they try their cases, but it seems to me that
13 if you have matters that you want to ask about Mr. Zullo that
14 pertain to exhibits that you want to have admitted based on
15 some sort of inference, I'm going to require you to ask him 17:01:50
16 about them now, so that if there's any follow-up questions,
17 Mr. Masterson can -- or any of the other parties, can ask some
18 follow-up questions on what you ask him.

19 So I'm going to allow you to reconsider that if you --
20 reconsider closing your questions to Mr. Zullo right now, but 17:02:07
21 if you do close those questions, as far as I'm concerned, I'm
22 not going to be drawing inferences about exhibits that you want
23 to have admitted after I close the testimony in this case.

24 MR. YOUNG: Understood, Your Honor. And in light -- I
25 do request the ability to continue asking Mr. Zullo questions 17:02:21

1 tomorrow. I will go back, in light of what's happened this
2 afternoon, and make sure that I ask any questions I now think
3 I'll get answers to with respect to those exhibits.

4 THE COURT: All right. If you don't get answers, then
5 we'll follow the procedure that I previously identified at 17:02:39
6 sidebar. If you do get an -- but I think that in light of the
7 circumstances of this afternoon, you need to come prepared to
8 ask any questions about any exhibits that you want. So the
9 motion's going to be -- the motion is potentially mooted,
10 because otherwise, we need to set a schedule so we can figure 17:02:57
11 out where we're going from here.

12 MR. YOUNG: I understand, Your Honor.

13 THE COURT: All right. Anything further?

14 MR. MASTERSON: Nothing from me, Judge.

15 THE COURT: All right. Please be here ready to -- 17:03:07

16 Did you have something, Mr. Walker?

17 MR. WALKER: No, Your Honor.

18 THE COURT: Please be here ready to resume testimony
19 tomorrow at 9:00 a.m. If we're close to the end of your
20 questioning of Mr. Zullo, you'll also have figured out what 17:03:19
21 kind of cross-examination you want to do?

22 MR. MASTERSON: I will, Judge.

23 THE COURT: Do you know if you're going to call any
24 other witnesses in your case at this point?

25 MR. MASTERSON: I would like to have -- I will advise 17:03:31

1 the Court in the morning, but I want to let everyone know I'm
2 thinking right now no.

3 THE COURT: All right. And so that means --

4 And thank you.

5 Mr. Walker, that means if you're going to have
6 witnesses, you need to have them here, is it fair to say
7 sometime in the morning.

17:03:44

8 MR. YOUNG: I think so. We had indicated that we
9 would recall Sheriff Arpaio. We will think about that a little
10 more. I don't think if we do that it will be very long.

17:03:54

11 THE COURT: All right. And so maybe recalling Sheriff
12 Arpaio.

13 Maybe, but right now you're not thinking there will be
14 witnesses that you'll call, Mr. Masterson.

15 You were going to call one witness, I believe,
16 Mr. Walker?

17:04:07

17 MR. WALKER: That's correct, Your Honor, but we're
18 rethinking that. There was another witness that I had
19 mentioned where we were trying to work out a stipulation about
20 an affidavit. I think Mr. Young and I are going to be able to
21 work out that stipulation, so the --

17:04:24

22 THE COURT: So you're thinking not, too, but you're
23 still reserving the right.

24 MR. WALKER: Yes, that's correct.

25 THE COURT: Mr. McDonald.

17:04:37

1 MR. McDONALD: Yes, Your Honor.

2 THE COURT: Could you grab a microphone, just so that
3 everybody can hear you, please.

4 MR. McDONALD: Mr. Birnbaum sent me an e-mail based
5 upon your conversation this morning about a possible date to
6 hear arguments. Again, I don't know whether that would just be
7 for the civil contempt or whether the criminal contempt. 17:04:49

8 THE COURT: Yes. Here's the deal that I worked out, I
9 think, with Mr. Birnbaum. Really, I'm just going to hear
10 comments, on the -- and right now it looks like it will
11 probably -- or at least it could potentially be next Friday,
12 the 20th. I'll hold that open for the parties to come make
13 closing arguments in the civil case. 17:05:01

14 Mr. Stein and I believe you and I spoke some time
15 ago -- or not some time ago, about a week ago -- and I said
16 that I wasn't going to require you to make any sort of a motion
17 until after we started considering remedies as it pertained to
18 a possible referral in a criminal contempt matter. 17:05:17

19 Mr. Birnbaum said that as it pertained to Chief
20 MacIntyre, he would rather make that earlier than later, and I
21 gave him the option to do so. So I may hear from Mr. Birnbaum
22 on the 20th. You will not be forfeiting any rights to be heard
23 on some sort of criminal referral if you don't do that on the
24 20th. 17:05:36

25 But as I told Mr. Birnbaum, he's going to get one 17:05:49

1 opportunity, you'll get one opportunity; whenever you take it
2 you can take it, but you'll get one opportunity.

3 MR. McDONALD: Mr. Birnbaum had sent me an e-mail
4 after you made that this morning. I e-mailed him to say:
5 Circle the 20th. He wrote me back and said: Could you please
6 share with the judge that that's a date I couldn't be here. 17:06:04

7 THE COURT: That he couldn't be here?

8 MR. McDONALD: Mr. Birnbaum says he couldn't make it.
9 He has some other obligation.

10 THE COURT: Well, if he can't make it on the 20th, 17:06:20
11 that doesn't mean if the rest of the parties can make it that
12 I'm not going to have closings on the 20th.

13 MR. McDONALD: Sure.

14 THE COURT: I'll just allow Mr. Birnbaum to appear
15 some other time proximate to the 20th and make whatever 17:06:29
16 argument he wants to make.

17 MR. McDONALD: Yeah. Maybe he could join us when we
18 make ours.

19 THE COURT: Perhaps.

20 MR. McDONALD: Thank you, Judge. 17:06:37

21 THE COURT: That's his option.

22 MS. WANG: Your Honor, two questions. First is Your
23 Honor had said at some point during the proceedings that you
24 might pose some questions that you would like the parties to
25 focus on -- 17:06:49

1 THE COURT: Yes.

2 MS. WANG: -- in closing arguments.

3 Is it still the Court's intent to do that?

4 THE COURT: Well, the Court is beginning to doubt
5 whether the Court will have the organization necessary to do
6 that, but I'm certainly going to try, at least with larger
7 questions.

17:06:56

8 I have presumed from the beginning that you really
9 don't want to do so draft proposed findings of fact and
10 conclusions of law. That may be incorrect. Do you want to do
11 them?

17:07:06

12 MS. WANG: Your Honor, whatever's most helpful to the
13 Court we are happy to do so.

14 THE COURT: Well, to be honest, it's a huge labor in
15 this case where we've heard as much testimony as we've heard,
16 and that's why I was trying to keep up with it. I have kept up
17 with it, but I've fallen a little bit behind, to be truthful
18 with you. But in the past I have found that party submissions
19 are usually not very helpful, because I don't usually agree
20 with either party completely. And so I've not found it
21 particularly helpful to try to wade through findings of fact
22 and conclusions of law to try and parse out what I agree with
23 and I just usually do my own.

17:07:20

17:07:35

24 That would probably be my preference, but it does
25 require quite a bit more work on my part rather than your part

17:07:51

1 and may require some more time.

2 Mr. Masterson, do you want to be heard on that?

3 MR. MASTERSON: Not -- not on that, although I'd
4 rather not do findings of fact and conclusions of law if you're
5 asking me. But what I wanted to bring up was again Rule 50,
6 and --

17:08:05

7 THE COURT: Yeah, again, for the nth time, just to
8 make sure, you're not -- the Rule 50, because we have taken
9 witnesses of our order --

10 MR. MASTERSON: Yeah.

17:08:18

11 THE COURT: -- I'm not going to prevent you from
12 making your Rule 50 at the close of evidence or whenever you
13 need to make it. You've not going to forfeit that right.

14 MR. MASTERSON: And I'm not even sure it really makes
15 sense, due to how things have shaken out with the witnesses
16 so --

17:08:29

17 THE COURT: I'm not, either, but that's up to you.

18 MR. MASTERSON: Okay.

19 MS. WANG: Your Honor, I had a second point which
20 actually relates to what Mr. Masterson just said.

17:08:36

21 I'm, frankly, puzzled by the mentions of Rule 50
22 motions in this case. It is a hearing tried to the Court. And
23 so I'm a little puzzled by the reference to Rule 50.

24 THE COURT: Well, I will tell you how I've been
25 interpreting that, and it may not be strictly a Rule 50, but

17:08:53

1 he's just saying: Dismiss my party before you proceed any
2 further because there hasn't been a case stated for civil
3 contempt on one or more of the three charges I issued.

4 But I will say, Mr. Masterson, as I said before -- and
5 I realize you came to this case late -- there are, I think, 17:09:07
6 what, five possible contemnors I've named in this case. Not
7 all three counts relate to each of the contemnors. So if I
8 didn't name a contemnor under a count, you don't need to worry
9 about making a motion. I'm not going to find anybody in
10 contempt for something I didn't name them for in the original 17:09:25
11 notice of order to show cause.

12 MR. MASTERSON: Okay, Judge. And I'll go back and
13 take a look at all -- all of that.

14 THE COURT: Okay.

15 MS. WANG: Your Honor, just not to belabor it, but at 17:09:34
16 least two of the named contemnors admitted liability to civil
17 contempt.

18 THE COURT: I am aware of that as well.

19 MS. WANG: Right. Finally, Your Honor, as to any
20 motions that will be filed by the criminal defense counsel in 17:09:47
21 this case on behalf of named contemnors --

22 THE COURT: I haven't authorized any motions yet.

23 MS. WANG: I'm sorry, not motions, but closing
24 arguments.

25 THE COURT: Um-hum. 17:09:59

1 MS. WANG: To the extent that there are going to be
2 arguments about whether or not --

3 THE COURT: There's criminal contempt. You've got
4 no --

5 Ms. Wang: Referral for criminal contempt. Your 17:10:07
6 Honor, I think it's plaintiffs' preference that these issues be
7 kept separate. They are in fact separate --

8 THE COURT: Yeah.

9 MS. WANG: -- and the Court is going to make its
10 decision about whether any referrals should be made. We would 17:10:16
11 like to see the civil contempt proceedings come to a
12 conclusion.

13 THE COURT: Well, I agree with that. And to the
14 extent -- to the extent that I'm going to allow Mr. Birnbaum,
15 if he wants to earlier make his whatever argument he wants to 17:10:30
16 make on behalf of no criminal referral for Chief MacIntyre, to
17 the extent he wants to make that -- I appreciate your raising
18 it -- I want to make it very clear it isn't part of the civil
19 contempt hearing.

20 The only reason -- and this was my discussion with 17:10:49
21 Mr. McDonald and Mr. Stein a couple weeks ago -- is I did
22 mention, and I do think it is relevant to me, whether or not
23 the civil contempt hearing provides an adequate remedy is one
24 of the considerations I'm going to take into account when and
25 if I take up whether I'm going to refer this for criminal 17:11:05

1 contempt.

2 But just so that we're also clear, because it is
3 completely separate, I'm not going to give you time to respond
4 to Chief MacIntyre, because I don't think you have any stake in
5 it at all. It is purely my discretionary decision, and I've
6 allowed special counsel to appear just to protect the rights
7 and make the arguments on behalf of possible people that I
8 might refer for criminal contempt.

17:11:18

9 MS. WANG: Yes, Your Honor, and plaintiffs' concern is
10 that we get an adequate remedy for the civil contempt.

17:11:35

11 THE COURT: Yeah, I understand that, so I think we're
12 on the same page. You won't be heard on the criminal contempt
13 issues.

14 MS. WANG: Thank you, Your Honor.

15 MR. McDONALD: Judge, one other question based upon
16 what you've said. For planning purposes, apparently the 20th
17 is when we have the civil contempt.

17:11:46

18 Do you envision the criminal arguments and
19 presentation being made that day, or are you --

20 THE COURT: No, no, no, no. They aren't going to be
21 made that day, because, as I indicated from the beginning, I'm
22 going to make all the findings of fact first. We're then going
23 to determine, after I make findings of fact, the United States
24 Department of Justice wanted to introduce expert witness
25 testimony about standard of care on internal investigations, or

17:11:57

17:12:15

1 something like that. If they did seek to introduce such an
2 expert, the defense had reserved the right to call their own
3 expert on that issue.

4 It just seems to me that whether or not there's going
5 to be an expert needed, and on what topic such testimony or 17:12:32
6 expert testimony might be appropriate, are not going to be
7 really clear until I make my findings of fact. So I instructed
8 all parties to put in all the evidence they had relating to
9 remedies as well as facts in this hearing, so we weren't going
10 to reopen the hearing. If we reopen any factual part of the 17:12:49
11 hearing after I make my findings of fact, it's only going to be
12 to hear the testimony of the experts of the two sides. I
13 haven't yet determined.

14 As you know, Mr. McDonald, expert testimony's only
15 admissible if it's going to aid the finder fact. 17:13:06

16 MR. McDONALD: Right.

17 THE COURT: And as I said at the time, I'm the
18 finder-of-fact in this case. I can pretty much determine
19 whether there's going to be expert testimony that's going to
20 assist me, and that's going to -- that's going to depend on 17:13:17
21 when I sort through all this and make my findings whether or
22 not I'm going to even entertain it.

23 If I do, I'm going to specify what I want expert
24 testimony on with more specificity so that both sides can call
25 an expert if they really want to. 17:13:30

1 MR. McDONALD: Thank you.

2 THE COURT: And that is a remedies issue. So I'm
3 going to make my remedies so not only am I going to make
4 findings of fact before I determine whether I make a criminal
5 referral; I'm going to make a remedies determination as to -- 17:13:41
6 again, I think two of the parties here have admitted contempt,
7 so there's probably going to be some consideration of remedies.

8 MR. McDONALD: On the remedies consideration, can
9 special appointed coun- -- or special counsel make suggestions
10 on remedies, too, or is it your vision that that comes from the 17:14:01
11 civil side and we remain silent?

12 THE COURT: Well, I think there's every reason to keep
13 these two matters, even though there is obviously some
14 interface as it pertains to the facts, which is why you're
15 here, I think there's every reason to keep these matters 17:14:16
16 separate.

17 If you want to make suggestions, then my suggestion
18 would be you make them to your own counsel. And if -- or it's
19 not your own counsel, but you make them to counsel who are
20 representing your clients in the civil case. If they are 17:14:25
21 unresponsive in a way that you think would best serve the
22 interests of your client for the purposes for which you're
23 representing them, then I suggest you go to plaintiffs' counsel
24 and make your suggestions.

25 But do that with them, don't do it with me, because 17:14:38

1 I'm only going to hear from them in terms of civil remedies.

2 MR. McDONALD: Thank you.

3 THE COURT: All right.

4 MR. WALKER: Your Honor, a question. This colloquy
5 has confused me a bit. It sounds as though you're thinking
6 that whether there's going to be further proceedings on
7 remedies is going to have to await your findings of fact and
8 conclusions of law.

17:14:51

9 THE COURT: It will be -- it seems to me it will be
10 greatly benefited by my findings of fact.

17:15:09

11 MR. WALKER: So my only question is: For the oral
12 arguments that the Court contemplates coming up fairly soon
13 here, is that to be limited strictly to the issues --

14 THE COURT: Now, if you want to raise -- I know that
15 you have been working with the plaintiffs on some sort of
16 possible remedies as pertains to Count 1 of the contempt. And
17 frankly, although if you want to reserve it, I'll let you. If
18 you want to make arguments concerning those remedies, I'd just
19 as soon hear them then if you're ready to make them so that we
20 could -- if there is in fact substantial agreement, as you've
21 suggested there might be, and if there are areas we can just
22 move off the table, I think it makes all the sense in the world
23 to move them off the table.

17:15:29

17:15:44

24 For that matter, as I think I've indicated before, if
25 there are remedies that I think that I can implement

17:15:59

1 immediately based on my findings of fact, even if I determine
2 that an expert's necessary, I'm going to implement those
3 remedies immediately. And then we will deal with other expert
4 remedies.

5 But again, I'm not in a position to know that yet, and 17:16:10
6 the evidence hasn't -- or the, you know, the facts haven't
7 closed, and I haven't put everything together in a way I need
8 to to understand it.

9 MR. WALKER: Just a couple follow-up points.

10 So I think with respect to the issue of remedies for 17:16:25
11 potential victims, it may be a little optimistic to expect that
12 we're going to be in a position to make presentations to the
13 Court by the 20th. We may be, but that's a little uncertain at
14 this point.

15 So putting that to one side, would you want to hear 17:16:48
16 any other arguments we have about potential remedies --

17 THE COURT: Yeah, I do. I do, because that will
18 inform my factual findings, frankly.

19 MR. WALKER: At the upcoming oral arguments.

20 THE COURT: Yeah. 17:17:06

21 MR. WALKER: Great. Okay. Thank you.

22 THE COURT: Anything else?

23 See you tomorrow morning -- oh. See you tomorrow
24 morning at 9 o'clock.

25 (Proceedings recessed at 5:17 p.m.)

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C E R T I F I C A T E

I, GARY MOLL, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 16th day of November, 2015.

s/Gary Moll