

M6F5sch1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v. 17 Cr. 548 (JMF)

5 JOSHUA ADAM SCHULTE,

6 Defendant.

7 Trial

8 New York, N.Y.
9 June 15, 2022
9:20 a.m.

10 Before:

11 HON. JESSE M. FURMAN,

12 District Judge
13 -and a Jury-

14 APPEARANCES

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

19 JOSHUA A. SCHULTE, Defendant *Pro Se*

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

23 Also Present: Charlotte Cooper, Paralegal Specialist
24
25

M6F5sch1

1 (Trial resumed; jury not present)

2 THE COURT: Good morning. Welcome back. This case is
3 on trial.

4 Just so you know, my latest information is that we are
5 waiting on one juror who had kindly e-mailed to say that he was
6 running late, he should be here any minute, at which point we
7 will get started. I assume the government's witness is here
8 and ready to go?

9 MR. DENTON: Yes, your Honor.

10 THE COURT: Two things for me to raise and then I
11 gather Mr. Schulte has a couple things.

12 First, I told you there was a juror who had wanted to
13 speak with me. My understanding is it is the juror who is an
14 employee of TSA. I think he had two concerns or issues that he
15 wanted to talk to me about. One is it sounds like he is being
16 asked to or made to work overtime or some such thing and was
17 hoping that I might be able to speak to his supervisor. Unless
18 there is objection, I am certainly happy to call. I don't know
19 what I would say or be able to say.

20 The second is he is concerned that given the nature of
21 his job, that he might overhear conversations, I gather of
22 passengers going through security at the airport, about this
23 case. And while I gave him a stern admonition that it is their
24 responsibility not to be present for any conversations, he
25 obviously wouldn't be able to move and absent himself. I think

M6F5sch1

1 the probability of that is vanishingly small so I'm willing to
2 take the chance, with the understanding that we should let him
3 know that if he does hear anything -- I have already told the
4 jurors this -- that he should obviously report it to my staff.

5 So anyone disagree with either of those things?

6 MR. DENTON: No, your Honor.

7 THE COURT: Mr. Schulte?

8 MR. SCHULTE: One second, Judge?

9 (Defendant and counsel conferring)

10 MR. SCHULTE: Yes, it's fine the way -- we have no
11 objection.

12 THE COURT: So I will handle it that way.

13 Then the other thing is juror no. -- I think it is 14,
14 the one with the wedding dress fitting, she has reported that
15 it would be quite expensive for her to change her ticket,
16 unfortunately. I am inclined to tell her that we are going to
17 plow ahead for the moment given that there is considerable
18 uncertainty about how long things will go but she shouldn't
19 worry, but the bottom line is we won't make her incur that
20 expense.

21 Any objection to that?

22 MR. DENTON: No, your Honor.

23 THE COURT: Mr. Schulte?

24 MR. SCHULTE: No.

25 THE COURT: And both of these jurors are alternates

M6F5sch1

1 also, just for what it is worth.

2 Mr. Schulte, I understand you have some issues to
3 raise. I ask you to just phrase them in order of priority,
4 that is to say anything that needs to be addressed and resolved
5 this morning you should prioritize, and if things can wait we
6 can always discuss it later.

7 Go ahead.

8 MR. SCHULTE: OK. So the first thing is I think the
9 marshals just need permission or authorization from you for me
10 to be able to use the second laptop for my exhibits.

11 THE COURT: Use in the courtroom?

12 MR. SCHULTE: Yeah, be able to access and use it like
13 I use the other. I think there was court order for me to be
14 able to use this laptop so they need authorization from you for
15 me to use the second laptop.

16 THE COURT: And the second laptop is something that
17 standby counsel procured? What is it?

18 MR. SCHULTE: Yes.

19 THE COURT: Any objection, Mr. Denton? Any concerns?

20 MR. DENTON: I think as long as it is something that's
21 used just here in the courtroom, that's fine, your Honor. I
22 think to the extent that it was going with the defendant
23 anywhere else other than the courtroom, we would want to make
24 sure that we applied the same security procedures that were
25 applied to his original laptop.

M6F5sch1

1 THE COURT: Is it just to be used in this courtroom?

2 MR. SCHULTE: Yes. That's correct. It is being
3 locked, I think, in the FBI marshal's room by the SCIF.

4 THE COURT: So permission granted. To the extent that
5 the marshals needed that from me, they now have it from me. If
6 I need to put something in writing, let me know.

7 Next?

8 MR. SCHULTE: So I wanted to raise I received two
9 government's exhibits yesterday, one of them I can talk about
10 later, I don't think it is coming up any time soon, but the
11 second one I just wanted to note for the Court, Government
12 Exhibit 1703 is the expert presentation for Patrick Leedom who
13 is coming up relatively soon this week, and the expert
14 presentation that they previously provided has been completely
15 rewritten, it is entirely different. And they're just now -- I
16 just saw it for the first time yesterday. So, I mean, it is
17 just going to be incredibly difficult for me to be able to
18 review 150 new slides and a whole new expert presentation.
19 That should have been provided weeks and weeks ago.

20 THE COURT: Mr. Denton?

21 MR. DENTON: So I don't think the defendant's
22 characterization is accurate. There certainly were substantial
23 changes of a cosmetic nature, different background, fonts, some
24 of the headers and things like that. All of the forensics that
25 are described in there are the same. Some of them have been

M6F5sch1

1 moved around in order but there is no substantive change to the
2 conclusions that Mr. Leedom is going to testify to or the
3 particular forensic artifacts that he is going to show in
4 support of those conclusions. We did produce an updated
5 version reflecting some of those cosmetic changes -- I forget
6 whether it is last week or the week before -- and have
7 continued to produce updated versions as revisions have been
8 made.

9 THE COURT: I take it this is not an exhibit to be
10 entered into evidence, this is a demonstrative to assist the
11 jury in understanding its testimony; is that correct?

12 MR. DENTON: Well, your Honor, I think there is -- it
13 certainly is the latter. I think that we will expect
14 Mr. Leedom to testify that it summarizes voluminous exhibits
15 that he reviewed that could not conveniently be displayed in
16 the courtroom and so we do think it would be admissible as a
17 summary exhibit, but I think that's also something that the
18 Court can defer on. All of the individual forensic artifacts
19 that are going to be displayed are separately admitted as
20 government exhibits, that was part of the stipulation that was
21 read yesterday. So whether it comes in as itself as a summary
22 exhibit under 1006 or just as a demonstrative I'm not sure it
23 really makes much difference.

24 THE COURT: So Mr. Schulte, from what Mr. Denton said
25 it sounds like there is no issue here but is there a

M6F5sch1

1 substantive difference that you can point me to?

2 MR. SCHULTE: I mean, I think first I just want to
3 raise that this is the first time I am receiving it so to the
4 degree the government saying they provided a version of this
5 before, that's not true, I just received it yesterday.

6 So I guess I would just ask the Court, you know, I
7 haven't had that much time to review it, I just saw that all
8 the slide presentation is completely different, so I just ask
9 the Court if you could -- or if you could just compare the two
10 and basically rule whether you think, you know, it is
11 substantially different. I think it is from what I can tell
12 but I haven't had a chance to literally go through every single
13 slide. I went through the presentation and the conclusion; a
14 lot of the information seems substantially different from the
15 other one.

16 THE COURT: Well, I'm not going to compare it but you
17 are welcome to compare it and if you can identify any
18 substantive differences between the two then you can alert me
19 to it, say tomorrow morning. I am certainly happy to consider
20 any application at that time. Based on Mr. Denton's
21 representation, it sounds like it is cosmetic differences
22 rather than substantive differences. If you can point me to
23 things that are substantively different and you can explain and
24 persuade me that there is prejudice from the fact that you just
25 got it, then I will consider that and decide what to do. But

M6F5sch1

1 the burden is on you to demonstrate that there is some problem
2 here and so far that hasn't happened. Thankfully he is not
3 testifying today so you will have time to review it after trial
4 today, and if there is an issue, you can raise it.

5 Is there anything else?

6 MR. SCHULTE: Yes. One minute.

7 (Defendant and counsel conferring)

8 MR. SCHULTE: Two final matters. One is about the
9 3500 materials and updates that I am receiving from the
10 government. So they provided new updates now so I ask the
11 Court, you know, if it's possible that during the lunch break
12 if I am able to essentially work in here with the lunch to go
13 through all of the materials, and also some of the materials
14 that they provided are -- it is illegible, we can't discern
15 what the handwriting, what it actually says so we ask that the
16 government provide some kind of key or reference for what is
17 actually written.

18 THE COURT: This is with respect to Agent Evanchec?

19 MR. SCHULTE: Yes. That's correct.

20 THE COURT: Mr. Denton, will you tell me what we are
21 talking about here? Or Mr. Lockard? Excuse me.

22 MR. LOCKARD: Yes, your Honor.

23 So we produced some handwritten notes that
24 Mr. Evanchec had taken as 3500. This morning standby counsel
25 asked if we could help decipher some of those that we agreed to

M6F5sch1

1 do and I think at our next break we can provide that
2 interpretation.

3 THE COURT: And these are notes that he took when?

4 MR. LOCKARD: These are notes that he took within the
5 last couple of days.

6 THE COURT: OK. Just a reminder, you have to do these
7 things promptly. If there is new 3500 -- that happens in a
8 trial -- you should immediately produce it and it shouldn't
9 even be a case of days. We are dealing with an ongoing trial
10 here so it is absolutely imperative that Mr. Schulte, who
11 obviously is detained so you can't get things to him the night
12 before, gets things in a timely fashion so that we don't have
13 any sort of delay. All right?

14 MR. LOCKARD: Certainly.

15 THE COURT: How long do you expect the rest of your
16 direct to be?

17 MR. LOCKARD: Approximately three hours.

18 THE COURT: OK. Well, you will get the key,
19 Mr. Schulte, on the break I guess. I have no objection to
20 Mr. Schulte remaining in the courtroom during the break if the
21 marshals are OK with that.

22 THE MARSHAL: Your Honor, we will keep him in the cell
23 block up here, that way one of us can grab lunch at a time.

24 THE COURT: Great. That should suffice.

25 MR. DENTON: One last thing for the record. The

M6F5sch1

1 government has no applications with respect to yesterday's
2 transcript. That may have been obvious but just to say we have
3 no issues with that being released.

4 THE COURT: I will deem that obvious every day unless
5 you tell me otherwise.

6 MR. DENTON: Understood.

7 THE COURT: Thank you.

8 We are still awaiting word that we have our final
9 juror, so anything else, Mr. Schulte?

10 MR. SCHULTE: No. Nothing else.

11 THE COURT: So I guess stay as you are and when we
12 have our jurors, we will proceed.

13 MS. SHROFF: Your Honor, may I just be excused for
14 five minutes? I need to talk to the CISO about an e-mail I
15 just received.

16 THE COURT: Sure. I'm not going to wait to begin.

17 MS. SHROFF: That's fine.

18 THE COURT: If you can discretely walk in in the event
19 we have started, that's fine.

20 MS. SHROFF: Thank you.

21 (pause)

22 THE COURT: Counsel, two things. One, why don't we
23 get the witness in so we are ready to go when the jurors are
24 here. Second, while we are waiting -- and maybe this is what
25 Mr. Lockard Mr. Schulte is doing -- if you can interpret the

M6F5sch1

1 handwriting, this would be an opportune time to do that.

2 MR. LOCKARD: We are on the same wavelength, your
3 Honor.

4 THE COURT: Thank you.

5 (pause)

6 THE COURT: Counsel, one update. I gather the
7 juror -- there was a subway delay, one of the subways was shut
8 down -- he has gotten off the subway at the station nearby so
9 he should be here any minute and then we will get started as
10 soon as he is ready.

11 While we have a moment and I don't think there is any
12 problem saying this in front of the witness, I would like the
13 government to propose and share with Mr. Schulte, in the first
14 instance, an appropriate limiting instruction on the fact that
15 Mr. Schulte is currently incarcerated. He alerted the jury to
16 that himself, as you will recall. This is -- it is not a case
17 where the fact that his incarceration is irrelevant to the
18 jury's determination. Obviously there are various ways in
19 which it is relevant, both to his arguments and perhaps to the
20 government, and certainly relevant to their understanding on
21 where he was and what he did. But, that being said, I think
22 it's appropriate for me to instruct the jury at an appropriate
23 time about what they can and can't consider in that regard. So
24 if you can come up with a proposal, I would appreciate it.

25 MR. DENTON: Understood, your Honor. We will.

M6F5sch1

1 THE COURT: Thank you.

2 Yes?

3 MR. LOCKARD: This is just a ministerial clarification
4 question. So your Honor, you may have already said this and I
5 apologize if you did and I have forgotten. At what time does
6 the Court take the midday break or is that a game time decision
7 depending on where things are?

8 THE COURT: I would say in general it will be about
9 11:30 but I'm not sure I will do it that way today given that
10 we are getting off to such a late start. So I will probably do
11 more of a game time decision today.

12 MR. LOCKARD: Thank you.

13 THE COURT: All right. I gather we have a full jury
14 and they are on their way up so we should get started in a
15 moment.

16 THE DEPUTY CLERK: All rise.

17 (Continued on next page)

18

19

20

21

22

23

24

25

M6F5sch1

1 (Jury present)

2 THE COURT: You may be seated.

3 Welcome back, ladies and gentlemen. Sorry we are
4 getting off to a late start. I know one of you had some train
5 trouble. I gather there was a train line that was shut down
6 and these things unfortunately happen. As I said yesterday,
7 unfortunately we can't get started until you are all here so as
8 a result we are a bit delayed this morning and I apologize and
9 very much thank those of you who were here on time and ready to
10 go.

11 I can assure you I'm not going to keep you past 3:00
12 as much as I want to make up for lost time. When I tell you
13 that we are going to end at a particular time, I know you made
14 plans based on that and I'm not going to make that sort of
15 change on you so we will still end at 3:00 today.

16 I also noticed, I think some of you have your phones
17 with you. Pre-pandemic, jurors weren't allowed to have their
18 phones in the court house but I think that's a change the
19 jurors have welcomed. I would urge you to leave your phones in
20 the jury room; they will be secured there. That way there is
21 no chance that they will go off or be a distraction. If you do
22 have them with you, I would ask you to turn them off -- not put
23 them on silent but turn them off. Because while we are in
24 trial, obviously you can't be looking at your phones or not
25 answering calls or anything of that sort. So if you want to

1 take a moment to make sure it is completely off, that would be
2 great, and once everyone is looking up, we will get started.

3 With that, we will pick up where we left off yesterday
4 with the testimony of Agent Evanhec. You may take off your
5 mask at this time?

6 THE WITNESS: Yes, your Honor.

7 THE COURT: And I remind you, you are under oath.

8 THE WITNESS: Yes, your Honor.

9 THE COURT: And I also remind you to speak directly
10 into the microphone, loudly and clearly.

11 THE WITNESS: Yes, your Honor.

12 THE COURT: With that, Mr. Lockard, you may proceed.

13 RICHARD JOHN EVANCHEC,

14 DIRECT EXAMINATION

15 BY MR. LOCKARD:

16 Q. Good morning, sir.

17 A. Good morning, Mr. Lockard.

18 Q. Special Agent Evanhec, yesterday afternoon you were
19 describing the investigation that the FBI conducted related to
20 the WikiLeaks Vault 7 release. Do you remember that?

21 A. I do.

22 Q. Do you recall describing the particular backup files that
23 the investigation determined had been stolen?

24 A. I do.

25 MR. LOCKARD: Ms. Cooper, if you could please display

1 for us again 1207-27 which is in evidence?

2 THE COURT: Mr. Lockard, if you can keep your voice up
3 too, please?

4 MR. LOCKARD: Yes, your Honor.

5 Q. And Agent Evanhec, which backup file is the file that was
6 stolen?

7 A. March 3rd of 2016.

8 Q. Remind us again, what is the last date accessed for the
9 March 3rd, 2016 backup file?

10 A. April 20th of 2016.

11 MR. LOCKARD: Ms. Cooper, if we could please enlarge
12 that?

13 Q. And at what time?

14 A. 5:42 p.m.

15 Q. Agent Evanhec, are you aware whether Mr. Schulte was at
16 work on April 20th of 2016?

17 A. I am.

18 Q. Actually, you have in front of you a binder of hard copies
19 of the exhibits. I welcome you to refer either to the hard
20 copies or to the copy displayed on the screen, whichever is
21 more convenient.

22 A. Yes, sir.

23 Q. But if you could please look at Government Exhibit 107
24 which is also in evidence?

25 MR. LOCKARD: And if you could please pull that up,

M6F5sch1

Evanhec - Direct

1 Ms. Cooper?

2 Q. Do you recognize what is contained in Government Exhibit
3 107?

4 A. Yes, sir. These are badging records that were maintained
5 by the CIA that captured the moments an employee would have
6 used the access card that I described to the jury yesterday,
7 upon entering the building and each vault.

8 Q. If we could please look at page 4 of Exhibit 107, what date
9 is covered by these badge records?

10 A. April 18th of 2016 to April 21st of 2016.

11 Q. And if you could please focus in on the entry that's
12 timestamped 19:06:10 on April 20th?

13 A. Yes, sir.

14 Q. First of all, could you convert for us what time is 19:06?

15 A. It would be 7:06 p.m.

16 Q. And what activity is reflected there?

17 A. A computer log off.

18 Q. And for which employee are these badge records?

19 A. Joshua Schulte.

20 Q. If you could look down just a little bit below that at
21 19:07:04; what is reflected by the type close, and the summary
22 arm, disarm, command accepted?

23 A. This would have indicated that Mr. Schulte was the last
24 person who was in the secure vault that he then closed and sent
25 a command to activate the alarm.

1 Q. And just a couple seconds after that at 19:07:06, what is
2 reflected there?

3 A. Exit of that vault.

4 MR. LOCKARD: Thank you, Ms. Cooper. You can take
5 that down, please.

6 Q. And if you could also look at Government Exhibit 405, which
7 is in evidence, and turning to page 9 of that exhibit, do you
8 recognize that agreement?

9 A. I do.

10 Q. Was that provided to the FBI by the CIA?

11 A. It was.

12 Q. What type of agreement is that?

13 A. This was an agreement between Joshua Schulte and the CIA
14 wherein he is advised of his responsibilities to protect
15 classified information during his time as a CIA employee and
16 outline certain restrictions and responsibilities he had to
17 protect that information.

18 Q. And if we could please look at page 2 -- I'm sorry, page 2
19 of that agreement which is page 10 of the exhibit -- I
20 apologize -- is that signed?

21 A. It is.

22 Q. By whom?

23 A. Joshua Schulte.

24 Q. And on what date?

25 A. January 3rd of 2012.

1 Q. If we could please turn back to, again, page 9 of the
2 exhibit, page 1 of this agreement?

3 Agent Evanhec, could you please read what is stated in
4 paragraph 2?

5 A. I understand that in the course of my employment or other
6 service with the Central Intelligence Agency, I may be given
7 access to information or material that is classified or is in
8 the process of a classification determination in accordance
9 with the standards set forth in Executive Order 12958 as
10 amended or superseded, or other applicable Executive order,
11 that if disclosed in an unauthorized manner would jeopardize
12 intelligence activities of the United States government. I
13 accept that by being granted access to such information or
14 material, I will be placed in a position of special confidence
15 and trust and will become obligated to protect the information
16 and/or material from unauthorized disclosure.

17 MR. LOCKARD: Thank you. You can take that down,
18 Ms. Cooper.

19 THE COURT: Ladies and gentlemen, this is probably
20 obvious but, first of all, an Executive Order is an order
21 signed, issued by the president of the United States. It has
22 the force of law within the Executive branch, that is, actually
23 the source of what information that's kept classified is done
24 so pursuant to Executive orders signed by various presidents
25 over the years. I can't say I know specifically what that

1 Executive order is or says but it obviously pertains to,
2 governs classifications and classified evidence. So just so
3 you understand that.

4 Go ahead, Mr. Lockard.

5 MR. LOCKARD: Thank you, your Honor.

6 BY MR. LOCKARD:

7 Q. So, Agent Evanhec, we have looked at some badge records
8 and a secrecy agreement that were provided by the CIA, and
9 yesterday we read a stipulation that described various other
10 agency records, e-mails, instant messages, personnel files, and
11 the like. What was the nature of your interactions with the
12 CIA during your participation in this investigation?

13 A. Sure.

14 Especially the early stages of the investigation the FBI,
15 in both New York field office and our Washington, D.C. field
16 office, had near daily interaction with the CIA. At that stage
17 they were a victim agency, and consistent with any
18 investigation the FBI does there is, in the early stages, much
19 engagement with the victim because, in many cases, the victim
20 is also a witness. In this case certainly they were.

21 So throughout the investigation they were really in a
22 position to provide logistical assistance to the FBI. So for
23 example, if we identified someone that we wanted to interview
24 in CIA space we would make a request of the CIA and we had
25 people assigned to be our liaisons, or if we needed the badge

1 records that we just looked at or we needed e-mails, we would
2 go to them. So throughout the investigation I authored a
3 number of requests and memorandums to the CIA asking,
4 requesting them to provide that information for us. So it was
5 really a logistical support function they ultimately provided.

6 In the beginning there was certainly some consultation
7 they offered to help us get our feet under us to understand,
8 again, where the evidence came from, who potentially could have
9 been responsible, who would have had access to it, and things
10 like that, sir.

11 Q. What was the frequency of your action with CIA personnel?

12 A. Multiple times a day in the beginning of the investigation
13 for sure.

14 Q. And you testified yesterday that you had been to the CCI
15 office?

16 A. I have; yes, sir.

17 Q. How much time did you spend at the CCI office following the
18 initial Vault 7 release on March 7th of 2017?

19 A. In total work days time there, probably months. There were
20 periods that I would be at CCI for weeks at a time and would
21 then come back to New York to meet with my supervisors and my
22 team back there and talk about the investigative strategy. So
23 I was really bouncing back and forth between both Washington
24 and New York as the investigation called, but total time would
25 have been several months.

1 Q. And were there other FBI investigators would were also at
2 the CCI offices during those times?

3 A. There were.

4 Q. How would you describe the level of access that you had to
5 the CIA during the investigation?

6 A. We were, first of all, offered secluded space in one of the
7 basements of their buildings in order to conduct our
8 investigation. We were given assurances under the highest
9 level of the CIA that there would be no barrier to our
10 investigation; if we needed something and asked for it, that it
11 would be given.

12 Q. Did that bear out?

13 A. It did.

14 Q. Now, you testified yesterday that the investigation that
15 was open in New York was focused on a particular subject.

16 A. That's correct.

17 Q. And who was that subject?

18 A. Joshua Schulte.

19 Q. Why was Mr. Schulte identified as a subject?

20 A. So almost immediately after the disclosure, our Washington
21 field office deployed to the CIA to understand what had
22 happened. Within hours of that investigation being opened we
23 began to get reports that Mr. Schulte had, on a number of
24 occasions, reached out to then current employees at the CIA to
25 understand what was happening, to get reflections of what was

1 being discussed about the leak in the agency, and had even at
2 one point, I believe, asked if the FBI was asking questions
3 about him. In addition to that, the CIA did provide some
4 historical background of Mr. Schulte and his having been under
5 investigation at the time that he had left the agency in
6 November of 2016, had provided examples of him having elevated
7 access in the exact system that was ultimately compromised, and
8 of having personnel conflicts in the CIA.

9 So, they did provide us leads to follow in this
10 investigation and those were primarily focused on Mr. Schulte.

11 THE COURT: Let me interrupt and just say, ladies and
12 gentlemen, to the extent that Agent Evanhec just described
13 things that he heard from other people, you may not consider
14 that for the truth of those statements, the truth of the
15 matters asserted there. You may consider it for the effect
16 that it had on the agent and on the investigation, in other
17 words what steps they took in connection with the information
18 they received, but you should not consider those statements for
19 their truth.

20 Go ahead.

21 MR. LOCKARD: Thank you, your Honor.

22 BY MR. LOCKARD:

23 Q. Now, was Mr. Schulte the only individual whose potential
24 role in the Vault 7 leaks was investigated by the FBI?

25 A. No.

1 Q. You described an investigation being run principally by the
2 Washington field office. What was the nature of that
3 investigation?

4 A. Yes, sir.

5 As I testified yesterday and explained to the jury, the
6 Washington field office was working, again, what we call that
7 un sub investigation -- that unknown subject -- so that in the
8 event, although New York had a specific subject that it was
9 uncovering evidence for, in the event that there was a
10 co-conspirator or that there was somebody completely different
11 from Mr. Schulte that would have been involved, our Washington
12 field office had an even bigger effort, quite frankly, at the
13 CIA, designed to figure out if anybody else could have been
14 involved in this. So they had an equally large team, if not
15 larger, that was dedicated to uncovering additional leads. And
16 we worked with that team daily as well to share results of our
17 investigation so that one investigation was informing the other
18 and there wasn't a duplication of efforts, and there was
19 certainly coordinated effort to preserve the time that we were
20 asking the CIA to invest in our investigation.

21 So their effort was even bigger than ours and really
22 focused on identifying anyone else that could have been
23 involved.

24 Q. Now, you talked a moment ago about information you had
25 heard that there might have been some personnel conflicts

1 involving Mr. Schulte at the agency; is that right?

2 A. That's correct.

3 Q. In the course of your investigation, did you review records
4 relating to that conflict?

5 A. I did.

6 Q. Based on your review of those records, did you have an
7 understanding of what was sort of the genesis of that conflict?

8 A. Generally; yes, sir.

9 MR. LOCKARD: If we could please look at Government
10 Exhibit 1034 which is in evidence?

11 Q. Agent Evanchec, do you recognize this e-mail or this e-mail
12 chain?

13 A. I do.

14 Q. If we could turn to page 6, please? And then, focusing in
15 on the top, the e-mail that was sent March 1st? Who sent this
16 e-mail?

17 A. Mr. Schulte.

18 Q. And to whom did he send this e-mail?

19 A. To the security organization within his office.

20 Q. What's the general topic of this e-mail?

21 A. In this e-mail Mr. Schulte discusses behavior in the
22 workplace by one of his colleagues -- Amol -- and goes on to
23 insinuate and suggest that Amol made death threats against him
24 specifically saying 'I wish you were dead' and things of that
25 such and wanted to bring this matter to the attention of the

1 security personnel in his office.

2 Q. And now, does Mr. Schulte refer to a prior complaint that
3 he had made about his colleague Amol?

4 A. He did.

5 Q. And if you could look at the e-mail just below this dated
6 October of 2015, is this the earlier allegation about Amol?

7 A. It is.

8 Q. Turning back to the March 1, 2016 e-mail, I would like to
9 direct your attention to the sentence third from the bottom
10 that starts: I have considered just going to the local
11 police --

12 A. Yes.

13 Q. -- and trying to get a restraining order but I thought I'd
14 inform security before I did this.

15 What is your understanding of who DDI support security is?

16 A. I'm sorry, sir. Can you repeat the question?

17 Q. What is your understanding of who is the recipient of this
18 e-mail, DDI support security?

19 A. That is the security officers that are assigned to
20 Mr. Schulte's office.

21 Q. And did the security office include officers with law
22 enforcement functions?

23 A. It does.

24 Q. How does Mr. Schulte's statement that he has considered
25 just going to the local police, how did that inform your

1 investigation?

2 A. I think it showed a level of desperation with Mr. Schulte
3 in that he was willing to escalate a matter that was in the
4 workplace to an outside local police agency. Certainly there
5 were armed police officers, as I described yesterday, at his
6 office; there was a security office. So I believe making a
7 report to the local police about activities that had occurred
8 in secret and top secret office space in the CIA would have
9 been an escalation.

10 THE COURT: Can I just interrupt for one second?

11 Sorry. The next couple days I will have various
12 instructions to you but I assume they'll get less frequent as
13 time goes on.

14 You can see in this exhibit a couple things, one is
15 some of the text is blacked out, that's called a redaction.
16 Over the course of the trial you will see various redactions in
17 some of the documents. The bottom line is you shouldn't
18 speculate as to why something is redacted, you shouldn't
19 speculate as to what is behind the redaction, it is not
20 relevant for your consideration so you shouldn't consider it
21 one way or another in your deliberations. And relatedly, I
22 mentioned to you yesterday that because of certain
23 sensitivities regarding employees of the CIA that some
24 employees would be identified only by first name or even by a
25 substitute name, so you will see that in this document and

1 other documents as well. But, once again, don't speculate
2 about why something is redacted or what is behind the
3 redactions but I just wanted to explain what that is.

4 Go ahead.

5 (Continued on next page)
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 MR. LOCKARD: Thank you, your Honor. If we could
2 please turn to page 4 of this exhibit, which is a reply to
3 Mr. Schulte's prior email.

4 Q. What is the official position of the individual who sent
5 that reply?

6 A. An investigator/federal police officer.

7 Q. And what is a federal police officer?

8 A. It's a sworn law enforcement officer that has the powers of
9 police at the federal level.

10 Q. Agent Evanchech, did you come to learn whether Mr. Schulte,
11 in fact, involved local criminal justice authorities?

12 A. I did.

13 Q. What happened?

14 A. Mr. Schulte, as a result of his perceived conduct of Amol,
15 had filed a restraining order against Amol in a local court.

16 Q. And did you learn what ultimately happened to that
17 restraining order?

18 A. The restraining order, from my recollection, sir, was
19 eventually --

20 MR. SCHULTE: Objection. Hearsay.

21 THE COURT: Sustained.

22 BY MR. LOCKARD:

23 Q. What, if any, effect did Mr. Schulte's complaint and the
24 filing of the restraining order have on the workplace?

25 A. It ultimately necessitated --

1 MR. SCHULTE: Objection. Hearsay.

2 THE COURT: To the extent it had an impact on your
3 investigation, I'll allow you to give an answer, with the
4 understanding that that's the only thing the jury may consider
5 it for.

6 So did this have an effect an your investigation?

7 THE WITNESS: It did, yes, sir.

8 THE COURT: OK. Then you may answer.

9 A. It ultimately required the CIA to move the desks of both
10 the defendant, Mr. Schulte, and Amol. So they were both taken
11 from their assignment at the operational support branch and
12 moved elsewhere, to other units within AED.

13 THE COURT: And just to be clear, how did that affect
14 your investigation? What role did that information play?

15 THE WITNESS: Your Honor, it -- there would be a
16 continued, as we'll see in, I think, some of the evidence, a
17 continued referral back to the fact that the defendant had been
18 moved from that, and it was a motivation and continued to be a
19 source of anger for him leading up to his, his eventual
20 resignation.

21 THE COURT: All right. That was what you understood
22 and one of the reasons that you focused on him, is that
23 correct?

24 THE WITNESS: Correct. Yes, sir.

25 BY MR. LOCKARD:

1 Q. Was that information reflective of the workplace conflicts
2 that you had been informed of at the outset of the
3 investigation?

4 MR. SCHULTE: Objection.

5 THE COURT: Sustained.

6 BY MR. LOCKARD:

7 Q. Did you come to learn whether CIA security investigated the
8 allegations Mr. Schulte had made?

9 A. I did, yes, sir.

10 MR. SCHULTE: Objection.

11 THE COURT: Overruled.

12 MR. LOCKARD: I'd like to turn now to Government
13 Exhibit 508, which is in evidence. And actually, if you could
14 just play it for -- hold on.

15 If you could display for Agent Evanchech 508-T. And
16 then just, as we get the exhibit lined up, referring back to
17 Government Exhibit 3004, which was received in evidence
18 yesterday, pursuant to paragraph 5, Government Exhibit 508 is
19 excerpts of a recording of an April 8, 2016, interview of the
20 defendant while at the CIA.

21 Perhaps we can just play this recording, which is in
22 evidence, for the jury. And Ms. Cooper, if we could play
23 through time stamp 00:52.

24 (Video played)

25 MR. LOCKARD: I just want to pause there.

1 Q. Agent Evanhec, did you hear a reference to an outside
2 activities report?

3 A. Yes.

4 Q. What is an outside activities report?

5 A. That is a report that CIA employees are required to submit
6 to certain entities within their office anytime they would go
7 outside of the CIA and affiliate themselves with the CIA. So
8 this was in an effort to ensure that anytime an employee
9 disclosed their relationship with the CIA or conducted any kind
10 of activity the CIA was aware of that, because obviously the
11 CIA takes extraordinary means and methods to --

12 MR. SCHULTE: Objection.

13 THE COURT: All right. Sustained. We'll leave it
14 there.

15 MR. LOCKARD: Your Honor, I think actually, it would
16 be helpful.

17 Q. Agent Evanhec, there is a witness binder in front of you.
18 There should be a tab for 508-T. Do you see that?

19 THE COURT: While the witness is looking at that, let
20 me just explain.

21 Similar to a redaction, you can see in this video that
22 the gentleman speaking with Mr. Schulte, his head/face is
23 pixilated. That's essentially a redaction of the video done to
24 obscure who the person is. Again, you shouldn't concern
25 yourselves with why that was done, let alone who that person is

1 or, I guess, what is behind the redaction, what he looks like.

2 But I just wanted to explain that.

3 A. I'm sorry. Mr. Lockard, can you direct me to --

4 Q. Is there a 508-T in the binder in front of you?

5 THE COURT: I think it's possible that a binder fell
6 from the witness box before. Is that possible?

7 No. All right.

8 THE WITNESS: Mr. Lockard, I see a 509-2-T.

9 Q. Maybe the tab in front of that; is there a 508-T?

10 A. Yes, sir. I'm sorry. I do have it.

11 Q. Excellent.

12 Prior to your testimony today, have you reviewed that
13 transcript?

14 A. I have, yes.

15 Q. And have you reviewed the transcript along with the
16 recording, 508-T?

17 A. I have, yes, sir.

18 Q. Does it accurately reflect 508?

19 A. It does.

20 MR. LOCKARD: Your Honor, we'd like to use the English
21 transcript as a demonstrative to assist the jury in reviewing
22 this video recording.

23 THE COURT: All right.

24 Any objection, Mr. Schulte?

25 MR. SCHULTE: No.

1 THE COURT: All right. I'll allow it.

2 Ladies and gentlemen, just so you understand, here,
3 I'm going to permit the government to give to you a transcript
4 that has been prepared of this recording. You just heard
5 testimony concerning the agent's review, but just so you
6 understand, because the recording is itself in English, the
7 evidence is the recording. The evidence isn't the transcript.
8 The transcript was prepared, and you're able to view it just as
9 an aid in listening to and reviewing the exhibit. The exhibit
10 itself is the recording. The transcript is not the recording.

11 So again, you can consider it just as an aid in
12 reviewing the exhibit. And as with all the exhibits, what
13 weight, if any, you give it is up to you.

14 MR. LOCKARD: Your Honor, if I may, we will employ the
15 passing out and hand them down method.

16 THE COURT: Sure. Go ahead.

17 Are there multiple transcripts in these binders?

18 MR. LOCKARD: There are two, two transcripts.

19 THE COURT: All right.

20 Ladies and gentlemen, for now, just take the binder,
21 and don't look at anything. And then just follow my
22 instructions about where to turn.

23 Government, do you have one for the court reporter?

24 There you go.

25 All right. Mr. Lockard, should we turn to 508-T?

1 MR. LOCKARD: Yes. Anyone who would like to follow
2 along in the transcript, we should be on page 3 of the
3 transcript. So there's a cover page and then a few pages of
4 text. The second page is page 3.

5 THE COURT: All right. Please turn to tab 508-T --
6 please don't look forward at the other exhibit in this
7 binder -- and you can follow along.

8 BY MR. LOCKARD:

9 Q. OK. Agent Evanchech, the reference to the outside
10 activities report appears in the transcript on line, I believe,
11 24 on page 2 of the transcript and then the discussion carries
12 over to the second page?

13 A. That's correct.

14 Q. And that's the report of an individual's outside activities
15 that relate to the events at the CIA?

16 MR. SCHULTE: Objection. Leading.

17 THE COURT: Sustained.

18 BY MR. LOCKARD:

19 Q. Can you remind us again, very briefly, what is an outside
20 activities report?

21 A. Sure. This is a filing that any employee of the CIA would
22 make, basically letting their leadership know that they had
23 intended to disclose their affiliation with the CIA outside of
24 the CIA.

25 MR. LOCKARD: OK. Ms. Cooper, if you could please

1 take us back up and play thorough time stamp 1 minute, 59
2 seconds.

3 (Video played)

4 BY MR. LOCKARD:

5 Q. Agent Evanchech, directing your attention to the defendant's
6 statement about going to the media and, you know, a potential
7 Washington Post article, how, if at all, does that relate to
8 the earlier statement that we looked at about going to local
9 police?

10 MR. SCHULTE: Objection.

11 THE COURT: Sustained.

12 BY MR. LOCKARD:

13 Q. How, if at all, would this statement affect the
14 investigation that was being conducted?

15 MR. SCHULTE: Objection.

16 THE COURT: Overruled.

17 A. Certainly very early in the investigation, sir, the spring
18 of 2016, it became extraordinary interesting to us as we had
19 determined that the date of the information stolen from
20 Confluence was in March of 2016. So this time frame overall
21 became essential for the FBI to understand if there were
22 employees in the CIA who were having difficulties, and
23 certainly, again, this is further escalation. At first, we had
24 heard that there was going to be an effort to contact local
25 police and local authorities, and now we see further escalation

1 in the sense that Mr. Schulte was considering a law firm that
2 would potentially go to the press with his personal issues he
3 was having at the CIA.

4 MR. LOCKARD: Ms. Cooper, if we could please pick up
5 through the time stamp 2 minutes and 24 seconds.

6 (Video played)

7 MR. LOCKARD: I want to pause there for a moment.

8 Q. Agent Evanhec, directing your attention to the defendant's
9 statement about an EAP, what is an EAP?

10 A. That's the employee assistance program.

11 Q. And very briefly, what is an employee assistance program?

12 A. That's a resource available to many federal agencies, where
13 they can go to get counseling or otherwise help with personal
14 issues they may be experiencing.

15 Q. And do you have an understanding of what the defendant is
16 referring --

17 MR. SCHULTE: Objection.

18 THE COURT: Sustained.

19 MR. LOCKARD: Ms. Cooper, if we could please play
20 through time stamp 3 minutes and 49 seconds.

21 (Video played)

22 BY MR. LOCKARD:

23 Q. And Agent Evanhec, just directing your attention to the
24 defendant's statement about feeling like he's being punished,
25 was this interview before or after he had moved branches as a

1 result of the allegations and protective order?

2 A. After.

3 MR. LOCKARD: Ms. Cooper, if you could please take us
4 back up and play it through time stamp 5 minutes and 38
5 seconds.

6 (Video played)

7 BY MR. LOCKARD:

8 Q. And just to clarify, directing your attention to the
9 defendant's statement about this information being leaked, what
10 is he referring to?

11 MR. SCHULTE: Objection.

12 THE COURT: Sustained.

13 BY MR. LOCKARD:

14 Q. Special Agent Evanhec, when Mr. Schulte was asked what his
15 desired outcome was, what did he say was his desired outcome?

16 A. He begins by saying he doesn't even know, and he goes on to
17 say essentially that he would like an apology from his
18 management.

19 Q. And did he say anything about punishment?

20 A. He would like --

21 MR. SCHULTE: Objection. Leading.

22 THE COURT: Sustained. The exhibit speaks for itself.

23 MR. LOCKARD: Ms. Cooper, if we could please play
24 through time stamp 6 minutes and 29 seconds.

25 (Video played)

1 THE COURT: Ladies and gentlemen, this probably goes
2 without saying, but one piece of the audio recording there was
3 bleeped out. That is just another form of redaction for an
4 audio. So again, same instructions apply to that.

5 BY MR. LOCKARD:

6 Q. Agent Evanhec -- I want to pause there -- the defendant
7 made a reference to something that happened in the navy yard?

8 MR. SCHULTE: Objection.

9 Q. Are you personally familiar with an event that occurred in
10 a navy yard around the time frame of this interview?

11 A. Yes, there was a mass shooting.

12 THE COURT: And just to be clear, as far as I know,
13 that has no connection whatsoever to Mr. Schulte or this case.
14 I assume that that testimony is just intended to eliminate the
15 agent's understanding of what that's a reference to.

16 MR. LOCKARD: And then if we could pick up from there.

17 (Video played)

18 BY MR. LOCKARD:

19 Q. Agent Evanhec, what is the nature of the threat that
20 Mr. Schulte describes about Amol here in this last part of the
21 recording?

22 MR. SCHULTE: Objection.

23 THE COURT: Sustained.

24 BY MR. LOCKARD:

25 Q. In the March 1, 2016, email that we looked at earlier,

1 Mr. Schulte first reports concerns about a threat relating to

2 Amol, did he say anything about weapons?

3 A. No.

4 MR. SCHULTE: Objection. He's testifying.

5 THE COURT: All right.

6 Mr. Lockard, in general, to the extent that something
7 is in evidence, let's let the evidence speak for itself, but
8 I'll allow the answer to stand.

9 Go ahead.

10 BY MR. LOCKARD:

11 Q. Agent Evanchech, I'd like you to turn to --

12 MR. LOCKARD: Ms. Cooper, if you could pull up
13 Government Exhibit 1095.

14 THE COURT: I assume we're done with the transcripts.

15 MR. LOCKARD: We are done with the transcripts for
16 now.

17 THE COURT: All right.

18 Ladies and gentlemen, why don't you just put the
19 binders beside you or use them to lean on, but you can put them
20 aside for now.

21 BY MR. LOCKARD:

22 Q. Agent Evanchech, do you recognize this memorandum?

23 A. I do.

24 Q. And who is it addressed to?

25 A. Joshua Schulte.

1 Q. And who is it written from?

2 A. Anthony Leonis.

3 Q. And at the time of this memorandum, what was Mr. Leonis's
4 role with CCI?

5 A. He was the acting --

6 MR. SCHULTE: Objection.

7 THE COURT: Sustained.

8 BY MR. LOCKARD:

9 Q. If you could please look at the title next to Mr. Leonis's
10 name, what is that title?

11 A. Acting chief.

12 Q. And then if you look at the series of acronyms that follow,
13 what are those acronyms?

14 MR. SCHULTE: Objection, as to what he knows.

15 THE COURT: I'll allow it. Overruled.

16 A. This is the breakdown of the organization of which
17 Mr. Schulte was an employee of, from the org chart that we saw
18 yesterday.

19 Q. And again, if you could just remind us, from the highest
20 level to the lowest level, what are those acronyms?

21 THE COURT: Could we blow up the acronyms themselves,
22 please.

23 MR. LOCKARD: Ms. Cooper, if you could also pull up
24 Government Exhibit 89, and maybe we could display these side by
25 side.

1 A. Director of digital innovation, Center for Cyber
2 Intelligence, Engineering Development Group, Applied
3 Engineering Division.

4 Q. Where in the org chart was Mr. Leonis with respect to
5 Mr. Schulte?

6 A. He would have been his second-level supervisor.

7 MR. LOCKARD: Thank you.

8 Q. Could you please read paragraph 1 of the memorandum.

9 A. "At the end of March 2016, DDI/CCI/EDG/AED/OSB staff were
10 directed by DDI/CCI and DDI/CCI/EDG management to ensure that
11 all AED/OSB projects were properly resourced. All
12 AED/OSB-related development resources (to include computer
13 network exploitation, CNE, related code libraries, development
14 tools, etc.) were accessed and administered by the appropriate
15 people in AED/OSB, and any projects that were not going to
16 remain in AED/OSB be moved to the appropriate EDG branch
17 immediately (Note: AED/OSB is responsible for developing,
18 among other things, tools used to acquire data from targeted
19 systems.)"

20 Q. And prior to the workplace conflicts that we've described,
21 in what group was Mr. Schulte?

22 A. The Operations Support Branch, or OSB.

23 Q. And after the time frame that he was moved to a different
24 branch, in which branch was he at that time?

25 A. The Remote Development Branch, or RDB.

1 MR. LOCKARD: And if we could please look at --

2 Ms. Cooper, I think you can take down 89 now. Thank you.

3 Q. And now looking at paragraph 2 of the memorandum, could you
4 please read that?

5 A. "As part of this process, on early April 2016, AED/OSB
6 administrators of AED/OSB's CNE code component libraries (known
7 as the OSB libraries) removed Mr. Joshua Schulte's
8 administrative access to the OSB libraries following
9 Mr. Schulte's transfer from AED/OSB to AED/RDB at the end of
10 March 2016. In doing so, while Mr. Schulte's administrative
11 rights to the OSB libraries code repository were removed,
12 Mr. Schulte maintained user-based access to the OSB libraries
13 code repository to permit him to access and commit code to the
14 OSB libraries repository through a predefined peer review
15 process."

16 THE COURT: I think you read, on the first line, code
17 component libraries as opposed to development libraries. It
18 says code component.

19 THE WITNESS: Apologies, your Honor.

20 BY MR. LOCKARD:

21 Q. And if we could please look at paragraph 3, subparagraph
22 (1).

23 MR. SCHULTE: Objection, your Honor. He's just
24 reading the document. He has no personal knowledge.

25 THE COURT: All right.

1 Sustained. I'll allow you to display it if it's
2 necessary for his testimony, but otherwise, let's move on.

3 BY MR. LOCKARD:

4 Q. In the course of your investigation, did you learn about
5 what happened after Mr. Schulte's administrative access to the
6 OSB libraries was removed?

7 A. Yes.

8 MR. SCHULTE: Objection, as to when.

9 THE COURT: Well, the answer is yes.

10 Next question.

11 BY MR. LOCKARD:

12 Q. And are those events reflected in this memorandum?

13 MR. SCHULTE: Objection.

14 THE COURT: Sustained.

15 Let's move on.

16 BY MR. LOCKARD:

17 Q. Did the information that you learned come from this
18 memorandum?

19 A. I'm sorry, sir. Could you repeat the question?

20 Q. Did the information that you learned about what happened
21 after Mr. Schulte's OSB libraries administrative access was
22 revoked apart from this memorandum?

23 A. Yes.

24 MR. LOCKARD: And if we can scroll down to the bottom
25 of this memorandum, the very bottom, where there's a signature

1 block. Yes.

2 Q. And where it says, "the undersigned has read and
3 understands the above," is there a signature?

4 A. There is.

5 Q. And whose signature is that?

6 A. Joshua Schulte's.

7 MR. SCHULTE: Objection.

8 THE COURT: All right. It speaks for itself.

9 Counsel, can I actually see everybody at sidebar for
10 one moment, please.

11 (Continued on next page)

1 (At sidebar)

2 THE COURT: Mr. Lockard, to some extent it's
3 appropriate to elicit from this witness things that he learned
4 from documents or other people to explain steps that he took in
5 his investigation. I get that, but what's going on here is
6 bordering on using this witness as a summary witness to
7 basically lay out the government's entire case and
8 investigation, and that's not proper. So I'm hoping that this
9 discussion can obviate some future objections because there
10 won't be objectionable questions asked, but really, this
11 witness should not be used to just summarize things that other
12 witnesses are going to say or what documents are in evidence.
13 That's not a proper thing to do.

14 I don't know if you have anything to say. It's hard
15 for me to evaluate what's necessary to explain steps that he
16 took in his investigation versus just summarizing your case.
17 But the former is OK, the latter is not.

18 MR. LOCKARD: Your Honor, I think certainly documents
19 that are in evidence can be displayed and read by any witness,
20 but we certainly take the Court's point, and we'll move on from
21 this issue.

22 THE COURT: OK. But the point is it's been a
23 recurring issue, so I don't know how much of your future
24 examination will raise similar issues. Yes, it's in evidence,
25 and in that sense, a witness can read it, but that doesn't mean

1 that you can put on a witness and present your closing
2 statement by having them read everything that you would want to
3 put in your closing statement. That's not OK.

4 So with that admonition, I'll trust that you'll pare
5 things down and limit it to what's necessary to explain the
6 steps that this agent, this witness took in connection with his
7 investigation and not use him as a summary witness. OK?

8 MR. LOCKARD: Yes.

9 THE COURT: Thank you.

10 (Continued on next page)
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 (In open court)

2 THE COURT: I gather one of the jurors has requested
3 to use the restroom. Obviously, if you can use the restroom
4 right before we come up here so we don't need to take these
5 breaks, that would be ideal. That being said, I'm not here to
6 torment you, as I said yesterday, so I'll have Mr. Lee just
7 quickly run that juror to the jury room that's here, where
8 there's a restroom, and we'll get started right when she
9 returns.

10 The rest of you, if you want to stand and stretch,
11 you're welcome to do that.

12 Counsel, if you could just wait a moment, that would
13 be great.

14 (Recess)

15 THE COURT: All right. We'll pick up where we left
16 off.

17 Mr. Lockard, you may proceed.

18 MR. LOCKARD: Thank you, your Honor.

19 Q. Special Agent Evanchech, you testified about some
20 information that you had learned at the outset of the
21 investigation with respect to Mr. Schulte that was conveyed to
22 you by the CIA, is that right?

23 A. Correct.

24 Q. What, if anything, did you do to verify or disprove that
25 information?

1 A. Well, we began to interview a number of the individuals
2 that had firsthand knowledge of that, that information.

3 Q. And did you take any other steps?

4 A. We obtained badge records. We obtained emails. We
5 obtained instant messaging chats that the defendant had been
6 part of -- and others, quite frankly, that were of interest to
7 us at the time. So we attempted to obtain any piece of
8 evidence, whether it be part of the computer network or part of
9 the personnel file or any of those other pots of information
10 that I talked about, in order to be able to get and verify that
11 from our own.

12 Q. If we could turn to, I think in front of you in your
13 witness binder, you should have Government Exhibit 509-2-T.

14 A. Yes, sir.

15 THE COURT: Ladies and gentlemen, just wait before you
16 start to look at something until I direct you.

17 Go ahead.

18 BY MR. LOCKARD:

19 Q. And without telling us what is in that transcript, have you
20 reviewed that transcript?

21 A. I have.

22 Q. And have you reviewed it along with the recording that's in
23 evidence as Government Exhibit 509-2?

24 A. I have.

25 Q. And does the transcript fairly and accurately reflect the

1 statements that are in that recording?

2 A. It does.

3 MR. LOCKARD: Your Honor, the government would like to
4 display the transcript to the jury as a demonstrative.

5 THE COURT: All right.

6 Any objection, Mr. Schulte?

7 (Defendant conferred with standby counsel)

8 MR. SCHULTE: If there's a video to it, we request the
9 video be played with it.

10 THE COURT: I think that's what I understood
11 Mr. Lockard to be proposing.

12 MR. LOCKARD: Yes, your Honor.

13 THE COURT: Ladies and gentlemen, at this time you may
14 pick up those binders again and turn to the second tab, which
15 is marked GX509-2-T. And with the same instructions as
16 earlier, you may follow along with the transcript. That is to
17 say, the transcript is not the evidence; it is just an aid in
18 helping you to understand the actual evidence, which is the
19 recording.

20 Go ahead.

21 MR. LOCKARD: Ms. Cooper, if you could please play the
22 video through time stamp 4 minutes and 15 seconds.

23 (Video played)

24 MR. LOCKARD: Thank you, Ms. Cooper. We can pull that
25 down.

1 THE COURT: Can we put the binders away?

2 MR. LOCKARD: Yes, the binders we can put under the
3 chairs.

4 THE COURT: Let me modify my earlier instruction in
5 one respect. You'll notice that there were some names bleeped
6 out that were substituted in the transcript as Jeremy or Jeremy
7 Weber. I guess that's only really reflected in the transcript,
8 not in the recording. So in that regard, you consider the
9 transcript as evidence of that name, Jeremy or Jeremy Weber, at
10 that place in the recording. But otherwise, my instruction
11 earlier that the evidence is the recording and not the
12 transcript governs.

13 MR. LOCKARD: Thank you, your Honor.

14 Q. Agent Evanhec, we've reviewed some of the evidence
15 obtained in your investigation. I'd like to rewind back to the
16 time period of March 8, 2017, when you first opened the
17 investigation.

18 A. Correct.

19 Q. What were your investigative steps specifically with
20 respect to Mr. Schulte?

21 A. Back in New York, we had put him under physical
22 surveillance. We had reviewed his online presence -- so his
23 LinkedIn page, I believe some other websites that he had
24 activated. And we had begun to identify people in his life
25 that could be interviewed. We immediately requested his

1 personnel file and his security file from -- from the CIA and
2 had begun our own investigation into, you know, where he was in
3 life at that time and what he had done at the CIA as well.

4 Q. And what did you come to learn in those early days about
5 where Mr. Schulte was and what was going on in his life? More
6 specifically, did you learn anything about his plans in March
7 of 2017?

8 A. Yes. We had learned that he had planned to travel to
9 Cancun.

10 Q. And when was the planned travel?

11 A. I believe it was March 16 of 2017.

12 Q. How, if at all, did learning about that planned travel
13 affect the investigation?

14 A. As the case agent, I became very concerned that just over a
15 week after --

16 MR. SCHULTE: Objection.

17 THE COURT: Overruled.

18 A. Just after, a week after the release of WikiLeaks, the
19 subject of a full field investigation at the FBI had planned
20 travel outside of the United States to Cancun, Mexico, where
21 the FBI doesn't have authority. It was only the second time in
22 his life, I believe, Mr. Schulte had traveled outside the
23 United States. So those two facts alone were very concerning
24 to me as an FBI agent and the case agent in this investigation.

25 Q. And just to clarify, at that time, did you know anything

1 about the purpose of the travel?

2 A. We did not.

3 Q. How did learning about that travel affect your next
4 investigative steps?

5 A. It certainly accelerated a need that we assessed was to get
6 in front of him and actually interview him and ask him about
7 the Vault 7 and to ask him about his travel plans.

8 Q. And so what investigative steps did you plan in connection
9 with that?

10 A. So, we had planned to meet Mr. Schulte after he left work
11 on the 15th of April and interview him at a nearby coffee shop,
12 and we had also planned to execute, just after that interview,
13 a search warrant of his residence.

14 THE COURT: Sorry. You said April. Was it March or
15 April?

16 THE WITNESS: March 15, sir.

17 BY MR. LOCKARD:

18 Q. Prior to this planned interview, had any other steps been
19 taken to conduct searches related to Mr. Schulte?

20 A. Yes.

21 Q. What were those?

22 A. March 13, there was a search of his apartment in Manhattan
23 as well.

24 Q. And what type of search was that?

25 A. It was called a delayed notification search. So it

1 essentially is a search that a court authorizes the FBI to go
2 in and conduct a search warrant -- in this case, of
3 Mr. Schulte's apartment -- but then to delay notification that
4 it had been done to a later time.

5 Q. Was anything seized during that search?

6 A. No, sir.

7 Q. Why not?

8 A. When agents entered his residence on the 13th of March,
9 they encountered a treasure trove of digital media, and quite
10 frankly, any efforts to copy that image, which was covered
11 under the warrant, would have been worthless. We only had a
12 certain amount of time before we knew Mr. Schulte would come
13 home for the day. And so in the absence of being able to
14 conduct a search or to obtain images of his electronic devices,
15 we opted simply to take photographs of the residence and of the
16 digital media inside.

17 Q. And what happened after that search was attempted?

18 A. An additional search warrant was obtained to do a --
19 another search of his residence at a later time.

20 Q. Where did you approach Mr. Schulte to begin the interview?

21 A. After he was leaving work -- at the time he was an employee
22 of Bloomberg, I believe, on Park Avenue, not far from Grand
23 Central Station. He was under surveillance at the time, so we
24 waited for him to come out of work, and we approached him and
25 identified ourselves as FBI agents.

M6fWsch2

Evanhec - Direct

1 Q. And who was with you?

2 A. Special Agent David Donaldson.

3 Q. And what happened after you identified yourselves as FBI
4 agents?

5 A. Sure. We told Mr. Schulte that we were investigating the
6 Vault 7 release from WikiLeaks, and we invited him to chat with
7 us, which he agreed.

8 Q. Where did you go?

9 A. We went to Pershing Square. It's a coffee shop, I believe,
10 on East 42nd Street not far from Grand Central Station.

11 Q. And why did you plan to conduct the interview at the coffee
12 shop?

13 A. We wanted to go somewhere where Mr. Schulte would feel
14 comfortable talking to us. We also wanted to go somewhere that
15 would have been safe for agents to go to and that we could have
16 some degree of privacy in our discussion with Mr. Schulte. And
17 these agents had conducted a site survey, what we call, of that
18 location earlier and assessed that at that time of day it
19 basically afforded us and Mr. Schulte those, the benefits of
20 those things.

21 Q. And what, if anything, did you tell Mr. Schulte about the
22 nature of the interview?

23 A. That, I believe, from inviting him to speak with us, he had
24 the option to not, and he chose to.

25 Q. Did you ask Mr. Schulte about the Vault 7 leaks?

1 A. We did.

2 Q. And what did he say about that?

3 A. He said they were not too severe, and he said that because
4 they were -- they did not actually contain the source or binary
5 code from what was first released. But he -- so he did say
6 they weren't too severe.

7 Q. Did you ask Mr. Schulte about how the leak occurred?

8 A. We did.

9 Q. And what, if anything, did he say in response to those
10 questions?

11 A. I believe he had said that it could have been -- I don't
12 remember specifically, so is there something that you have that
13 can refresh my memory on that?

14 Q. I believe so. If you look on the floor near the witness
15 chair, there should be a binder that says volume 2 on it. It
16 should be a large binder. It may be behind you.

17 A. Yes, sir. I have it.

18 Q. And if you turn to the document towards the back, I
19 believe, marked 3501-, should be 821, I think.

20 A. OK. I have it.

21 Q. Is that a document that relates to this interview?

22 A. It is. It's the 302, or memorialization of the interview.

23 Q. If you could please read to yourself the material on the
24 second page of that and then put the report to the side.

25 THE COURT: While the witness is doing that, let me

1 just tell you, ladies and gentlemen, the rules allow --

2 You can continue reading, Agent.

3 The rules allow a lawyer, where a witness can't recall
4 something, to refresh or try to refresh their document with a
5 document, with really anything.

6 Random digression. When I studied for the bar, the
7 professor who taught on this subject said you could use
8 anything; you could even use a bowl of fettuccine Alfredo. So
9 there you have it. It's now a part of the official record in
10 this case.

11 Bottom line is that unless it is admitted into
12 evidence, you may not consider it. The evidence is the
13 witness's testimony. If, by looking at something, his
14 recollection is refreshed and he testifies, then you can
15 consider that testimony as you would any other. What weight,
16 if any, you give to the fact that he, you know, refreshed his
17 recollection is up to you. But bottom line is you may not
18 consider documents that are not in evidence.

19 MR. LOCKARD: I believe the professor went on to say
20 that the witness could then eat the fettuccine.

21 MR. SCHULTE: Objection, Judge.

22 THE COURT: All right. Let's move on.

23 A. I recall, Mr. Lockard.

24 Q. OK. So if you could please put the document to the side.

25 Has that refreshed your recollection?

1 A. It has.

2 Q. OK. Could you please describe what the defendant said
3 about how the leak occurred or could have occurred?

4 A. He said that you could check the DevLAN system and audit
5 records to look for spikes in activity, which would suggest
6 copying. He also suggested that one should look at the backup
7 servers.

8 Q. Did the defendant say anything about the backup servers?

9 A. He -- other than that was the place that the information
10 could have come from.

11 Q. Was he asked any questions about who might have committed
12 the alleged leak?

13 A. Yes.

14 (Continued on next page)

1 BY MR. LOCKARD:

2 Q. And what did he say in response to that?

3 A. He said that he could not imagine that others in his office
4 could have done this.

5 Q. Did you ask him if he committed the leak?

6 A. We did. On multiple occasions.

7 Q. What did he say in response to those questions?

8 A. He did not.

9 Q. What was Mr. Schulte's demeanor like during the course of
10 the interview?

11 A. Appeared very nervous.

12 Q. In what way?

13 A. I recall, while at Pershings, interviewing him, looking
14 down at his hand, and his hand was trembling.

15 Q. Did there come a time when the interview ended?

16 A. There did.

17 Q. How did it end?

18 A. It ended -- the FBI had served Mr. Schulte with two grand
19 jury subpoenas. My supervisor had entered our -- approached
20 our table and provided those to Mr. Schulte. One of the
21 subpoenas was for him to appear before a grand jury on March
22 17th, and one was for a grand jury that permitted the FBI to
23 seize his cellular phone.

24 Q. During the interview, did Mr. Schulte say anything about
25 his travel plans?

1 A. He did.

2 Q. What did he say about that?

3 A. That he had planned to travel on the 16th with his brother.

4 Q. Did you ask him about his travel documents?

5 A. We did.

6 Q. What did he say about that?

7 A. He said that earlier in the day he had returned home at
8 lunchtime where he assembled his passport and had printed out
9 some travel documents that were in his backpack.

10 Q. Had you learned any information prior to the interview that
11 related to travel documents?

12 A. Yes.

13 Q. What did you learn?

14 A. We had learned that Mr. Schulte also maintained a
15 diplomatic passport that he did not return to the CIA upon his
16 resignation.

17 Q. Very generally speaking, what is a diplomatic passport as
18 opposed to --

19 MR. SCHULTE: Objection.

20 Q. -- an ordinary travel passport?

21 THE COURT: Overruled.

22 A. A diplomatic passport is a document issued by the United
23 States State Department that is given to our diplomatic staff
24 overseas. And they're very important and very distinct from a
25 passport that that you and I might travel on because they

1 afford some types of diplomatic immunities for those employees
2 overseas.

3 Q. Can they be used by non-government employees?

4 A. No.

5 MR. SCHULTE: Objection.

6 THE COURT: Overruled.

7 Q. Did you ask Mr. Schulte about the diplomatic passport?

8 A. Yes.

9 Q. What did he say about that?

10 A. It was at his residence.

11 Q. After the interview concluded, where did you go?

12 A. To his residence.

13 Q. And did Mr. Schulte go with you?

14 A. He did.

15 Q. And what happened when you got there?

16 A. He -- agents were staged there to execute the search
17 warrant. Mr. Schulte used the key to the apartment to open the
18 door for the FBI.

19 Q. Did you ask Mr. Schulte any questions about the contents of
20 the apartment?

21 A. We did.

22 Q. And what did he say?

23 A. He said there were no guns inside as a matter of agent
24 safety. He indicated that there were not any e-mails that he
25 had printed from the CIA there and, otherwise, there was no

1 classified information.

2 Q. How long did Mr. Schulte stay?

3 A. The search began at 7:41, I believe, and he stayed until
4 about 10:19 p.m., approximately, if memory serves.

5 Q. And what, if anything, did you tell him about his continued
6 presence?

7 A. We reminded him that he was free to go anywhere he wanted
8 to go and he wasn't required to stay at the search. He opted
9 to leave, indicated that he would return shortly thereafter,
10 and he gave us a time of his return.

11 Q. Did he return?

12 A. Not at the time he said.

13 Q. Did you find the passport?

14 A. We did not.

15 Q. What, if anything, did do you next?

16 A. We had made -- we had kept surveillance on Mr. Schulte
17 after he had left the apartment. We had learned that he had
18 gone back to Bloomberg, his offices that were there, so we had,
19 myself and some other agents had gone back to Bloomberg. We
20 had seen Mr. Schulte in the lobby and approached him and
21 announced some of our findings of our search.

22 Q. And what findings did you announce?

23 A. We told him that we had in fact found the classified e-mail
24 that he said was not present in his apartment. We had told him
25 that we had not found the diplomatic passport either.

1 Q. And then what did you do next?

2 A. We asked him where the diplomatic passport -- where his
3 passports were, essentially.

4 Q. What did he say?

5 A. They were now in his office desk in Bloomberg.

6 Q. So what did you do after learning that?

7 A. We, together, went up to his desk, I believe he retrieved
8 them, and the FBI took custody of them.

9 MR. LOCKARD: Ms. Cooper, if you could please pull up
10 Government Exhibit 1622?

11 Q. Do you recognize that, Agent Evanhec?

12 A. That is a diplomatic passport.

13 Q. And if we go to the next page? Do you more specifically
14 recognize it?

15 A. Yes.

16 Q. What is it?

17 A. It is a picture of Mr. Schulte, as well as his personally
18 identifying information contained inside the diplomatic
19 passport.

20 Q. How did your conversation with Mr. Schulte conclude during
21 those events?

22 A. After we had taken the passports from Mr. Schulte, we
23 advised him that the search was going to take way longer than
24 expected given the amount of volume of data that was in his
25 apartment. We recommended that he get a hotel in the area and

1 spend the night there so that the FBI could continue the
2 search. As we were walking to the hotel, Mr. Schulte asked me
3 if I thought he was responsible for the leak, of which I
4 responded: If you were in my shoes, what would you think?

5 Q. And what did he respond?

6 A. He responded by saying that the FBI now possessed all of
7 his data but felt bad that we would have to go through it and
8 review it. He then ended the evening, our interaction, by
9 saying that no traitor had ever come from Texas.

10 MR. LOCKARD: At this time we have another
11 stipulation.

12 THE COURT: Proceed.

13 MR. LOCKARD: Government Exhibit 3003, which I will
14 read.

15 In the matter of the United States of America versus
16 Joshua Adam Schulte:

17 It is hereby stipulated and agreed, by and among the
18 United States of America, by Damian Williams, United States
19 Attorney for the Southern District of New York, David W. Denton
20 Jr. and Michael D. Lockard, Assistant United States Attorneys,
21 of counsel, and Josh Adam Schulte, the defendant, that:

22 1. If called as a witness, a special agent ("Agent
23 1") with the Federal Bureau of Investigation ("FBI") with
24 knowledge of the matter, would testify that on or about March
25 14th and 15th, 2017, Agent 1 was present at 200 East 39th

1 Street, Apartment 8C, New York, New York, 10016 (the
2 "apartment") to execute a search warrant (the "search
3 warrant"). While present at the apartment, Agent 1 recovered:
4 (i) a computer that was used by the defendant containing four
5 hard drives and that was logged into evidence as SC01 (the
6 "home computer"; (ii) a thumb drive that bears the marking
7 "ufcu.org" and is marked as Government Exhibit 1603 (the "thumb
8 drive" (iii) a rack containing two servers, the first server of
9 which contained five hard drives and the second server of which
10 also contained five hard drives, and that was logged into
11 evidence as SC48 (the "rack servers"); (iv) six 1-terabyte hard
12 drives that are marked 1608 through 1613, respectively, one
13 640-gigabyte hard drives that marked as Government Exhibit
14 1614, and one 160-gigabyte hard drive that is marked as
15 Government Exhibit 1615.

16 2. Government Exhibit 1601 is a compact disk
17 containing Government's Exhibits 1601-1 through 1601-26, which
18 are true and accurate copies of photographs of the home
19 computer; Government's Exhibits 1401, 1402, and 1403 are
20 compact disks containing Government's Exhibits 1401-1 through
21 1401-16; 1402-1 through 1402-10, and 1403-1 through 1403-7,
22 which are true and accurate copies of forensic files and data
23 recovered from the home computer; Government Exhibit 1404 is a
24 compact disk containing Government Exhibit 1404-1 through
25 1404-15, which are true and accurate copies of forensic files

1 and data recovered from the thumb drive; Government Exhibit
2 1605 is a compact disc containing Government Exhibit 1605-1
3 through 1605-53, which are true and accurate copies of
4 photographs of the rack servers; government Exhibit 1405 is a
5 compact disc containing Government Exhibit 1405-1 through
6 1405-12, which are true and accurate copies of portions of
7 Internet relay chats recovered from the rack servers.

8 3. If called as a witness, a special agent ("Agent
9 2") with the FBI with knowledge of the matter, would testify
10 that on or about March 14th and 15th, 2017, Agent 1 was present
11 at the apartment to execute the search warrant. While Agent 2
12 was present in the apartment, Agent 2 recovered (i) hard copies
13 of Government's Exhibits 1616 through 1619 from a headboard in
14 the defendant's bedroom; (ii) pieces of shredded paper from a
15 shedder that are contained in a bag marked Government Exhibit
16 1620. Government Exhibit 1621 is a reconstruction of some of
17 the pieces of shredded paper recovered from the apartment.

18 4. If called to testify, an officer with the Federal
19 Bureau of Prisons would testify that on or about October 5,
20 2018, Officer 1 recovered a Samsung cell phone with IMEI
21 no. 357073084445432 (the "Samsung phone") from Unit 7 South
22 within the Metropolitan Correction Center, 150 Park Row, New
23 York, New York, 10007. Government Exhibit 821 a compact disc
24 containing true and accurate copies of forensic files and data
25 recovered from the Samsung phone. Government Exhibit 822 is a

1 compact disc containing true and accurate copies of messages
2 sent and received using the messaging application Signal on the
3 Samsung phone.

4 It is further stipulated and agreed that this
5 stipulation, as Government Exhibit 3003, Government Exhibits
6 1603, 1608 through 1615, 1601, 1401 through 1404, 1605, 1405,
7 1616 through 1621, 821, and 822, and all Government's Exhibits
8 contained on Government's Exhibits 1601, 1401 through 1404,
9 1605, 1405, 821 and 822 may be received, in evidence, as
10 government's exhibits at this trial.

11 The government offers Exhibit 3003 and the exhibits
12 referenced therein.

13 THE COURT: Admitted.

14 (Government Exhibits 3003, 1603, 1608 through 1615,
15 1601, 1401 through 1404, 1605, 1405, 1616 through 1621, 821,
16 and 822, and all Government's Exhibits contained on
17 Government's Exhibits 1601, 1401 through 1404, 1605, 1405, 821
18 and 822 received in evidence)

19 THE COURT: Mr. Lockard, just one housekeeping matter.
20 I don't think that 1622 is in evidence. If it is not, did you
21 intend to offer it? The passport.

22 MR. LOCKARD: Thank you, your Honor. Yes, the
23 government offers Government Exhibit 1622.

24 THE COURT: Any objection?

25 MR. SCHULTE: No objection.

1 THE COURT: Admitted.

2 (Government's Exhibit 1622 received in evidence)

3 THE COURT: Let's make sure we don't display anything
4 until it is in evidence, please.

5 MR. LOCKARD: Yes, your Honor.

6 BY MR. LOCKARD:

7 Q. Agent Evanchec, with Ms. Cooper's assistance, if we could
8 please look at Government Exhibit 1624?

9 Do you recognize what is shown in 1624?

10 A. I do.

11 Q. How do you recognize it?

12 A. I had been with the defendant that night and walked through
13 his house -- his apartment.

14 MR. LOCKARD: Government offers 1624.

15 THE COURT: Any objection?

16 MR. SCHULTE: No objection.

17 THE COURT: Admitted.

18 (Government's Exhibit 1624 received in evidence)

19 THE COURT: Just to be clear, this is a photograph of
20 the apartment?

21 THE WITNESS: Yes, your Honor.

22 BY MR. LOCKARD:

23 Q. And does this depict the apartment as it appeared during a
24 portion of the search?

25 A. It does.

1 Q. And what part of the apartment is shown here?

2 A. This would be standing at the threshold of the front door
3 looking into the living room and kitchen area.

4 MR. LOCKARD: And if we can turn to Government Exhibit
5 1627 for the witness?

6 Q. Do you recognize that?

7 A. This would have been the living room area as well.

8 MR. LOCKARD: We offer 1627.

9 THE COURT: Any objection?

10 MR. SCHULTE: No objection.

11 THE COURT: Admitted.

12 (Government's Exhibit 1627 received in evidence)

13 THE COURT: Did you want to publish?

14 MR. LOCKARD: Yes, please.

15 BY MR. LOCKARD:

16 Q. Agent Evanhec, what is shown here?

17 A. Again, the living room area of Mr. Schulte's apartment.

18 Q. And does this display some of the computer equipment that
19 was seized during the search and which was described in the
20 stipulation?

21 A. It does.

22 THE COURT: Can I ask you a question? In this
23 photo -- and maybe since I don't think it was shown to the jury
24 we could go back to 1624 for a moment -- there is what appears
25 to be a post-it note on the wall. Can you just explain, was

1 that something that was there when you arrived or was that put
2 up by agents? What is your understanding of that?

3 THE WITNESS: Your Honor, that is normally how the FBI
4 labels rooms when we do search warrants for the purposes of
5 photographing. I cannot be certain in this situation that that
6 is something that the FBI put there, however.

7 THE COURT: But custom and practice, when conducting a
8 search, is to put up a number or letter just to indicate
9 particular areas of the premises being searched? Is that
10 correct?

11 THE WITNESS: Yes, your Honor. I can certainly see
12 the entryway being designated by Alpha.

13 THE COURT: OK. All right. Let's go back to 1627.

14 BY MR. LOCKARD:

15 Q. Picking up on the last question, the post-it note in the
16 upper left labeled D -- or delta -- is that -- similar
17 question.

18 A. It is similar, tradecraft to how the FBI handles a search
19 warrant; yes.

20 Q. Let's look at Government Exhibit 1630; Agent Evanhec, if
21 you recognize that?

22 A. Yes, I do.

23 Q. What is shown there?

24 A. This is, again, a different vantage point of his living
25 room looking now into the kitchen, and the front door area

1 would be off to the upper left corner of the photo.

2 MR. LOCKARD: We offer 1630.

3 THE COURT: Any objection?

4 MR. SCHULTE: No objection.

5 THE COURT: Admitted.

6 (Government's Exhibit 1630 received in evidence)

7 THE COURT: Mr. Lockard, I don't know how many there
8 are but do you want to cycle through them and offer them all at
9 once?

10 MR. LOCKARD: That would be fine.

11 BY MR. LOCKARD:

12 Q. If we can also look at Exhibits 1631, 1632 and 1642, which
13 I don't know where your binder is but they're also in hard copy
14 in the slim binder.

15 A. I recognize this, sir. I recognize that as the server.

16 THE COURT: That was 1631 and 1632, respectively.

17 Q. And 1642?

18 A. I recognize that, sir, as the defendant's bedroom.

19 Q. Do all of those photographs fairly and accurately represent
20 the defendant's apartment during the time of the search?

21 A. They do. Yes, sir.

22 MR. LOCKARD: We offer 1631, 1632, and 1642, as well.

23 THE COURT: Any objection?

24 MR. SCHULTE: No objection.

25 THE COURT: Admitted.

1 (Government's Exhibits 1631, 1632, and 1642 received
2 in evidence)

3 BY MR. LOCKARD:

4 Q. If we can please look at Government Exhibit 1616?

5 THE COURT: Did you want to publish those?

6 MR. LOCKARD: We will come back to them, I think.

7 BY MR. LOCKARD:

8 Q. Do you recognize Government Exhibit 1616?

9 A. I do.

10 Q. And just to refer back to Government Exhibit 3003, the
11 stipulation which states that hard copies of Government Exhibit
12 1616 through 1619 from the headboard of the defendant's bedroom
13 is the location where those were recovered from. Had you seen
14 this e-mail prior to the search?

15 A. I had.

16 Q. And how did you obtain a copy of the e-mail prior to the
17 search?

18 A. From my interactions with the CIA.

19 Q. Did you ask Mr. Schulte about this e-mail during your
20 interview of him earlier that night?

21 A. I did.

22 Q. And what did you ask?

23 A. I asked him if a copy of this was present in his apartment
24 and he said it was not.

25 Q. If we could please -- let me rephrase.

1 Did you determine whether any classified information was
2 contained in this e-mail?

3 A. We had.

4 Q. And what is the type of classified information you
5 determined was in the e-mail?

6 MR. SCHULTE: Objection.

7 A. The classified information is the pairing of --

8 THE COURT: Hold on. Hold on.

9 THE WITNESS: Sorry.

10 THE COURT: There was an objection so I need to rule
11 on the objection.

12 I will overrule the objection.

13 Go ahead.

14 THE WITNESS: I'm sorry, your Honor.

15 THE COURT: You may answer.

16 THE WITNESS: Your Honor, I am having trouble hearing
17 the objections.

18 THE COURT: Mr. Schulte, make sure you speak directly
19 into the microphone when you are objecting so that it is
20 understood.

21 THE WITNESS: Thank you, your Honor.

22 THE COURT: You may answer the question.

23 THE WITNESS: The pairing of the affiliation and the
24 pairing of the CIA to the names of actual employees, and their
25 full names, was included in this e-mail.

1 BY MR. LOCKARD:

2 Q. And we talked yesterday about classified information
3 handling requirements. Do you recall that?

4 A. I do.

5 Q. Is maintaining classified information at home consistent
6 with classification handling requirements?

7 A. It is not.

8 Q. If we could please look at Government Exhibit 1642 and
9 publish? Is the location from where that e-mail is recovered,
10 is that shown in this photograph?

11 A. It is.

12 Q. And where was it -- from where was it recovered?

13 A. The headboard of the bed.

14 Q. Can you generally describe what the headboard looks like in
15 this photograph?

16 A. The headboard is a wooden structure that is at the head of
17 the bed against the wall of the bedroom.

18 Q. In the course of the search were other materials from the
19 CIA found?

20 A. Yes.

21 Q. Can we please look at Government Exhibit 1617 which is in
22 evidence?

23 Agent Evanhec, what is shown here?

24 A. This is an additional e-mail thread that most recently
25 dates March 2nd that the defendant was a recipient to.

1 Q. And is this an e-mail that you had seen prior to the search
2 that was conducted of the defendant's apartment?

3 A. Yes.

4 Q. Generally speaking, what does this e-mail relate to?

5 A. Basically, the prior topic that we discussed; the dispute
6 between the defendant and Amol and figuring out how that matter
7 would be addressed between the defendant and the CIA.

8 Q. And were you able to determine whether this document
9 contained classified information?

10 A. I was.

11 Q. And what type of classified information?

12 A. Again, the affiliation with the CIA, with the full, complete
13 names of employees at the CIA.

14 THE COURT: Can I just clarify? With respect to this
15 document and the prior e-mail that you showed there are
16 redactions in both of them. Were those redactions in the
17 copies obtained or recovered from the defendant's apartment?

18 THE WITNESS: They were not, your Honor.

19 THE COURT: So just to be clear, those redactions have
20 been just made for purposes of display at trial? Is that your
21 understanding?

22 THE WITNESS: That's my understanding, your Honor.

23 MR. SCHULTE: Your Honor, can I have a quick side bar?

24 THE COURT: No.

25 MR. SCHULTE: I just --

1 THE COURT: Mr. Schulte, no.

2 BY MR. LOCKARD:

3 Q. Can we please turn back to Government Exhibit 1630?

4 Stipulation 3003 refers to pieces of paper from a shredder
5 that were recovered from the apartment. Is the location where
6 those shredded pieces of paper were found, is that shown in
7 this photograph?

8 A. It is.

9 Q. Where is that?

10 A. On the left-hand side of the photo there is a black box in
11 the entryway, and that was a shredder just in the foreground of
12 the slippers there on the floor -- back ground, rather. I'm
13 sorry.

14 Q. If we can pull up Government Exhibit 1621 which is in
15 evidence? Again, referring back to Government Exhibit 3003,
16 Exhibit 1621 is a reconstruction of some of the shredded pieces
17 of paper recovered from the apartment. Have you had a chance
18 to review the reconstructions of the shredded documents?

19 A. I have.

20 Q. Do you recognize what kind of document this is?

21 A. I do.

22 Q. And what kind of document is this?

23 A. This would have been a cover sheet that I am aware that the
24 CIA printer --

25 MR. SCHULTE: Objection; would have been.

1 THE COURT: When you say would have been meaning?

2 THE WITNESS: This is, your Honor.

3 THE COURT: That's what you identified this as?

4 THE WITNESS: I have, your Honor.

5 THE COURT: You may proceed.

6 THE WITNESS: This is a cover sheet that CIA printers

7 print that would accompany any print jobs. So any time a CIA

8 officer or any people that work in the types of offices that

9 Mr. Schulte did would print any type of document, it would come

10 with a cover sheet that would basically segregate that from

11 other print jobs to basically protect the information that was

12 underneath. So this is basically a printer cover sheet.

13 BY MR. LOCKARD:

14 Q. And can you remind us, approximately how much time did you

15 spend working in the CCI offices following the March 7, 2017

16 Vault 7 leak?

17 A. Months, sir.

18 Q. During those months did you become familiar with CIA print

19 cover sheets?

20 A. I did.

21 Q. If we could please look at pages 2 and 3?

22 THE COURT: Hang on. Before you do that, the document

23 makes reference to SCI compartments. Do you know what that

24 means and can you explain it?

25 THE WITNESS: So as we spoke about yesterday, there

1 are classifications like secret and top secret. In addition to
2 that there is a level of an additional level of classification
3 that's called SCI and that is, again, even a more restrictive
4 type of information that employees would have to have clearance
5 to obtain and, again, a need to know that information. So this
6 is just an additional enhanced compartment of classification,
7 your Honor.

8 THE COURT: All right. Thank you.

9 MR. LOCKARD: Thank you, your Honor.

10 BY MR. LOCKARD:

11 Q. And in the spirit of clarification, does the cover sheet
12 identify the printed materials as classified? Or does it
13 identify them in some other way?

14 Let me ask you, could you please read the first sentence
15 after the warning?

16 A. The output is from a top secret system processing data with
17 multiple SCI compartments and handling caveats.

18 Q. Thank you.

19 And did the reconstructed documents contain additional CIA
20 print cover sheets like this?

21 A. They did.

22 Q. Were those print cover sheets the originals, did they
23 contain the redactions that are reflected in Exhibit 1621?

24 A. They did not.

25 Q. If we could go to page 4 of 1621? Have you had an

1 opportunity to review this reconstruction?

2 A. I have.

3 Q. And, generally speaking, what does this reconstruction,
4 which is partial, what does it appear to be from?

5 A. Again, the defendant's dispute with Amol and the
6 involvement of the Threat Management Unit in hoping to resolve
7 that matter.

8 Q. And if we could turn to page 5 of this exhibit? Again,
9 were you able to recognize from what this partial
10 reconstruction of the document came from?

11 A. Yes. It appears to be an e-mail again.

12 Q. And without paging through, were there additional
13 reconstructions of shredded e-mails contained in the shredder?

14 A. There were.

15 Q. Remind us, at the time that the search was conducted on
16 March 13th and 14th of 2017, at that time how long had
17 Mr. Schulte been separated from the CIA?

18 A. It would have been since November, so looking at six
19 months.

20 Q. How long after the initial Vault 7 release by WikiLeaks was
21 the search?

22 A. Approximately a week.

23 Q. Agent Evanhec, did there come a time when you spoke with
24 the defendant again?

25 A. There was.

1 Q. When was the next time that you spoke with the defendant?

2 A. On March 20th of 2017.

3 Q. And where did you speak with the defendant?

4 A. Those conversations occurred at the United States

5 Attorney's office right here, a block away, in Manhattan.

6 Q. Who was present?

7 A. Myself, Special Agent David Donaldson, the defendant, two

8 attorneys that the defendant brought with him, as well as two

9 United States attorneys.

10 Q. During the course of -- well, let me ask. After you met

11 with the defendant on March 20th, did you meet with him again?

12 A. We did; yes.

13 Q. And when did you meet with him again after March 20th,

14 2017?

15 A. The following day.

16 Q. On March 21st?

17 A. That's correct, sir.

18 Q. Were the circumstances of that meeting similar to the

19 circumstances you described on March 20th?

20 A. Yes. Correct.

21 Q. In the course of those two days of interviews or those

22 interviews on two consecutive days, was the defendant asked

23 about the Vault 7 leaks?

24 A. He was.

25 Q. What, if anything, did he say about how the leaks could

1 have happened?

2 A. He said a number of things over the course of those two
3 days. He described three ways, frankly, that the information
4 could have been obtained. He described the first way was to
5 view a page-by-page scrape of the information which would
6 essentially involve copying of each individual page that was
7 released to WikiLeaks and then turning it over to them. The
8 second option that he provided was a remote or physical access
9 to the backups, so by physically going to the servers in the
10 CCI office and downloading the information from them or by
11 remotely accessing those servers from a desktop computer. And
12 the last and third option he provided was the offsite backup
13 servers.

14 Q. What, if anything, did the defendant say about his access
15 to the offsite backup servers?

16 A. He said he had never been there.

17 Q. What, if anything, did he say about other AED developers'
18 access to the offsite backup servers?

19 A. He indicated that it was highly unlikely that they would
20 have access because if he didn't have access, they wouldn't,
21 because he was the main one.

22 Q. Did Mr. Schulte talk about his role in backing up files
23 from DevLAN system?

24 A. He did.

25 Q. What did he say about that?

1 A. He indicated that at one point he had written a script that
2 actually sent the information from the live system to the
3 backup. So that, from what we saw yesterday in those logs,
4 every day in the 6:00 hour, a new backup was added to the file
5 directory. Mr. Schulte indicated that at one point he had
6 written that script to send those backup files to -- actually
7 those files to backup, and he had also said that at one time he
8 was asked to go into the backup server -- on two occasions he
9 had been asked to go into the backup server and actually did go
10 into the backup server to delete old copies of backup versions.

11 Q. Did Mr. Schulte describe how he would access the backups?

12 A. He did.

13 Q. What did he say about that?

14 A. I believe he indicated that he would access them through
15 the Stash virtual machine which is one of the applications in
16 DevLAN.

17 Q. Was Mr. Schulte asked about his administrator role while he
18 was at the CIA?

19 A. He was.

20 Q. And what, if anything, did he say about his administrator
21 role?

22 A. He was one of the administrators to the project and had
23 indicated that he had various administrative rights and
24 applications that granted access to the applications themselves
25 so he, at various times, mentioned his -- the role he had in

1 the system as an administrator.

2 Q. Did Mr. Schulte talk about how others might be able to
3 access the backup server?

4 A. I don't recall.

5 Q. Was Mr. Schulte asked about log files during these
6 interviews?

7 A. He was.

8 Q. What, if anything, did he say.

9 A. He indicated that the system would maintain log files that,
10 as I mentioned before, might show a spike in activity for a
11 file being downloaded, so he indicated that that was a
12 potential avenue for the FBI to explore in hoping to solve this
13 crime.

14 Q. During those interviews on consecutive days, did you ask
15 Mr. Schulte whether he had had any role in the Vault 7 release?

16 A. We did.

17 Q. And what types of questions did you ask him on that front?

18 A. There were --

19 I'm sorry, your Honor. Did you ask something?

20 THE COURT: No, I just coughed.

21 THE WITNESS: I'm sorry.

22 That was a litany of questions that basically asked
23 every which way to Sunday if Mr. Schulte had any involvement in
24 the WikiLeaks release. They were questions like, Did you make
25 the system vulnerable to compromise? Did you provide the

1 information to WikiLeaks? Have you been in touch with anybody
2 from WikiLeaks? Have you been in touch with any foreign
3 governments?

4 There were a series of questions like that to
5 basically encapsulate any possibility that the defendant could
6 have done, any involvement he might have had in the leak.

7 Q. And what did the defendant say in response to those
8 questions?

9 A. "No" to each of those questions.

10 Q. At the time of these interviews, did you know that the
11 backup files had been stolen on April 20th of 2016?

12 A. We had not.

13 Q. Did you know which backup files had been stolen?

14 A. We did not.

15 Q. After these two days, did there come a time when you spoke
16 with the defendant?

17 A. We did. I believe there was another time in June of 2017
18 from what I recall.

19 Q. What were the circumstances of that meeting?

20 A. They were very similar to the prior two in March.

21 Q. And who was present?

22 A. It was the same parties; myself, Special Agent Donaldson,
23 the defendant, two of his attorneys, and two United States
24 attorneys.

25 Q. And what was the principal topic of discussion at that

1 interview?

2 A. The principal topic of that interview was essentially to go
3 through the evidence that we had recovered primarily from his
4 apartment and to get an understanding of what that evidence
5 was, and he went piece by piece and explained what it was and
6 who had access to it, over the course of a couple of hours.

7 Q. If we could pull up Government Exhibit 1601-2 which is in
8 evidence and publish it if it hasn't been? And just referring
9 back to Government Exhibit 3003?

10 Actually, Agent Evanhec, do you recognize this photograph?

11 A. I do.

12 Q. And what is shown in here?

13 A. One of the computers that was seized from Mr. Schulte's
14 apartment on March 15th, 2017.

15 Q. And was Mr. Schulte asked about this computer?

16 A. He was.

17 Q. And what did he say about it?

18 A. That he was the user of this.

19 Q. Did you ask Mr. Schulte any questions about the Internet
20 relay chats?

21 A. We did.

22 Q. What did he say about those?

23 A. He indicated that his servers had hosted what they call an
24 Internet relay chat which is essentially is a chat function on
25 his laptop. We asked him about several of the parties that

1 were a part of that. He had, one by one, kind of gone and
2 explained who those individual participants were. I think he
3 even made comments about one of the members' mothers having
4 registered the account or having paid for it of some type. So
5 he provided information about the history of the Internet relay
6 chat.

7 Q. And did the Internet relay chat, did the users have screen
8 names?

9 A. They did.

10 Q. Did he identify his screen name?

11 A. He did.

12 Q. What was his screen name?

13 A. Josh.

14 Q. Did the FBI discover any encrypted portions of the
15 computers that were seized from the defendant's home?

16 A. We did.

17 Q. And what, if anything, did you ask the defendant related to
18 the encrypted portions of his computers?

19 A. We asked if he would provide us permissions and directions
20 of how to get into those encrypted portions.

21 Q. And what did the defendant say?

22 A. He declined to give us that permission.

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

24 THE COURT: Mr. Lockard, is this a natural breaking
25 point?

1 MR. LOCKARD: It is.

2 THE COURT: Great. So we will take our break there.

3 Ladies and gentlemen, a few things. First, number
4 one, keep an open mind. Relatedly, do not discuss the case
5 with one another or anyone else for that matter. Don't do any
6 research about the case. You have only heard a little bit of
7 the evidence and that is the reason all of those instructions
8 are absolutely critical. A reminder to take your notebooks
9 with you to the jury room, keep them with you at all times
10 except overnight when they should be left in the jury room. A
11 reminder, also, that you may want to leave your phones in the
12 jury room when you come back to the courtroom, but if you do
13 bring it hear are here just make sure that they are completely
14 off.

15 With that, it is 11:38. Let's be ready to go by 12:15
16 so we can get started, just keep it to a 40-minute break. We
17 will see with the travel to and from the jury room if that
18 amount of time works. If not, we can adjust things. But I
19 will keep my fingers crossed to try and keep things moving and
20 make the most use of your time so a reminder to use the
21 restroom before you come back. With that, enjoy your breaks
22 and we will see you shortly after 12:15.

23 Thank you.

24 (Continued on next page)

1 (Jury not present)

2 THE COURT: You may be seated.

3 Agent, you can step down. Please put your mask on
4 before you leave the witness box. Please be back here by 12:15
5 ready to go.

6 (Witness steps down)

7 THE COURT: Mr. Schulte, did you want to raise
8 something that you had requested a side bar about earlier?

9 MR. SCHULTE: Yes, I did; once the witness leaves.

10 THE COURT: Anything else to raise? Mr. Lockard, do
11 you know how much longer you have on direct?

12 MR. LOCKARD: Probably less than a half hour left.

13 THE COURT: OK. Anything else to raise from the
14 government?

15 MR. LOCKARD: Not at the moment, your Honor.

16 THE COURT: Mr. Schulte, the witness has left.

17 MR. SCHULTE: Yes.

18 Judge, there is a major issue here. These documents
19 that they've just introduced recovered from my home in the
20 shredded documents, the CIA all confirmed that those were all
21 unclassified and this witness actually testified for 10 pages
22 at the last trial agreeing, confirming, that all of these
23 documents were unclassified. To the degree the government
24 wants to change their testimony or now claim that they are
25 classified, they should have produced that in discovery because

1 the discovery produced to us was that these documents were not
2 classified, they were all unclassified. This witness testified
3 they were all unclassified at the last trial. Now he is
4 changing his testimony. There was no discovery production to
5 us about this. It is just crazy.

6 THE COURT: Well, two responses. One, if there was no
7 discovery there is no discovery. The witness has testified as
8 he did. To the extent that he testified differently in a prior
9 proceeding, it sounds like you have some very good material for
10 cross-examination so that's what cross-examination is for.

11 Anything else from you, Mr. Schulte?

12 MR. SCHULTE: So I guess the form of the transcripts,
13 when I am submitting those on cross I can just -- I'm just
14 wondering how those come in as exhibits then. I can submit the
15 whole transcript or the portions of the transcript?

16 THE COURT: You mean as a prior inconsistent
17 statement?

18 MR. SCHULTE: Yes. Just how I bring that up. And I
19 would also -- I think the major issue here is regarding the
20 discovery is when the CIA conducts classification reviews of
21 all of the documents and that's what I am saying, is that there
22 has to be discovery from that. The CIA has determined, through
23 its own classification experts -- because he is not a
24 classification expert. So to the degree that he is saying that
25 the CIA told him that they're classified, wherever he is

1 deriving this knowledge, there should be some underlying
2 document from the CIA classification authority either
3 confirming or stating the classification status of these
4 documents. That's the only way that the witness can determine,
5 right? So that's what I am saying, is that if he is saying
6 they're classified and he got that from the CIA, there is
7 documents there that were never produced to us. The
8 classifying authority has to say what the classification of
9 these documents are.

10 THE COURT: Mr. Lockard?

11 MR. LOCKARD: I don't know if the defendant is
12 referring to the fact that the documents are in some cases
13 marked unclassified by the sender but that is certainly
14 something that we can ask Mr. Evanhec about.

15 THE COURT: I would encourage you to do that, if only
16 to clarify things for the jury, but I think what he is saying
17 is that there should be some discoverable documents or
18 information from the classifying authority concerning the
19 classification of these documents. If he represents that there
20 is no such discovery then so be it, but that's, I think, his
21 point.

22 MR. DENTON: I'm sorry to tag team this, your Honor,
23 but just because it implicates different witnesses.

24 The defendant is aware there was a classification
25 review, particularly of Government Exhibit 1616, the OIG

1 e-mail. There was testimony about it. There will be testimony
2 about it from Mr. Leonis and there was a determination that
3 that contained classified information and he has long been on
4 notice of that.

5 MR. SCHULTE: No, Judge, that's exactly what I am
6 saying, is that they do a classification review for that
7 document. They did determine that was classified. I received
8 the discovery from the government so that's what I am saying,
9 all the other documents from the shredder and all the other
10 documents that they were referring to that were not the OIG
11 e-mail. There is existing documents at the CIA who have done
12 determinations from that, because I know how the process
13 worked, and they have turned over discovery where the CIA has
14 actually conducted the review and determined that the OIG
15 e-mail was classified. Those same determinations for the other
16 documents exist and the government should have turned those
17 over.

18 THE COURT: OK. So now we learn that 1616, there was
19 a classification review and it was turned over. 1617; is that
20 the same?

21 MR. DENTON: So your Honor, I think with respect to
22 those, there wasn't any testimony or discussion about the fact
23 that they're classified, there is just a discussion about the
24 fact that there are people's full names in there and that they
25 are redacted and that's where it stopped and so there wasn't

1 discussion about formal classification review for good reason.

2 THE COURT: 1617 I believe that the witness did
3 testify that it contained classified information, namely full
4 names of CIA employees.

5 MR. DENTON: I'm not sure whether he specifically
6 identified it as classified. I'm sorry, your Honor, for not
7 having it directly in front of me, but I think we can clarify
8 that, as needed.

9 MR. SCHULTE: The transcript is there, yes.

10 THE COURT: It also just points to a larger -- I want
11 to make sure that you all get your breaks and that I have my
12 own, but the separate issue that Mr. Schulte is averring to
13 which I think is a valid point is he is not the classifying
14 authority. So that in regard, to the extent that he says he
15 understands these to contain classified information, he is
16 really not basing that on statements that were made by someone
17 else. I am inclined to, if you don't clear that up, to provide
18 a curative instruction to the jury on that score. If there is
19 evidence later in the trial from somebody with firsthand
20 knowledge that can speak to the classification of these
21 documents then sobeit, but it doesn't seem that this is a
22 witness who can testify to that.

23 Mr. Lockard?

24 MR. LOCKARD: Yes, your Honor. I think we will
25 proceed on that basis.

1 THE COURT: OK. So I will give you an opportunity to
2 clear that up when we come back, and otherwise I will give a
3 curative instruction. To the extent that you should look at
4 the transcript and with respect to 1617, and I think it is
5 1621, to the extent that the witness said that anything was
6 classified you can either clean it up or make sure that there
7 is no discovery to be produced, and if there is any issue we
8 will take it up later.

9 Mr. Schulte, as for your question with what to do with
10 prior transcripts if there is a prior inconsistent statement,
11 that's one of the very good reasons that you have standby
12 counsel. So consult with them about how to do that sort of
13 thing and then we will take it up on cross-examination.

14 See you at 12:15. Thank you.

15 (Luncheon recess)

16 (Continued on next page)

1 AFTERNOON SESSION

2 12:15 p.m.

3 (Jury not present)

4 THE COURT: Please be seated.

5 All right. We'll get the jury and pick up where we
6 left off.7 MR. SCHULTE: One minor thing, Judge, real quick. The
8 marshals asked me, in order for me to have bottled drink, they
9 need permission from you. Is that OK?

10 THE COURT: Yes.

11 MR. SCHULTE: Thank you.

12 (Continued on next page)

1 (Jury present)

2 THE COURT: You may be seated.

3 Welcome back, ladies and gentlemen. I hope you had a
4 good break.

5 We'll pick up where we left off with the direct
6 testimony of Agent Evanchech.

7 Mr. Lockard, you may proceed.

8 BY MR. LOCKARD:

9 Q. Good afternoon, sir.

10 A. Good afternoon, Mr. Lockard.

11 MR. LOCKARD: Ms. Cooper, could we please look back at
12 Government Exhibit 1616.

13 Q. Agent Evanchech, we looked at this email prior to the break.
14 Do you recall that?

15 A. I do.

16 Q. I want to focus in on the portion of the email that appears
17 underneath "signed by" and above OIG. What is that?

18 A. That's a classification marking.

19 Q. And how do classification markings relate to emails?

20 A. Each email that an employee at the CIA would write would
21 require them to apply a classification --

22 MR. SCHULTE: Objection. No expertise.

23 THE COURT: Where are we looking at here, Mr. Lockard?

24 MR. LOCKARD: The classification banner.

25 THE COURT: That's highlighted?

1 MR. LOCKARD: Yes. Yes, your Honor. I'm happy to ask
2 a few preliminary questions.

3 THE COURT: Why don't you do that.

4 MR. LOCKARD: Thank you.

5 Q. Special Agent Evanchech, what is your security clearance?

6 A. Top secret.

7 Q. And do you use classified email systems in connection with
8 your work at the FBI?

9 A. Yes, I do.

10 Q. And you use those classified email systems on what type of
11 basis?

12 A. National security cases.

13 Q. And how often have you used those classified email systems?

14 A. Throughout my career.

15 Q. Have you engaged in email communications with CIA
16 officials?

17 A. I have.

18 Q. At the classified level?

19 A. I have.

20 Q. For how long were you at the CCI offices after the March 7,
21 2017, leak?

22 A. Three to four months.

23 Q. Did you have encounters with CIA emails and email systems
24 during that time?

25 A. Extensively.

1 Q. Are you familiar with the classification designations for
2 emails on CIA email systems?

3 A. I am.

4 Q. What does this classification banner mean in this email?

5 A. That means that Mr. Schulte had classified this email
6 unclassified as he sent it and wrote it.

7 THE COURT: And just to be clear, what you're saying
8 is that on your system and the CIA's system, to your knowledge,
9 it's the sender of the email that classifies or makes reference
10 to what level of classification, if any, it is?

11 THE WITNESS: Yes, your Honor.

12 BY MR. LOCKARD:

13 Q. Now, who ultimately is responsible for the actual
14 classification of the document, generally speaking?

15 A. The writer designates the classification. Is that what
16 you're asking?

17 Q. I guess I'm asking does the sender of an email have the
18 ability to change the classification level of information
19 contained in the email?

20 A. No.

21 Q. What is the sender of the email's responsibility with
22 respect to the information in the email and the classification
23 markings?

24 A. To properly classify that email.

25 Q. Now, turning to government -- and again, I'm sorry, is this

1 an email that you had asked Mr. Schulte about during your
2 interview on March 15?

3 A. It is.

4 Q. And what did he tell you about this email?

5 A. That this email was not located at his apartment in
6 Manhattan.

7 Q. And was it found in his apartment in Manhattan?

8 A. It was.

9 Q. And again, where was it found?

10 A. In the headboard of his bed.

11 Q. Turning to Government Exhibit 1617, where was this email
12 also found?

13 A. The headboard of his bed.

14 Q. And again, looking in at the classification banner, who
15 would have selected that classification banner?

16 A. The writer of each individual email.

17 Q. OK. Now, what effect, if any, did the discovery of
18 Government Exhibits 1616, 1617, and the other documents found
19 during the search have on the course of the investigation that
20 you were leading with respect to Mr. Schulte?

21 A. Given that we had known there was classified information in
22 the collection of documents that we reviewed, it showed a
23 propensity of the defendant to mishandle classified
24 information.

25 THE COURT: All right. Let me interrupt to say a

1 couple of things.

2 First of all, that's just the witness's opinion by way
3 of explaining what steps he then took. Obviously, whether the
4 defendant committed the crimes that he's charged with is
5 ultimately a question for you, members of the jury, and in that
6 regard, whether he had a propensity to do anything is up to
7 you.

8 The second thing, let me just explain or ask Agent
9 Evanchech, earlier you testified that some of these documents --
10 I think 1616 and 1617 -- contained some classified information;
11 namely, the full names of CIA employees. Is that correct?

12 THE WITNESS: Depending on -- my understanding, your
13 Honor, is depending on that employee's actual role, that would
14 be the case.

15 THE COURT: OK. But with respect to these particular
16 documents, to the extent that you identified them as containing
17 classified information, is that something that you were told by
18 someone at the CIA or by someone else?

19 THE WITNESS: Yes. It would have to be, your Honor,
20 original classification authority are the ultimate
21 classification reviewers in the U.S. government. I know at the
22 FBI we have several of them. I'm not sure how many the CIA
23 has, but that actual entity, that individual with that
24 authority would actually be the one to determine why something
25 is classified.

1 THE COURT: OK. To translate that, in other words,
2 the determination of whether a document that originated at the
3 CIA contained classified information would be determined by
4 someone at the CIA. Is that correct?

5 THE WITNESS: Correct, yes, sir.

6 THE COURT: And when you said that these documents,
7 1616 and 1617, contained classified information that was
8 something that you were told was determined by someone at the
9 CIA?

10 THE WITNESS: That's correct, your Honor.

11 THE COURT: All right.

12 Ladies and gentlemen, I'm going to instruct you that
13 you're not to consider Agent Evanhec's testimony on that score
14 for its truth, just for, again, the fact that he was told that
15 these contain classified information and what effect, if any,
16 that had on him and the steps he took in his investigation.
17 But since it's something he was told, it's not firsthand
18 testimony.

19 And I also remind you, as I think I said yesterday,
20 ultimately, you'll be asked to decide whether certain
21 information in this case qualifies as what is known as national
22 defense information. I will give you thorough instructions on
23 that at the conclusion of the case. Classified information and
24 national defense information, again, are not exactly the same
25 idea. But whether something was deemed or treated as

1 classified by the government is a factor that you may consider
2 in deciding whether information is national defense
3 information.

4 With that, Mr. Lockard, you may proceed.

5 MR. LOCKARD: Thank you, your Honor.

6 Q. And Agent Evanchech, if we can just turn away from
7 classification issues for the moment and just focus in on the
8 subject matter that this email relates to, again, what does
9 this email relate to?

10 A. The defendant's dispute with Amol.

11 MR. SCHULTE: Objection. Asked and answered.

12 THE COURT: Sustained.

13 MR. LOCKARD: Your Honor, we have one final
14 stipulation to read during this witness's testimony.

15 THE COURT: Go ahead.

16 MR. LOCKARD: It is marked as Government Exhibit 3002.

17 In the matter of the United States of America v.
18 Joshua Adam Schulte, defendant:

19 "It is hereby stipulated and agreed by and among the
20 United States of America, by Damian Williams, United States
21 Attorney for the Southern District of New York, David W. Denton
22 Jr. and Michael D. Lockard, Assistant United States Attorneys
23 of counsel, and Joshua Adam Schulte, the defendant, that:

24 "1. If called as a witness a representative of Google
25 Inc. ('Google') with knowledge of the matter would testify that

1 Government Exhibits 1305-1 through 1305-10 are true and correct
2 copies of documents from the account joshschulte1@gmail.com,
3 including subscriber information, emails, and Google searches
4 conducted and websites visited by the user of that account, and
5 the date and time those searches occurred and the websites
6 visited search history, were made at or near the time by, or
7 from information transmitted by, a person with knowledge of the
8 matters set forth in the records; they were kept in the course
9 of a regularly conducted business activity; and it was the
10 regular practice of that business activity to maintain the
11 records.

12 "2. If called as a witness, a representative of
13 Amazon.Com Inc. ('Amazon') with knowledge of the matter would
14 testify that Government Exhibit 1306-1 contains true and
15 correct copies of documents from Amazon associated with Amazon
16 user account joshschulte1@gmail.com, which were made at or near
17 the time by, or from information transmitted by, a person with
18 knowledge of the matters set forth in the records; they were
19 kept in the course of a regularly conducted business activity;
20 and it was the regular practice of that business activity to
21 maintain the records.

22 "3. If called as a witness, a representative of
23 Automatic Inc. ('Automatic') with knowledge of the matter
24 would testify that Government Exhibits 1301-1 through 1301-4B
25 are true and correct copies of documents from Automatic

1 associated with Automattic profile
2 <https://en.gravatar.com/joshschulte1>, which includes WordPress
3 websites joshschulte.wordpress.com,
4 presumptionofslavery.wordpress.com and
5 presumptionofinnocence.net, and which were made at or near the
6 time by, or from information transmitted by, a person with
7 knowledge of the matters set forth in the records; they were
8 kept in the course of a regularly conducted business activity;
9 and it was the practice of that business activity to maintain
10 the records.

11 "4. If called as a witness, a representative of
12 Buffer Inc. ('Buffer') with knowledge of the matter would
13 testify that Government Exhibit 1302-1 is a true and correct
14 copy of documents from Buffer associated with the Buffer
15 account with the user ID 5b8c7b584c2e71709f92901, and
16 associated with the email address
17 freejasonbourne@protonmail.com, and which were made at or near
18 the time by, or from information transmitted by, a person with
19 knowledge of the matters set forth in the records; they were
20 kept in the course of a regularly conducted business activity;
21 and it was the regular practice of that business activity to
22 maintain the records.

23 "5. If called as a witness, a representative of
24 Twitter Inc. ('Twitter') with knowledge of the matter would
25 testify that Government Exhibits 1304-1 through 1304-3 are true

1 and correct copies of documents from the Twitter account
2 @freejasonbourne, and which were made at or near the time by,
3 or from information transmitted by, a person with knowledge of
4 the matters set forth in the records; they were kept in the
5 course of a regularly conducted business activity; and it was
6 the regular practice of that business activity to maintain the
7 records.

8 "6. It is further stipulated and agreed that this
9 stipulation, as Government Exhibit 3002, and Government
10 Exhibits 1305-1 through 1305-10, Government Exhibit 1306-1,
11 Government Exhibits 1301-1 through 1301-4B, Government Exhibit
12 1302-1, and Government Exhibits 1304-1 through 1304-3 may be
13 received in evidence as government exhibits at trial."

14 The government offers Government Exhibits 3002 and the
15 exhibits referred to therein.

16 THE COURT: Admitted by stipulation.

17 (Government Exhibits 1301-1 through 1301-4B received
18 in evidence)

19 (Government Exhibit 1302-1 received in evidence)

20 (Government Exhibits 1304-1 through 1304-3 received in
21 evidence)

22 (Government Exhibits 1305-1 through 1305-10 received
23 in evidence)

24 (Government Exhibits 1306-1 and 3002 received in
25 evidence)

1 BY MR. LOCKARD:

2 Q. Now, Agent Evanhec, I'd like you to turn back to the slim
3 binder that's in front of you that has the exhibit tab markings
4 on it.

5 A. Yes, sir.

6 Q. And towards the back, you should see Government Exhibits
7 1350, '51, '52, and '53.

8 A. Yes, sir.

9 Q. Do you recognize those documents?

10 A. I do.

11 Q. Did you prepare them or assist in their preparation?

12 A. I did.

13 Q. Do they accurately summarize certain Google searches and
14 website visits from the defendant's Google account?

15 A. They do.

16 MR. LOCKARD: The government offers 1350, 1351, 1352,
17 and 1353.

18 THE COURT: Any objection?

19 MR. SCHULTE: No objection.

20 THE COURT: Admitted.

21 (Government Exhibits 1350, 1351, 1352, and 1353
22 received in evidence)

23 BY MR. LOCKARD:

24 Q. Agent Evanhec, did the defendant's Google search history
25 include searches relating to the deletion of data from

1 computers?

2 A. They did.

3 MR. LOCKARD: Could we please pull up Government
4 Exhibit 1350.

5 Q. Generally speaking, what is reflected in this exhibit?

6 A. This exhibit documents the number of times the defendant's
7 Google account was used to conduct several searches related to
8 the deletion of data. And this period of review was from late
9 April of 2016 to early May of 2016, so a rather limited time
10 frame.

11 Q. Now, did your review of the defendant's Google searches
12 include the time periods prior to April of 2016?

13 A. We reviewed those as well.

14 Q. Were there similar searches prior to April of 2016?

15 A. Not to this volume, from my recollection.

16 THE COURT: Can you just explain; you either prepared
17 these or were involved in their preparation? Is that correct?

18 THE WITNESS: Correct, yes, sir.

19 THE COURT: And what did you base that preparation on?

20 THE WITNESS: So, your Honor, we had served a search
21 warrant on Google, which then returned all of the defendant's
22 searches that he had conducted through Google for a number of
23 years. So we went through line by line and reviewed those
24 actual searches.

25 THE COURT: All right. And then this is a summary of

1 what you found in the search?

2 THE WITNESS: Yes, your Honor. It's a summary.

3 THE COURT: All right.

4 Ladies and gentlemen, I'll give you further
5 instructions on this at the conclusion of the case, but in
6 certain circumstances, where there's voluminous documents or
7 data and it would be difficult to examine that or introduce it
8 at trial, parties are permitted to introduce a summary or a
9 chart basically summarizing that data rather than presenting
10 the data itself or in addition to presenting the data itself.
11 So in that regard, you may consider this as evidence of what
12 the agent found in the data that he reviewed.

13 You may proceed.

14 BY MR. LOCKARD:

15 Q. And again, when is the time frame of the searches that are
16 reflected in the summary chart?

17 A. Late April of 2016 to early May of 2016.

18 Q. And looking below that, what's reflected in the left-hand
19 column of that table?

20 A. The actual search that was entered into the Google search
21 engine.

22 Q. And what's reflected on the right-hand column?

23 A. The number of times that was searched.

24 Q. And how many total searches during the late April to early
25 May 2016 time frame did the defendant conduct, or were

1 conducted from the defendant's Google account, relating to the
2 wiping of computer storage?

3 A. Eight.

4 Q. What does "related pages visited" mean?

5 A. So, each time the defendant caused these search terms to be
6 entered, he may or may not have chosen to actually visit some
7 of the results that came of that. So if you see below, it's on
8 April 30, the defendant searched Western Digital disk utility
9 wipe, and you can then see amongst the returns that he obtained
10 what actual link he had opted to select and to review,
11 presumably.

12 Q. Does that reflect that the browser that was used to conduct
13 the search then navigated to that page?

14 A. That is correct.

15 Q. And what is the title of the first related page?

16 A. The first April 30, 2016, visited site is "how to install
17 more than one operating system on a hard drive or dual boot of
18 a system." And that was on WD support.

19 Q. And what is the title of the second website listed there?

20 A. "Kill your data dead with these tips and tools," from
21 PCWorld.com.

22 MR. LOCKARD: Thank you, Ms. Cooper. We can take that
23 down.

24 Q. Does the defendant's Google search history include searches
25 related to WikiLeaks?

1 A. It does.

2 MR. LOCKARD: Could we please pull up Government
3 Exhibit 1351.

4 Q. Agent Evanhec, can you describe what is summarized by this
5 chart?

6 A. Yes. This is the number of times that Google was used from
7 the defendant's Gmail account to search WikiLeaks-related
8 topics from 2006 until July of 2016.

9 Q. And what were the total number of WikiLeaks-related
10 searches in that time period?

11 A. Three.

12 Q. And when were the earliest two?

13 A. The earliest examples that are cited are July 29 of 2010.

14 Q. And there's a second in July of 2010?

15 A. Correct.

16 Q. And there's a third in July of 2016?

17 A. That's correct.

18 MR. LOCKARD: If we could turn to Government Exhibit
19 1352.

20 Q. And what is summarized in this document?

21 A. The defendant's searches of WikiLeaks types of searches
22 between August 2016 and January of 2017.

23 Q. And approximately how many WikiLeaks-related searches were
24 conducted on the defendant's Google account during that
25 several-month time period?

1 A. 39.

2 Q. And how many total pages did the defendant visit?

3 A. 115.

4 Q. Now, is this time period before or after the Vault 7
5 release?

6 A. This was before the Vault 7 release was made public.

7 Q. And what was the date of the Vault 7 release?

8 A. March 7, 2017.

9 Q. Do you see in the table of searches conducted about five
10 lines down?

11 A. Yes.

12 Q. What was that search?

13 A. "WikiLeaks code."

14 MR. LOCKARD: OK. Ms. Cooper, if we could zoom back
15 out.

16 Let's turn to, actually, if we can look at Government
17 Exhibit 1353.

18 Q. What's summarized in this chart?

19 A. It's where a number of searches that I, as the lead
20 investigator, found of interest that the defendant had
21 conducted between March 7 of 2017, and March 14 of 2017. So
22 this would have been the first week after the WikiLeaks release
23 of Vault 7.

24 Q. And when did the FBI first make contact with Mr. Schulte?

25 A. On March 15, 2017.

1 Q. So during that one week between the Vault 7 release and
2 your interview of Mr. Schulte, approximately how many searches
3 related to WikiLeaks or Vault 7 did the defendant conduct?

4 A. I think in totality, those categories don't only relate to
5 WikiLeaks, but it's 28.

6 Q. So let's talk about some of the searches that are in here.
7 Why did you include the CIA as a search related to Vault 7?

8 A. They were the victim of the hack.

9 Q. And why did you include the FBI as a search related to
10 Vault 7?

11 A. It was the lead investigative agency of this case. In
12 addition, the subject had inquired with current employees of
13 the CIA whether the FBI was asking questions about him on site.

14 THE COURT: Again, ladies and gentlemen, you can't
15 consider that for its truth, just the fact that that was the
16 agent's understanding and what effect it had on his
17 investigation.

18 BY MR. LOCKARD:

19 Q. And why is "unredacted names CIA" and "unredacted names"
20 included as a relevant Vault 7 search?

21 A. Because there were the full names of CIA employees that
22 were included in that leak -- or excuse me, in that release of
23 WikiLeaks information.

24 Q. And why is dank memes included in the Vault 7 related
25 searches?

1 A. There were a number of memes that internally in the CIA
2 they had created over the course of my review of their evidence
3 that were more of interest and included one of the managers at
4 the CIA and the CCI.

5 MR. LOCKARD: If we could turn to page 2 of this
6 exhibit and just look at some of the related website visits
7 that were conducted related to these searches.

8 Q. What is the title of the website that the defendant visited
9 on March 9?

10 A. Reception of WikiLeaks.

11 Q. And then the title of the site visited on March 10?

12 A. "Are the CIA documents on WikiLeaks really a big deal?"

13 Q. And the last one?

14 A. "Authorities questioning CIA contractors in connection with
15 WikiLeaks dump."

16 MR. LOCKARD: Your Honor, if I may have just a moment?

17 THE COURT: Yes.

18 Somebody's device was going off. If that happens
19 again, it will be my device, so I recommend you shut it off.

20 MR. LOCKARD: No further questions, your Honor.

21 THE COURT: Cross-examination.

22 MR. SCHULTE: Just one second. Sorry.

23 CROSS-EXAMINATION

24 BY MR. SCHULTE:

25 Q. Good afternoon.

1 A. Good afternoon, Mr. Schulte.

2 Q. You testified on direct that an unsub investigation started
3 on March 7, 2017, right?

4 A. That's correct, yes, sir.

5 Q. And that was in the Washington office, right?

6 A. That's correct, yes, sir.

7 Q. And that was the day of the leak, right?

8 A. That's correct.

9 Q. And by March 8, you were already conducting a full field
10 investigation into only me, correct?

11 A. That's correct.

12 Q. And that investigation was conducted out of New York,
13 correct?

14 A. Yes, sir.

15 Q. By you, right?

16 A. I was one of the agents, yes, sir.

17 Q. What is a full field investigation?

18 A. That is basically the FBI's effort to investigate an
19 allegation of either a crime or a threat to national security.

20 Q. And so it was an unsub investigation for less than 24
21 hours, correct?

22 A. It remained -- there remained, sir, an unsub investigation
23 for years.

24 Q. And from the outset of the investigation, I was and
25 remained the only subject of your investigation, correct?

1 A. You were the only individual that the FBI was able to
2 predicate a full investigation of, that's correct.

3 Q. And you said you spent months at the CCI office, correct?

4 A. Yes, sir, that's correct.

5 Q. Sometimes you were there for weeks at a time, correct?

6 A. That's correct, yes, sir.

7 Q. You were interviewing witnesses, correct?

8 A. Yes, sir.

9 Q. Reviewing documents?

10 A. Yes, sir.

11 Q. You had unfettered access to DevLAN, correct?

12 A. Correct.

13 Q. But as of March 8, the investigation was only just
14 beginning, correct?

15 A. Correct.

16 Q. By March 8, you had not reviewed any of the CIA
17 electronics, right?

18 A. Not -- not independently, no, sir.

19 Q. Well, no one had, right?

20 A. No one at the FBI had actually gone into those forensics at
21 that point, no, sir.

22 Q. You had not reviewed a single byte of the 1.4 petabytes
23 that you said that were seized from the CIA, correct?

24 A. At that point those devices were not even seized yet.

25 Q. OK. You had not interviewed witnesses, correct?

1 A. At that point we had certainly had discussions with the
2 CIA. It was the victim agency, so the victim had been engaged
3 with at that point, yes.

4 Q. Although I'm talking about witnesses. Had you actually
5 investigated or talked to any individual witnesses by March 8?

6 A. By the -- by that time, my memory doesn't serve me exactly
7 correctly if I had myself interviewed any witness, but I
8 definitely had discussions with the CIA. So I don't mean to
9 split hairs there, sir, but just I want you to be aware of that
10 nuance.

11 Q. But had anyone on your team interviewed individual CIA
12 witnesses?

13 A. I don't believe that we had 302s into the file at that
14 time. I'm sure there are official documents of our interviews.

15 Q. OK.

16 A. I think that's fair.

17 Q. You didn't talk to any of the foreign office people,
18 correct?

19 A. At that point, no, sir.

20 Q. You didn't even know anything about the DevLAN
21 infrastructure, correct?

22 A. We -- we did. We were aware of DevLAN and very
23 introductory parts of it, I would say, but not the in-depth
24 knowledge by any means.

25 Q. OK. But it's fair to say you didn't really, you had no

1 idea what had been stolen yet by that time?

2 A. We did know that the information was from DevLAN, yes.

3 Q. But specifically, the time frame or anything about -- all
4 you knew was that information seemed to come, originate from
5 DevLAN, correct?

6 A. Sir, because WikiLeaks had given so many different
7 releases, that entirety of that information wasn't known until
8 late in the fall of 2017.

9 Q. OK. But you immediately began pursuing me as a sole
10 suspect on March 8, right?

11 A. Sir, we were -- we were investigating you. I wouldn't say
12 that we were pursuing you.

13 Q. OK. And you testified about physical security, correct;
14 about the building, CCI?

15 A. Yes, that's correct. Yes, sir.

16 Q. You testified that the CCI building is located in an
17 undisclosed location, correct?

18 A. That's correct.

19 Q. The CCI office is a nine-floor building, right?

20 A. That's correct.

21 Q. Hundreds of people work in that building, correct?

22 A. Yes, sir.

23 Q. All of those people have security clearances, correct?

24 A. Yes, sir.

25 Q. But DD1 is where the CIA brings all its job applicants,

1 correct?

2 MR. LOCKARD: Objection.

3 THE COURT: Mr. Schulte, can you explain what you mean
4 by DD1?

5 MR. SCHULTE: I'm going to go into detail. That's an
6 open CIA facility, so I'm just --

7 THE COURT: Well, OK. Overruled.

8 Do you know if that's the case, Agent?

9 THE WITNESS: Sir, it was not a topic of my
10 investigation to investigate CIA human resources of new
11 applicants.

12 BY MR. SCHULTE:

13 Q. But you said that the building is in -- you testified that
14 it's in an undisclosed location, correct?

15 A. Correct.

16 Q. But were you aware that they have their own visitors center
17 there and --

18 A. I'm aware there's a visitors center, yes.

19 Q. OK. Were you aware that there were more uncleared visitors
20 to DD1 than any other CIA facility?

21 A. I would have no reason to know that, no.

22 Q. OK. Did you know that DD1 is an SC0 site?

23 A. I don't know what that is, sir.

24 Q. You've never heard of SC; you don't know what that acronym
25 means?

1 A. No, sir, I don't. I apologize.

2 THE COURT: Do you know what DD1 is? Is that what
3 we're referring to as the location of the -- excuse me; I'm
4 forgetting the acronym -- the CCI building?

5 THE WITNESS: I'm under the impression, your Honor,
6 that the defendant is talking about the CCI building, and if
7 not, we could certainly revisit some of these topics.

8 THE COURT: OK. But let's refer to it as the CCI
9 building rather than using an acronym, since it's a little
10 confusing if that's what you're intending.

11 MR. LOCKARD: Your Honor, I think a sidebar may be
12 helpful to navigate this issue.

13 THE COURT: I think we can leave it there for the
14 moment, but let's go on.

15 MR. SCHULTE: OK.

16 Q. But you were investigating, and you testified about
17 accesses on direct, correct?

18 A. Correct.

19 Q. So would it not have been in your field of investigation
20 about who could access a building?

21 A. Certainly during my term -- my time in the secure parts of
22 that building, I had never seen an applicant or someone who
23 didn't possess a security clearance, no, sir.

24 Q. But as part of your investigation, you didn't conduct any
25 investigation as to how many uncleared people show up to DD1 --

1 I mean to the CCI building or anything of that nature?

2 A. No, sir. My focus was the crime scene, which was on the
3 eighth and ninth floors. So my investigation would have been
4 focused on who would have had access to those floors only and
5 not -- I think what you're prescribing is to be public areas of
6 the building, which I was not aware of.

7 Q. OK. As far as the security goes, do you know if there are
8 different kinds of badges and accesses that allow different
9 personnel into different parts of the building?

10 A. Yes, sir, I do.

11 Q. OK. And what types of badges would be permitted into the
12 eighth and ninth floor?

13 A. So, my understanding is, is so long as any of those badges,
14 whether it was a contractor or whether it was a visitor or
15 whether it was a full-time CIA employee so long as that person
16 held a top secret security clearance, they would be able to
17 enter that building. And if they hadn't, there would certainly
18 be prescriptions of the security division there that the CCI
19 would place on that person being escorted and things like that.
20 So certainly, you know, the infrastructure and the security
21 there had certain prescribed rules for how that would work and
22 how that would look.

23 Q. All right. You also talked a little bit on direct about
24 the security clearances in general, correct?

25 A. That's correct, yes, sir.

1 Q. And over 5 million people have top secret security
2 clearance in the U.S., correct?

3 A. I'm -- I can't verify that. I'm not aware, sir.

4 Q. In this courtroom, the lawyers have top secret security
5 clearances, correct?

6 A. I believe so. I'm not certain of the actual clearances at
7 this moment.

8 Q. The government works with multiple defense contractors, and
9 they all have security clearances, correct?

10 A. Depending on the assignment, they certainly would.

11 Q. And in fact, anyone who can pay for the security clearance
12 process, they can -- they can get one, correct?

13 A. No, sir.

14 Q. They can't? How -- what is the process for obtaining the
15 security clearance, the beginning process?

16 A. I believe there needs to be an actual need for that hosting
17 agency, that hosting organization to issue a security
18 clearance. So certainly someone that is wealthy in the United
19 States can't walk into the CIA and demand a security clearance.
20 They would certainly need to be employed by an organization or
21 entity that would have a need to carry that work forward.

22 Q. OK. You testified about the structure -- CCI, EDG, AED --
23 on direct, correct?

24 A. Yes, sir, that's correct.

25 Q. And the information published by WikiLeaks came from that

1 CCI office, correct?

2 A. That's correct.

3 Q. In total, there were about a thousand people who worked in

4 CCI, correct?

5 A. In the building overall, that's probably a fair and

6 accurate assessment.

7 Q. All right. So DevLAN next. You testified on direct about

8 the DevLAN network, correct?

9 A. Yes, sir, I did.

10 Q. And in the course of your investigation, you learned that

11 DevLAN was described by CIA employees as the wild Wild West,

12 correct?

13 A. That's correct.

14 Q. That was because there were no security protocols or rules,

15 correct?

16 A. That's not correct.

17 Q. OK. What did that -- what was that in reference to?

18 A. The wild Wild West?

19 Q. Yes. Yeah.

20 A. I believe that, that there were employees that had

21 suggested that the system lacked extraordinary security

22 measures that the CIA put in place with other systems, but in

23 our conversations with you and I, sir, you had talked about

24 your role with administering accesses in that system itself.

25 So I'm not sure that for a layperson, like someone walking in

1 Washington, D.C. --

2 MR. SCHULTE: I think, you know, just a question and
3 answer.

4 THE COURT: Hold on.

5 Agent, do me a favor, and listen to the question. And
6 just answer the question.

7 THE WITNESS: Yes.

8 THE COURT: The question had been your understanding
9 of what wild Wild West being used in reference to DevLAN, what
10 that meant.

11 THE WITNESS: Yes, your Honor. And I apologize, your
12 Honor.

13 THE COURT: Thank you.

14 A. That there were certainly engineers, Mr. Schulte, that had
15 been disappointed with the lack of controls that existed in
16 DevLAN that weren't necessarily there with other systems. So
17 that is an accurate statement.

18 Q. So the DevLAN system, it didn't have the requisite security
19 protocols that other enterprise networks of that scale would
20 have, correct?

21 A. That's my understanding, yes.

22 Q. There were shared passwords amongst the administrators,
23 correct?

24 A. Correct.

25 Q. There were no firewalls, correct?

- 1 A. I can't speak to firewalls, sir.
- 2 Q. There was certainly no antivirus software?
- 3 A. I can't speak to antivirus software.
- 4 Q. OK. But access controls, there weren't any access
- 5 controls, right?
- 6 A. There certainly were, yes.
- 7 Q. What is your understanding of where on DevLAN contained
- 8 access controls?
- 9 A. How would someone get onto DevLAN; is that your question,
- 10 sir?
- 11 Q. Well, how would someone from DevLAN access information on
- 12 DevLAN?
- 13 A. They would need to have access to the physical space where
- 14 that server and the system that were in place were housed.
- 15 They would certainly need to have the credentials to get onto
- 16 that computer. So someone couldn't walk off the street to get
- 17 it, basically.
- 18 Q. They couldn't get in the building, right?
- 19 A. Correct. Absolutely.
- 20 Q. So I'm talking specifically about people who, once they log
- 21 into DevLAN, there's no access controls, there's no protection
- 22 of the data on DevLAN, correct?
- 23 A. That's my understanding, yes, sir.
- 24 Q. There were no standard log-in capabilities that every other
- 25 enterprise network used, correct?

1 A. That's my understanding, yes.

2 Q. And CIA employees also described DevLAN as a dirty network,
3 did they not?

4 A. Correct.

5 Q. And that was because there were all types of viruses,
6 malware, data and devices on the network, correct?

7 A. Yes, sir, that's correct.

8 Q. You also testified on direct that DevLAN is a LAN, right?

9 A. That was my understanding, yes.

10 Q. What is a LAN?

11 A. It's a -- in this case, it was a contained set of servers
12 that connected to computers that worked within itself to
13 accomplish the mission that they needed to do.

14 Q. Do you know what it stands for?

15 A. Developmental local area network, I believe, is what DevLAN
16 stood for.

17 Q. And there were, in fact, international connections to other
18 foreign offices through DevLAN, correct?

19 A. Yes, sir.

20 Q. So it was technically not a local area network, right?

21 A. There were certain abilities of two offices outside the
22 United States to connect to that secure system, yes.

23 MR. SCHULTE: All right. I want to take a look at
24 Government Exhibit 602. I have the defense exhibits here.
25 Should I grab the government exhibits, or is the government

1 able to pull those up? Is that all right?

2 THE COURT: I think the government can pull them up.
3 If you just direct them to what you'd like to pull up, they'll
4 have them here.

5 Thank you.

6 MR. SCHULTE: Thanks.

7 THE COURT: And just the witness for the moment.

8 MR. SCHULTE: Page 2, please. I think this is in
9 evidence. Right?

10 THE COURT: I believe it is, yes. Would you like it
11 published?

12 MR. SCHULTE: Yes, please. Publish it.

13 THE COURT: All right. Thank you.

14 BY MR. SCHULTE:

15 Q. So this is the network diagram of DevLAN, correct?

16 A. It appears that way, yes.

17 Q. And do you see where Hickok is on the right side?

18 A. The gateway?

19 Q. Yes.

20 A. I do, yes, sir.

21 Q. OK. So I just wanted to -- so DevLAN connected to a
22 separate network there, right, this COG network?

23 A. It appears so, yes, sir.

24 Q. So individuals from COG could access the computers on
25 DevLAN, correct?

1 A. I'm not sure entirely what they could access, but this
2 diagram seems to suggest that there's some connectivity between
3 COG and the network itself. What computers I'm not actually
4 sure, sir, but it does appear from this diagram to show that.

5 Q. OK. And you see the DevLAN offsite backup, right, at the
6 top, top left, WMA storage?

7 A. I do, yes, sir.

8 Q. OK. And that's another connection to the DevLAN network,
9 right?

10 A. Sir, I believe this document shows that. My understanding
11 was that that was not a site that had connectivity. I thought
12 it was a physically isolated space. That was what my
13 recollection is.

14 Q. OK. But the backup is storing the data, backing up the
15 data from DevLAN, correct?

16 A. It certainly is another location where the DevLAN
17 environment of information existed, yes, sir.

18 Q. OK. And the top, the field locations, Foreign Office East,
19 Foreign Office West, do you see those?

20 A. Yes, sir.

21 Q. And those are overseas locations, correct?

22 A. Yes, sir.

23 Q. And from those locations, they can also access DevLAN,
24 right?

25 A. Correct.

1 MR. SCHULTE: OK. We can take that down. Thank you.

2 Q. I'd like to move on now to the CIA backups themselves. So
3 we've heard a lot of about Confluence, but what is Stash?

4 A. Stash, my understanding, is the actual code itself. So
5 this would have been the commands that would actually be used
6 to infiltrate systems and electronic devices.

7 Q. So Stash was the actual code repositories from DevLAN,
8 correct?

9 A. That's my understanding, yes.

10 Q. OK. And your understanding is that Stash was also stolen
11 from the CIA, correct?

12 A. I'm not aware of that.

13 Q. You're not aware of Stash being stolen from --

14 A. I'm only aware of Confluence and pieces of, of source code
15 that were included in that having been -- been released.

16 Q. So you're aware that source code was released, correct?

17 A. Correct.

18 Q. And the source code resided in Stash, correct?

19 A. My understanding, sir, is that at times that source code
20 was actually in the wiki in Confluence. That was my
21 understanding.

22 THE COURT: Could you just explain what you mean by in
23 the wiki in Confluence?

24 THE WITNESS: Oh. Sorry. So, confluence, your Honor,
25 as I tried to describe yesterday, is really a wiki. It was a

1 discussion board that housed, you know, any number of user logs
2 or, you know, discussions by developers, whatnot. So we really
3 referred to it as a wiki during our investigation. That's what
4 Confluence was. It was really a discussion board, where any
5 random things could be put there.

6 THE COURT: And can you just explain what you mean by
7 wiki? Since there's been testimony about WikiLeaks, I just
8 want to --

9 THE WITNESS: Sure, add to the discussion. Much like
10 Wikipedia, users can go in and edit that type of stuff. So
11 wiki, I think, generally is kind of accepted as a
12 user-generated platform that people can go and alter
13 information on.

14 THE COURT: When you say Confluence is a wiki, at
15 least until it was leaked and appeared on WikiLeaks, you're not
16 suggesting there was any connection to WikiLeaks?

17 THE WITNESS: No, your Honor.

18 THE COURT: OK.

19 BY MR. SCHULTE:

20 Q. So you're -- are you aware that WikiLeaks released
21 something called Vault 7 and Vault 8?

22 A. Yes.

23 Q. And so is it your testimony that both of those derived
24 solely from Confluence?

25 A. No. There were portions of Stash that were in those as

1 well.

2 Q. So, I'm a little confused. If Stash wasn't disclosed to
3 WikiLeaks, how did they publish Stash material?

4 A. I think, I guess, in my mind, just so you know where I'm
5 coming from -- it may be helpful -- I considered the actual
6 portions of code to be Stash type of documents. So when I say
7 that there was portions of Stash, there were portions of code
8 that certainly were released by WikiLeaks. I believe those
9 predominantly came from the actual Confluence subset
10 themselves, is my understanding.

11 Q. So you just testified that Confluence was the wiki,
12 correct?

13 A. Correct.

14 Q. And the source code from DevLAN is stored in Stash,
15 correct?

16 A. That's correct, sir.

17 Q. So are you also saying then that there is -- Stash is also
18 stored on Confluence?

19 A. No.

20 Q. OK. So Stash material was released by WikiLeaks in at
21 least Vault 8, correct?

22 A. Correct.

23 Q. So where did that information -- where did Vault 8 derive
24 from?

25 A. It derived from DevLAN, and in the Confluence system, and

1 the Confluence systems at the time had source code actually in
2 it.

3 (Continued on next page)

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

1 BY MR. SCHULTE:

2 Q. OK. So just to be clear, so your testimony is that all the
3 material from WikiLeaks all came from a Confluence -- from the
4 Confluence application; is that correct?

5 A. Sitting here today I can't be a hundred percent sure that
6 there wasn't a page or two that was from somewhere else but my
7 understanding was Confluence, yes.

8 Q. I mean, that's a pretty big -- pretty important part of
9 your investigation, right? Because you need to find out -- the
10 first question you ask is where the data came from, correct?

11 A. Correct.

12 Q. That would have been the very first question that you
13 conducted in this investigation, right?

14 A. Absolutely.

15 Q. I mean, you need to know who had access to that
16 information; correct?

17 A. Absolutely.

18 Q. So if someone did not have access to that information they
19 couldn't possibly be a suspect, right?

20 A. Correct.

21 Q. So I guess, you know, I'm just struggling to understand
22 how -- so is your testimony today that you just don't remember
23 at all or just you never figured out?

24 A. No. So my involvement in the case had kind of dwindled
25 into the late summer and early fall of 2017 so, you know,

1 frankly, I wasn't following the case as much then after the
2 interaction that we had and the interviews that we had in the
3 summer of 2017.

4 Q. OK. So it would be more accurate to simply say that you
5 just don't know whether the information released from Vault 8
6 was originated from Stash?

7 A. We certainly know that the Confluence from March 3rd was
8 stolen and I will leave my testimony at what I have testified
9 to.

10 Q. And just for clarification, what is that?

11 A. That the Confluence from March 3rd of 2016 was stolen.
12 That is the information, largely, that is made available on
13 WikiLeaks and that there are portions of code that have been
14 promulgated by WikiLeaks in the Vault 7 and Vault 8 releases.

15 Q. OK. But then your connection to the investigation ended
16 what time? What date?

17 A. Approximately the fall of 2017 it was dwindling down.

18 Q. OK. But both Stash and Confluence relied on what is called
19 version control, correct?

20 A. I'm not aware of what version control is, sir.

21 Q. OK. The information released by WikiLeaks -- the pages --
22 you could see previous pages, you could see all the edit
23 history, correct?

24 A. That's my understanding.

25 Q. In fact, let's, if we can pull up GX- 5-2, I think it is an

1 example. If we can go to the next page, please? Is there
2 another one after this? The last page, please? The page
3 before it? OK.

4 So at the bottom here it lists previous versions, correct?

5 A. It does.

6 Q. And so essentially the documents released have the complete
7 history. Any time the document was edited it's recorded here,
8 correct?

9 A. That's my understanding, yes.

10 Q. So based on this system, each successive backup file
11 contains all the data from the previous backups, correct?

12 A. I believe that's a fair assessment.

13 Q. So if WikiLeaks received the March 6th, 2017 backup file
14 they could have simply selected previous versions from March
15 3rd, 2016 and released those files, correct?

16 MR. LOCKARD: Objection.

17 THE COURT: Sustained.

18 Mr. Lockard, make sure you use the microphone, please.

19 MR. LOCKARD: Yes, your Honor.

20 BY MR. SCHULTE:

21 Q. Based on this page here, you don't know what backup file
22 these documents originated from, correct?

23 A. Looking at this page alone? No.

24 Q. Based on your investigation into this disclosure and your
25 understanding of how the backup files work and the data they

1 contain --

2 A. Sure.

3 Q. -- is it true to say that the March 6, 2017 backup file
4 would contain all the data from March 3rd, 2016?

5 MR. LOCKARD: Objection.

6 THE COURT: Sustained.

7 Can I ask the agent, you testified on direct that you
8 understood or learned that the data stolen came from the March
9 3rd backup. Is that something that you determined yourself or
10 that is something that you were told by someone who conducted
11 an analysis?

12 THE WITNESS: Our computer scientists, your Honor.

13 THE COURT: Ladies and gentlemen, let me say once
14 again, because it is something the agent heard from someone
15 else, you are not to consider that testimony for its truth but
16 merely for what effect it had on his investigation and the
17 steps he took in connection with it. With that, I don't think
18 we need to examine this witness about that conclusion.

19 Go ahead, Mr. Schulte.

20 BY MR. SCHULTE:

21 Q. OK. Can we pull up GX- 1207-27?

22 So this is a list of the Confluence database files,
23 correct?

24 A. Yes, sir.

25 THE COURT: This is in evidence? Did you want to

1 publish this, Mr. Schulte?

2 MR. SCHULTE: Yes, it is in evidence. Can we publish
3 it?

4 THE COURT: Yes.

5 Q. So just to be clear, this particular document showing the
6 access times, you didn't know this document existed until
7 sometime in 2020, correct?

8 A. I was not aware of the existence of this document during my
9 time in the investigation.

10 Q. So during your -- so from the time that you initiated the
11 investigation in 2018 until the time you left the investigation
12 you never saw this document, correct?

13 THE COURT: I think you said 2018. You meant 2017; is
14 that correct?

15 MR. SCHULTE: Yes.

16 THE WITNESS: I'm sorry. What was your question,
17 Mr. Schulte?

18 Q. I'm sorry. From the time that your investigation began
19 related to the WikiLeaks disclosure until the time you left
20 that investigation, you never saw this document; correct?

21 A. I still remain involved in the investigation to this day.

22 Q. OK. So I guess from the time you initiated the
23 investigation until the time I was charged with the crimes you
24 never saw this document; correct?

25 A. I don't believe so.

1 Q. OK. Just to clarify here, because it shows the dates and
2 the database files, your testimony is you don't know that the
3 latest backup, the March 11th file, the last file here, you
4 don't particularly know whether that contains the data from
5 February 1st, correct? That's your computer scientist, right?

6 A. I'm not sure I understand your question.

7 Q. The last backup file on the list here, 20160311; correct?
8 You see it?

9 A. Yes.

10 Q. Your testimony is you don't know if that file contains all
11 the information in the first file here, 20160201, correct? It
12 is your computer scientist who made the determination, right?

13 A. Certainly with every subsequent set of files there can be
14 changes made to any older files that are in there so I'm not
15 sure that's an accurate statement.

16 Q. Yes, but we just saw how the Confluence file contained the
17 prior previous edit history, correct?

18 MR. LOCKARD: Objection.

19 THE COURT: Sustained.

20 Q. Can we pull back up the Marble file, 5-2, on the second to
21 last page, please?

22 So this shows every time the document was modified,
23 correct? That's what you testified earlier?

24 A. I believe it shows previous versions.

25 Q. The previous versions are previous versions of the file,

1 these are the changes to that file, correct?

2 MR. LOCKARD: Objection.

3 THE COURT: Is that your understanding, Agent?

4 THE WITNESS: Your Honor, I'm frankly not clear on the
5 question so if Mr. Schulte would ask it again?

6 THE COURT: Can you ask it a different way, please?

7 BY MR. SCHULTE:

8 Q. So is it your understanding here that the version
9 history -- these previous versions -- contain the history of
10 the file, the previous modifications to the file?

11 A. Sir, with just this piece of information I don't know that
12 I can make that determination. I would need to look at the
13 entirety of it.

14 Q. All right. But it is safe to say that that is beyond your
15 knowledge whether or not the entire history is contained within
16 each backup?

17 A. Sitting here today and looking at only this document, I
18 can't say.

19 Q. Well, just talking about overall, your entire -- your
20 entire knowledge of how the backups worked through your
21 investigation you, sitting here today, you don't know?

22 A. That is something that the computer scientists really
23 focused on and our other cyber teams. As I mentioned
24 yesterday, I was the case agent involved in the coordination
25 and overall engagements with you. That was my role.

1 Q. OK. The backup files from both Confluence and Stash,
2 through your investigation did you learn that these are digital
3 files? Correct?

4 A. Correct.

5 Q. They are stored on the computer, correct?

6 A. Correct.

7 Q. They're intangible files, correct?

8 A. What do you mean by intangible files, sir?

9 Q. Well, the definition of intangible is you can't touch it;
10 it is digital, right?

11 A. You can certainly print them and pages from the Wiki, for
12 example, touched them. So did they exist in a system in
13 digital formats? Yes.

14 Q. OK. So can we pull up Government Exhibit 1207-41?

15 So just to be clear on this point, there is no -- it
16 doesn't show on this page but, to your knowledge, there is no
17 access time of April 20th for any Stash files, any Stash
18 backups; correct?

19 A. I'm happy to review that date if you would like me to.

20 Q. No. I'm saying, to your knowledge, that there is no --
21 there is no access -- there is no modified date on any of the
22 Stash backups like you testified about the Confluence backups,
23 correct?

24 A. Not to my knowledge sitting here today, sir.

25 Q. OK. OK, back to the 1207-27, please.

1 So I'm going to ask you a little bit about the access
2 times. If you open the file, the access time is updated;
3 correct?

4 A. Correct. Correct.

5 Q. If you touch the file the access time is updated, correct?

6 A. That's my understanding, yes.

7 Q. If you simply look at the file properties such as the file
8 size the access time is updated, correct?

9 A. That I am not clear of, sir.

10 Q. OK. You could run a chron job and that would update the
11 access time, correct?

12 A. I can't speak to that, sir.

13 Q. But a service could update the access time, correct?

14 A. Service meaning?

15 Q. A service running on either the system or the network, in
16 general.

17 A. I can't speak to that directly myself.

18 Q. A security sweeper that sweeps the network, that could
19 update the access time too, correct?

20 A. I can't speak to that, sir.

21 THE COURT: Mr. Schulte, I think it is quite clear to
22 everyone that this witness is not a computer expert, that he
23 received certain information from computer experts at the FBI
24 and relied on that in his investigation. I permitted him to
25 testify with respect to that information to explain his

1 investigation but let's reserve questions about -- that are
2 really more proper for an expert on these issues, please.

3 MR. SCHULTE: OK.

4 BY MR. SCHULTE:

5 Q. Were you briefed or did you review any of the CIA malware
6 that was developed on DevLAN?

7 A. I personally did not, no.

8 Q. Are you familiar with false flag operations?

9 A. I am.

10 Q. What are false flag operations?

11 A. False flag operations are essentially where, presumably, an
12 intelligence officer would pose as an officer of another
13 country or of a terrorist organization in order to try to
14 elicit information from someone thinking they would be more
15 sympathetic talking to someone that the actual officer was not.

16 Q. Are you aware of false flag operations with respect to
17 malware or software, in general?

18 MR. LOCKARD: Objection.

19 THE COURT: Sustained.

20 Q. Were you aware that malware could change file times?

21 A. Not personally aware of that, no.

22 Q. So these screenshots here of the Stash or Confluence
23 backups they're from, specifically, the FSO1 file server from
24 DevLAN, correct?

25 A. That's correct, it is my understanding.

1 Q. The actual data WikiLeaks received may not even derive from
2 this file server, correct?

3 A. I believe those assessments were made and that it was
4 determined that it was a match.

5 Q. I'm sorry?

6 A. I said my understanding is those assessments were made and
7 it was assessed that they were from the March 3rd version of
8 Confluence.

9 Q. No, that's not the question. The question is the backup
10 file may not have originated from this particular server,
11 correct?

12 A. I don't believe that was the assessment of our team.

13 Q. OK, but you don't actually know whether WikiLeaks received
14 an official backup file or files pulled directly from the Stash
15 or Confluence virtual machines themselves, correct?

16 A. That's correct.

17 Q. You wouldn't know if WikiLeaks received a backup from the
18 CIA's offsite backup location, the WMA storage; right?

19 A. That's not our assessment that's where it came from.

20 Q. I'm going to circle back to the initiation of your
21 investigation. Did you ever speak with the director of the CIA
22 about this case?

23 A. He was on the -- not directly. I was in earshot of a
24 conversation that our team had had with him early in the
25 investigation.

1 Q. So the answer is no?

2 A. Directly I did not speak to the director of the CIA, no.

3 Q. Do you know who the director was at this time?

4 A. I believe it was Michael Pompeo.

5 Q. What about the director's staff, were you in contact with
6 them?

7 A. I personally was not. I don't -- the director's staff, I'm
8 not sure what you mean by that either but I was not in touch
9 with anyone who had -- was working directly in his office, from
10 what I can recall.

11 Q. You never provided the director or his office any updates
12 on the case?

13 A. I am aware that his team was certainly updated on the case
14 and we were constantly updating directors of both the CIA and
15 the FBI.

16 Q. You sought approval from the director to declassify
17 information for a search warrant though, correct?

18 A. That's correct.

19 Q. And when was that?

20 A. That would have been sometime, March 13th, 14th time frame,
21 my understanding, or maybe days just before that. The early
22 part of March 2017.

23 Q. And isn't it true that on that date the director of the CIA
24 declassified the fact that the WikiLeaks disclosures were,
25 indeed, authentic CIA documents?

1 A. That's my understanding.

2 Q. OK. And isn't it true that your first theory was that the
3 data was actually stolen on March 8th, 2017?

4 A. I believe it was March 7 and 8th; yes, that's correct. 7th
5 into the 8th, I believe, was the estimate early on in the
6 investigation.

7 Q. You didn't supply a specific date?

8 A. I'm sorry?

9 Q. You didn't have a specific date in the search warrant of
10 theft, when you believed the theft occurred?

11 A. I believe our -- I didn't swear to the search warrants but
12 I believe the initial theory at the time the search warrants
13 were sworn out was the date of information was March 7th or
14 8th.

15 Q. Why did you need the director's approval for the search
16 warrant?

17 A. Because the information that we were seeking to use and
18 confirm in the search warrants was classified.

19 Q. Do you know who actually wrote the search warrants that you
20 provided to the director?

21 A. I don't.

22 Q. You don't know who wrote them?

23 A. I don't, no. Not sitting here today I can't recall that
24 specifically.

25 Q. Do you know when you emailed the -- do you know if you

1 emailed the copies of the search warrants directly to the
2 director for approval?

3 A. I can't recall that sitting here today. I certainly would
4 not have been in direct e-mail communication with the director
5 of the CIA.

6 Q. So you don't know if he suggested any changes to the
7 substance of it?

8 A. I can't recall that sitting here today, sir.

9 Q. And the search warrant itself was unclassified, correct?

10 A. That's correct.

11 Q. I would like to publish, just to the witness and the
12 parties --

13 THE COURT: Something just came up on my screen.

14 Q. I think this is already coming in on GX- 812 but I would
15 like to introduce the search warrant through DX 104-1.

16 THE COURT: Well, do you want to let the witness
17 identify it and authenticate it?

18 MR. SCHULTE: Sure.

19 Q. Yes. Can you identify this document, sir?

20 A. Yes. This appears to be the search warrant signed by
21 Special Agent David Donaldson to execute a search warrant at
22 your residence that was signed on the 13th of March, 2017.

23 Q. And this is the search warrant that we were just discussing
24 about -- that was emailed to the director for approval;
25 correct?

1 A. I can't speak to where it was emailed. This is a search
2 warrant that David Donaldson caused to be signed.

3 Q. OK, but the search warrant is unclassified, correct?

4 A. That's correct. Yes, sir.

5 MR. SCHULTE: I would like to move now to introduce
6 it.

7 MR. LOCKARD: Objection. If it is in as 812 I think
8 we can use 812.

9 THE COURT: Is 812 in? And, if so, can you point me
10 to when it was admitted? Is there a stipulation?

11 MR. SCHULTE: I believe in 812 it is attached as an --

12 THE COURT: That's not my question, Mr. Schulte.

13 MR. SCHULTE: OK.

14 THE COURT: My question is whether it is in evidence.
15 I don't believe it is.

16 MR. LOCKARD: I think it is. Certainly we don't
17 object to 812.

18 THE COURT: Mr. Schulte, can you show me what is in
19 the rest of this document, please, so I can go through it?

20 MR. SCHULTE: Yes.

21 MR. LOCKARD: Your Honor, 812 is not currently in
22 evidence. It is subject to another stipulation but certainly
23 we could read and enter it now.

24 THE COURT: Well, the witness has authenticated this.
25 Can we admit this and be mindful that it may well be a

1 duplicate of a portion of 812?

2 MR. LOCKARD: Yes. No objection, your Honor.

3 THE COURT: So it is admitted as Defendant's Exhibit
4 140-1; is that correct, Ms. Shroff?

5 MR. SCHULTE: Yes, that's correct.

6 THE COURT: Would you like to publish it to the jury?

7 MR. SCHULTE: Yes.

8 THE COURT: You may.

9 (Defendant's Exhibit 104-1 received in evidence)

10 THE COURT: And let me just briefly instruct you,
11 ladies and gentlemen, that you may know this or have surmised
12 it but a search warrant is basically -- under the Fourth
13 Amendment of the Constitution, the law enforcement can't search
14 someone's property or apartment or digital records without
15 authorization from a Judge like me. A search warrant is
16 authorization to do that -- I should say subject to various
17 exceptions and many Supreme Court opinions and the like. But,
18 for your purposes, it is important to understand that, in
19 general, you are not permitted to just conduct a search for any
20 reason at any time and, in general, it does require a warrant
21 that is authorized by a Judge on a finding under a showing of
22 probable cause. So that is to say, in order to authorize a
23 search, a Judge has to be persuaded that there is probable
24 cause to conduct a search, that evidence or the fruits of the
25 crime may be found in the premises. But the fact that a Judge

1 found probable cause is not relevant for your consideration of
2 whether the government has proved beyond a reasonable doubt,
3 based on the evidence that you will see in the course of this
4 trial, that Mr. Schulte committed the crimes charged, all
5 right?

6 So with that, you may proceed, Mr. Schulte.

7 MR. SCHULTE: Thank you.

8 BY MR. SCHULTE:

9 Q. I would like to direct your attention at 8(a). Can you
10 read that, please?

11 A. The information that WikiLeaks claimed was classified CIA
12 information, that is, the classified information, was at the
13 time of its disclosure, in fact, classified CIA information.

14 Q. OK. And one last section here, 8(b). Can you read that,
15 too, please?

16 A. Yes, sir.

17 Specifically, the classified information was created and
18 maintained by one specific group within CIA which is
19 responsible for various computer engineering activities,
20 including the development of computer code (the "CIA group").
21 That CIA group exists within a larger CIA component (the "CIA
22 component"). In March 2016, less than 200 employees were
23 assigned to the CIA group and only employees of the CIA group
24 had access to the computer network on which the classified
25 information that was stolen from the CIA grab's computer

1 network was stored. (Moreover, as described in detail below,
2 only three of those approximately 200 people who had worked for
3 the CIA group had access to the specific portion of the group's
4 computer network on which the classified information was likely
5 stored.)

6 Q. And here the CIA group is EDG, correct?

7 A. That's my understanding.

8 Q. So these two -- these two statements you requested and
9 received authorization from the CIA to declassify this
10 information to put it in this search warrant; correct?

11 A. I'm only aware, Mr. Schulte, that there was a request for
12 declassification. I'm not sure exactly what was declassified.

13 Q. OK, but the search warrant is unclassified, correct?

14 A. That's correct.

15 Q. So if it is in the search warrant then it is not
16 classified -- or it is unclassified, correct?

17 A. That would be safe to assume, yes.

18 Q. And the search warrant is dated March 13, 2017; correct?

19 A. Correct.

20 Q. And with the knowledge that one CIA group and CCI contained
21 200 employees, it is not a leap to assume other groups within
22 CCI likely contained about 200 employees too, right?

23 MR. LOCKARD: Objection.

24 THE COURT: Sustained.

25 Q. Based on your expertise as an investigator, seeing that one

1 group contains 200 employees, it is not much to infer that
2 other groups contained equal number, likely equal number of
3 employees, right?

4 MR. LOCKARD: Objection.

5 THE COURT: Sustained.

6 Q. OK. After the execution of this search warrant, how often
7 did you meet with the CIA?

8 A. Certainly when I was present at CCI it would have been
9 daily. When I was there throughout the earlier parts of the
10 investigation there was near daily requests for information
11 from the CIA.

12 Q. So did the CIA ever tell you or direct you to target me in
13 the investigation?

14 A. No.

15 Q. Do you know if you had a meeting with the CIA on June 26,
16 2017?

17 A. I can't recall specifically that meeting that day sitting
18 here today, sir.

19 Q. Do you ever recall the CIA telling you that you have to go
20 after me with everything, from their political standpoint, on
21 June 26, 2017?

22 A. I don't recall the specifics of a meeting that day.

23 Q. OK. What are Link messages?

24 A. Link messages are essentially messages that -- if you are
25 referring to the FBI Link systems they are instant messages

1 that we share and communicate, as any Skype would or instant
2 messaging capability.

3 Q. And your link messages are all recorded, correct?

4 A. Correct.

5 Q. The messages are recorded in the regular course of business
6 at the FBI, correct?

7 A. Correct. That's correct.

8 Q. I would like to show just the witness and the parties, do
9 you recognize this?

10 A. Yes. It appears to be a transcript of instant messaging
11 chats, correct.

12 THE COURT: Mr. Schulte, when you show the witness an
13 exhibit, make a record of what the exhibit number is so that it
14 is clear?

15 MR. SCHULTE: This is Defendant's Exhibit 101.

16 Q. So specifically I want to point your attention here at
17 Defendant's Exhibit 101-1. Can you -- I would like to publish
18 this to the jury.

19 MR. LOCKARD: Objection.

20 THE COURT: Sustained.

21 MR. SCHULTE: OK.

22 Q. Does this refresh your recollection of June 26, 2017?

23 A. This without context, no.

24 Q. OK. Does this help?

25 THE COURT: Again, please make a record of what we are

1 showing. This is, am I correct, page 18 of Defendant's Exhibit
2 101?

3 MR. SCHULTE: That's correct.

4 THE COURT: So Agent, I think Mr. Schulte is asking
5 you to look at this page in its entirety. When you have done
6 so and read it to yourself, please, look up, and Mr. Schulte
7 will ask you a question.

8 MR. LOCKARD: Your Honor, I think a side bar on this
9 may be appropriate.

10 THE COURT: I don't think we need that.

11 But, Mr. Schulte, go ahead.

12 MR. SCHULTE: So does this refresh your recollection?

13 THE COURT: About what?

14 MR. SCHULTE: About the message that you sent June
15 26 --

16 THE COURT: No. All right. We will have a side bar.

17 Counsel, please approach.

18 (Continued next page)

1 (At side bar)

2 THE COURT: For starters, Mr. Lockard, do you want to
3 elaborate? I don't know if there is a concern that I may not
4 be aware of here, but.

5 MR. LOCKARD: There is a concern. It is not the
6 classification concern. The Link message -- Link messages for
7 Agent Evanhec include a reference to C20, which is a criminal
8 squad in the New York field office that was conducting the
9 child pornography investigation and we just wanted to alert the
10 Court and Mr. Schulte that this line of questioning may well
11 end up opening a door that he does not want to open.

12 THE COURT: OK. I assume, subject to the door being
13 open, that the agent understands and has been instructed that
14 he is not to mention those charges. Is that correct?

15 MR. LOCKARD: That is correct.

16 THE COURT: OK.

17 Mr. Schulte?

18 MR. SCHULTE: So my understanding -- and he testified
19 that it is a business record so I -- it is enterprise e-mail
20 system, messaging system, so I would move to introduce the
21 whole thing.

22 THE COURT: So just because it is maintained in the
23 ordinary course of business, that doesn't get it in as a
24 business record. There are other requirements. And e-mail,
25 alone, is not automatically a business record.

1 MR. SCHULTE: I think the statement alone then, the
2 101-1, it is admissible, it not hearsay because it is an
3 adverse party statement.

4 THE COURT: OK. You are wrong about that too, but --

5 MR. SCHULTE: OK.

6 THE COURT: -- I will certainly happily let you say,
7 having look at that, does it refresh your recollection that you
8 had a meeting on June 26, 2016 with the CIA and that at that
9 meeting they said X. The witness can either say yes or no. I
10 think he has now looked at it. If it refreshes his
11 recollection then it refreshes his recollection. If it
12 doesn't, you are going to have to move on. You certainly
13 haven't established a foundation for the admission of the
14 document in its entirety, let alone that particular piece of
15 it. OK?

16 MR. SCHULTE: So the statement itself, if he doesn't,
17 or if he says he doesn't recollect it, there is no
18 recollection, it goes to state of mind when he is about his
19 investigation.

20 THE COURT: He is not your adverse party and in that
21 sense it is not a statement of an adverse party. That rule
22 doesn't apply to this, nor short of any context does this
23 statement make any sense whatsoever. Again, you can ask him if
24 it refreshes his recollection and you will take whatever answer
25 you are given but that statement alone there are 401 problems,

1 there are 403 problems, there are 800 problems so I don't see
2 how you are going to get it in. You can try under some other
3 theory but none you have given me is the proper basis.

4 While we are here, do you know how much longer you
5 have on cross of this witness?

6 MR. SCHULTE: Yeah, I still have -- it will probably
7 go at least until the end.

8 THE COURT: OK. And the next witness is one of the
9 witnesses subject to the security procedures?

10 MR. DENTON: Yes, your Honor. He is here.

11 THE COURT: So if you are able to wrap it up today
12 that would be ideal, it would be nice to start with that
13 witness tomorrow. But, if not, we will take it as it comes.

14 While we are at side bar, is there any reason here to
15 discuss the CCI building issue or shall we take that up later
16 in a different setting?

17 MR. DENTON: We can take it up here, your Honor.

18 I think the issue is that that is -- that is not the
19 CCI building -- which it has a different number -- but it is,
20 if not over the line, certainly right at the line of unmasking
21 something that the Court has uniformly held should be redacted
22 in a way that seemed fairly deliberate to us.

23 THE COURT: So Mr. Schulte, I would urge you to look
24 at the key and just be careful. I think the government knows
25 more than I do so I'm not sure why, given the various acronyms

1 that have been thrown around over the course of this trial that
2 would cause any harm, but be that as it may, if you look at the
3 key, there are certain things we are not going to be saying out
4 loud here and just make sure you --

5 MR. SCHULTE: I think that brings up another issue and
6 that's, you know, for the other witnesses it may come out as
7 well but for this witness the problem is as an SC0 facility it
8 is an open building, both the buildings are. So, I mean, I
9 don't know how I can come up --

10 THE COURT: So you asked your questions of this
11 witness, he gave you his answers. That may be something you or
12 the government can elicit from other witnesses. It may be
13 something that you testify to, but we have covered that.

14 Let's resume.
15
16
17
18
19
20
21
22
23
24
25

1 (In open court)

2 BY MR. SCHULTE:

3 Q. All right. Does this refresh your recollection that there
4 was a meeting on June 26, 2017?

5 A. It does not.

6 Q. Does it refresh your recollection that there was any
7 meeting in June?

8 A. There is no reference to a meeting that I can see in
9 this --

10 THE COURT: Hold on.

11 Agent, that's not the question. This document is not
12 in evidence. Don't testify about what this document may or may
13 not say. The question is having looked at this document, does
14 it refresh your recollection whether there was a meeting in
15 June?

16 THE WITNESS: No.

17 BY MR. SCHULTE:

18 Q. Does it refresh your recollection about the going to
19 Baltimore?

20 THE COURT: Sustained.

21 MR. SCHULTE: OK.

22 THE COURT: Move on, Mr. Schulte.

23 Let's take this document down, please.

24 BY MR. SCHULTE:

25 Q. Moving on to the first time that we met that you testified

1 about on direct. So you testified that we met on March 15th,
2 2017; correct?

3 A. That's correct.

4 Q. And that was one day before my travel to Cancun, correct?

5 A. Correct.

6 Q. And you and Agent Donaldson brought me to the Pershing
7 Square Diner, correct?

8 A. You agreed to meet us there, yes.

9 Q. And can you tell the jury what a Miranda warning is?

10 A. Miranda warnings are essentially warnings that you would
11 give to someone who is in custody and is to be arrested that
12 basically advises them of their rights, including one of them
13 is the right to be silent.

14 Q. And you did not give me a Miranda warning, correct?

15 A. We did not.

16 Q. Can you tell the jury what a 1001 warning is?

17 A. A 1001 warning is -- it is a felony to lie to an FBI agent,
18 so you can charge someone criminally for lying to an FBI agent
19 in the course of an investigation.

20 Q. And you did not give me a 1001 warning either, correct?

21 A. Not at that time; no, sir.

22 THE COURT: Let me just interrupt for a moment to
23 explain a couple principles of law.

24 Miranda warning, that name comes from *Miranda v.*
25 *Arizona*, it is a Supreme Court case from sixty-some-odd years

1 ago that established the principle that the police, when they
2 engage in a custodial interrogation of a person, that is, if
3 they're in custody and they question that person, that they, in
4 order to use that statement against them to prove their guilt
5 at a trial, that they have to give them certain warnings about
6 the right to remain silent, the right to have an attorney, so
7 on and so forth.

8 Two things. Number one, it only applies to if someone
9 is in custody, it doesn't apply if they're free to go. Number
10 two, I instruct you that the statements that Mr. Schulte made
11 in that March 15th interview are admissible, I ruled that they
12 are admissible, I have allowed them into evidence so there is
13 nothing -- you may consider them. Having said that, you can
14 certainly consider the fact that Mr. Schulte was not given
15 warnings about either Miranda or 1001 which pertains to a
16 section of the United States Code. You can consider those in
17 connection with your evaluation of the statements that he made
18 and what weight you give to them.

19 Mr. Schulte, you may proceed.

20 BY MR. SCHULTE:

21 Q. And at this time you did not tell me that I was a suspect
22 in the leaks, correct?

23 A. At that initial point, no, sir, I don't believe.

24 Q. In fact, when you approached me you specifically requested
25 assistance in helping solve the crime; correct?

1 A. That's my memory; yes, sir.

2 Q. And how would you describe my demeanor at the first
3 meeting?

4 A. You were willing to answer our questions, you were polite
5 and, quite frankly, enjoyable to talk to.

6 Q. And you testified that at some point during the
7 conversation you handed me a couple of subpoenas, correct?

8 A. That's correct.

9 Q. And then you seized my cell phone, correct?

10 A. Pursuant to the subpoena, yes.

11 Q. And you also demanded my passport, correct?

12 A. No.

13 Q. You did not -- did you request my passport at that time?

14 A. No.

15 Q. You didn't request the passport at that time?

16 A. Not at that time I believe, sir. It wasn't until later in
17 the evening.

18 Q. I would like to show you one of your FBI 302s from that
19 time.

20 A. Sure.

21 THE COURT: Mr. Schulte, please make reference to
22 Defendant's Exhibit or Government Exhibit rather than
23 characterizing something that is not in evidence, please.

24 Q. OK. We will have to come back to that. OK. I want to
25 talk to you a little bit about the OIG e-mail now. Right? You

1 claim I said it was -- or I told you I did not have a copy of
2 the OIG e-mail, correct?

3 A. Correct.

4 THE COURT: Just so we are clear, is that Government
5 Exhibit 1616? Is that what you are referring to?

6 MR. SCHULTE: Yes.

7 THE COURT: I'm asking the Agent. Is that when you
8 are testifying about the OIG e-mail, is that Government Exhibit
9 1616?

10 THE WITNESS: I would have to see, your Honor.

11 MR. SCHULTE: Can we pull it up, please? Thank you.

12 THE WITNESS: Yes, your Honor.

13 THE COURT: And what is OIG?

14 THE WITNESS: The Office of the Inspector General,
15 your Honor.

16 BY MR. SCHULTE:

17 Q. So this e-mail was later recovered from my home, correct?

18 A. Yes. That's correct.

19 Q. And you testified on direct that you believe that I lied to
20 you about possessing the OIG e-mail, correct?

21 A. Correct.

22 Q. It was an e-mail that I labeled unclassified, correct?

23 A. Correct.

24 Q. And just to be clear, while I was working at the CIA, I had
25 the authority of a derivative classifier, correct?

1 A. Correct.

2 Q. And what does that mean?

3 A. That means, essentially, that as I spoke earlier, original
4 classification whose that position is ultimately responsible
5 for classification, they're able to delegate classification to
6 people assuming that they will apply them correctly.

7 Q. So I was authorized by the CIA to make classification
8 decisions, correct?

9 A. So long as those abided by the rules of classification,
10 yes.

11 (Continued on next page)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 BY MR. SCHULTE:

2 Q. Right. But during the course of your investigation, you
3 found multiple -- multiple emails and other documents that I
4 classified, correct?

5 A. Correct.

6 Q. And at the end of the day, based upon the training the CIA
7 gave to me, I'd made those classification decisions, correct?

8 MR. LOCKARD: Objection.

9 THE COURT: Sustained.

10 BY MR. SCHULTE:

11 Q. You testified that you have top secret security clearance,
12 correct?

13 A. That's correct, yes, sir.

14 Q. So do you have a similar email system that the FBI uses for
15 sending classified information?

16 A. I do, yes, sir.

17 Q. So how do you -- so based on your training, you determine
18 whether information is classified and at what level, correct?

19 A. That's correct.

20 Q. And how does your email system work when you're going to
21 review the document?

22 A. Sure. So, the way our system works, sir, is we would
23 generate an email, and just prior to pressing send, it would
24 prompt you with a drop-down menu that would ask you how you
25 want to classify this document. And it would give you the

1 options to make it unclassified or classified or secret or top
2 secret. And then, only then, only after that point that you
3 input those classifications does the system allow you to
4 actually press send. So you're required to make those
5 decisions and note those designations prior to pressing send.

6 Q. And when you press send and the menu comes up, how many
7 different options are you presented?

8 A. They're -- frankly, there are dozens of boxes specially
9 given as handling caveats that I mentioned yesterday, like not
10 for foreign dissemination.

11 Q. OK. But those are the dissemination controls, correct?

12 A. Correct.

13 Q. For the classification decision, how many boxes, how many
14 different options?

15 A. Depending on the system, most likely three -- unclassified,
16 secret, and top secret.

17 THE COURT: Do you know if the FBI's system on that
18 score is similar to the CIA's email system? Do you know?

19 THE WITNESS: I believe so, based on what I've seen,
20 sir.

21 BY MR. SCHULTE:

22 Q. So when you -- there are three levels of classification,
23 correct?

24 A. Correct. Again, depending on the system that you're on.
25 So if you're on a secret system, it wouldn't give you the

1 option to press top secret because there's presumably no top
2 secret information there. So it just depends on your system.

3 Assuming there's a top secret system, there should be three.

4 Q. But the system doesn't allow you to simply click one of
5 those three options, correct?

6 A. Our systems it does.

7 Q. Is there a classification reason that must be supplied,
8 like a specific reason why the document's classified at a
9 certain level?

10 A. Yes. So I think what you're -- an example of that might
11 be -- it might help -- if it's a human source or the reporting
12 on a human source, you might designate that it's HUMINT type of
13 intelligence. Is that what you're talking about, sir?

14 Q. No. Those would be the SCI controls, correct?

15 A. Correct.

16 Q. So those are -- can you explain to the jury SCI?

17 A. SCI, as I testified yesterday, is an additional category,
18 additional category of classified information, mostly national
19 defense information, that would be even more restricted than
20 even top secret. So you could have SCI, which is a very
21 sensitive pot of information, either at secret level or top
22 secret, but it requires additional read-ins. That's basically
23 briefings to warn you about the dangers of exposing that. So
24 that's generally what SCI is.

25 Q. OK. Are you familiar with the way the CIA classification

1 system works?

2 A. I believe it was very similar to what I just attempted to
3 explain.

4 Q. OK. Have you seen what's referred to as the classification
5 banners at the bottom of the page? I mean not the banner at
6 the top that designates the classification level but the actual
7 block. Classification block is what it's referred to.

8 A. I've seen those, yes.

9 Q. Does the FBI have those as well, or --

10 A. Yes.

11 Q. -- to your knowledge, it's just -- you do have them, right?

12 A. I believe those are uniform across the intelligence
13 community, sir.

14 Q. OK. So in those classification blocks, it says something
15 like declassification-by date, right?

16 A. Correct.

17 Q. It will say declassifier, your number, right?

18 A. Correct.

19 Q. And it gives a classification reason, which is a numerical,
20 numeric code that specifically relates the classification
21 information to one of multiple different types, correct?

22 A. Correct.

23 Q. And so those different types of classification can be
24 anything from communications intelligence, comments, to any
25 kinds of -- any types of classification, right?

1 MR. SCHULTE: Objection.

2 A. I don't deal with that type of information on a daily
3 basis.

4 THE COURT: There was an objection. The witness
5 already answered, so I'll leave it, but let's move on,
6 Mr. Schulte.

7 BY MR. SCHULTE:

8 Q. So in your career, classifying documents, sometimes people
9 make honest mistakes when they classify documents, correct?

10 MR. LOCKARD: Objection.

11 A. I think that's --

12 THE COURT: Sustained.

13 BY MR. SCHULTE:

14 Q. Have you ever made a mistake classifying a document, sir?

15 MR. LOCKARD: Objection.

16 THE COURT: Sustained.

17 BY MR. SCHULTE:

18 Q. Do you know if someone makes an honest mistake in
19 classifying a document, if they can be charged with a crime?

20 MR. LOCKARD: Objection.

21 THE COURT: Sustained.

22 BY MR. SCHULTE:

23 Q. Do you realize, sir, that this OIG email was initially
24 confirmed to be unclassified to the CIA for approximately two
25 months?

1 MR. LOCKARD: Objection.

2 THE COURT: Sustained.

3 BY MR. SCHULTE:

4 Q. So this document, this OIG document here, the government
5 never charged me with a crime for this document, correct?

6 MR. LOCKARD: Objection.

7 THE COURT: I will allow that.

8 Do you know the answer to that question?

9 THE WITNESS: I don't, your Honor.

10 THE COURT: All right. The witness says he doesn't
11 know the answer to that question.

12 I'm not sure this is visible to the jury, so let's
13 publish it so that the jury understands what document we're
14 discussing.

15 Next question, please.

16 MR. SCHULTE: OK. I'd like to show just to the
17 parties defense exhibit 813. I believe the government has
18 Government Exhibit 813, but I don't believe it's in evidence,
19 so I'm offering this defense exhibit 813 into evidence.

20 THE COURT: All right. Denied.

21 Next question.

22 MR. SCHULTE: 813-1 is a --

23 MR. LOCKARD: Objection.

24 MR. SCHULTE: -- present since --

25 THE COURT: Hold on, Mr. Schulte.

1 Is there a question that you want to pose to this
2 witness about this exhibit?

3 MR. SCHULTE: Yes. The question is --

4 THE COURT: All right. So you're showing the witness
5 what's marked as defense exhibit 813-1. What's your question?

6 BY MR. SCHULTE:

7 Q. The question is do you recall that you referred to the OIG
8 email during our discussions as the classified email?

9 THE WITNESS: Your Honor, I can't see the exhibit.

10 THE COURT: All right. That's fine. Just answer the
11 question.

12 A. I'm sorry, Mr. Schulte. Can you just rephrase the
13 question -- repeat the question?

14 Q. Yes. Do you recall that during your discussions with me
15 you referred to this OIG email as the classified email?

16 A. I did.

17 Q. OK. And did I not specifically tell you that I had no idea
18 what you were talking about because I never printed or retained
19 any classified documents in my apartment?

20 MR. LOCKARD: Objection.

21 THE COURT: Overruled.

22 A. I recall asking you if you had a classified OIG or an OIG
23 email in your apartment, and you said no. That's the
24 recollection that I have.

25 Q. I'm sorry, sir. Didn't you just testify that you referred

1 to the document as the classified email? Right?

2 A. I can't recall. I definitely recall it being -- referring
3 to it as the OIG. I just don't have a memory of referring --
4 of making a distinction of it being classified or not. I just
5 don't recall, sir.

6 Q. But you just stated earlier that you did refer to it as the
7 classified email, correct; that was what you just said?

8 A. My testimony is I don't recall if indicated a
9 classification of that email or not. That's my final
10 testimony.

11 Q. There's a big difference between something is referred
12 to --

13 THE COURT: Mr. Schulte, pose a question, please, just
14 a question.

15 BY MR. SCHULTE:

16 Q. You did not bring with you a redacted version of the OIG
17 email to show me, correct?

18 A. No, we had not, sir.

19 Q. And you did not tell me that this was an email that I
20 classified unclassified, correct?

21 A. I don't think we had any further -- I don't think we
22 provided any further information about it, frankly.

23 Q. All right. So do you not believe, sir, that your reference
24 to the OIG email simply did not mesh at all with what I
25 believed you were talking about?

1 THE COURT: Sustained.

2 BY MR. SCHULTE:

3 Q. Do you not think that I simply didn't -- I simply
4 misunderstood what you were talking about?

5 MR. SCHULTE: Objection.

6 THE COURT: Sustained.

7 Mr. Lockard, microphone, please.

8 BY MR. SCHULTE:

9 Q. OK. You did not record the meeting that took place on
10 March 15, 2017, correct?

11 A. We did not.

12 Q. OK. And did you know that by this time, in 2017, almost
13 every single police department in the country required body
14 cams?

15 MR. SCHULTE: Objection.

16 A. The FBI --

17 THE COURT: Sustained.

18 BY MR. SCHULTE:

19 Q. Now, the FBI does many covert recording operations,
20 correct?

21 MR. LOCKARD: Objection.

22 THE COURT: Sustained.

23 BY MR. SCHULTE:

24 Q. Well, in this specific case, you had multiple of my former
25 friends and colleagues wear wires to spy on me, correct?

1 A. They were lawfully given wires to collect evidence, yes.

2 Q. So why did you not record the meeting?

3 A. It's not required by FBI policy.

4 Q. So is it not true, sir, that the FBI deliberately does not
5 record these meetings so it can then claim anything that
6 happened in those meetings afterwards?

7 THE COURT: Sustained.

8 BY MR. SCHULTE:

9 Q. If you recorded the session, there would be no dispute of
10 what was said, correct?

11 A. Correct.

12 Q. Instead, you are asking the jury to rely upon your memory
13 of what happened five years ago, correct?

14 MR. LOCKARD: Objection.

15 THE COURT: Sustained.

16 BY MR. SCHULTE:

17 Q. OK. You, as the FBI, are charged by the prosecutors to
18 gather evidence for a trial, correct?

19 A. We are required by our positions to obtain evidence.

20 Whether that leads to a trial or leads to an exoneration,
21 that's our goal, is to collect evidence and come to a
22 conclusion, a truthful conclusion about what happened.

23 Q. OK. And eyewitness testimony has been scientifically
24 proven to be unreliable, correct?

25 MR. LOCKARD: Objection.

1 THE COURT: Sustained.

2 BY MR. SCHULTE:

3 Q. OK. Well, you, as the FBI, prefer to provide video or
4 audio evidence to a jury if possible, correct?

5 MR. LOCKARD: Objection.

6 THE COURT: Sustained.

7 BY MR. SCHULTE:

8 Q. Video evidence of someone committing a crime is compelling,
9 correct?

10 MR. LOCKARD: Objection.

11 THE COURT: Sustained.

12 Let's move on to the next line of questioning, please.

13 BY MR. SCHULTE:

14 Q. OK. The individuals you testified about that you gave
15 recording devices to, you did not ask them to write down what
16 transpired, correct; you gave them the wire?

17 A. That's correct.

18 Q. OK. And you gave them the wire to record the audio,
19 correct?

20 A. Correct.

21 Q. But you preferred the audio over their written
22 recollection, correct?

23 MR. LOCKARD: Objection.

24 THE COURT: Sustained.

25 BY MR. SCHULTE:

1 Q. OK. So on March 15, 2017, before you came to talk to me at
2 Bloomberg, you scouted out the area and selected Pershing
3 Square diner, correct?

4 A. I personally did not do that, but I understood that that
5 happened, yes.

6 Q. OK. And you did all this extensive planning, between
7 obtaining the latest search warrant on March 14, until the plan
8 to specifically meet with me on the 15th, correct?

9 A. Correct.

10 Q. You had extra FBI agents blend in at Pershing Square diner,
11 correct?

12 A. Correct.

13 Q. And they could have easily been set up to have video or
14 audio recording, correct?

15 MR. LOCKARD: Objection.

16 THE COURT: Overruled.

17 A. That was a possibility, yes.

18 THE COURT: Ladies and gentlemen, let me interrupt and
19 say two things.

20 One is, as I'll instruct you at the conclusion of the
21 case, the government is not required to use any particular
22 investigative techniques as part of either investigation or in
23 connection with this trial. Having said that, you are
24 obviously free to consider what techniques they did and didn't
25 use in evaluating what evidence there is or the absence of

1 evidence in deciding whether the government has proved beyond a
2 reasonable doubt that the defendant committed the crimes with
3 which he is charged.

4 The second thing is just, as a matter of law, I
5 instruct you that law enforcement is not required to record any
6 conversation that they conduct with a suspect or a witness.
7 Some law enforcement agencies do, as the agent testified, but
8 as a matter of law, that is not a requirement.

9 Mr. Schulte, you may proceed.

10 MR. SCHULTE: OK.

11 Q. So you, Special Agent Donaldson, who were there overtly
12 with me, correct?

13 A. Correct.

14 Q. So you, Donaldson, and the other FBI agents could have worn
15 wires to record the audio, correct?

16 A. Yes, that's an option.

17 Q. OK. So do you know whose decision it was whether or not to
18 do those things?

19 A. It was a collective decision based on FBI policy.

20 Q. What is the FBI policy?

21 A. That in matters such as this, we're not required to record,
22 as your Honor had mentioned. And that's that.

23 Q. OK. So the FBI policy is you're not required to, correct?

24 A. Correct.

25 Q. But you can if you choose to, right?

1 A. Sure, absolutely.

2 Q. So before a meeting such as this, does the team get
3 together and determine, you know, how you're going to plan this
4 out?

5 A. Largely for counterintelligence investigations, that is not
6 a routine matter of business.

7 Q. So is it that a team -- is it the team lead who makes these
8 decisions, or --

9 A. It's collectively the team. Certainly my supervisor would
10 have been part of that conversation.

11 Q. OK. Do you know if there were any conversations about it
12 or not?

13 A. I don't recall, sir.

14 Q. And during the meeting, up until the search warrant was
15 served and executed, you testified that it was a largely
16 friendly kind of environment, correct?

17 A. Correct.

18 Q. OK. So while I was at bloom -- after --

19 MR. SCHULTE: Sorry. Let me rephrase that.

20 Q. After the search warrant was served, everyone came back to
21 my apartment, correct?

22 A. Correct.

23 Q. I think you or some agents walked with me back to the
24 apartment, correct?

25 A. Correct.

1 Q. And then I think we waited there a little bit until the
2 search warrant was served, correct?

3 A. Correct.

4 Q. And then at some point, I left and I went back to -- I went
5 back to Bloomberg, right?

6 A. Correct.

7 Q. Now, do you have any obligation if you discover that the
8 search warrant you obtained, if you discover that the evidence
9 in the search warrant you obtained from the judge is false?

10 MR. LOCKARD: Objection.

11 THE COURT: Sustained.

12 BY MR. SCHULTE:

13 Q. If you obtain a lawful search warrant from a judge --
14 correct?

15 A. Correct.

16 Q. -- and before you execute that search warrant, you learn
17 that everything that you testified to in the search warrant was
18 incorrect or major parts of it were incorrect, do you have an
19 obligation to inform the judge?

20 MR. LOCKARD: Objection.

21 THE COURT: Sustained.

22 BY MR. SCHULTE:

23 Q. Sir, isn't it true that you received notification that the
24 March 7, 2016, date of theft sworn out in your search warrant
25 was impossible before you ever executed the search?

1 A. I don't -- I wasn't the author of the search warrant. I
2 don't recall the timing of that.

3 Q. Do you know what time the FBI executed its search warrant
4 and began the search?

5 A. On the 15th, sir?

6 Q. Yes.

7 A. I believe it was 7:41 p.m.

8 Q. 7:41 p.m., you said, right?

9 A. That's my recollection, yes, sir.

10 MR. SCHULTE: OK. I want to show just the witness and
11 the parties defense exhibit 110.

12 THE COURT: OK.

13 BY MR. SCHULTE:

14 Q. Do you recognize this document?

15 A. It appears to be an email from a New York agent to myself
16 and my supervisor.

17 Q. Does this document refresh your recollection about the
18 events on that day, March 15, 2017?

19 A. It does.

20 Q. OK. And what time did you receive this email?

21 A. This was received on internal FBI systems at 6:41 p.m. on
22 the 15th.

23 Q. And who else was it sent to?

24 A. My --

25 THE COURT: Sustained. It's not in evidence.

1 MR. SCHULTE: I'd like to move to introduce it into
2 evidence.

3 MR. LOCKARD: Objection.

4 THE COURT: Sustained.

5 BY MR. SCHULTE:

6 Q. So does this refresh your recollection about knowledge
7 about the information that was initially sworn out in the first
8 search warrant?

9 A. It suggests that there was a change.

10 MR. LOCKARD: Objection, your Honor.

11 THE COURT: Hold on. That's not the question. The
12 question isn't what this document says. It's sitting here
13 today, does it refresh your recollection about the information
14 that was contained in the search warrant that was executed that
15 day?

16 THE WITNESS: Your Honor, I don't -- I don't
17 specifically recall this email. It is what it is. I see it.

18 THE COURT: That's also not the question. The
19 question is just looking at it, whatever it may be --

20 THE WITNESS: Yes.

21 THE COURT: -- even if it's a bowl of fettuccine
22 Alfredo, does it refresh your recollection sitting here today
23 about information that was in that warrant?

24 THE WITNESS: It does.

25 THE COURT: OK.

1 THE WITNESS: Yes. I'm sorry, your Honor.

2 THE COURT: Thank you.

3 BY MR. SCHULTE:

4 Q. Does it refresh your recollection that you learned
5 information at 6:41 p.m.?

6 A. That's not when I learned it.

7 Q. Well, when did you learn it?

8 A. At this time of this email, I was with you, so I would not
9 have been able to access it. We were discussing it, quite
10 frankly, so I'm assuming it would have been the next business
11 day, when I read my email, that I would have received this
12 information.

13 THE COURT: I think to help the jury, does this
14 refresh your recollection that you learned before executing the
15 search warrant at -- I think you said it was 7:41 p.m., that
16 the date, the relevant date was not March 7 but an earlier
17 date? Does it refresh your recollection that you learned that
18 before executing the search warrant? Your testimony is no?

19 THE WITNESS: It would not have.

20 THE COURT: OK.

21 MR. SCHULTE: Just showing the witness and the parties
22 what's marked as defense exhibit 109.

23 Q. Does this refresh your recollection about the events that
24 were occurring on March 15, 2017?

25 MR. LOCKARD: Objection.

1 THE COURT: Sustained.

2 BY MR. SCHULTE:

3 Q. During the discussion and meeting with me on March 15,
4 2017, do you know if -- do you recall if updates were being
5 periodically sent throughout the night?

6 A. They were.

7 Q. OK. And how were those updates being transmitted?

8 A. These updates were being transmitted by our cell phones, I
9 believe, through government email accounts.

10 Q. So you had your -- you had access to your cell phone and
11 other internet-enabled devices during this time, correct?

12 A. Unclassified systems, yes.

13 Q. OK. So your testimony about this system is different from
14 the other system?

15 MR. LOCKARD: Objection.

16 THE COURT: I don't understand the question, so let's
17 try a new question.

18 MR. SCHULTE: OK.

19 Q. The defense exhibit 110, this email system is different
20 from your defense exhibit 109 email system?

21 MR. LOCKARD: Objection.

22 THE COURT: Sustained.

23 These documents are not in evidence, Mr. Schulte.
24 Please don't refer to their contents.

25 MR. SCHULTE: OK.

1 Q. You testified earlier that you would have received
2 information about this in the next business day or so, right?

3 A. Just depends on when I would have read that email, sir.

4 Q. OK. But once you read it, you would have learned that
5 information, correct?

6 MR. LOCKARD: Objection.

7 A. Correct.

8 Q. OK. After you learned this information, to your knowledge,
9 was any judge notified?

10 MR. LOCKARD: Objection.

11 THE COURT: Sustained.

12 BY MR. SCHULTE:

13 Q. OK. Isn't it true that you learned nearly every single
14 fact you wrote in your search warrant, which was sworn out by
15 Agent Donaldson, was false?

16 THE COURT: Sustained.

17 BY MR. SCHULTE:

18 Q. Was there a time -- was there a time in which you
19 discovered contradictory evidence to what was sworn out in the
20 search warrants?

21 MR. LOCKARD: Objection.

22 THE COURT: Sustained.

23 Ladies and gentlemen, it's 2:45, so that brings us to
24 the end of your part of this day.

25 Let me give you some instructions before I excuse you

M6fWsch6

1 for the day.

2 First, an instruction to those in the audience, if you
3 remain when the jury's excused, please wait a minute or so just
4 so the jury can clear the floor before exiting the courtroom.

5 To the jury, second, don't discuss the case with each
6 other, with anyone whatsoever, in any way, shape or form.
7 Don't do any research about the case. Please keep an open mind
8 about the case. You've heard only some of the evidence, and
9 obviously, as I've said many times and will say many times
10 more, you need to keep an open mind until you've heard
11 everything and you begin your deliberations.

12 A couple reminders about tomorrow. One, hopefully we
13 can start on time tomorrow, so to that end, please try to be in
14 by 8:45, at the latest. And again, we will hopefully have
15 breakfast and coffee there for you. I recognize that subway
16 problems and the like are not necessarily in your hands, but
17 all I can ask is that you do your best because we need to wait
18 until all of you are here.

19 No. 2, I do recommend that you bring with you a snack
20 or small lunch just to eat during the break since it is a
21 relatively short break and I want to stick to our schedule as
22 much as possible. It's probably best and easiest if you not
23 leave the jury room during the break. You're not imprisoned
24 there, so you are free to leave if you need to. But I would
25 just urge you, I think it's probably best practice, because I

M6fWsch6

1 want to start on time after the break.

2 Reminder -- I'm not going to say this every day, but
3 first couple days -- if you do develop Covid symptoms overnight
4 or test positive, for that matter, please do alert us know so
5 that know we and can deal with it accordingly.

6 Finally, just a specific note for one of you -- I
7 think it's juror No. 15, if I'm not mistaken -- you asked my
8 staff if I could contact your supervisor about an issue. I'm
9 happy to do that. If you provide that contact information and
10 name to my staff, I'll take care of that.

11 Another concern, let me say generally to all of you, I
12 have admonished you that it is your obligation to not stay in
13 the presence of anyone who's discussing this case, if anyone
14 happens to be discussing it. You should obviously do your best
15 on that front. If you are exposed to some sort of conversation
16 or news item about it, anything of that sort, and you can't do
17 anything about it, it is what it is. Just alert my staff --
18 tell only my staff -- about it, and then we'll deal with it
19 accordingly. But all I can do on that score is ask you again
20 to do your best as well.

21 With that, I wish you very pleasant afternoon and
22 evening. We'll see you, hopefully, tomorrow at or just after 9
23 a.m., and we'll get a full day in.

24 Thank you.

25 (Continued on next page)

M6fWsch6

(Jury not present)

THE COURT: You may be seated.

All right. Let me tell you before you step down, sir, No. 1, please be back in the courtroom a few minutes before nine tomorrow, or actually in the witness room, and counsel will give you instructions about when to enter.

Because you're on cross-examination, I'm going to instruct you not to communicate with the prosecution team about the substance of your testimony. If you need to discuss logistics, those sorts of things, that's one thing, but you may not discuss the substance of your testimony or the case more generally.

Understood?

THE WITNESS: Yes, your Honor.

THE COURT: All right. With that, you're excused for the afternoon, and we'll see you tomorrow morning.

THE WITNESS: Yes, sir.

(Witness not present)

MR. DENTON: Your Honor, that's a good opportunity for me just to note that -- Special Agent Evanchec is obviously an FBI agent. For a number of the other witnesses, in order to implement some of the arrangements, there will be various government, FBI people interacting with them. That will not include the prosecution team. Everyone is being advised that none of those communications should not involve the substance

M6fWsch6

1 of the case for any witness on cross-examination.

2 I just wanted to note that that's going to be
3 required.

4 THE COURT: All right. So certainly with you making
5 sure that everybody understands those ground rules, I will make
6 the point over any break during cross-examination of
7 instructing the witness accordingly as well, and shouldn't be
8 any problem with communicating about things about logistics,
9 whereabouts, those sorts of things, but nothing relating to the
10 substance of the case or the testimony.

11 All right. Anything that the government wants to
12 raise?

13 MR. LOCKARD: No, your Honor.

14 THE COURT: Mr. Schulte, anything you want to raise?

15 MR. SCHULTE: Just one quick matter.

16 I just want to bring to the Court's attention again
17 the ferrying back and forth to MDC, if the Court was ever able
18 to determine if it's possible for me to basically have my
19 documents in the car so when we're waiting at MDC for, like,
20 three hours, I can work on the cross, which -- and other types
21 of stuff.

22 THE COURT: The short answer is I did speak to the
23 U.S. Marshal about that, and what he said, which seemed
24 reasonable to me, was that if you selected whatever documents
25 you would need for that ride, that that would be no problem for

M6fWsch6

1 you to read some documents, but it would have to be whatever
2 you needed, not the entirety of your materials or the whole box
3 and also not a pen either. So with that understanding, that
4 seemed reasonable to me, and so hopefully they're doing that.

5 MR. SCHULTE: OK. Thank you.

6 THE COURT: All right.

7 Mr. Schulte, first of all, let me just confirm. I
8 have steen standby counsel giving you what seems to be advice
9 and handing you Post-it notes, and the like. So just to
10 confirm again that you're directing your defense and firmly in
11 control and just relying on them for advice. Is that correct?

12 MR. SCHULTE: Yes, that's correct.

13 THE COURT: Second, although I will pay you the
14 compliment of saying that, on the whole, I think you're doing a
15 better job than I might have expected for somebody with no
16 trial experience, I would maybe encourage you to talk to them
17 about the rules of evidence, particularly with respect to
18 refreshing recollections and also using exhibits.

19 So when you show an exhibit to a witness, what you
20 should do is say: I'm showing the witness what is marked as
21 defense exhibit 1. Do you recognize that?

22 And until an exhibit is in evidence, you shouldn't
23 refer to the contents of it. You shouldn't characterize it.
24 You shouldn't do anything. It's up to the witness to
25 authenticate it and to lay a foundation for it to come into

M6fWsch6

1 evidence. If you're using an exhibit to refresh recollection,
2 you need to ask a specific question to which the witness says I
3 don't recall, at which point then you're permitted to use
4 something to refresh recollection. Again, you need to make a
5 record of what it is. You show it to the witness. You say
6 please review that to yourself. And once the witness has done
7 that, you say, now do you recall, and you can repeat the
8 question to which the witness had previously said that they
9 didn't recall.

10 It's not sort of free rein to just ask generally does
11 that refresh your recollection about the events of the day
12 altogether. It's a specific question to which the witness
13 previously said they didn't recall. OK?

14 MR. SCHULTE: Thank you.

15 THE COURT: So just a couple of minor points that I'm
16 seeing over and over. I would encourage you to -- and standby
17 counsel, maybe encourage you also to, on your own, perhaps help
18 Mr. Schulte out on some of those fronts. But again, on the
19 whole, I think you're doing an admirable job given that you
20 don't have legal training and haven't done this before.

21 All right. With that, I will see you tomorrow
22 morning, same time, same place, and wish you guys a pleasant
23 afternoon and evening. And thank you very much.

24 (Adjourned to June 16, 2022, at 9:00 a.m.)
25

INDEX OF EXAMINATION

Examination of:	Page
RICHARD JOHN EVANCHEC	
Direct By Mr. Lockard	166
Cross By Mr. Schulte	263

GOVERNMENT EXHIBITS

Exhibit No.	Received	
3003, 1603, 1608 through 1615, 1601,		218
1401 through 1404, 1605, 1405,		
1616 through 1621, 821, and		
822, and all Government's		
Exhibits contained on		
Government's Exhibits 1601,		
1401 through 1404, 1605, 1405,		
821 and 822		
1622		219
1624		219
1627		220
1630		222
1631, 1632, and 1642		223
1631, 1632, and 1642		223
1301-1 through 1301-4B		255
1302-1		255
1304-1 through 1304-3		255
1305-1 through 1305-10		255
1306-1 and 3002		255
1350, 1351, 1352, and 1353		256

DEFENDANT EXHIBITS

Exhibit No.	Received	
104-1		297