

IN THE CIRCUIT COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

**AO ALFA-BANK**

*Plaintiff,*

v.

**JOHN DOE *et al.***

*Defendants.*

CASE NO.: 50-2020-CA-006304-  
XXXX MB

CIVIL DIVISION (AK)

**PLAINTIFF'S FINAL MOTION FOR EXTENSION OF TIME  
TO SERVE PROCESS ON DEFENDANTS**

Plaintiff AO Alfa-Bank ("Plaintiff" or "Alfa Bank"), pursuant to Fla. R. Civ. P. 1.070, hereby requests that the Court enter an order extending Plaintiff's time to serve process on Defendants to July 1, 2022. Absent an extension of time to serve process, Plaintiff will be deprived of information from third-party witnesses that will significantly assist its efforts to identify, name, and serve the unknown Defendants. Plaintiff's requests for that information have given rise to various litigation proceedings throughout the country. In this regard and as outlined below, there are a number of third-party discovery enforcement matters that are near completion. In many instances, these matters are fully briefed and awaiting decision by the courts. Denying Plaintiff's request for an extension and forcing it to abandon such efforts at the eleventh hour would be highly prejudicial to Plaintiff. Plaintiff represents to this Court that this is the final extension of time to serve process that Plaintiff will seek in this action.

In support of this Motion, Plaintiff states as follows:

**I. Background**

1. This is an action against the unknown criminal actors who perpetrated a sustained series of cyberattacks against Alfa Bank in 2016 and 2017.

2. These unknown actors, the John Doe defendants herein, executed a highly sophisticated cyberattacking scheme to fabricate apparent communications between Plaintiff, one of Russia's largest privately owned commercial banks, and the Trump Organization, former President Donald Trump's namesake company, in the months leading up to and immediately following the 2016 U.S. Presidential election.

3. On June 11, 2020, Plaintiff filed this action seeking damages against the John Doe defendants under Florida's Civil Remedies for Criminal Practices Act.

4. Pursuant to Fla. R. Civ. P. 1.070, Plaintiff's deadline to serve the John Doe defendants was October 9, 2020. On September 17, 2020, Plaintiff moved this Court to extend this deadline (Dkt. 37, Filing # 113501906), and on October 8, 2020, this Court entered an order extending the deadline to serve the John Doe defendants to February 21, 2021 (Dkt. 41, Filing # 114628129).

5. On February 10, 2021, Plaintiff moved this Court to extend this deadline (Dkt. 50, Filing # 121199138), and on February 23, 2021, this Court entered an order extending the deadline to serve the John Doe defendants to June 23, 2021 (Dkt. 54, Filing # 121922060).

6. On June 21, 2021, Plaintiff moved this Court to extend this deadline (Dkt. 71, Filing # 129200126), and on July 7, 2021, this Court extended the deadline to November 5, 2021 (Dkt. 80, Filing # 130154484).

7. On October 18, 2021, Plaintiff moved this Court to extend this deadline (Dkt. 114, Filing # 136760123), and on November 3, 2021, this Court extended the deadline to March 3, 2022 (Dkt. 130, Filing # 137788366).

8. Because this is a John Doe action, the actual Defendants have not been named because their identities are still being investigated. Plaintiff now seeks a final extension to allow it sufficient time to obtain discovery from third parties that it has been pursuing for many months in order to identify Defendants and serve them with process.

## **II. Overview of Plaintiff's Discovery Efforts**

9. Plaintiff has been diligently searching to discern the true identities of the John Doe defendants to serve them with process.

10. To that end, since it filed this action, Plaintiff has issued over 50 subpoenas for document production and 26 subpoenas for depositions to individuals and entities located in 17 different jurisdictions in the United States.

11. Since filing its last motion for extension of time to serve process on Defendants on October 18, 2021, Plaintiff has diligently continued its efforts to identify the John Doe defendants and serve them with process, and, as discussed below, continues to make great strides in so doing. Plaintiff has obtained and served numerous additional subpoenas, diligently negotiated with third parties who have been served with subpoenas, received substantial document productions and responses to open records requests, obtained multiple attorney proffers, and deposed six third parties—all of which have substantially furthered its efforts to identify and locate the John Doe defendants. Plaintiff has attempted to move this matter forward as expeditiously as possible while addressing objections interposed by multiple subpoena recipients and working through the challenges posed by COVID-19.

12. Although Plaintiff has successfully and amicably negotiated discovery from a majority of the third parties who have been served, litigation is pending related to compliance with subpoenas in multiple jurisdictions. Plaintiff has worked to resolve these proceedings as expeditiously as possible. Despite Plaintiff's best efforts, however, litigation involving discovery requests to several key third-party witnesses is scheduled to continue past the March 3, 2022 service deadline.

13. Moreover, the federal trial of Michael Sussmann on a false-statement charge stemming from the events underlying Plaintiff's Complaint is scheduled to begin on May 16, 2022. *See Pre-Trial Order, United States v. Sussmann*, Crim. No. 1:21-cr-00582-CRC (D.D.C. Dec. 14, 2021). Plaintiff anticipates that evidence revealed during that trial will substantially assist its efforts to identify, name, and serve Defendants.

### **III. Plaintiff's Ongoing Discovery Efforts**

14. Plaintiff currently is pursuing discovery from a number of key third parties. These efforts are likely to yield evidence that is important to identifying Defendants. Despite Plaintiff's efforts to swiftly and diligently resolve disputes with third parties, several proceedings involving critical witnesses will not be concluded prior to the March 3, 2022 deadline. Absent an extension of time to serve process, Plaintiff will be forced prematurely to terminate those efforts. Such termination would severely prejudice Plaintiff, particularly given the substantial time and resources that have gone into litigating subpoenas with third parties whom Plaintiff has reason to believe possess information important to advancing Plaintiff's efforts. For this reason, Plaintiff requests one final extension of the service deadline.

15. Among other third parties, Plaintiff seeks and is on the verge of obtaining crucial discovery from the following:

- **Michael Sussmann.** Michael Sussmann has been charged with making a materially false statement to the FBI. The indictment alleges that Sussmann played a central role in the events underlying Plaintiff's Complaint. Plaintiff served Sussmann with a document subpoena on August 24, 2020, pursuant to which he made an initial production. *See* Dkt. 15 (Filing # 110607721). Plaintiff believes that Sussmann refused to produce critical responsive documents on the basis of an improper assertion of privilege. On August 13, 2021, Plaintiff filed a motion in the District of Columbia Superior Court to compel Sussmann to produce documents withheld as privileged or, in the alternative, to produce a privilege log. Sussmann filed a motion to stay the ancillary proceedings in the Superior Court in light of his pending criminal case, which Plaintiff opposed. On February 9, 2022, the Superior Court granted a limited stay pending the conclusion of Sussmann's criminal trial, which is scheduled to begin on May 16, 2022. The court emphasized that this action is a "very serious matter," remarking that "[t]hese are issues that need to be resolved, and they will be." *See* Ex. 1 (Hr'g Tr. 22:8-11; 25:7-9, *AO Alfa-Bank v. Doe*, 2020 CA 2 003459 (D.C. Super. Ct. Feb. 9, 2022)). The court ultimately granted a limited stay in light of the gravity of the pending criminal charges and Sussmann's potential loss of his law license if convicted. *Id.* 14:8-11. The court stressed that it "anticipate[s] the stay being very brief," noting that the trial is only four months away. *Id.* 10:12-16. The court observed that Alfa Bank would likely obtain relevant evidence from the trial. *Id.* 10:12-16; 24:8-11 ("That's a lot of opportunity for evidence to be presented during trial, which, you know, once it's out, that may actually -- you know, you may some [sic] additional information."). Significantly, the court predicated its limited stay of proceedings, at least in part, on its assumption that Plaintiff would be able to obtain an additional extension of time to serve process on Defendants. *See id.* 9:8-17 ("[A]n order staying enforcement of the proceedings related to the subpoena would certainly be a strong argument in support of extending that time [to serve process] even more.") Absent an extension of time to serve process, Plaintiff will be deprived of additional documents or a privilege log produced by Sussmann.
- **Rodney Joffe.** Evidence released by federal prosecutors reveals that Rodney Joffe played a critical role in the events underlying Plaintiff's Complaint. Plaintiff served Joffe with document and deposition subpoenas and likewise has sought information through subpoenas to Joffe-related companies. *See* Dkts. 98, 99 (Filing # 133511867); 103, 104, 106 (Filing # 135121217); 108, 109, 111 (Filing # 135121794). After Virginia courts rejected Joffe's attempts to resist or delay compliance with Alfa Bank's subpoenas, Alfa Bank deposed Joffe on February 11, 2022, at which time Joffe liberally invoked his constitutional privileges against self-incrimination and declined to answer the majority of questions related to the Complaint. Joffe's counsel indicated on the record that he has reason to believe that the Special Counsel's Office ("SCO") investigation will

conclude in the coming weeks. *See* Ex. 2 (Joffe Feb. 11, 2022 Dep. Tr. 6:16 – 7:6). Accordingly, Plaintiff held the deposition open with the intent of continuing the examination if Joffe’s privilege against self-incrimination extinguishes following the conclusion of the SCO investigation. Joffe’s counsel did not object to re-opening the deposition should Joffe’s current posture change, and indicated that Joffe would be forthcoming with documents and testimony in those circumstances. Absent an extension of time to serve process, Plaintiff will be deprived of Joffe’s documents and testimony unimpeded by assertions of the privilege against self-incrimination.

- **L. Jean Camp.** L. Jean Camp is a computer science professor at Indiana University who played a key role in reviewing and analyzing the DNS computer data underpinning the Complaint. *See* Compl. ¶ 51. Plaintiff first sought discovery from Camp on June 18, 2020. *See* Dkt. 9 (Filing # 109038291). After an initial round of litigation, Plaintiff served Camp with a new subpoena for documents and a separate subpoena for her deposition testimony on June 17, 2021. *See* Dkts. 68, 69 (Filing # 128990754). Camp produced limited responsive documents to Plaintiff but filed a motion to quash the deposition subpoena. The Monroe Circuit Court in Indiana heard argument on Camp’s motion to quash on January 31, 2022 and must render a ruling no later than March 2, 2022. Absent an extension of time to serve process, Plaintiff will be deprived of Camp’s deposition testimony.
- **Peter Fritsch (Fusion GPS).** Plaintiff served document and deposition subpoenas on Peter Fritsch, a principal of the investigative research firm Fusion GPS who played an important role in the events underlying Plaintiff’s Complaint. After nearly seven months of litigation in Maryland court, Fritsch was ordered to provide testimony that he had improperly withheld as privileged at his December 1, 2021 deposition. During the February 14, 2022 continuation of the deposition, Fritsch refused to answer nearly every question on the basis of his privilege against self-incrimination. *See* Ex. 3 (Fritsch Feb. 14, 2022 Dep. Tr. 302 - 444). Fritsch’s counsel explained that Fusion GPS had been cooperating with the SCO investigation for close to one year and that Fritsch, as an owner of Fusion GPS, is a subject of the investigation. *See id.* 445:2-16. Plaintiff held Fritsch’s deposition open and intends to reopen the deposition should the SCO’s investigation conclude in the coming weeks and Fritsch’s Fifth Amendment rights extinguish. Absent an extension of time to serve process, Plaintiff will be deprived of the ability to obtain testimony from Fritsch unencumbered by his assertion of the privilege against self-incrimination.
- **Laura Seago (Fusion GPS).** Laura Seago is an analyst at Fusion GPS who investigated and disseminated false information related to the server allegations described in the Complaint. After the court rejected Seago’s

motion to quash Alfa Bank's deposition subpoena, Seago appeared for her deposition on October 8, 2021 but improperly refused to answer a number of questions on purported privilege grounds. Plaintiff promptly filed a motion to compel Seago to respond to those questions in the District of Columbia Superior Court on October 28, 2021. The Superior Court heard argument on the motion to compel on February 10, 2022. At the conclusion of the hearing, the court set a status hearing for April 7, 2022, *see* Ex. 4 (Hr'g Tr. 104:8-16, *AO Alfa-Bank v. Doe*, 2021 CA 000683 2 (D.C. Super. Ct. Feb. 10, 2022)), and indicated that it would not be in a position to rule on the motion in advance of the March 3, 2022 service deadline. *See id.* 91:24 – 93:6; 98:23 – 99:6. Absent an extension of time to serve process, Plaintiff will be deprived of information that Seago improperly withheld on the basis of privilege.

- **Jacob Berkowitz (Fusion GPS).** Jacob Berkowitz is a former Fusion GPS senior analyst who helped review and promote the server allegations described in the Complaint. Alfa Bank deposed Berkowitz on January 11, 2022. Like his Fusion GPS colleagues, Berkowitz declined to answer the vast majority of relevant questions on the basis of privilege. On January 31, 2022, Alfa Bank filed a motion to compel Berkowitz's withheld testimony and a request for a hearing to resolve the same in the District of Columbia Superior Court. Absent an extension of time to serve process, Plaintiff will be deprived of information that Berkowitz improperly withheld on the basis of privilege.
- **Ilya Zaslavskiy.** Ilya Zaslavskiy investigated the server allegations and provided his findings to various third parties. Plaintiff served Zaslavskiy with a deposition subpoena on November 27, 2021, and he filed a motion to quash thereafter. The motion to quash is currently fully briefed and pending in the District of Columbia Superior Court. On January 27, 2022, Plaintiff filed a motion to set a hearing on the pending matter and awaits a response from the court. Absent an extension of time to serve process, Plaintiff will be deprived of Zaslavskiy's deposition testimony.
- **April Lorenzen.** Evidence released by federal prosecutors reveals that April Lorenzen initially "discovered" the DNS data that forms the basis for Alfa Bank's Complaint, setting into motion the false narrative concocted by the John Doe Defendants. *See* Compl. ¶¶ 43-47. After an initial round of litigation over Alfa Bank's subpoenas for documents and deposition testimony, Alfa Bank served Lorenzen with a new document subpoena on January 20, 2022. Alfa Bank hopes to reach a resolution with counsel for Lorenzen in the near future regarding her compliance with the subpoena. Should negotiations reach a standstill, Plaintiff intends to file a motion to compel production. Absent an extension of time to serve process, Plaintiff will be deprived of important responsive documents in Lorenzen's possession, custody, or control.

- **ZETALytics.** Plaintiff issued document and deposition subpoenas to Lorenzen’s company, ZETALytics, after Lorenzen indicated that ZETALytics possessed information relevant to Plaintiff’s Complaint. After an initial round of litigation, Alfa Bank served ZETALytics with a new document subpoena on January 27, 2022. See Dkt. 133 (Filing # 140539075). Plaintiff is negotiating with ZETALytics and hopes to obtain responsive documents in the near future. Absent an extension of time to serve process, Plaintiff could be deprived of responsive documents in ZETALytics’ possession, custody or control.<sup>1</sup>

#### IV. Good Cause for an Extension of Time to Serve Process

16. As outlined above, Plaintiff continues to diligently search for the information needed to identify, name, and serve Defendants in this action. Though substantial progress has been made to date, Plaintiff requests additional time beyond the March 3, 2022 deadline to continue its efforts in light of the pending proceedings described above.

17. “[A]n affected plaintiff may either seek an extension of the 120-day time limit prior to its expiration or provide good cause for the delay in a hearing held pursuant to a motion filed subsequent to the expiration of the time period.” *Sirianni v. Kiehne*, 608 So.2d 936 (Fla. Dist. Ct. App. 1992). “When a plaintiff shows good cause for failure to serve process within 120 days, the trial court must extend the time for service and has no discretion to do otherwise.” *Roberts v. Stidham*, 19 So.3d 1155, 1157 (Fla. Dist. Ct. App. 2009). “The trial court has broad discretion to

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<sup>1</sup> Plaintiff notes that multiple third parties have accused it, in briefing and correspondence, of violating its duty of candor to this Court and failing diligently to seek the identities of Defendants. These third parties have alleged that Plaintiff failed to inform this Court that an expert that it retained in 2017 identified 321 Internet Protocol (“IP”) addresses associated with the 2017 cyberattacks described in the Complaint and faulted Plaintiff for declining to subpoena the internet service providers (“ISPs”) that correspond to these IP addresses. These allegations are outrageous and false. Plaintiff in fact attached the expert report that includes the description of the 321 IP addresses to its Complaint, which has been pending before this Court for over twenty months. See Compl. Ex. 7, Stroz Friedberg, LLC, *Summary of Cyber Incident Investigation* (July 19, 2017) at 136-141. Plaintiff hid nothing from this Court. Plaintiff has investigated and obtained information related to those IP addresses without needing to resort to formal legal process. That information has not enabled Plaintiff to identify Defendants, which is why Plaintiff continues its discovery efforts.



extend the time for service even when good cause for failing to meet the 120-day deadline has not been shown.” *Id.*

18. Florida courts have readily observed that courts should not use the 120-day rule to prematurely terminate cases that are being actively and diligently adjudicated. Courts have found a plaintiff’s diligent efforts to locate and serve the defendants amount to good cause for subsequent extensions of the service deadline. For example, in *Gary J. Rotella & Assocs., P.A. v. Andrews*, 821 So.2d 468, 470 (Fla. Dist. Ct. App. 2002), the court found good cause for granting multiple extensions of the service deadline where “the record plainly establishes that plaintiff was attempting to efficiently move the case through the courts.” The court emphasized that “the trial judge did not indicate any necessity to use *administrative tools to prod a quiescent case into the active adjudicatory process*,” as “the case could not have moved any faster than the lawyer was already moving it.” *Id.* (emphasis added); *see also, e.g., Amaran v. Marath*, 34 So.3d 88, 91 (Fla. Dist. Ct. App. 2010) (reversing trial court’s dismissal of a case for failure to comply with the 120-day rule and noting that the plaintiff’s extensive efforts to serve a defendant, which included discovery requests, successful motions to compel for information on the defendant’s whereabouts, and an agreement to serve the defendant at his deposition that was not honored, amounted to good cause).

19. By filing this motion, Plaintiff seeks an extension of time before the expiration of the court-imposed deadline of March 3, 2022.

20. Plaintiff respectfully submits that its efforts to date, as detailed herein, constitute good cause to extend the time to serve process on Defendants. Plaintiff has dedicated a vast amount of time and resources to identifying the John Doe defendants, including through issuing over 75 third-party subpoenas for documents and depositions, deposing nine third parties, and

litigating compliance with subpoenas in a number of separate proceedings. Denying an extension in these circumstances would severely prejudice Plaintiff by extinguishing its ongoing discovery efforts, including pending litigation in which it seeks to prevent third parties from improperly refusing to comply with subpoenas—many of which were served long ago. This is not a “quiescent case” needing prodding; rather, discovery efforts are actively underway and key proceedings are nearing resolution. *Gary J. Rotella & Assocs., P.A.*, 821 So.2d at 470. Accordingly, the Court should extend Plaintiff’s time to effectuate service of process. *See Roberts*, 19 So.3d at 1157.

21. Even if Plaintiff has not shown requisite good cause, the Court should extend Plaintiff’s time to effectuate service pursuant to the Court’s broad discretion. *Id.*

WHEREFORE, Plaintiff respectfully requests that the Court enter an order granting Plaintiff a final extension of time through and to July 1, 2022 within which to serve process in this action, and grant Plaintiff such other and further relief as the Court deems just, equitable, and proper.

Dated: February 18, 2022

Respectfully submitted,

**NELSON MULLINS**

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*/s/ Terrance Anderson, Jr.*

**Terrance Anderson, Jr.**

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**Margaret E. Krawiec**

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NOT A CERTIFIED COPY

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on this 18th day of February, 2022, I electronically filed the foregoing document with the Clerk of the Court using the Florida Courts E-Filing Portal. I also certify that the foregoing document will be served on the Defendants together with the initial process in this action.

/s/ Terrance Anderson, Jr.  
Terrance Anderson, Jr.

NOT A CERTIFIED COPY

# **Exhibit 1**

*NOT A CERTIFIED COPY*

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

-----X  
: AO ALFA-BANK, : Docket Number: 2020 CA2 003459  
: :  
: Plaintiff, :  
: :  
: vs. :  
: :  
: JOHN DOE, et al., :  
: :  
: Defendants. :  
: :  
: Wednesday, February 9, 2022  
-----X Washington, D.C.

The above-entitled action came on for hearing before the HONORABLE SHANA FROST MATINI, Associate Judge, in Courtroom Number 517.

APPEARANCES:

On Behalf of the Plaintiff:

MICHAEL McINTOSH, ESQUIRE

Washington, D.C.

On behalf of the Defendant:

STEPHEN A. BEST, ESQUIRE

RACHEL O. WOLKINSON, ESQUIRE

Washington, D.C.

22-00403

P R O C E E D I N G S

1  
2 THE DEPUTY CLERK: Your Honor, now calling the  
3 matter of AO Alpha-Bank versus John Doe, et al., case number  
4 2020 CA 003459.

5 Parties, please state your name for the record  
6 beginning with the plaintiff.

7 MR. McINTOSH: Good morning. Michael McIntosh on  
8 behalf of plaintiff AO Alpha-Bank.

9 THE COURT: Good morning.

10 MR. BEST: Good morning, Your Honor. Stephen Best  
11 and Rachel Wolkinson on behalf Michael Sussman, and we're  
12 from the law firm of Brown Rudnick.

13 THE COURT: Okay. Good morning. All right. A  
14 couple of preliminary matters.

15 First, I just want to thank the parties for their  
16 accommodation of me. I know I've had to move this hearing  
17 once. It's not something that I like to do, and I do  
18 respect the parties' time. I respect that the issues are  
19 important to the parties. It was not my intent to push this  
20 off any further knowing that things had been pending for  
21 some time.

22 I can just say it's been a rough several months  
23 that will hopefully get a little bit better now that we have  
24 five new colleagues coming on board for Superior Court.  
25 But, you know, we're still in the hole by, I think, 11

1 judges, even with that addition, and so thank you for that.

2 Also, and just so you know how this all came to be  
3 before me, I mean, generally, judge in chambers serves a  
4 very important purpose at Superior Court, and it handles  
5 many things and does so efficiently. This is just the type  
6 of case that's not well-suited for judge in chambers for  
7 many reasons that I think are just not obvious to the  
8 parties.

9 And so, by putting it on a regular civil calendar,  
10 you now have a dedicated judge, not the revolving door that  
11 you have in judge in chambers, and hopefully that will be a  
12 benefit to the parties because there will be continuity, and  
13 you also know who you're dealing with.

14 And so, with that aside, I did want to start on  
15 the Motion to Stay because obviously that is an important  
16 issue. And I also note that there is a Motion for Leave to  
17 File a Reply. That motion is opposed.

18 I'm going to grant the Motion for Leave because I  
19 did through the reply. I mean, quite frankly, the issues of  
20 the reply flagged for the Court were, to me, obvious ones I  
21 reviewed to be opposition. And I would just also note that  
22 there is a movement to amend Rule 12(i) so that replies are  
23 permitted for any type of motion and not just the ones that  
24 are currently delineated.

25 I wouldn't be surprised if you'd see that



1 amendment very soon, and so my ruling is also within my  
2 discretion, consistent with what I anticipate the practice  
3 of the Superior Court going forward. Also, that brings us  
4 more in line with our local federal court practices.

5 And so the Motion to Stay is based on the fact  
6 that Mr. Sussman is currently under indictment pending trial  
7 in the U.S. District Court for one count of making false  
8 statements to the FBI.

9 Mr. Sussman argues that the factual matters  
10 addressed by the subpoena that was served upon him are  
11 closely related to the U.S. District case. Alpha disagrees  
12 and asserts the Court should exercise its discretion and  
13 decline to enter a stay.

14 And so the factors that are cited by Alpha, there  
15 are four factors the Court had to consider in determining  
16 whether to grant a stay of criminal proceedings when there  
17 are potentially parallel criminal proceedings. Here -- or  
18 first, the relationship between the civil and criminal  
19 action.

20 As to the claims that the criminal and civil  
21 proceedings are not closely related, this is a surprising  
22 representation for Alpha to make, given that Alpha was the  
23 one to bring the criminal charges to the Court's attention  
24 by filing what was styled as a notice of supplemental  
25 authority in support of its Motion to Compel.

1           Of course, there is no Supplemental Authority  
2 here. A criminal indictment is not an opinion of the Court.  
3 It's just a charge that the prosecuting authority is  
4 bringing against an individual with facts that are alleged  
5 to support that charge. It's no more authority than  
6 attaching a complaint in a civil matter. But that's just a  
7 mischaracterization.

8           But in any event, while the charge in the  
9 indictment is making a false statement to the FBI, it's all  
10 predicated on the other actions that Mr. Sussman is alleged  
11 to have participated in, and they're outlined in the  
12 indictment, and they relate to Alpha's subpoena to Mr.  
13 Sussman.

14           And, you know, in the notice of supplemental  
15 "authority," Alpha has asserted that the indictment amply  
16 demonstrates Mr. Sussman's clear relevance to the allegation  
17 in Alpha-Bank's underlying complaint. I mean, that's a  
18 power statement that the cases are closely related.

19           And Alpha further states in its notice that the  
20 indictment destroys the pillar of Mr. Sussman's argument  
21 that he is an innocent third party. Which, quite frankly,  
22 appears to the Court that Alpha is taking a position that an  
23 indictment somehow proves guilt, which, of course, does not.

24           Then in its opposition to the Motion to Stay,  
25 obviously, Alpha tries to backtrack from, essentially,

1 urging the Court to use a pending criminal charge as a  
2 justification to enforce a subpoena. And instead of arguing  
3 that the indictment amply demonstrates why the subpoena  
4 should be enforced and citing a number of specific  
5 allegations in the indictment, Alpha now characterized the  
6 indictment as containing superfluous allegations, and the  
7 Court is not persuaded by this flip-flopping in the  
8 indictment.

9 Plainly, it is intended to methodically lay out a  
10 theory of criminal liability that in many ways complements  
11 Alpha's own theory that it's pressing in seeking to gain  
12 information for its civil case.

13 And so I'll just point to several assertions in  
14 the indictment that Alpha raised in its notice. For  
15 example, Mr. Sussman's alleged involvement in tasking  
16 researchers to search internet data for information about  
17 Trump's potential ties to Russia. I mean, to me, this is  
18 directly related to Subpoena Requests 1, 2, 3, 4, 5, 6, 7,  
19 and 8.

20 Also, Mr. Sussman's involvement in the drafting,  
21 reviewing, and revising of the white paper related to the  
22 Alpha-Bank allegations that Mr. Sussman later provided to  
23 the FBI. That's related to Subpoena Request 10. Mr.  
24 Sussman's meeting with the FBI where he allegedly stated  
25 that he was not doing work for any client related to the

1 allegations. This relates to Subpoena Request 8, 13, and  
2 14.

3 Mr. Sussman's involvement with others to  
4 disseminate the Alpha-Bank allegations to the media. That's  
5 related to Request 13. And Alpha also raises that Mr.  
6 Sussman allegedly conveyed to another Government agency that  
7 he was not acting on behalf of a client. And this again  
8 relates to Requests 13, 14, and 15.

9 The subpoena by its own terms is, of course, as  
10 broad as it can possibly be. It defines communication as  
11 being used in the broadest sense. The term document is at  
12 least as expansive as its defined by the Florida Rules of  
13 Civil Procedure. The terms all, any, and each shall be  
14 construed in the broadest sense possible.

15 And so the breadth of the subpoena demonstrates  
16 that Alpha's characterization in its opposition to the  
17 relief they requested is limited in nature is simply not the  
18 case.

19 And so the Court here finds that there is a very  
20 close relationship between the criminal charges. And as the  
21 D.C. Circuit recognized in the *SEC versus Dresser Industries*  
22 case, which both parties rely on, the strongest case for  
23 deferring civil proceedings was where the party under  
24 indictment for a criminal offense is required to defend a  
25 related civil matter, which would implicate Mr. Sussman's

1 Fifth Amendment privilege.

2 And also, looking at the burden on the Court,  
3 which is the second factor that Alpha has said the Court  
4 should consider. I also find that this factor weighs in  
5 favor of staying the civil matter.

6 If, for example, the Court did not impose a broad  
7 stay, that would likely open the door for numerous discrete  
8 challenges as to whether certain requests, certain documents  
9 implicate the privilege. And this concern is much more than  
10 hypothetical given the apparent inability of the parties --  
11 and I'm just looking at the stack of papers I have here that  
12 were filed, most of which, I'll just say, the filings tend  
13 to devote the first half to complaining about the other  
14 side, casting dispersions on the other side, and a lot of  
15 rhetoric.

16 It's usually not until about Page 10 where I  
17 actually get anything that helpful to the Court deciding the  
18 actual issues. And so, like I said, the concern is more  
19 than hypothetical given that the parties don't seem to be  
20 able to work together.

21 And this concern was recognized by Judge Kotelly  
22 in the stated *Gaither versus District of Columbia*, 2005 U.S.  
23 District Court case, where she noted that the potential for  
24 additional motions practice on such discreet issues could  
25 end up being duplicative and unnecessary; that the civil

1 matter was not stayed until the completion of the related  
2 criminal trial, and the same concern is present in this  
3 case, and so factor two weighs in favor of the stay.

4 Third factor is hardship or inequalities of the  
5 parties. I would note that, when I checked yesterday, Mr.  
6 Sussman's criminal trial is set for May 16th of this year.  
7 That's a little over three months from now.

8 Alpha's concern in its brief was that it was  
9 running out of time to identify and serve the co-defendants  
10 in Florida, and that concern does not appear particularly  
11 compelling. I know that, obviously, these briefs have some  
12 age on it. I was able to access the docket in Florida, and  
13 it appears that that November deadline, I believe it was  
14 that was previously set, has already been continued.

15 Obviously, an order staying enforcement of the  
16 proceedings related to the subpoena would certainly be a  
17 strong argument in support of extending that time even more.  
18 And, quite frankly, the Court cannot find that a plaintiff's  
19 desire to pursue a civil suit for damages is at the same  
20 level as a criminal defendant's constitutional right to  
21 avoid self-incrimination.

22 And I would also note that this case is  
23 distinguishable from other cases where, for example, no  
24 indictment had yet been filed and the Government was merely  
25 investigating a possible criminal case. There are a few

1 District Court cases that touch on this issue, including  
2 *Barry Farm Residence Council versus U.S. Department of Navy*,  
3 and that was in 1997, a U.S. District Court case here in our  
4 federal court.

5 Unlike there where there was an investigation,  
6 here, there is -- I'm sorry. Mr. Best, I saw your lips  
7 moving. Were you intending to say something?

8 MR. BEST: No. I'm just talking to my colleague,  
9 Ms. Wolkinson, who's next to me.

10 THE COURT: Okay. I just wanted to make sure.

11 MR. BEST: Thank you, Your Honor.

12 THE COURT: Here, there's both an indictment and  
13 there is, in fact, a trial date set. And so, here also,  
14 another issue is the duration of the stay. I anticipate the  
15 stay being very brief. As I said, a trial date is eminent.  
16 Only four months, and that's pretty modest.

17 And then I would just note it's a different  
18 situation than what the D.C. Circuit examined in *McSurely*  
19 *versus McClellan*, which is a 1970 case, 426 F.2d 664, where  
20 it said the Court has broad discretion in granting or  
21 denying a stay as to coordinate the business of the Court  
22 efficiently and sensibly; that that discretion may be abused  
23 by a stay of indefinite duration or in the absence of a  
24 pressing need.

25 And so I, of course, do not intend to impose an

1 indefinite stay here. I think that it's -- you know, we're  
2 -- and there's also case law that addresses whether a stay  
3 should be continued if an appeal of a criminal conviction,  
4 for example, is brought. And I think that situation is very  
5 different because, at that point, there is a verdict, and I  
6 would be, I think, less inclined to continue a stay at that  
7 point.

8 But I recognize the Supreme Court has said in the  
9 *Landis* case that Mr. Sussman bears a high burden here, and I  
10 do think that that burden has been met. And, for those  
11 reason, I'm going to grant the Motion to Stay and set a  
12 further date for the end of May. I'm not sure how long the  
13 criminal trial is expected to last.

14 But I -- again, my goal here is not to have a  
15 lengthy or indefinite stay. It's just to get past this  
16 criminal charge, and then see where things are at.

17 I also -- you know, I don't necessarily know,  
18 given the passage of time from when these motions were filed  
19 back in, you know, August and September, whether anything  
20 has been happening with the parties.

21 I know there were some requests of the Court to  
22 set hearings. I believe you were last before Judge Rankin,  
23 and that's when I got the call from Judge Epstein indicating  
24 that he needed to transfer this case.

25 MR. BEST: No, Your Honor. There have not been



1 any discussions. The one update that we can afford Your  
2 Honor is we did check the docket, too, and not one John Doe  
3 has been named since the filing, which was 2020, I believe,  
4 in this case.

5 And we have good faith reason to believe that they  
6 were, in fact -- that they could name John Does if they  
7 wanted to at this point, but none have been named. But  
8 that's the only update I have for Your Honor.

9 MR. MCINTOSH: Well, Your Honor, let me respond.  
10 I mean, I don't think that's in any way, shape, or form an  
11 update. I don't know where Mr. Best is getting this good  
12 faith belief, but it's patently untrue.

13 The Florida Court has been presiding over the  
14 underlying action and reviewing Alpha-Bank's discovery  
15 efforts. The extension grants are not a rubber stamp. The  
16 Court has to find good cause to give Alpha-Bank an extension  
17 of time to serve process on the defendants, and it's found  
18 good cause four separate times. That's true.

19 But each time Alpha-Bank comes back to the Court,  
20 it's an incrementally higher burden to show that another  
21 four months is warranted. And here, Alpha-Bank is moving  
22 toward complying with that March 3rd deadline, and so the  
23 March 3rd deadline is a real deadline.

24 THE COURT: Well, I mean, I don't know whether --  
25 what information Alpha-Bank has to seek to name a actual

1 individual. I -- my -- that's, quite frankly, not my  
2 concern here, and I'm simply addressing the issue of the  
3 criminal matters.

4 MR. McINTOSH: Understood, Your Honor. And I  
5 don't know if Your Honor will give us the opportunity to  
6 respond to Your Honor's ruling. I'm happy to make a few  
7 points that perhaps weren't sufficiently clear in our  
8 briefing.

9 THE COURT: I mean, you're welcome to make  
10 whatever record you like.

11 MR. McINTOSH: Sure. Okay. Thank you, Your  
12 Honor. I'll be brief, but I'll raise a few points.

13 First of all, the subpoena at issue here was  
14 served on Mr. Sussman back in 2020, August 2020. So the  
15 subpoena was served.

16 THE COURT: You don't need to repeat anything that  
17 you've already written about because there's a lot written  
18 here.

19 MR. McINTOSH: Understood, Your Honor, and this  
20 hopefully, will not be duplicative of our briefing.

21 But Mr. Sussman -- the indictment of Mr. Sussman  
22 was returned 13 months after he was served with the  
23 subpoena. In any normal proceeding, compliance with that  
24 subpoena would have been long carried out.

25 So, here, Mr. Sussman, in effect, is benefiting

1 from the fortuity, at least in this circumstance, of a  
2 federal indictment giving him an excuse to further delay  
3 compliance with the subpoena, and we respectfully --

4 THE COURT: I'm sorry. I don't think anyone would  
5 welcome criminal charges and -- as a reason to not have to  
6 produce some documents.

7 MR. McINTOSH: Certainly, Your Honor. And I --

8 THE COURT: And, obviously, that is not only could  
9 he actually be incarcerated if he is found guilty, he would  
10 lose his license to practice his -- I am just having a hard  
11 time with that.

12 MR. McINTOSH: Understood, Your Honor. And that's  
13 not the point I'm trying to make. Certainly, no one would  
14 welcome criminal charges or a federal indictment.

15 My point, Your Honor, is more that had Mr. Sussman  
16 complied with the subpoena in an expeditious manner, as  
17 non-parties across the country do every day, we would be not  
18 -- we would not be in this situation where there's an  
19 apparent collision between an ongoing federal criminal trial  
20 and these proceedings.

21 But second, just I would also like to clarify a  
22 point from the briefing. Your Honor, you mentioned that  
23 Alpha-Bank makes the point, which Your Honor deemed  
24 inconsistent, that on the one hand that Alpha-Bank's  
25 position is that the allegations in the indictment support

1 and closely relate to the underlying complaint. But, on the  
2 other hand, Alpha-Bank is trying to argue that the criminal  
3 case is not substantially related to these proceedings, and  
4 I'd like to make two points in response.

5 First, Alpha-Bank readily acknowledges and has  
6 stated to Your Honor that the allegations in the indictment  
7 do overlap; certainly, substantially overlap with the  
8 allegations in the complaint. But the test is to look at  
9 the charge in the indictment, not the allegations in the  
10 indictment, because the charge is what exposed the  
11 defendant, herein Mr. Sussman, to criminal charges.

12 THE COURT: And how does one prove the charge?

13 MR. McINTOSH: I'm sorry, Your Honor?

14 THE COURT: How does one prove a charge? They use  
15 the facts.

16 MR. McINTOSH: Correct. And the facts --

17 THE COURT: (Crosstalk) the charge, and that's  
18 just so.

19 THE COURT: Yes, Your Honor. But the facts here,  
20 the charge is for making a single false statement at a  
21 single meeting, and that statement was that Mr. Sussman  
22 apparently indicated that he did not attend that meeting on  
23 behalf of this specific client.

24 Now, that statement has nothing to do with  
25 Alpha-Bank's complaint. Whether Mr. Sussman told the FBI

1 officials that he appeared at that meeting of his own  
2 volition or whether he appeared at that meeting on behalf of  
3 a particular client, that's the charge and those are the  
4 facts underpinning that charge. And those facts have  
5 nothing to do with Alpha-Bank's underlying suit.

6 THE COURT: Okay.

7 MR. McINTOSH: I should add that they have even  
8 less to do, if that's possible, with the limited request  
9 before Your Honor. Right now, Alpha-Bank requests two  
10 rulings. First, Alpha-Bank is requesting a privilege log.  
11 Second, Alpha-Bank is requesting the de-designation of four  
12 documents.

13 And Mr. Sussman has not explained how, even if  
14 this Court rules in favor of Alpha-Bank, how producing a  
15 privilege log, one that he's already produced to the  
16 Government in the criminal proceedings, how producing that  
17 privilege log in response to a document production made  
18 seven months ago, how that would imperil his criminal  
19 defense. Nor has he suggested any way that the  
20 de-designation of four technical documents would jeopardize  
21 his criminal defense.

22 And, I think, if you zoom out to the meaning of  
23 this four-part standard, the overarching question is, will  
24 continuing these civil proceedings jeopardize the criminal  
25 defendant's right to present a defense. And, here, I think

1 the answer is a resounding no.

2 Mr. Sussman has not made any showing that even  
3 ruling's for Alpha-Bank's favor -- in Alpha-Bank's favor on  
4 these two limited issues would any way affect his  
5 presentation of his defense at the criminal trial, and  
6 that's the overarching inquiry. And I won't repeat what  
7 we've stated in our briefs as to each particular prong, but  
8 I think that global inquiry is what informs the analysis  
9 here.

10 And looking at it at that high level, our position  
11 is that Mr. Sussman simply hasn't shown that continuing with  
12 these proceedings would affect, let alone negatively affect,  
13 his criminal trial.

14 THE COURT: Well, I mean, I think that a lot of  
15 what you said actually supports why a stay is appropriate.  
16 What we're talking about here is the fact that he -- as a  
17 criminal defendant, Mr. Sussman has -- there's no  
18 requirement whatsoever that he produce discovery, that he  
19 have information out there that he may give you statements.

20 And, in fact, he's strongly advise not to do  
21 anything that could possibly be used against him. And so,  
22 when you're talking about what the Government must prove and  
23 any defense that Mr. Sussman has, he doesn't have to prove  
24 you any defense.

25 And the -- and your -- Alpha is seeking

1 information that relates to the FBI meeting, that relates to  
2 any client, that -- I mean, it goes right to -- it was  
3 Alpha's -- Alpha has served, like I said, understandably  
4 broad subpoena. You're looking for information. You want  
5 anything out there. I get that.

6 And, you know, whether this should have been --  
7 you know, the subpoena should have been complied with  
8 earlier, that is another issue before the Court. Because,  
9 quite frankly, if I find that there's no requirement to  
10 produce a privilege log here, which is not a finding that  
11 I'm going to make at this time, because it's premature,  
12 given that I am entering a stay here.

13 But, you know, I understand that there's a choice  
14 of law or (indiscernible) that's being asserted here, and  
15 you know, quite frankly, if I decide that some of these  
16 issues not in Alpha's favor, that could also moot out some  
17 of what we're talking about.

18 But I think that under these circumstances where  
19 we have a criminal trial in a couple months related to the  
20 exact same scenario that all relates to that same scenario,  
21 it would be a violation of Mr. Sussman's rights if I were to  
22 deny the request for a stay.

23 MR. McINTOSH: Yes, Your Honor. And I just want  
24 to briefly address -- so Alpha-Bank is not presently  
25 requesting the production of any documents.

1           Certainly, if Mr. Sussman produces the privilege  
2 log, Alpha-Bank challenges certain withholdings on that  
3 privilege log, then the story might be different.

4 Absolutely. And that's, you know, not something we're  
5 prepared to argue today.

6           But currently, Mr. Sussman has complied with the  
7 subpoena by producing all responsive documents, and he did  
8 so last July. So here, even if the Court rules in favor of  
9 Alpha-Bank, Mr. Sussman would not be producing any new  
10 testimonial documents that could somehow relate to his  
11 criminal case.

12           At most, certain documents would be de-designated  
13 and he would produce a privilege log, again, one that he's  
14 already provided to the Government and nothing that would,  
15 you know, come as any surprise to anyone participating in  
16 those criminal proceedings.

17           And the other point that I would add is that I  
18 appreciate Your Honor's insistence that the stay here will  
19 be limited. But entry of any stay effectively results in  
20 the denial of Alpha-Bank's motions and the grant of Mr.  
21 Sussman's motions.

22           As I mentioned, Alpha-Bank intends to comply with  
23 the March 3rd deadline to serve, name, identify defendants.  
24 And so entering any stay that lasts past March 3rd  
25 effectively denies Alpha-Bank relief here and permits Mr.



1 Sussman to run out the clock on a subpoena that now has been  
2 pending over 17 months.

3 THE COURT: Well, I mean, you don't -- you could  
4 certainly name other defendants later if additional  
5 information reveals that there are other Does out there that  
6 you're not aware of at this time.

7 MR. McINTOSH: That --

8 THE COURT: The discovery process is all about --  
9 I mean, especially, if you are able to start to name  
10 individuals, and then you have discovery in the civil case  
11 in Florida, I imagine that your discovery there would be as  
12 broad as it is in these subpoenas as it's intended to be.

13 And quite frankly the -- I know, in his replay,  
14 Mr. Sussman raised the issue of he's already produced  
15 documents, and so that also undercuts the factor two -- or  
16 factor three rather, the prejudice to the other side.

17 You've received documents here in response to the  
18 subpoena. And then what just sort of remains are, you know,  
19 whether the privilege log should be produced and, if I did  
20 order a privilege log, I imagine there would then be  
21 challenges to the entries on those logs, and that's  
22 something that, you know, I would, of course, deal with.

23 And then also, as far as the -- you know, the un-  
24 designating certain documents, I mean, that's an issue too  
25 that, you know, I would need to focus. But, I mean, at this

1 point, I want to see these criminal proceedings -- I want to  
2 see trial, and then decide where to go from there. And as I  
3 said, the factors may be slightly different at that point.

4 MR. McINTOSH: Understood, Your Honor. I just  
5 want to make one brief point in response.

6 Our position is that we're entitled to the  
7 additional information requested of Mr. Sussman. The  
8 privilege log, the de-designation of these documents, which  
9 will assist our discovery efforts because they will -- that  
10 will allow us to disclose those documents to other third-  
11 party witnesses after depositions, which, as Your Honor  
12 knows from reading the briefs, has been a huge impediment to  
13 our discovery efforts to date.

14 We think we're entitled to --

15 THE COURT: Just so you know, I'm very clear about  
16 your position, and it has been made very clear that you  
17 believe that you're entitled to this, so I get that.

18 MR. McINTOSH: Absolutely. No. Understood, Your  
19 Honor, and I apologize, and I'll be brief. I just want to  
20 make the point that regardless of whether Alpha-Bank can  
21 name additional defendants past the March 3rd deadline, the  
22 deadline is a deadline, and Alpha-Bank needs to name at  
23 least some defendants ahead of that deadline. And our  
24 position is that entry of a stay here will impede those  
25 efforts by precluding us from obtaining information to which

1 we're entitled.

2 THE COURT: Well, I mean, I don't know Florida  
3 civil procedure rules, but I imagine that leave to amend is  
4 as freely granted there as it is here. And this is a  
5 progress. Again, when considering a civil litigant's suit  
6 for damages up against a criminal defendant's rights, the --  
7 you can't really compare the two.

8 I get that Alpha is very determined to clear  
9 itself. If the allegations that Alpha has made in these  
10 parallel proceedings as well in the Florida Courts are  
11 correct, you know, that is a very serious matter.

12 I know that both sides here -- and what is, quite  
13 frankly, just too much mudslinging, you know, accuses the  
14 other side of being bad actors and threatening to undermine  
15 the democratic process by way of either, you know, tampering  
16 with an election or just undermining democracy in general,  
17 those are all very serious allegations. I get that.

18 Alpha, obviously, is entitled to its day in court.  
19 But we do, in our system, have a priority over days in  
20 court, and the priority always weighs in favor of criminal  
21 proceedings. And so I don't know -- and perhaps Mr. Best  
22 might be in a better position to advise the Court as to what  
23 the anticipated length of the criminal trial is.

24 MR. BEST: Your Honor, I did speak to Latham, and  
25 they're expecting it to be a three-week to four-week trial.

1 THE COURT: Hmm.

2 MR. BEST: Maybe two weeks. But it's in U.S.  
3 District Court D.C. So, depending upon the COVID rules at  
4 that time, that will, you know, play a role as to the length  
5 of the trial.

6 But I would recommend, since it's set for the  
7 16th, that we set it for -- or we set a status or a hearing  
8 at the end of May.

9 And then I'll take the burden of advising the  
10 Court as to what the U.S. District Court has said as to the  
11 length of the trial and advising you accordingly. I mean,  
12 if it's got to be moved, then we're talking one to two  
13 weeks, not one to two months.

14 THE COURT: And I do know that trials are taking  
15 place there. One apparently started yesterday. They --  
16 thank you, they are on the schedule. I think one was  
17 supposed to start today, too. And so -- and things are  
18 moving, I think, COVID-wise in a very positive direction.

19 MR. BEST: Yes, Your Honor.

20 THE COURT: I'm reluctant to say that out loud  
21 because that's -- the one thing the last two years have  
22 taught us is that we shouldn't take anything for granted.

23 MR. BEST: Yeah.

24 THE COURT: Okay. So what if we were to set a  
25 status for the first Friday in June, looking at June 3rd?

1 MR. BEST: That's fine, Your Honor.

2 MR. McINTOSH: Your Honor, I mean, to say the  
3 obvious, we object to continuing things that far. But that  
4 date also works for us, and we would plan to participate.

5 THE COURT: Okay. I mean, I just don't see a  
6 reason for it coming back before May 16th. And given the  
7 estimate of a four-week trial, which, quite frankly, Mr.  
8 McIntosh, that may work in your favor. That's a lot of  
9 opportunity for evidence to be presented during trial,  
10 which, you know, once it's out, that may actually -- you  
11 know, you may some additional information.

12 MR. McINTOSH: Yes, Your Honor. And I'd also add,  
13 and I know Your Honor will balance the factors perhaps  
14 differently, but an acquittal, obviously, is only one of  
15 three outcomes. And, certainly, if Mr. Sussman is acquitted  
16 in mid-June, we can move forward here with no barriers.

17 But if there's a hung jury or Mr. Sussman is  
18 convicted, I would imagine he'll take the position that the  
19 Fifth Amendment privilege persists until either he's tried  
20 again, or the prosecution dismisses the indictment, or he's  
21 sentenced. So I think this is potentially about a year  
22 delay.

23 THE COURT: Well, I mean, again, I think that -- I  
24 mean, a hung jury, that's a different story. A conviction  
25 where a defendant might appeal, the variables might be

1 different there. I'm not sure.

2 My goal isn't to just not have this move forward.  
3 I'm doing my best here to apply the facts as I see them to  
4 the law as I know it and make the best possible decision  
5 based on that.

6 And so I understand Alpha is anxious and for good  
7 reason. I get it. I want to emphasize that I don't -- you  
8 know, I'm not saying that you're here without good reason.  
9 These are issues that need to be resolved, and they will be.

10 MR. McINTOSH: I appreciate that, Your Honor. If  
11 I may, you know, I would just say that as Your Honor  
12 acknowledges, the burden here that Mr. Sussman bears is  
13 high, and he has to demonstrate extraordinary circumstances.

14 And I'm not aware of any suggestion from Mr.  
15 Sussman beyond boiler plate recitations of how proceeding  
16 with these limited issues before this Court will jeopardize  
17 his criminal defense. And Mr. Sussman appears to take the  
18 position that any criminal defendant who's involved in any  
19 civil proceedings anywhere is entitled to a stay. And I  
20 just don't think that's right under case law.

21 THE COURT: Well, I haven't analyzed -- it says  
22 there are simply criminal proceedings. What I've done is I  
23 have looked very close at the allegations that are set forth  
24 in the indictment and the request that Alpha has served and  
25 the remaining issues.

1           Because, you know, again, even once we get past  
2 the pending criminal charges, there's still issues of  
3 attorney/client privilege. There's -- I mean, this is --  
4 this does not end the Court's inquiry and the Court's  
5 analysis of what needs to be done.

6           And I recognize that this may involve, at some  
7 point, an in-camera review. It may -- there's a lot that  
8 might be asked of the Court, and that's fine at the  
9 appropriate time.

10           And, right now, given the -- if the closeness of  
11 Alpha's allegations, I mean, quite frankly, it's -- reading  
12 Alpha's submissions and what the -- and that compared to the  
13 indictment, there's -- it's almost like they were written by  
14 the same people in some way.

15           I'm not saying they were, but there's the theory  
16 there is the same. And I think it's important that the  
17 F.B.I. is examining this.

18           These are, like I said, these are extremely  
19 serious issues, and I'm not, you know, casting judgement on  
20 off this complaint, the indictment, or anything like that.  
21 That's not my role here.

22           MR. McINTOSH: No. I fully understand, Your  
23 Honor, and fully appreciate the prospects of in-camera  
24 review in some future proceedings.

25           But I think the important part is those are in the

1 future, and right here we're not asking for an in-camera  
2 review. We're asking only for a privilege log and the  
3 de-designation of four documents.

4 And we think, certainly, we can cross that bridge  
5 if we get to it because, you know, an in-camera review or a  
6 Motion to Compel based on a privilege log, you know, would  
7 cause a great collision with Mr. Sussman's Fifth Amendment  
8 privileges, and that's an issue for another day in our  
9 position though.

10 We think that these limited requests before the  
11 Court can be ruled on without have to broach those, you  
12 know, perhaps thornier issues.

13 THE COURT: I understand. So does June 3rd work?

14 MR. McINTOSH: Yes, Your Honor.

15 THE COURT: Can we make that 11:30?

16 MR. McINTOSH: Yes.

17 MR. BEST: Yes, Your Honor.

18 THE COURT: Okay. And, I'll say this again, I  
19 want to assure the parties that you have my assurance that  
20 once I am -- I find it appropriate to get to the issue here,  
21 I will prioritize the issues because I recognize that there  
22 has been delay here.

23 It's unfortunate that this matter didn't get  
24 transferred to a civil calendar sooner rather than later. I  
25 know how frustrating it is to have stuff out there and to be



1 waiting for the Court to decide.

2 I make every effort I can to not have motions  
3 languishing for too long, and with over 400 cases, that can  
4 be a challenge. But I recognize that people need and want  
5 and are entitled to a decision.

6 And so just know this is not me trying to  
7 backburner things. This is me trying to do what I believe  
8 is correct under the circumstances and with the assurance  
9 that you will get your rulings.

10 MR. BEST: Your Honor picked up this case about  
11 two to three weeks ago, if not sooner. It's clear you've  
12 read and extraordinarily voluminous set of pleadings in this  
13 case. And thank you for your prompt attention to this  
14 matter.

15 THE COURT: One think I would just suggest to the  
16 parties as we proceed forward. I think it might be helpful  
17 that you understood my approach to resolving disputes and  
18 because it might differ from some of my colleagues.

19 But I really prefer to focus on the relevant facts  
20 and the applicable law. When I see that a lot of effort is  
21 being made to cast -- to put the others -- to cast the other  
22 side in an unpleasant light, I actually consider that to be  
23 borderline unethical insofar as I see that as an attempt to  
24 bias the Court against a party.

25 The Court is required to focus -- to treat every

1 litigant equally and to make decisions without regard to the  
2 individuals, but based on the facts and the law. That's  
3 something that I take very seriously.

4 And so when on the one side, you know, I hear a  
5 party arguing, oh, Mr. Sussman's a criminal. He's a liar.  
6 He's this, that, and the other.

7 And on the other side I hear, oh, Alpha-Bank is  
8 run by a bunch of oligarchs who are seeking to destroy  
9 democracy as we know it, that to me is very distracting, and  
10 I do not want my decisions and they will not be based on  
11 this idea that one side is less entitled to be before the  
12 Court and be treated as an equal than the other.

13 So that's something that I find very troubling and  
14 I just want to encourage you moving forward to keep that in  
15 mind.

16 MR. McINTOSH: Thank you, Your Honor.

17 THE COURT: (Indiscernible) and point me in the  
18 direction of the law, and that's how I would prefer.

19 MR. McINTOSH: Thank you, Your Honor. We look  
20 forward to that discussion of the law, which I'm prepared  
21 to.

22 I argued today understanding that won't happen,  
23 but, you know, we think the legal principles overwhelmingly  
24 support our positions and look forward to arguing at a later  
25 date.

1 THE COURT: Okay. Thank you. I appreciate you  
2 taking that under consideration, and I look forward to  
3 seeing the parties back in early June.

4 MR. BEST: Thank you, Your Honor.

5 THE COURT: All right. Thanks everyone. Have a  
6 good day.

7 MR. BEST: You too.

8 THE COURT: The other motions are going to be  
9 stayed as well. So Motion for Leave to File a Reply is  
10 granted. Motion to Stay is granted.

11 MR. McINTOSH: Thank you.

12 (Thereupon, this concludes these proceedings.)

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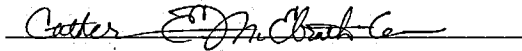
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CERTIFICATE OF TRANSCRIBER

I, CATHERINE E. McELRATH-CARR, do hereby certify that in my official capacity, I prepared from electronic recordings the proceedings had and testimony adduced in the matter of: AO ALFA-BANK v. JOHN DOE, et al., Docket Number: 2020 CA2 003459, in said Court on the 9th day of February 2022.

I further certify that the foregoing 30 pages were transcribed to the best of my ability from said recordings.

In witness whereof, I have subscribed my name this the 17th day of February 2022.



Catherine McElrath-Carr

TRANSCRIBER

# **Exhibit 2**

*NOT A CERTIFIED COPY*

IN THE CIRCUIT COURT  
 FOR THE FIFTEENTH JUDICIAL CIRCUIT  
 IN AND FOR PALM BEACH COUNTY, FLORIDA

-----x

AO ALFA-BANK,	:	
Plaintiff,	:	Case No.:
vs.	:	50-2020-CA-006304-
JOHN DOE, et al.,	:	XXXX-MB
Defendants.	:	

-----x

VIDEOTAPED DEPOSITION OF RODNEY JOFFE  
 via remote videoconference  
 Friday, February 11, 2022

Videotaped Deposition of RODNEY JOFFE, held remotely via Zoom videoconference, commencing at 9:30 a.m., Friday, February 11, 2022, before Elizabeth Mingione, Registered Professional Reporter and Notary Public for the District of Columbia.

Job No.: 51538

1 A P P E A R A N C E S O F C O U N S E L :

2 O N B E H A L F O F A L F A - B A N K , P L A I N T I F F :

3 S K A D D E N , A R P S , S L A T E , M E A G H E R & F L O M , L L P

4 M A R G A R E T E . K R A W I E C , E S Q U I R E

5 1440 New York Avenue, Northwest

6 Washington, D.C. 20005

7 (202) 371-7303

8 Margaret.Krawiec@skadden.com

9

10 O N B E H A L F O F R O D N E Y J O F F E , D E P O N E N T :

11 W E I L , G O T S H A L & M A N G E S , L L P

12 S T E V E N A . T Y R R E L L , E S Q U I R E

13 E I L E E N C I T R O N , E S Q U I R E

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17 Steven.tyrrell@weil.com

18 Eileen.citron@weil.com

19

20 A L S O P R E S E N T

21 Joe Townsend, Videographer

22

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C O N T E N T S

WITNESS: RODNEY JOFFE

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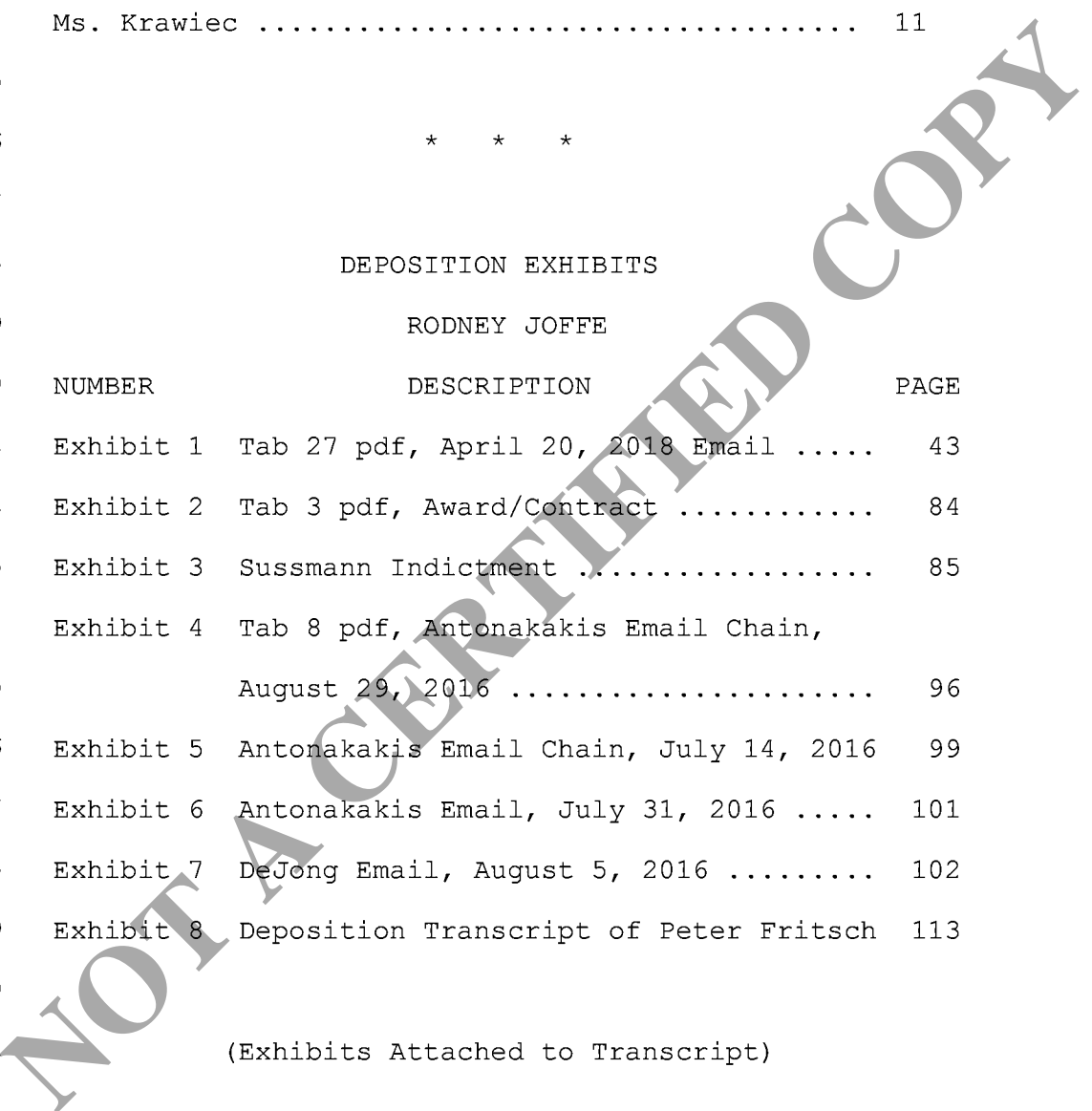
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DEPOSITION EXHIBITS

RODNEY JOFFE

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(Exhibits Attached to Transcript)





1 P R O C E E D I N G S

2 VIDEOGRAPHER: Here begins the videotaped 09:36:45  
3 deposition of Rodney Joffe, taken in the matter of AO 09:36:52  
4 Alfa-Bank v. John Doe et al., in the Circuit Court of 09:36:58  
5 Fairfax County, Civil Action Number 2021-001-4165. 09:37:09  
6 Today's date is February 11, 2022. The time is 9:37 09:37:17  
7 a.m. Eastern Standard Time. 09:37:19

8 This deposition is being held remotely via 09:37:23  
9 Zoom video conference. The court reporter is 09:37:27  
10 Elizabeth Mingione. My name is Joe Townsend. I'm the 09:37:32  
11 video camera operator. We are both here on behalf of 09:37:35  
12 Henderson Legal Services. 09:37:36

13 Would counsel please introduce themselves 09:37:41  
14 and state whom they represent. 09:37:44

15 MR. KRAWIEC: Margaret Krawiec on behalf of 09:37:46  
16 AO Alfa-Bank. 09:37:49

17 MR. TYRRELL: Steven Tyrrell and Eileen 09:37:51  
18 Citron on behalf of Rodney Joffe. 09:37:51

19 VIDEOGRAPHER: Would the court reporter 09:37:51  
20 please administer the oath. 09:37:51

21 COURT REPORTER: Good morning. My name is 09:37:52  
22 Elizabeth Mingione. I'm a Washington D.C. notary 09:37:52

1 public and registered professional shorthand reporter. 09:37:52

2 Due to the current pandemic, this deposition is being 09:37:52

3 held via remote Zoom videoconferencing. 09:37:52

4 The witness and I are not in the same room. 09:37:52

5 Therefore, the witness will be sworn in remotely, 09:37:52

6 pursuant to agreement of all parties, with the parties 09:37:52

7 stipulating that the testimony is being given as if 09:37:52

8 the witness was sworn in person. 09:37:52

9 Is that agreeable, Counsel? 09:38:28

10 MS. KRAWIEC: Yes, it is, on behalf of AO 09:38:32

11 Alfa-Bank. 09:38:34

12 MR. TYRRELL: Yes, on behalf of Mr. Joffe. 09:38:35

13 - - - 09:38:35

14 Whereupon, 09:38:35

15 RODNEY JOFFE, 09:38:35

16 Having been duly sworn was examined 09:38:35

17 and testified as follows: 09:38:35

18 - - - 09:38:35

19 MS. KRAWIEC: Good morning, Mr. Joffe. 09:38:54

20 Thank you very much for your time today. I understand 09:38:59

21 that your counsel would like to make a statement on 09:39:02

22 the record before we get started, so I'll afford him 09:39:06

1 obviously the courtesy to do so. 09:39:09

2 MR. TYRRELL: Thank you, Margaret. I 09:39:10

3 appreciate that. My client has been forced to invoke 09:39:13

4 his rights today under the Fifth Amendment to the U.S. 09:39:17

5 Constitution and Section 8 of the Virginia 09:39:19

6 Constitution because the investigation of the Office 09:39:22

7 of Special Counsel headed by John Durham remains 09:39:25

8 pending and active. 09:39:27

9 We will do our best to consider each of the 09:39:30

10 questions that you pose today. And, you know, where 09:39:32

11 we are able to do so without compromising my client's 09:39:38

12 rights, we will respond to the questions. For the 09:39:40

13 record, to the extent that he responds to any 09:39:44

14 questions, that should not be considered a waiver with 09:39:47

15 regard to the subject area or any related questions. 09:39:52

16 Although my client steadfastly believes he 09:39:56

17 has done nothing wrong, and does not believe that he 09:39:58

18 is a target of the Special Counsel investigation, the 09:40:00

19 investigation has focused on events that he played a 09:40:05

20 part in, and the Special Counsel has been unwilling to 09:40:07

21 provide any assurances to us about the outcome of the 09:40:10

22 investigation with regard to my client. Having said 09:40:13

1 that, we believe that the investigation is very close 09:40:16  
2 to concluding, and that if you had been willing or 09:40:20  
3 your client had been willing to wait a few more weeks, 09:40:23  
4 my client would be free to answer your questions and 09:40:25  
5 to provide personal documents in response to your 09:40:28  
6 subpoenas. 09:40:28

7 You have chosen not to wait. And we 09:40:30  
8 understand that you are entitled to do that under the 09:40:32  
9 order that was entered by Judge Mann on January 7, 09:40:37  
10 2022. Nevertheless, we note our objection for the 09:40:40  
11 record, and preserve all rights to object to your use 09:40:42  
12 of this transcript against Mr. Joffe in any form 09:40:46  
13 whatsoever. We also reserve the right to respond to 09:40:49  
14 your questions and to provide documents once the 09:40:52  
15 Special Counsel's investigation is concluded. 09:40:54

16 Finally, we note that there may be other 09:40:59  
17 objections that we have to your questions based on, 09:41:01  
18 among other things, the attorney-client privilege, 09:41:03  
19 attorney-work-product doctrine, trade secrets 09:41:06  
20 privilege, state secrets privilege and others. Rather 09:41:10  
21 than belabor those issues during this particular 09:41:14  
22 deposition, I mean, obviously if those privileges are 09:41:18

1 implicated and we would otherwise respond, we will 09:41:22  
2 assert the objections; but rather than do that as to 09:41:24  
3 each question, if our client invokes his rights under 09:41:26  
4 the Fifth Amendment or the Virginia constitution, we 09:41:29  
5 won't state those additional objections, but we do 09:41:33  
6 reserve the right to interpose those if and when my 09:41:37  
7 client is not compelled to assert his rights, and 09:41:39  
8 discovery from him resumes or continues. 09:41:42

9 Thank you, Margaret. I appreciate it. 09:41:44

10 MS. KRAWIEC: Thank you. And just for the 09:41:46  
11 record, the indefinite nature of the Special Counsel 09:41:54  
12 John Durham's investigation makes it very difficult 09:41:57  
13 for us to continue to delay moving forward with 09:42:00  
14 depositions. 09:42:00

15 I know, Steve, we had spoken several months 09:42:03  
16 ago where the thinking was that the investigation was 09:42:06  
17 going to conclude. And so it's not for a lack of 09:42:11  
18 patience but rather a lack of uncertainty, and also 09:42:14  
19 obligations and deadlines that we have with respect to 09:42:17  
20 the Florida court that are upcoming, which requires us 09:42:20  
21 from our perspective in order to serve the best 09:42:24  
22 interests of the case and our client to move forward. 09:42:27

1 And we appreciate the challenges that Mr. Joffe faces 09:42:31  
2 in light of the ongoing nature of the investigation. 09:42:33  
3 And, you know, we are trying to balance that. And 09:42:37  
4 given the order from Judge Mann, we are moving forward 09:42:41  
5 in good faith here today. 09:42:42

6 MR. TYRRELL: Understood. Margaret, one 09:42:43  
7 other logistical matter. You know, obviously given 09:42:47  
8 how we are doing this remotely, you know, and our 09:42:53  
9 desire to consider each of your questions 09:42:56  
10 individually, I may need to mute after your questions. 09:42:59  
11 I will mute after your questions to confer with my 09:43:01  
12 client. And then we'll come back on, and he'll either 09:43:04  
13 respond or invoke his rights. 09:43:07

14 I'm sorry if that's awkward, but I think 09:43:09  
15 that's, you know, it's important for us to do that 09:43:10  
16 because we do want to consider each of your questions. 09:43:13  
17 We want to be thoughtful about it, and if we can 09:43:18  
18 answer, we want to answer. 09:43:18

19 MS. KRAWIEC: I, you know, I would actually 09:43:19  
20 object to proceeding in that manner. Generally 09:43:22  
21 speaking, when a question is pending from an attorney, 09:43:26  
22 the attorney -- the client -- the deponent is supposed 09:43:30

1 to answer the question to the best of their ability 09:43:32  
2 and then, if necessary, ask for a break to confer with 09:43:37  
3 counsel. We understand the nature from a Fifth 09:43:39  
4 Amendment perspective. 09:43:41

5 What we would ask, Mr. Tyrrell, for you to 09:43:44  
6 do is to make your objection, you know, that you 09:43:49  
7 intend to likely assert the Fifth, and then confer 09:43:53  
8 with your counsel so that at least the objection is 09:43:56  
9 pending before the conferring occurs. 09:44:00

10 MR. TYRRELL: Okay. I'm happy to proceed 09:44:02  
11 that way, Margaret, but I actually think that will be 09:44:05  
12 less efficient, so -- but if you -- if that's how you 09:44:07  
13 want to proceed, I'll do it that way, because I expect 09:44:11  
14 I will probably do that with regard to many of your 09:44:13  
15 questions until I have a chance to confer with my 09:44:17  
16 client. And then, you know, we would go from there. 09:44:19  
17 But whatever your preference is. I don't have a 09:44:21  
18 strong preference either way. 09:44:23

19 MS. KRAWIEC: What I am trying to avoid is 09:44:25  
20 scenarios where essentially after each question you 09:44:28  
21 are -- and I'm not suggesting you would do this, but 09:44:31  
22 it could be that you are assisting the client with his 09:44:33

1 testimony. And I understand what you are representing 09:44:37  
2 is that it's to assert the Fifth, but it seems to me 09:44:40  
3 that there are questions based upon presumably the 09:44:44  
4 prep and your preparation not only with Mr. Joffe but 09:44:46  
5 just as his counsel that there are clear questions 09:44:50  
6 that you know that you are going to be asserting the 09:44:51  
7 Fifth. 09:44:52

8 And so what I'm trying to avoid is a 09:44:54  
9 scenario where Mr. Joffe -- there's no spontaneity, 09:45:00  
10 there's no factual information that's relayed without 09:45:02  
11 guidance from counsel. 09:45:02

12 MR. TYRRELL: Okay. We'll do the best we 09:45:04  
13 can. 09:45:04

14 MS. KRAWIEC: Understood. Thank you. 09:45:06

15 EXAMINATION CONDUCTED 09:45:06

16 BY MS. KRAWIEC: 09:45:06

17 Q. Mr. Joffe, are you prepared to proceed, or 09:45:09  
18 do you need to take a break before we begin, or are 09:45:12  
19 you okay to go? 09:45:13

20 A. I'm okay to go. 09:45:14

21 Q. Okay. Thank you. So, again, my name is 09:45:17  
22 Margaret Krawiec. And myself along with my 09:45:21



1 colleagues, we represent AO Alfa-Bank, the plaintiff 09:45:25

2 in this lawsuit. We will refer to our client 09:45:28

3 throughout the course of the deposition as Alfa-Bank 09:45:30

4 or sometimes shorthand as Alfa or the plaintiff. 09:45:33

5 Is that understood? 09:45:34

6 **A. Yes.** 09:45:34

7 **Q.** So the basis of our suit is that our client 09:45:37

8 we believe was the victim of a cyber attack 09:45:40

9 perpetrated by a group of yet unidentified actors. As 09:45:44

10 such, we filed what is known as a John Doe lawsuit to 09:45:47

11 allow us discovery to identify the defendants. 09:45:50

12 We will refer to the defendants in this 09:45:52

13 matter as the Doe defendants. Do you understand? 09:45:56

14 **A. I do.** 09:45:56

15 **Q.** Unless otherwise specified, if we say this 09:46:01

16 action or this case, we will be referring to the 09:46:05

17 underlying Florida litigation. Florida is where we 09:46:08

18 have brought this John Doe suit. Is that understood? 09:46:09

19 **A. Yes.** 09:46:10

20 **Q.** We will refer to the general allegations of 09:46:13

21 secret communications between Trump entities and 09:46:17

22 Alfa-Bank as the server allegations. Is that 09:46:21

1 understood? 09:46:22

2 **A. Yes.** 09:46:23

3 **Q.** And when we say the "server allegations," 09:46:27

4 we are referring to the allegations as detailed in, 09:46:29

5 among other media, the October 31, 2016, Slate article 09:46:34

6 by Franklin Foer, and the October 5, 2016, blog post 09:46:39

7 by someone using the alias Leaves Tea. 09:46:42

8 Generally it's been alleged that DNS logs 09:46:46

9 from a server allegedly controlled by the Trump 09:46:49

10 organization, and logs from a server allegedly 09:46:51

11 controlled by Alfa-Bank evidenced covert human 09:46:53

12 interaction between the two organizations. So, again, 09:46:57

13 giving you that general background, that is what we 09:47:01

14 will be referring to when we use the term "server 09:47:04

15 allegations" throughout the course of the deposition. 09:47:06

16 **Mr. Joffe, have you ever been deposed?** 09:47:13

17 **A. Yes.** 09:47:16

18 **Q.** And could you give us some background as to 09:47:21

19 when you were deposed and in what type of proceeding? 09:47:24

20 **A. As a -- I spent a period of time as a 09:47:35**

21 **reserve police officer in Los Angeles. And during the 09:47:38**

22 **course of those 20 years, I was deposed certainly more 09:47:41**

1 **than once in -- in criminal cases.** 09:47:46

2 Q. And that was you were serving in your 09:47:49

3 function in your professional capacity where you were, 09:47:53

4 for example, being deposed in the context of the case 09:47:54

5 that arose at work, for example? 09:47:56

6 **A. Not at work. Where I was being deposed as** 09:48:00

7 **a police officer in the arrest of suspects who'd** 09:48:08

8 **committed crimes.** 09:48:08

9 Q. Understood. And in the context of a civil 09:48:11

10 litigation, the distinction here, this is a civil 09:48:14

11 case, for example; have you ever been named as a party 09:48:18

12 to a civil litigation? 09:48:20

13 **A. I think I have been many years ago. I** 09:48:28

14 **can't remember what it was about. Yeah. At least 30** 09:48:29

15 **years ago.** 09:48:31

16 Q. And were you deposed in that matter? 09:48:32

17 **A. No.** 09:48:34

18 Q. And generally just as a witness or a party 09:48:37

19 that may have factual information, have you ever been 09:48:40

20 deposed in a civil case? 09:48:42

21 **A. I have in a -- I have in a -- in a civil** 09:48:58

22 **case that related to junk faxes.** 09:48:59

1 Q. I'm sorry, that related to? 09:49:04

2 A. **Junk faxes.** 09:49:07

3 Q. Okay. 09:49:08

4 A. **Faxing.** 09:49:10

5 Q. Okay. In connection with sort of these 09:49:13

6 server allegations, these types of issues, have you 09:49:16

7 had any depositions in any civil matter? 09:49:18

8 MR. TYRRELL: You can answer. 09:49:24

9 A. **No.** 09:49:24

10 Q. Have you ever had to testify in court? 09:49:29

11 A. **Ever in my life?** 09:49:31

12 Q. Yes. 09:49:31

13 A. **Many times.** 09:49:32

14 Q. And was that in connection with your prior 09:49:35

15 job as a police officer as you described to us? 09:49:38

16 A. **As a reserve police officer. Correct.** 09:49:42

17 Q. A reserve police -- 09:49:43

18 A. **And in the junk fax cases, the TC -- under** 09:49:48

19 **the TCPA.** 09:49:49

20 Q. Got it. Okay. And in connection with the 09:49:58

21 John Durham investigation, have you had to be 09:50:00

22 interviewed by anyone in that office? 09:50:03

1 MR. TYRRELL: You can answer. 09:50:03

2 A. No. 09:50:04

3 Q. And have you had to testify in front of the 09:50:07

4 grand jury that's been empanelled in connection with 09:50:11

5 that investigation? 09:50:12

6 MR. TYRRELL: You can answer. 09:50:12

7 A. No. 09:50:14

8 Q. Were you asked to be interviewed? 09:50:18

9 MR. TYRRELL: I would like to interpose an 09:50:26  
10 objection and take a moment, please. 09:50:29

11 MS. KRAWIEC: Sure. 09:50:30

12 (Counsel confers with witness off record.) 09:51:12

13 A. **The answer is yes. And I declined to** 09:51:18

14 **interview.** 09:51:19

15 BY MS. KRAWIEC: 09:51:19

16 Q. And, Mr. Joffe, do you remember generally 09:51:20

17 the time frame or time period when you were asked to 09:51:25

18 be interviewed? 09:51:28

19 MR. TYRRELL: You can answer. 09:51:29

20 A. **Trying to remember. I don't recall the** 09:51:40

21 **exact time, but it was at least a year ago.** 09:51:43

22 Q. And I know we were just talking about 09:51:45

1 whether or not you were asked to be interviewed; were 09:51:47  
2 you actually asked to testify in front of the grand 09:51:50  
3 jury? 09:51:50  
4 MR. TYRRELL: You can answer the question. 09:51:54  
5 THE WITNESS: I don't -- 09:51:55  
6 (Counsel and witness confer off record.) 09:52:04  
7 **A. They did -- they did serve me with a grand 09:52:08**  
8 **jury subpoena, and I did invoke my Fifth Amendment 09:52:11**  
9 **rights. 09:52:11**  
10 BY MS. KRAWIEC: 09:52:11  
11 Q. Okay. And can I ask was the subpoena for 09:52:14  
12 just testimony or was it also for documents? 09:52:18  
13 MR. TYRRELL: You can answer. 09:52:23  
14 **A. Both testimony and documents. 09:52:25**  
15 Q. And just so the record's clear, Mr. Joffe, 09:52:28  
16 you invoked your Fifth Amendment with respect to the 09:52:31  
17 testimony? 09:52:31  
18 **A. I did. 09:52:33**  
19 Q. And did you also invoke your Fifth 09:52:35  
20 Amendment with respect to the documents that were -- 09:52:38  
21 **A. I -- 09:52:38**  
22 Q. -- sought in the grand jury subpoena? 09:52:41



1 MR. TYRRELL: You can answer. 09:54:05

2 A. The subpoenas came after the request for an 09:54:27  
3 interview. 09:54:27

4 Q. Thank you. And, Mr. Joffe, I know we sort 09:54:31  
5 of got ahead of -- I should have said that if I ever 09:54:35  
6 ask you a question that don't understand or you need 09:54:38  
7 clarification, please don't hesitate. You know, your 09:54:40  
8 counsel jumped in and corrected me on something, you 09:54:44  
9 know, benign, a recollection of your prior testimony. 09:54:46

10 And so please stop me if -- if there's any 09:54:50  
11 confusion as to a question I pose, or if you want to 09:54:53  
12 correct anything that I say, because obviously we are 09:54:55  
13 here just to get the best record that we can. 09:54:58

14 A. Okay. 09:55:00

15 Q. And just a reminder, not to be annoying, 09:55:03  
16 but that you are under oath and that you understand 09:55:07  
17 that accompanying with that oath that you have taken 09:55:11  
18 is that any misinformation could result in the 09:55:15  
19 penalties of perjury, including criminal penalties. 09:55:18  
20 Is that understood, Mr. Joffe? 09:55:20

21 A. Yes. 09:55:21

22 Q. And again, if you need to take a break at 09:55:24



1 any time, please let me know and we'll afford you that 09:55:28  
2 courtesy. If you could -- if a question is pending, 09:55:31  
3 if you could simply answer that question, complete the 09:55:34  
4 question that's pending and then ask for the break, I 09:55:37  
5 would appreciate that. 09:55:38

6 **A. Okay.** 09:55:39

7 Q. And just in terms of your testimony today, 09:55:41  
8 are there any impairments that we should be aware of, 09:55:45  
9 recently taking medication, drugs, alcohol or anything 09:55:48  
10 else that would make it difficult for you to 09:55:52  
11 understand my questions today? 09:55:52

12 **A. I don't believe so. I do take medication.** 09:55:55  
13 **I have an autoimmune disease, and I do take a number** 09:56:02  
14 **of medications. And I'm also getting older, so my** 09:56:06  
15 **hearing is not great, but I feel perfectly competent** 09:56:11  
16 **at the moment.** 09:56:12

17 Q. Okay. And any of the medications that you 09:56:14  
18 are currently taking, have they ever posed problems 09:56:16  
19 for you from a memory perspective or confusion 09:56:20  
20 perspective that you are aware of? 09:56:22

21 **A. They have.** 09:56:23

22 Q. In what circumstances, Mr. Joffe, just so 09:56:27

1 we can appreciate that and understand? 09:56:29

2 A. Well, I've been on and off chemotherapy for 09:56:33

3 11 years, once a week. I'm also on -- have been on 09:56:37

4 and off high doses of Prednisone, both things that 09:56:41

5 affect my short and long-term memory. But I've been 09:56:46

6 off of those medications for a while now. I am in 09:56:49

7 remission currently. 09:56:50

8 And so I still have, you know, some effect 09:56:53

9 with memory so, you know, memory during the period 09:56:57

10 when I was ill, which was from 2012 through 2017 09:57:03

11 before I went into remission. 09:57:06

12 Q. Understood. 09:57:07

13 A. But in general, I'm fine now. I've -- I 09:57:10

14 don't think that -- call myself impaired in any way. 09:57:15

15 I don't drink, I don't smoke, and I don't take drugs. 09:57:18

16 Q. Understood. 09:57:19

17 A. Other than -- other than medication. 09:57:20

18 Q. Understood. And appreciate that. And 09:57:22

19 thank you for sharing that. And wishing you nothing 09:57:26

20 but the best with the -- 09:57:29

21 A. Thank you. 09:57:30

22 Q. -- your ongoing health. Just quickly, Mr. 09:57:33

1 Joffe, did you bring any documents with you to today's 09:57:36

2 deposition? 09:57:37

3 **A. No.** 09:57:37

4 **Q.** And without encroaching on any of your 09:57:41

5 conversations with your attorney, I'm just looking for 09:57:44

6 high level, did you meet with your attorneys to 09:57:46

7 prepare for this deposition? 09:57:57

8 **A. Yes.** 09:57:58

9 **Q.** And did you review any documents to refresh 09:58:00

10 your recollection? 09:58:00

11 **A. No.** 09:58:04

12 **Q.** Have you ever reviewed the complaint filed 09:58:09

13 by the plaintiffs, Alfa-Bank in this action, the 09:58:12

14 Florida action? 09:58:14

15 **A. Yes.** 09:58:16

16 **Q.** And do you recall generally when you 09:58:18

17 reviewed that complaint? 09:58:19

18 **A. I've looked at it a couple of times over 09:58:29**

19 **the last year probably.** 09:58:32

20 **Q.** And was it out of interest or why did you 09:58:36

21 review it? 09:58:37

22 **A. Out of -- out of interest.** 09:58:39

1 Q. And how did you find out about the 09:58:41

2 complaint, without encroaching on attorney-client? 09:58:45

3 MR. TYRRELL: Yeah. I'm going to object to 09:58:46

4 that question for the moment and just confer with my 09:58:49

5 client. 09:58:50

6 MS. KRAWIEC: Understood. 09:58:51

7 (Counsel and witness confer off record.) 09:59:20

8 THE WITNESS: I don't recall how I first 09:59:35

9 found out about it. 09:59:36

10 BY MS. KRAWIEC: 09:59:36

11 Q. Did anyone bring it to your attention other 09:59:39

12 than your attorney? 09:59:42

13 MR. TYRRELL: That's a yes or a no. 09:59:45

14 A. I'm sure I did. I may have read something 09:59:48

15 on the internet or read something in the press, but 09:59:52

16 some point someone probably had pointed it out to me, 09:59:56

17 because it's not something I normally go looking for. 09:59:59

18 Q. Understood. And have you spoken to anyone 10:00:01

19 about Alfa-Bank's attorney other -- Alfa-Bank's 10:00:05

20 complaint, lawsuit, other than your attorney? 10:00:09

21 MR. TYRRELL: That would be a yes or no. 10:00:11

22 A. The answer is yes, I've talked to other 10:00:18

1 **attorneys.** 10:00:19

2 Q. But only -- but did you speak to your 10:00:23

3 attorney? 10:00:24

4 **A. Yes. They were my attorneys.** 10:00:26

5 MR. TYRRELL: Just -- yeah. Just to be 10:00:29

6 clear, you know, Mr. Joffe also is an owner, a part 10:00:35

7 owner of some businesses that are separately 10:00:37

8 represented by counsel. And, you know, we would 10:00:39

9 consider conversations as the owner of the business 10:00:42

10 with the lawyers -- as an owner of the business with 10:00:45

11 the lawyers representing those businesses as 10:00:47

12 privileged as well. 10:00:49

13 So perhaps if you could -- if you want to 10:00:51

14 ask if he's spoken with anybody other than a lawyer 10:00:54

15 representing him or, you know, companies in which he 10:00:58

16 has a significant interest, he can answer that 10:01:01

17 question. 10:01:02

18 MS. KRAWIEC: Sure. And I would like to -- 10:01:03

19 I just want to make sure, Mr. Tyrrell, sir, are you 10:01:06

20 asserting a common-interest privilege with the 10:01:09

21 attorneys in the businesses that Mr. Joffe's 10:01:13

22 affiliated with? 10:01:15

1 MR. TYRRELL: Well, it hasn't come to that. 10:01:19

2 I'm asserting attorney-client privilege with regard to 10:01:22

3 the businesses that Mr. Joffe is an owner of. 10:01:25

4 BY MS. KRAWIEC: 10:01:25

5 Q. And can we go through the businesses that 10:01:26

6 would fall into that bucket, Mr. Joffe? Could you 10:01:29

7 list those businesses for us? 10:01:31

8 MR. TYRRELL: We are going to object to 10:01:32

9 that based on Mr. Joffe's rights under the Fifth 10:01:34

10 Amendment of the Constitution and Section 8 of the 10:01:39

11 Virginia Constitution. 10:01:40

12 MS. KRAWIEC: Okay. So just the fact of 10:01:42

13 which -- well, let me ask it this way. 10:01:44

14 BY MS. KRAWIEC: 10:01:44

15 Q. Mr. Joffe, what businesses do you have an 10:01:46

16 ownership in or are otherwise affiliated with? 10:01:51

17 **A. I'll answer that the same way. As a result** 10:01:54

18 **of the ongoing investigation of the Office of Special** 10:01:56

19 **Counsel, on the advice of my attorney, I'm going to** 10:01:59

20 **decline to answer the question based upon my rights** 10:02:02

21 **under the Fifth Amendment to the Constitution and** 10:02:05

22 **Section 8 of the Virginia Constitution.** 10:02:08

1 Q. And just so I understand the parameters of 10:02:10  
2 that, I'm not trying to encroach on your Fifth, but 10:02:12  
3 I'm simply asking the name of companies that you are 10:02:15  
4 affiliated with or otherwise have a business interest 10:02:18  
5 in. 10:02:18

6 A. Same response, both -- invoking my rights. 10:02:24

7 Q. Okay. Understood. Could you identify -- 10:02:30  
8 I'm not asking for what was discussed, but other than 10:02:34  
9 Mr. Tyrrell, the other attorneys that you spoke with 10:02:38  
10 about Alfa-Bank's complaint? 10:02:42

11 A. Sorry. Can you ask that question again. 10:02:46

12 Q. I'm just asking who the other attorneys 10:02:47  
13 are, because I need to be able to assess from a 10:02:51  
14 common-interest attorney-client privilege perspective 10:02:54  
15 if you are going to invoke those privileges, I need to 10:02:57  
16 understand who you believe to be your counsel or 10:03:00  
17 otherwise in -- in a common-interest arrangement. 10:03:04

18 So I just am looking for the other 10:03:08  
19 attorneys other than Mr. Tyrrell and Ms. Citron. 10:03:13

20 MR. TYRRELL: I'm happy to provide that to 10:03:15  
21 you after the deposition, if you would like. 10:03:16

22 MS. KRAWIEC: Okay. That would be great. 10:03:18

1 We would appreciate that. 10:03:19

2 MR. TYRRELL: Sure. 10:03:20

3 BY MS. KRAWIEC: 10:03:20

4 Q. Mr. Tyrrell, other than attorneys -- 10:03:30

5 MR. TYRRELL: You mean Mr. Joffe? 10:03:32

6 MS. KRAWIEC: -- anyone else -- I'm sorry. 10:03:34

7 MR. TYRRELL: I know you -- 10:03:34

8 MS. KRAWIEC: Why don't I depose you as 10:03:36

9 well. 10:03:36

10 MR. TYRRELL: I know you would love to do 10:03:38

11 that. Not today anyway. 10:03:41

12 MS. KRAWIEC: I'm sorry. 10:03:41

13 BY MS. KRAWIEC: 10:03:41

14 Q. Mr. Joffe, other than attorneys, who else, 10:03:46

15 non-attorneys, have you spoken to about Alfa-Bank's 10:03:51

16 complaint? 10:03:52

17 MR. TYRRELL: I'm going to interpose an 10:03:54

18 objection at this point and ask for a -- and confer 10:03:56

19 with my client. 10:03:58

20 MS. KRAWIEC: Okay. 10:03:58

21 (Counsel confers with witness off record.) 10:04:00

22 THE WITNESS: So, as a result of the 10:04:13



1 ongoing investigation of the Office of Special 10:04:15  
2 Counsel, on the advice of my attorney, I decline to 10:04:18  
3 answer that question based upon my rights under the 10:04:21  
4 Fifth Amendment to the Constitution and Section 8 of 10:04:23  
5 the Virginia Constitution. 10:04:27

6 BY MS. KRAWIEC: 10:04:27

7 Q. Have you spoken to David Dagon about the 10:04:33  
8 server allegations outlined in the Alfa-Bank 10:04:37  
9 complaint? 10:04:37

10 A. As a result of the ongoing investigation of 10:04:43  
11 the Office of Special Counsel, on the advice of my 10:04:46  
12 attorney, I decline to answer that question based upon 10:04:49  
13 my rights under the Fifth Amendment to the U.S. 10:04:52  
14 Constitution and Section 8 of the Virginia 10:04:54  
15 Constitution. 10:04:55

16 Q. And I don't want to be repetitive. It's 10:04:57  
17 just I have a certain obligation to create a record, 10:05:01  
18 so I'm going to -- 10:05:01

19 A. I understand. 10:05:01

20 Q. -- ask you just a couple more questions, 10:05:03  
21 and then I'll ask you a more broad question. 10:05:05

22 So what about April Lorenzen, same 10:05:09

1 question, have you spoken to her? 10:05:10

2 **A. Same response.** 10:05:11

3 Q. Okay. 10:05:12

4 **A. If you would like me to read the whole** 10:05:14

5 **thing, I will.** 10:05:15

6 Q. No. I think the record is clear on that, 10:05:16

7 Mr. Joffe. 10:05:17

8 Dr. Antonakakis, have you spoken with him? 10:05:21

9 **A. Same response.** 10:05:22

10 Q. Michael Sussmann? 10:05:27

11 MR. TYRRELL: Again, he's an attorney that 10:05:31

12 represented Mr. Joffe at one point in time, so... 10:05:35

13 MS. KRAWIEC: Is the -- I guess I'm 10:05:35

14 wondering is the representation ongoing, because I'm 10:05:39

15 -- the complaint was obviously filed after that 10:05:41

16 representation, unless it's ongoing. 10:05:43

17 MR. TYRRELL: The representation is not 10:05:45

18 ongoing. 10:05:46

19 BY MS. KRAWIEC: 10:05:46

20 Q. Okay. And so I'm asking whether or not he 10:05:48

21 spoke to Mr. Sussmann after the termination of the 10:05:50

22 representation regarding Alfa-Bank's complaint? 10:05:55

1           **A.     Same response. As a result of the --**           10:05:58

2           **taking the Fifth.**           10:05:58

3           **Q.     So, Mr. Joffe, just for the record, if I**           10:06:04

4           **were to ask, continue to enumerate individuals that I**   10:06:07

5           **think maybe are relevant to the server allegations,**   10:06:10

6           **would your answer be essentially the same, an**           10:06:13

7           **indication of your rights under the Fifth Amendment**   10:06:15

8           **and the Virginia Constitution?**           10:06:16

9           **MR. TYRRELL: You know, again, we want to**           10:06:24

10          **consider your questions individually, but we want to**   10:06:27

11          **be respectful of your time as well.**           10:06:30

12          **MS. KRAWIEC: Sure.**           10:06:30

13          **MR. TYRRELL: So I'm a little bit hesitant**       10:06:31

14          **to have my client say that, you know, every individual** 10:06:34

15          **you might mention, you know, he'd refuse to answer.**   10:06:38

16          **So I don't know if you want to just run quickly**       10:06:41

17          **through a list of names and I'll jot them down**       10:06:43

18          **perhaps, and then we can have a moment and come back**   10:06:46

19          **to you. Does that --**           10:06:46

20          **MS. KRAWIEC: Okay.**           10:06:47

21          **MR. TYRRELL: Again, I'm trying to be**           10:06:48

22          **efficient and respectful of your --**           10:06:49

1 MS. KRAWIEC: Totally. 10:06:50

2 MR. TYRRELL: -- time. 10:06:51

3 MS. KRAWIEC: No, I understand. And we 10:06:53

4 will run through the list of questions. Let me just 10:06:55

5 ask a couple more at this juncture. 10:06:57

6 BY MS. KRAWIEC: 10:06:58

7 Q. Have you -- I'm trying to understand -- I 10:07:01

8 know just from public information that you are 10:07:05

9 affiliated with Neustar. Is that correct, Mr. Joffe? 10:07:08

10 **A. Would you state that again.** 10:07:12

11 Q. My understanding from publicly reported 10:07:14

12 information is that you either had or continue to have 10:07:16

13 an affiliation with Neustar; is that correct? 10:07:21

14 **A. I had. I no longer have one.** 10:07:23

15 Q. And is that as a result of the Transunion 10:07:25

16 acquisition of Neustar? Did your involvement with 10:07:29

17 Neustar cease after -- as a result of that 10:07:34

18 acquisition? 10:07:34

19 MR. TYRRELL: I think you would have to ask 10:07:37

20 Neustar that question. My client can certainly tell 10:07:40

21 you from his perspective, you know, what precipitated 10:07:47

22 his retirement from Neustar. 10:07:49

1 MS. KRAWIEC: Okay. 10:07:50

2 MR. TYRRELL: But I think at the end of the 10:07:51

3 day, you know, they are the ones who will decide, you 10:07:54

4 know, that question, or can best answer that question. 10:08:02

5 MS. KRAWIEC: Understood. And, Mr. 10:08:02

6 Tyrrell, forgive me. I understand you are trying to 10:08:05

7 be helpful, but I am just trying to get factual 10:08:08

8 information as opposed to testimony from Mr. Joffe, 10:08:10

9 and so -- but it's helpful that you noted that Mr. 10:08:12

10 Joffe would be willing to advise as to his retirement 10:08:14

11 from Neustar. 10:08:15

12 BY MS. KRAWIEC: 10:08:15

13 Q. So, if you could tell us the circumstances 10:08:17

14 of your retirement, and as well as the general timing? 10:08:20

15 A. It related to Transunion transactions. And 10:08:26

16 following -- I believe it was following the Transunion 10:08:32

17 transaction there was a one-week period in which I 10:08:35

18 stayed on to clean up things, and I then retired. 10:08:38

19 Q. Okay. And we understand that there was a 10:08:43

20 separation from Neustar, an entity called Neustar 10:08:48

21 Security Solutions, and that that is no longer an 10:08:51

22 entity that's under the Neustar umbrella. 10:08:54

1 Do you have any understanding as to I think 10:08:56

2 it's referred to as NSS? 10:08:59

3 **A. I have a general understanding of NSS, but** 10:09:05

4 **I couldn't tell you what the financial connection is** 10:09:09

5 **between them, what the formal connection, what the** 10:09:12

6 **separation is.** 10:09:14

7 **Q. Understood.** 10:09:14

8 **A. I am on -- and I -- just to make sure that** 10:09:18

9 **I retired, I believe on the 19th of September, and** 10:09:22

10 **I've had no involvement with Neustar since then.** 10:09:26

11 **Q. Understood. And do you know whether or not** 10:09:29

12 **the information that Neustar possesses related to the** 10:09:36

13 **server allegations, DNS data, what have you, whether** 10:09:40

14 **or not that continues to reside with Neustar?** 10:09:44

15 **A. I have no idea.** 10:09:45

16 **Q. Well, when you were at Neustar, are we** 10:09:51

17 **correct that Neustar, among other things, had a large** 10:09:56

18 **DNS repository?** 10:09:59

19 **A. Yes.** 10:10:00

20 **Q. And do you understand that the individuals** 10:10:07

21 **that you worked with in connection with that DNS** 10:10:10

22 **repository, could you identify those individuals for** 10:10:15

1 us? 10:10:15

2 **A. I -- as a result of the ongoing** 10:10:19

3 **investigation of the Office of Special Counsel, on the** 10:10:22

4 **advice of my attorney, I'm declining to answer that** 10:10:26

5 **question based upon my rights under the Fifth** 10:10:27

6 **Amendment to the U.S. Constitution and Section 8 of** 10:10:31

7 **the Virginia Constitution.** 10:10:31

8 **Q. Well, I know you have already answered that** 10:10:33

9 **-- and I'm not suggesting the subject matter waiver.** 10:10:36

10 **I just -- you had answered that Neustar did in fact** 10:10:39

11 **have DNS data.** 10:10:41

12 **Could you give us a general understanding** 10:10:43

13 **of Neustar's DNS repository, the scope and how it was** 10:10:49

14 **that it had that DNS repository?** 10:10:52

15 **A. I'm going to have to invoke my rights** 10:10:56

16 **again. If you'd like me to do them full, I'll do** 10:11:00

17 **that.** 10:11:00

18 **Q. No. We can continue with that, but I guess** 10:11:04

19 **I should back up, just because we are going to be** 10:11:06

20 **talking about DNS. It would be helpful, Mr. Joffe,** 10:11:08

21 **for me to understand your sort of academic credentials** 10:11:12

22 **and areas of expertise, just so I have that** 10:11:15

1 background. 10:11:15

2 I should have started there, but I started 10:11:17

3 going down a question just naturally, but if we can 10:11:21

4 back up and you could give that background, I would 10:11:24

5 appreciate it. 10:11:25

6 MR. TYRRELL: Let me have a moment to 10:11:27

7 confer. Okay. 10:11:40

8 **A. Academically I finished high school, and I 10:11:43**

9 **attended three months of university in South Africa in 10:11:47**

10 **1972. That's it. 10:11:50**

11 Q. That's the extent of your -- your 10:11:53

12 academic -- 10:11:54

13 **A. Academic. Correct. 10:11:56**

14 Q. Could you describe your experience working 10:12:00

15 generally with DNS data? 10:12:04

16 MR. TYRRELL: Could you be more specific 10:12:08

17 with that question. 10:12:09

18 MS. KRAWIEC: Sure. 10:12:10

19 MR. TYRRELL: Because again we want to be 10:12:11

20 able to answer if we can, but your question is really 10:12:14

21 broad. 10:12:14

22 BY MS. KRAWIEC: 10:12:14



1 Q. Sure. When, Mr. Joffe, you already 10:12:19  
2 testified that there was -- Neustar had a DNS data 10:12:23  
3 repository. I'm trying to understand when it was that 10:12:26  
4 you first started working with DNS data or had an 10:12:29  
5 understanding of DNS? 10:12:31

6 A. I invented some DNS technology in 1998 that 10:12:44  
7 now forms the basis of the way DNS is used globally. 10:12:51

8 Q. Understood. And so this dates back to 10:12:57  
9 1998. And so is it fair to say that from 1998 going 10:13:00  
10 forward, that your work experience has been in the 10:13:03  
11 context of DNS? 10:13:07

12 A. As a result of the ongoing investigation of 10:13:12  
13 the Office of Special Counsel and advice of my 10:13:14  
14 attorney, I decline to answer that question based upon 10:13:17  
15 my rights under the Fifth Amendment to the U.S. 10:13:19  
16 Constitution and Section 8 of the Virginia 10:13:20  
17 Constitution. 10:13:22

18 Q. Understood. Given sort of that you 10:13:27  
19 invented this technology, and what I can infer is that 10:13:32  
20 up until your retirement you were dealing with DNS in 10:13:35  
21 some capacity or another, would you be -- would it be 10:13:38  
22 fair to characterize yourself as an expert in DNS? 10:13:42

1           A.     As a result of the ongoing investigation at 10:13:50  
2     the Office of Special Counsel, on the advice of my 10:13:50  
3     attorney, I decline to answer that question based upon 10:13:52  
4     my rights under the Fifth Amendment to the 10:13:55  
5     Constitution and Section 8 of the Virginia 10:13:58  
6     Constitution. 10:13:58

7           Q.     Mr. Joffe, could you describe any access 10:14:01  
8     you had to DNS data sources in 2016 or 2017 and the 10:14:05  
9     nature of your access? 10:14:07

10          A.     Once again, as a result of the ongoing 10:14:11  
11     investigation in the Office of Special Counsel and 10:14:13  
12     advice of my attorney, I'm declining to answer based 10:14:17  
13     upon my rights under the Fifth Amendment to the 10:14:20  
14     Constitution and Section 8 of the Virginia 10:14:22  
15     Constitution. 10:14:23

16          Q.     Mr. Joffe, could you please list all the 10:14:26  
17     entities in 2016 and 2017 through which you had access 10:14:28  
18     either directly or indirectly through other employees? 10:14:33

19          A.     I'm going to invoke my rights. As a result 10:14:41  
20     of the ongoing investigation and the Office of Special 10:14:43  
21     Counsel and advice of my attorney, I decline to answer 10:14:46  
22     that question based upon my rights under the Fifth 10:14:48

1 **Amendment to the U.S. Constitution and Section 8 of** 10:14:51  
2 **the Virginia Constitution.** 10:14:53

3 Q. Mr. Joffe, are you familiar with the 10:14:53  
4 Michael Sussmann indictment? Have you reviewed that 10:15:09  
5 document? 10:15:09

6 **A. I have, inasmuch as I'm not an attorney.** 10:15:11  
7 **I've looked at it as a layman.** 10:15:13

8 Q. And you probably noticed that throughout, 10:15:16  
9 woven throughout that indictment are more general 10:15:19  
10 references like Tech Executive 1, Internet Company 1, 10:15:24  
11 et cetera. 10:15:24

12 Are you familiar with who those entities or 10:15:28  
13 individuals are that are referenced in the indictment? 10:15:33

14 **A. So, as a result of the ongoing** 10:15:37  
15 **investigation in the Office of Special Counsel and** 10:15:38  
16 **advice of my attorney, I decline to answer that** 10:15:41  
17 **question based upon my rights under the Fifth** 10:15:43  
18 **Amendment to the U.S. Constitution and Section 8 of** 10:15:45  
19 **the Virginia Constitution.** 10:15:47

20 Q. And, Mr. Joffe, I appreciate, you know, 10:15:51  
21 your invocation of rights. I think we can reach an 10:15:54  
22 agreement that if -- to shorten that, when you say you 10:15:56

1 are invoking your Fifth Amendment rights, we can agree 10:16:00  
2 that it will encompass the Virginia Constitution 10:16:03  
3 rights as well. If that's agreeable to Mr. Tyrrell, 10:16:08  
4 you can just say I'm invoking my Fifth Amendment 10:16:11  
5 rights. 10:16:11

6 MR. TYRRELL: That's -- that's fine with 10:16:13  
7 us. Thank you. 10:16:14

8 Q. So, Mr. Joffe, it's been reported publicly 10:16:19  
9 that Tech Executive 1 refers to yourself. Would you 10:16:23  
10 agree with that? 10:16:25

11 A. I'm invoking my Fifth Amendment rights. 10:16:29

12 Q. Do you know who Internet Company 2 is 10:16:36  
13 referenced in the Sussmann document? 10:16:39

14 A. I invoke my Fifth Amendment rights. 10:16:41

15 Q. What about Internet Company 3? 10:16:45

16 A. I invoke my Fifth Amendment rights. 10:16:47

17 Q. Mr. Joffe, are you familiar with the 10:17:03  
18 company called Packet Forensics? 10:17:05

19 A. I invoke my Fifth Amendment rights here as 10:17:08  
20 well. 10:17:09

21 Q. Are you familiar with a company named 10:17:13  
22 ZETalytics? 10:17:14

1           **A.     I'm invoking my Fifth Amendment rights.**           10:17:17

2           Q.     Are you aware that ZETalytics is a company   10:17:20

3 owned by April Lorenzen?   10:17:22

4           **A.     I invoke my Fifth Amendment rights.**           10:17:30

5           Q.     Are you familiar with a company named       10:17:33

6 CenterGate?   10:17:35

7                   MR. TYRRELL: You can answer the question.   10:17:37

8           **A.     Yes.**   10:17:37

9           Q.     Could you describe that company for us, Mr.   10:17:39

10 Joffe?   10:17:40

11           **A.     It's a company that I started in 1997 or**       10:17:46

12 **'98, that stopped doing normal business in 2003.**           10:17:51

13 **Basically quiesced -- we remained an entity for some**       10:17:56

14 **tax losses that continued until around 2013 or 2014,**       10:18:02

15 **and it was then shut down.**                                       10:18:05

16           Q.     And we've spoken to your attorney about       10:18:08

17 this issue, but our understanding is that even though   10:18:11

18 it's a defunct or shut-down company, that you continue   10:18:16

19 to use your CenterGate email for -- for daily use; is   10:18:22

20 that correct?   10:18:22

21           **A.     I'm going to invoke my Fifth Amendment**       10:18:26

22 **rights on that.**   10:18:28

1 MS. KRAWIEC: Mr. Tyrrell, not to -- to 10:18:31  
2 pick a fight, but you have already made that 10:18:33  
3 representation to us when we were in the courthouse, 10:18:36  
4 and you confirmed -- because when we were trying to 10:18:39  
5 avoid pursuing any kind of litigation to enforce the 10:18:44  
6 subpoena to CenterGate, you had represented that it 10:18:47  
7 was defunct, but that to this day Mr. Joffe continues 10:18:50  
8 to use that email address, and that it's the only 10:18:52  
9 personal email address that he uses. So could we at 10:18:57  
10 least have that confirmation, given that you have 10:18:59  
11 already made that representation? 10:19:00  
12 MR. TYRRELL: I don't think I made all of 10:19:01  
13 the representations you just described, Margaret, 10:19:03  
14 including the last one. I didn't jot them all down. 10:19:07  
15 I didn't say it's the only personal email address he 10:19:10  
16 uses. But just to be clear, I think there was a 10:19:12  
17 problem with the question. 10:19:14  
18 MS. KRAWIEC: Okay. 10:19:14  
19 MR. TYRRELL: You asked. It assumed -- I 10:19:17  
20 think it's confusing, the concept of a domain name, 10:19:21  
21 which is CenterGate.com, with the idea that every 10:19:27  
22 email that's sent must be a record of the -- an entity 10:19:31

1 that has a similar name. So, for example, you know, 10:19:34  
2 every email that's sent from a Gmail.com address is 10:19:40  
3 not a business record of Gmail or Amazon.com or 10:19:44  
4 Yahoo.com. 10:19:47

5 So CenterGate.com is a domain name. It is 10:19:50  
6 not a -- it does not reflect business activity of a 10:19:56  
7 long defunct business entity. And I think that's what 10:20:00  
8 I -- perhaps that domain name piece we didn't talk 10:20:03  
9 about, but I think I did -- you are correct that I did 10:20:06  
10 represent to you, as my client just testified, that 10:20:08  
11 CenterGate, the business, was wound down and 10:20:12  
12 completely filed its final tax return for calendar 10:20:19  
13 year 2014 in early 2015, I think in March or April of 10:20:24  
14 2015. 10:20:25

15 MS. KRAWIEC: Okay. Well, maybe I can go 10:20:27  
16 at it a different way. This might be helpful, if the 10:20:30  
17 videographer could please pull up Tab 27, and if we 10:20:34  
18 could mark it as Exhibit 1. 10:20:36

19 - - - 10:20:36

20 (A document was marked as Exhibit Number 1.) 10:20:36

21 - - - 10:20:36

22 VIDEOGRAPHER: Just a moment. 10:20:44

1 MR. TYRRELL: But just to be clear, 10:20:46  
2 Margaret, my client is not going to -- my client will 10:20:48  
3 invoke his rights with regard to any question that you 10:20:51  
4 pose to him regarding his use of a particular email 10:20:54  
5 address. 10:20:55

6 MS. KRAWIEC: Okay. Understood. I think 10:20:59  
7 we have this exhibit. And if the court reporter could 10:21:01  
8 please enter this exhibit as Exhibit 1. And, Joe, if 10:21:05  
9 you could scroll to the third page of that exhibit, to 10:21:09  
10 the -- at the top. Okay. Perfect. 10:21:23

11 BY MS. KRAWIEC: 10:21:23

12 Q. So, Mr. Joffe, this is an email. I'll 10:21:25  
13 represent to you that this was obtained through a FOIA 10:21:28  
14 request. You see that this email was sent on April 10:21:40  
15 20, 2018. And it says: To Rodney Joffe, R Joffe, at 10:21:46  
16 Centergate.com. 10:21:47

17 Is this your email address? 10:21:48

18 A. **That is one of my email addresses. Yes.** 10:21:52

19 Q. And do you still use this email address? 10:21:56

20 Is it an active email address that you use? 10:22:00

21 MR. TYRRELL: You can answer. 10:22:00

22 A. **Yes.** 10:22:01



1 Q. Mr. Joffe, are there any other email 10:22:21  
2 addresses that you use other than this CenterGate 10:22:23  
3 email address? 10:22:25

4 A. As a result of the ongoing investigation in 10:22:29  
5 the Office of Special Counsel, and the advice of my 10:22:30  
6 attorney, I'm going to decline to answer that as well. 10:22:35

7 Q. Mr. Joffe, do you use an email address: 10:22:44  
8 RJoffe@PacketForensics.com? 10:22:47

9 A. Decline to answer that based on the advice 10:22:53  
10 of my attorney and invoke my rights under the Fifth 10:22:57  
11 Amendment. 10:22:59

12 Q. Just give me a second. I'm going to -- if 10:23:10  
13 the court reporter could go to page 80 of this Exhibit 10:23:15  
14 1. 10:23:16

15 So, Mr. Joffe, this is an email dated July 10:23:26  
16 31, 2019. It's from Dr. Manos Antonakakis to, among 10:23:36  
17 others, Rodney Joffe, R Joffe at PacketForensics.com. 10:23:39  
18 Is this your email address? 10:23:42

19 MR. TYRRELL: Margaret, I -- I appreciate 10:23:47  
20 that your question is focused on the email address, 10:23:51  
21 but from what I can see here, this is a 111-page email 10:23:55  
22 which I've never seen. And that puts us at a bit of a 10:24:00

1 disadvantage to appreciate what, you know, might be in 10:24:03  
2 the email and, you know, what the implications of it 10:24:05  
3 might be. 10:24:05

4 So, you know, I -- I understand you weren't 10:24:09  
5 obliged to provide us with the documents in advance, 10:24:12  
6 but it does put us in a challenging position in terms 10:24:16  
7 of, you know, considering each of your questions and 10:24:18  
8 deciding whether to answer them. So, if I may have a 10:24:22  
9 moment just with my client. 10:24:24

10 MS. KRAWIEC: And Mr. Joffe -- Mr. Tyrrell, 10:24:24  
11 we could take a break and you can -- we'll go off the 10:24:28  
12 record; you can confer with your client. And if you 10:24:31  
13 need to have the videographer move this exhibit, this 10:24:34  
14 is just a kind of a grouping of emails that were 10:24:38  
15 provided in a -- in a FOIA production. 10:24:43

16 MR. TYRRELL: I see. So it's not a single 10:24:45  
17 email. It's a packet of emails that you received. 10:24:48

18 MS. KRAWIEC: Correct. And I'm just asking 10:24:50  
19 about this specific page. That's why I am not trying 10:24:54  
20 to have a gotcha moment, I'm just trying to work 10:24:58  
21 within, you know, the integrity of the production and 10:25:01  
22 just point out that Mr. Joffe, it appears as of at 10:25:06

1 least July 2019 was using the email 10:25:09

2 RJoffe@PacketForensics.com. 10:25:11

3 THE WITNESS: As a result of the ongoing 10:25:15

4 investigation, the Office of Special Counsel and 10:25:18

5 advice of my attorney, I'm going to assert my rights 10:25:22

6 under the Fifth Amendment as well. 10:25:23

7 BY MS. KRAWIEC: 10:25:23

8 Q. Mr. Joffe, is Packet Forensics one of the 10:25:26

9 companies that you had an ownership interest with or 10:25:29

10 otherwise an affiliation? 10:25:31

11 A. Once again I'm going to invoke my rights 10:25:34

12 under the Fifth Amendment. 10:25:35

13 Q. What about Vostrom Holdings? 10:25:41

14 MR. TYRRELL: You can answer. 10:25:53

15 A. I have no ownership connection, business 10:25:55

16 connection to that domain at all. 10:26:00

17 Q. Are you familiar with Vostrom Holdings, Mr. 10:26:04

18 Joffe? Is that a name that's familiar to you? 10:26:08

19 MR. TYRRELL: You can answer yes or no. 10:26:09

20 A. Yes. 10:26:12

21 Q. And how is it familiar to you? 10:26:14

22 A. It's I believe a personal domain belonging 10:26:20

1 to Victor Oppleman. 10:26:22

2 Q. Who -- could you spell the name, please? 10:26:25

3 A. Victor Oppleman, O-P-P-L-E-M-A-N. 10:26:33

4 Q. And how do you know Mr. Oppleman? 10:26:36

5 A. I'm -- as a result of the investigation of 10:26:39

6 the Office of Special Counsel, I'm going to invoke my 10:26:43

7 rights, my Fifth Amendment rights. 10:26:45

8 Q. I'm going to go through a list of some 10:26:49

9 additional companies. And just like you did with 10:26:51

10 Vostrom, if there's any information you can share 10:26:54

11 without invoking your rights, we ask that you do so. 10:26:58

12 So, we spoke with -- about ZETalytics. 10:27:02

13 Just to confirm, are you invoking your rights if I ask 10:27:06

14 you any questions about ZETalytics? 10:27:09

15 A. Yes. 10:27:10

16 MR. TYRRELL: Yeah. Again, Margaret, when 10:27:11

17 you say any questions about ZETalytics, I -- 10:27:14

18 MS. KRAWIEC: Okay. Any questions 10:27:15

19 regarding Mr. Joffe's knowledge of ZETalytics. 10:27:19

20 MR. TYRRELL: Sure. 10:27:22

21 THE WITNESS: Well, I will invoke my 10:27:25

22 rights. 10:27:26

1 BY MS. KRAWIEC: 10:27:26

2 Q. What about Glomar Research, LLC? 10:27:28

3 A. I -- I don't recognize that name. 10:27:38

4 Q. Okay. What about ERP Services Inc.? 10:27:42

5 A. There I invoke my rights. 10:27:53

6 Q. Zero Point Dynamics? 10:27:54

7 A. I've never heard of them. 10:27:57

8 Q. TW Corporation? 10:27:58

9 A. I've heard of TW Corporation. It's a very 10:28:02

10 large defense contractor. But I know nothing about 10:28:05

11 them. I've never met them and I've never done 10:28:09

12 business with them. 10:28:10

13 Q. Understood. Georgia Tech Applied Research 10:28:12

14 Corporation? 10:28:14

15 A. I'm aware of them. 10:28:16

16 Q. And could you tell us generally how you are 10:28:19

17 aware of them, Mr. Joffe? 10:28:20

18 A. They are one of the Georgia Tech entities. 10:28:24

19 I couldn't tell you how they differ from Georgia Tech 10:28:28

20 and so for what they do. 10:28:30

21 Q. And -- and generally were you in your 10:28:33

22 capacity when you were at Neustar prior to your 10:28:35

1 retirement, were you working with Georgia Tech and/or 10:28:39

2 Georgia Tech Applied Research Corporation? 10:28:41

3 **A. I'm going to invoke my rights on my Fifth 10:28:46**

4 **Amendment rights on that.** 10:28:47

5 Q. Were you working with Georgia Tech in 10:28:50

6 connection with the DARPA contract? 10:28:53

7 **A. Same thing, invoking my Fifth Amendment 10:28:57**

8 **rights on that.** 10:28:59

9 Q. Did you share DNS data with anyone at 10:29:01

10 Georgia Tech? 10:29:04

11 **A. Once again invoking my Fifth Amendment 10:29:11**

12 **rights.** 10:29:11

13 Q. Let me just ask a general question. In 10:29:14

14 your capacity as an executive at Neustar, did you ever 10:29:19

15 deal directly with DARPA? 10:29:20

16 **A. I am going to invoke my Fifth Amendment 10:29:24**

17 **rights for that.** 10:29:26

18 Q. Okay. Just going back to the list of 10:29:28

19 companies, what about GrammaTech Inc.? 10:29:32

20 **A. Could you spell that.** 10:29:34

21 Q. Sure. G-R-A-M-M-A, capital T-E-C-H, one 10:29:39

22 word, so GrammaTech Inc. 10:29:41



1 Q. Systems and Technology Research? 10:31:50

2 A. I don't recognize that name at all. 10:31:56

3 Q. Two Six Labs, LLC? 10:32:01

4 A. I recognize the name, but I don't recall 10:32:06

5 actually doing any business for them or with them. 10:32:12

6 Q. Understood. Dino Capital Group, LLC? 10:32:15

7 A. I have to invoke my Fifth Amendment rights 10:32:19

8 in relation to that. 10:32:22

9 Q. Block Three Inc.? 10:32:25

10 A. Same thing, invoke my Fifth Amendment 10:32:28

11 rights. 10:32:28

12 Q. Littoral Ventures, L-I-T-T-O-R-A-L 10:32:35

13 Ventures? 10:32:36

14 A. Once again, invoking my Fifth Amendment 10:32:39

15 rights. 10:32:39

16 Q. White Hat Security? 10:32:42

17 A. Once again invoking my Fifth Amendment 10:32:46

18 rights. 10:32:47

19 Q. May I ask, Mr. Joffe, just generally 10:32:52

20 speaking when you were at Neustar, what policies and 10:32:55

21 agreements were sort of in place or governed your use 10:32:58

22 of DNS data? 10:32:59



1           **A.     Have to invoke my Fifth Amendment rights on** 10:33:02

2     **that.** 10:33:03

3           MR. TYRRELL: Margaret, are we done with 10:33:05

4     this particular document? It's a little -- 10:33:07

5           MS. KRAWIEC: Yes. 10:33:08

6           MR. TYRRELL: -- disconcerting to see a 10:33:10

7     little tiny image of you in the upper right-hand 10:33:12

8     corner. 10:33:13

9           MS. KRAWIEC: Yeah. I'm sorry. 10:33:14

10          MR. TYRRELL: Nothing wrong -- nothing 10:33:15

11     wrong with your image, it's just, you know, I feel 10:33:17

12     like I'm squinting to see you. 10:33:19

13          MS. KRAWIEC: You prefer to see me smiling 10:33:21

14     on this end, right? Of course. 10:33:21

15          MR. TYRRELL: Exactly. 10:33:23

16          MS. KRAWIEC: Okay. 10:33:24

17          MR. TYRRELL: Thank you. 10:33:25

18          MS. KRAWIEC: Thank you. 10:33:25

19     BY MS. KRAWIEC: 10:33:25

20     **Q.     Mr. Joffe, can you describe for me the DNS** 10:33:34

21     collection system referred to as Thales in 2016 and 10:33:37

22     2017? 10:34:00

1           **A.     So I've heard the name, but I have no**           10:34:02

2           **knowledge of what it is.**           10:34:03

3           Q.     I believe -- and I'm going off of           10:34:06

4           recollection, so I'm really just trying to spur your   10:34:09

5           recollection; but I believe you may have been an       10:34:13

6           author on a paper that discussed Thales. Is that       10:34:16

7           ringing a bell?           10:34:18

8           **A.     I was an author on a paper, and I don't**       10:34:27

9           **recall that it was called Thales.**           10:34:29

10          Q.     Well, I'm sorry, not that it was called       10:34:32

11          Thales, but that in -- within the document, the Thales 10:34:35

12          collection system or database, however it's best to   10:34:39

13          describe it was discussed. So I'm just more raising   10:34:42

14          it to see if it prompts your recollection?       10:34:45

15          **A.     I don't recall.**           10:34:46

16          MR. TYRRELL: Margaret, is it Thales with       10:34:48

17          an F or Vales with a V?           10:34:51

18          MS. KRAWIEC: It's Thales with a T, so           10:34:53

19          T-H-A-L-E-S.           10:34:56

20          MR. TYRRELL: Oh, oh, yeah. Yeah. Okay.       10:34:57

21          Thank you. Yeah. Yeah.           10:35:00

22          BY MS. KRAWIEC:           10:35:00

1 Q. So, Mr. Joffe, when I say Thales, does that 10:35:03  
2 have any meaning to you? 10:35:05

3 A. I've heard the name, but I have no idea 10:35:08  
4 where it fits in or what it's related to. 10:35:10

5 Q. And my mistake. It was a paper that was 10:35:12  
6 authored by David Dagon and not yourself, so -- okay. 10:35:18

7 A. Probably explains it. 10:35:20

8 Q. Okay. Mr. Joffe, have you ever -- are you 10:35:28  
9 familiar with the Amsterdam Internet Exchange just 10:35:31  
10 generally? 10:35:33

11 A. I'm going to invoke my Fifth Amendment 10:35:35  
12 rights on that. 10:35:36

13 Q. Did you have any access to DNS records 10:35:42  
14 transiting, quote, node, N-O-D-E, underscore ID, end 10:35:49  
15 quote, AMS-IX23 of the Amsterdam Internet Exchange? 10:35:57

16 A. I'm going to invoke my Fifth Amendment 10:35:58  
17 rights. 10:35:59

18 Q. Are you familiar with an individual named 10:36:08  
19 Tea Leaves? 10:36:09

20 A. I'm going to invoke my Fifth Amendment 10:36:11  
21 rights on that. 10:36:12

22 Q. Do you know who Tea Leaves is, Mr. Joffe? 10:36:15



1 -- well, these are my words, not yours, but from my 10:37:37  
2 perspective you are very familiar it appears with DNS 10:37:40  
3 data. And one concept I've struggled with 10:37:44  
4 transparently is whether or not DNS data should be 10:37:50  
5 viewed as private or not private, confidential or not 10:37:56  
6 confidential. 10:37:57

7 From your perspective, do you view DNS data 10:38:00  
8 as nonconfidential? 10:38:03

9 **A. I'm going to invoke my Fifth Amendment 10:38:31**  
10 **rights on that. 10:38:33**

11 Q. Have you ever provided, not specific to the 10:38:38  
12 server allegations; let's take the server allegations 10:38:41  
13 out of the equation. In the context of your work when 10:38:45  
14 you were at Neustar, even pre-2016, have you ever 10:38:48  
15 provided DNS data to people outside of Neustar? 10:38:54

16 MR. TYRRELL: Can you give me just a 10:38:56  
17 moment. I'm sorry, Margaret. We are trying to be 10:39:26  
18 helpful. 10:39:26

19 I -- I think my client will decline to 10:39:29  
20 answer any questions related to his activities with 10:39:33  
21 regard to the sharing of DNS data outside of Neustar, 10:39:38  
22 if there were any. But if you want to ask generally 10:39:41

1 if he's familiar if Neustar shared data, I think maybe 10:39:46

2 that's a question we can answer. 10:39:48

3 MS. KRAWIEC: Perfect. I was -- you 10:39:50

4 anticipated my very next question if you weren't able 10:39:53

5 to answer that, so I appreciate that we are on the 10:39:55

6 same page. 10:39:56

7 So, Mr. Joffe -- 10:39:56

8 MR. TYRRELL: So the last question is 10:39:58

9 withdrawn or should we invoke as to the last question? 10:40:01

10 MS. KRAWIEC: Why don't we just invoke for 10:40:03

11 the record. 10:40:04

12 MR. TYRRELL: Okay. That's fine. 10:40:05

13 THE WITNESS: So -- 10:40:06

14 MR. TYRRELL: So there's no question 10:40:07

15 pending. Go ahead. 10:40:09

16 MS. KRAWIEC: So you are -- but you are 10:40:10

17 invoking as to the last question, correct? 10:40:12

18 MR. TYRRELL: To the extent you are asking 10:40:13

19 him about his specific activities, yes, we are 10:40:16

20 invoking. 10:40:18

21 BY MS. KRAWIEC: 10:40:18

22 Q. So just talking about Neustar generally, 10:40:20

1 not any individual activity by you, Mr. Joffe, have 10:40:23  
2 there been circumstances, just broadly speaking, where 10:40:28  
3 Neustar has provided DNS data outside of the company? 10:40:36

4 **A. Yes.** 10:40:36

5 Q. And has it always been in the context of a 10:40:38  
6 contractual relationship or in what context -- that 10:40:42  
7 was compound. Let me break that down. 10:40:43

8 In what context has Neustar provided DNS 10:40:47  
9 data outside of the company? 10:40:49

10 **A. It provided it subsequent to a legal 10:40:55**  
11 **process. It's provided it to -- the data to 10:41:02**  
12 **customers, their own data. And there is a set of DNS 10:41:08**  
13 **data that has no terms and conditions around it. And 10:41:13**  
14 **that data is provided to a number of parties including 10:41:19**  
15 **security researchers and so on. 10:41:23**

16 Q. Okay. Very helpful. So legal process, 10:41:27  
17 customers and then researchers. So I want to explore 10:41:33  
18 each of those just so I understand the parameters and 10:41:36  
19 the differentiation between the potentially type -- 10:41:40  
20 different types of DNS data or the information 10:41:43  
21 contained therein. 10:41:44

22 So, legal process, am I correct just that 10:41:46

1 if someone subpoenaed Neustar for DNS data and they 10:41:50  
2 went through the appropriate legal process, that you 10:41:51  
3 may have produced that information pursuant to a 10:41:53  
4 validly issued subpoena? 10:41:55

5 MR. TYRRELL: Again, Margaret, you are 10:41:57  
6 saying you, so -- 10:41:58

7 Q. I'm sorry. I'm sorry. So Neustar, not 10:42:00  
8 you, Mr. Joffe personally, but Neustar. 10:42:02

9 If they were to receive a validly issued 10:42:05  
10 subpoena seeking DNS data, are you aware of 10:42:08  
11 circumstances in which the company has provided data 10:42:11  
12 in those contexts? 10:42:12

13 A. Yes, I am. 10:42:16

14 Q. And the format, just so I understand, is 10:42:19  
15 the format -- when you -- when Neustar produces DNS 10:42:24  
16 data, what format is it in? 10:42:31

17 A. It's in one of two or three technical 10:42:33  
18 formats which are standard formats, industry standard 10:42:38  
19 formats. 10:42:39

20 Q. Could you describe those formats for me, 10:42:41  
21 Mr. Joffe? 10:42:43

22 A. It could be done -- 10:42:45



1 (Counsel and witness confer off record.) 10:42:51

2 A. So it can be provided in what is called raw 10:42:58

3 DNS format. And there's a standard protocol format 10:43:03

4 for DNS. It can also be provided as a JSON file, 10:43:12

5 J-S-O-N, or as a text file of some kind. 10:43:18

6 Q. And is there benefits to which format the 10:43:24

7 DNS data is provided in? Like can you do more with a 10:43:28

8 particular format or what are the differences? Why do 10:43:32

9 you have the three different formats? 10:43:34

10 A. It depends on how people are competent to 10:43:43

11 use the different formats. If you were to talk to me 10:43:49

12 as a computer person and say, "What is the EBCDIC or 10:43:53

13 ASCII code for the letter J," I could give that to 10:43:58

14 you; but the average person would have no idea what 10:44:01

15 that meant. 10:44:01

16 So in DNS, it can be in a raw format or in 10:44:04

17 a modified format that makes more sense to someone not 10:44:09

18 as technical. 10:44:09

19 Q. I see. And so the raw format, do you have 10:44:13

20 to have like a certain system to be able to run the 10:44:16

21 data on? 10:44:24

22 A. No. 10:44:24

1 Q. So what format is most commonly used or 10:44:27  
2 preferred, I guess, if you can answer that? 10:44:28

3 A. For what purpose? 10:44:30

4 Q. Yeah. I'm trying to understand the 10:44:31  
5 purposes, because I'm not technically savvy. So why 10:44:34  
6 would someone want it in -- you had said -- and I'm 10:44:37  
7 not trying to mischaracterize your testimony, but I 10:44:39  
8 think you had suggested that the raw data might be 10:44:42  
9 more appealing to someone that's technical. 10:44:45

10 So what is the benefit of having the raw 10:44:48  
11 data as opposed to, for example, text file format? 10:44:53

12 (Counsel and witness confer off record.) 10:44:53

13 A. It's fundamentally the same data, just in a 10:45:26  
14 format that is easier for someone non-technical to be 10:45:31  
15 able to understand. It's the equivalent of me 10:45:33  
16 providing something that is in binary form, zeroes and 10:45:39  
17 ones. Some tech people would understand that. Others 10:45:43  
18 would say I would like you to give me the character 10:45:46  
19 representation of what that is. 10:45:47

20 It's the same data but in a different form 10:45:50  
21 that is easier for some people to understand or to 10:45:53  
22 utilize in analyzing, but there's no -- 10:45:56

1 Q. I see. 10:45:57

2 A. -- manipulation of the data. It's the same 10:45:59

3 data. 10:46:00

4 Q. And just generally when Neustar would 10:46:03

5 receive subpoenas through a validly legal process, 10:46:05

6 would the subpoenas explain why the DNS data was 10:46:10

7 sought? I mean, why were people asking for the DNS 10:46:13

8 data? 10:46:13

9 MR. TYRRELL: Just one moment, please. 10:46:18

10 A. I have no idea. I wasn't part of that 10:46:21

11 process. 10:46:21

12 Q. Okay. So what about customers? Obviously 10:46:22

13 Neustar's a business. It's -- while it provides this 10:46:28

14 excellent service from a DNS perspective, it needs to 10:46:31

15 make money. So it has these contracts or customers 10:46:33

16 that seek this DNS data. 10:46:35

17 Am I right in that, that the customer 10:46:37

18 relationships would be for purposes of being able to 10:46:41

19 have access to the DNS information that Neustar has? 10:46:46

20 A. I'm going to have to invoke the Fifth on 10:46:49

21 that. 10:46:49

22 Q. Okay. Can you tell generally -- I'm not 10:46:53

1 asking about the server allegations, but typically 10:46:55  
2 your customers, would you have actual contracts where 10:47:02  
3 you would provide certain services that Neustar was 10:47:05  
4 able to provide? 10:47:06

5 MR. TYRRELL: Are you asking if Neustar has 10:47:09  
6 contracts with customers? 10:47:09

7 Q. I'm trying to -- I don't want to trample on 10:47:13  
8 the concern to make an admission from a DNS 10:47:16  
9 perspective, but I'm trying to understand what 10:47:18  
10 services Neustar could provide to customers that would 10:47:21  
11 warrant the entry of a contract. So if you can give 10:47:25  
12 me information that would be helpful there, I'm just 10:47:28  
13 trying to understand what Neustar did for its 10:47:30  
14 customers. 10:47:30

15 A. The best thing is to actually look at 10:47:33  
16 Neustar's website because I'm not aware of the 10:47:36  
17 services that they provide, but I'm sure that they 10:47:39  
18 provide it on a website. Or if you were to contact a 10:47:43  
19 sales associate, or the marketing or sales department, 10:47:47  
20 I wasn't really involved in that. 10:47:48

21 Q. Okay. Mr. Joffe, what was your role at 10:47:53  
22 Neustar? I mean, I know you founded the company. 10:47:56



1 could be provided to these researchers versus 10:49:11  
2 information that could have been provided to customers 10:49:15  
3 contractually. 10:49:16

4 Can you explain the difference between the 10:49:17  
5 data that could be shared with these researchers? 10:49:21

6 **A. I invoke the Fifth on that.** 10:49:23

7 Q. Can I ask the format, the three formats 10:49:28  
8 that you referenced, could you at least tell me the 10:49:31  
9 format that you could -- you would provide the 10:49:33  
10 information to such researchers? 10:49:36

11 **A. It could be any of them, so --** 10:49:40

12 MR. TYRRELL: And again, the "you" is 10:49:42  
13 Neustar. 10:49:43

14 Q. I'm sorry. Neustar. Correct. I am just 10:49:45  
15 trying to understand, it sounded to me -- and maybe 10:49:49  
16 you can elaborate on this, Mr. Joffe, that you gave 10:49:52  
17 different types of information to the researchers 10:49:56  
18 versus through a -- 10:49:57

19 **A. Yes.** 10:49:57

20 Q. -- subpoena or a customer. And I'm trying 10:50:00  
21 to understand that. 10:50:00

22 MR. TYRRELL: Again Margaret, I'm sorry, 10:50:02

1 but you keep saying you, and -- 10:50:04

2 MS. KRAWIEC: I'm sorry. 10:50:05

3 MR. TYRRELL: -- my client is not speaking 10:50:06

4 about his individual activities at Neustar. If you 10:50:11

5 are asking generally if he's aware of what Neustar may 10:50:14

6 have done in a certain context, the company, he -- you 10:50:17

7 know, we'll do our best to answer those questions 10:50:20

8 where we can; but he's not going to answer any 10:50:23

9 questions specifically about what he did generally 10:50:25

10 with regard to researchers, for example, or 10:50:28

11 specifically with regard to the server questions, 10:50:31

12 server allegations. 10:50:31

13 MS. KRAWIEC: Understood. And that was 10:50:32

14 just a lack of precision on my end. I'm -- 10:50:35

15 MR. TYRRELL: No worries. 10:50:36

16 BY MS. KRAWIEC: 10:50:36

17 Q. I'm wondering what Neustar -- you had said 10:50:39

18 that Neustar provided information in certain context 10:50:42

19 to computer researchers or science -- science -- 10:50:45

20 science researchers. Trying to understand what that 10:50:50

21 data was and how it differed from data that maybe 10:50:54

22 would -- should be shared with customers? 10:50:56

1           **A.     It would be no difference. It was purely a** 10:50:59  
2           **formatting requirement where someone would say, I'd** 10:51:01  
3           **like it in format A or format B or format C. And it** 10:51:06  
4           **could be any of the parties would ask for that.** 10:51:08

5           **Q.     Very helpful. And so if Neustar were to** 10:51:12  
6           **provide information to, for example, a computer** 10:51:15  
7           **researcher, would there be any terms or conditions** 10:51:18  
8           **applied to that data?** 10:51:20

9           **A.     Generally, yes.** 10:51:25

10          **Q.     And what would those terms or conditions** 10:51:27  
11          **be, Mr. Joffe?** 10:51:28

12          **A.     It would be unique to any particular** 10:51:31  
13          **request. And it would be a decision made by someone** 10:51:35  
14          **above my pay grade.** 10:51:36

15          **Q.     So, just so that I can appreciate, what** 10:51:39  
16          **types of terms or conditions do you have a** 10:51:41  
17          **recollection of Neustar imposing when it provided such** 10:51:47  
18          **information?** 10:51:49

19          **A.     I can't recall what the differences were,** 10:52:00  
20          **but I can say that a decision would be made by the** 10:52:06  
21          **company from a competitive point of view. So, for** 10:52:09  
22          **example, it may be that Neustar would decide that --** 10:52:14



1 or they would not provide data to a competitor of 10:52:17

2 theirs under certain circumstances. 10:52:19

3 Q. Understood. Mr. Joffe, who from your 10:52:25

4 perspective -- I mean, you were senior vice president 10:52:29

5 at Neustar. Who would you deem to be Neustar's 10:52:32

6 competitors? 10:52:32

7 A. Um -- 10:52:41

8 MR. TYRRELL: Just a moment. 10:52:43

9 (Counsel confers with witness off record.) 10:52:43

10 MR. TYRRELL: Could you -- could you be 10:52:51

11 more specific, Margaret. I think -- 10:52:52

12 MS. KRAWIEC: Sure. 10:52:53

13 MR. TYRRELL: -- my client has indicated 10:52:54

14 that Neustar provides a range of services. You can 10:52:57

15 look at their website and see what they do. And my 10:53:00

16 guess is that there are different competitors in 10:53:01

17 different business lines. That's a guess, but I'm -- 10:53:05

18 MS. KRAWIEC: Yup. 10:53:06

19 MR. TYRRELL: -- that's typically the case. 10:53:08

20 BY MS. KRAWIEC: 10:53:08

21 Q. Fair enough. So I'm focused on from a DNS 10:53:11

22 perspective. Who would Neustar view its competitors 10:53:14

1 to be in that DNS space? 10:53:16

2 A. In providing DNS service, competitors there 10:53:20

3 would be Akamai, NS1; trying to think of some of the 10:53:27

4 other competitors. Things have changed in the last 10:53:38

5 couple of years, and I've not been active, so I think 10:53:40

6 there's been acquisitions, but those are two of the 10:53:44

7 large ones. A company named DYN DNS, D-Y-N, DNS, who 10:53:49

8 were taken over and bought by Oracle. A company 10:53:53

9 called Open DNS. 10:53:55

10 And there are probably some companies 10:54:01

11 outside the U.S., but I'm not -- I don't recall who 10:54:02

12 they are. 10:54:04

13 Q. Understood. 10:54:07

14 A. And they were competitors in different ways 10:54:09

15 with DNS. 10:54:09

16 Q. And I'm just trying to understand, but 10:54:14

17 would ZETalytics be a competitor of Neustar? 10:54:19

18 A. I'm going to invoke my Fifth Amendment 10:54:23

19 rights on that. 10:54:25

20 Q. So I think we have been going for a while, 10:54:29

21 Mr. Joffe and Mr. Tyrrell, Ms. Citron. If it makes 10:54:34

22 sense, we could take a 15-minute break. 10:54:37

1 MR. TYRRELL: Sure. It's up to you. 10:54:39

2 THE WITNESS: I'm fine, but it's up to you. 10:54:41

3 MS. KRAWIEC: Okay. Why don't we take a 10:54:42

4 break. And if the videographer could please open up a 10:54:48

5 breakout room for Skadden. 10:54:51

6 VIDEOGRAPHER. Okay. Going off the record 10:54:55

7 at 10:54 a.m. 10:54:58

8 - - - 10:54:58

9 (Recessed at 10:54 a.m.) 10:54:58

10 (Reconvened at 11:09 a.m.) 10:54:58

11 - - - 10:54:58

12 VIDEOGRAPHER: Back on the record, 11:09 11:10:03

13 a.m. 11:10:05

14 BY MS. KRAWIEC: 11:10:05

15 Q. Mr. Joffe, are you able to tell us how you 11:10:10

16 first became aware of the server allegations? 11:10:14

17 A. I am going to invoke my Fifth. 11:10:22

18 Q. Can you tell us what you did after learning 11:10:25

19 about the server allegations? 11:10:26

20 A. Same thing, Fifth. 11:10:27

21 Q. Can you tell us who brought to your 11:10:29

22 attention the server allegations in the first 11:10:31

1 instance? 11:10:32

2 **A. No. Going to take the Fifth.** 11:10:34

3 Q. What is your understanding of how the 11:10:38

4 Alfa-Bank look-ups were discovered? 11:10:41

5 **A. Going to take the Fifth.** 11:10:43

6 Q. Could you at least tell us when you learned 11:10:46

7 of the server allegations? 11:10:47

8 **A. Same thing, going to take the Fifth.** 11:10:51

9 Q. Do you know what the source was with 11:11:00

10 respect to the data underlying the server allegations, 11:11:00

11 like where the source was collected from? 11:11:02

12 **A. I'm going to take the Fifth.** 11:11:05

13 Q. And hopefully this is a fair question that 11:11:09

14 we can talk about. Were you aware of Alfa-Bank prior 11:11:13

15 to the server allegations? 11:11:15

16 **A. Never heard of them.** 11:11:17

17 Q. Can you tell us other than -- I'm trying to 11:11:23

18 be fair here. So up until the server allegations, 11:11:27

19 that was the first time you had heard of Alfa-Bank? 11:11:29

20 **A. Yes.** 11:11:31

21 Q. So I'm going to run through a list of 11:11:40

22 individuals just like we did last time, because I want 11:11:44

1 to see if it's a fair area to probe, or whether or not 11:11:46  
2 it prompts you invoking the Fifth. But I'm generally 11:11:50  
3 looking to understand your relationship, if any, with 11:11:53  
4 the following individuals or entities. 11:11:55

5 So Professor L. Jean Camp? 11:12:00

6 **A. I've never met her.** 11:12:15

7 Q. Have you ever spoken to her? 11:12:17

8 **A. I've never spoken to her.** 11:12:19

9 Q. Do you know who she is, Mr. Joffe? 11:12:21

10 **A. Only through public records and articles.** 11:12:28

11 Q. Xenos, that's X-E-N-O-S, Global? 11:12:35

12 **A. Never heard of them.** 11:12:37

13 Q. Mikey Dickerson? 11:12:39

14 **A. I've heard the name, but I don't know who** 11:12:44

15 **Mikey Dickerson is. I don't know what he does or** 11:12:47

16 **where he lives or --** 11:12:49

17 Q. So you have never met Mikey Dickerson? 11:12:51

18 **A. To the best of my knowledge, no.** 11:12:53

19 Q. Can I ask do you know who Daniel Jones is? 11:12:58

20 **A. I take the Fifth.** 11:13:03

21 Q. Are you aware of Mikey Dickerson working 11:13:06

22 for a company called Layer Aleph? Sorry. 11:13:14



1 him once or twice at a conference. 11:15:08

2 Q. Randy Bush? 11:15:10

3 A. Randy Bush, someone else that I've known 11:15:13

4 for 20 years in the internet security world, in 11:15:18

5 general internet security world. 11:15:22

6 Q. What about David Schiminovich? 11:15:25

7 A. I've never heard of him. 11:15:26

8 Q. Paul Vixie? 11:15:28

9 A. Paul Vixie I've known for since 1994 as a 11:15:37

10 DNS and a network expert. 11:15:42

11 Q. What about Nicholas Weaver? 11:15:44

12 A. I know the name Nicholas Weaver. I don't 11:15:48

13 recall ever meeting with him. I don't recall ever 11:15:50

14 communicating with him. But he's also in the 11:15:54

15 community. 11:15:55

16 Q. And Daniel Jones, just because I had asked 11:15:58

17 in the context of Mikey Dickerson, so am I correct 11:16:02

18 that you are going to take the Fifth? 11:16:03

19 A. Correct. 11:16:04

20 Q. If I say Daniel -- okay. 11:16:04

21 A. Correct. 11:16:05

22 Q. What about the Democracy Integrity Project 11:16:08

1 or TDIP? 11:16:09

2 **A. I'm going to take the Fifth on that.** 11:16:12

3 Q. Fusion GPS? 11:16:13

4 **A. Take the Fifth on that.** 11:16:16

5 Q. Glen Simpson? 11:16:18

6 **A. Take the Fifth on that.** 11:16:20

7 Q. Peter Fritsch? 11:16:21

8 **A. Take the Fifth on that.** 11:16:25

9 Q. Jake Berkowitz? 11:16:25

10 **A. Not a name that I recognize, other than** 11:16:36

11 **having seen it in the press at some point, but it's** 11:16:37

12 **not a name -- not someone I know or met. I couldn't** 11:16:39

13 **even connect him to anything.** 11:16:41

14 Q. Laura Seago? 11:16:42

15 **A. Take the Fifth on that.** 11:16:45

16 Q. Perkins Coie? 11:16:48

17 **A. Take the Fifth on that.** 11:16:50

18 Q. Michael Sussmann? 11:16:52

19 **A. Same thing.** 11:16:53

20 Q. What about Marc Elias? 11:16:56

21 **A. Same thing.** 11:16:57

22 Q. Edward Baumgartner? 11:17:01





1 MR. TYRRELL: Just give us a moment. 11:18:46

2 (Counsel confers with witness off record.) 11:18:46

3 A. Yes. 11:19:14

4 Q. And could you identify those individuals 11:19:17

5 for us, Mr. Joffe? 11:19:19

6 MR. TYRRELL: So, Margaret, with that 11:19:23

7 general a question, my client will have to invoke his 11:19:26

8 rights. If you want to ask about specific individuals 11:19:28

9 as you have been doing, we do our best to answer with 11:19:31

10 regard to specific individuals. 11:19:33

11 Q. So prior to 2016, prior to the server 11:19:37

12 allegations, I think you indicated that there were 11:19:38

13 people at Georgia Tech that you had a personal 11:19:42

14 relationship with, correct? 11:19:44

15 MR. TYRRELL: I'm not sure -- 11:19:44

16 A. I said -- 11:19:46

17 (Overlapping speakers) 11:19:46

18 MS. KRAWIEC: Professional, I said. 11:19:48

19 MR. TYRRELL: I thought you said did he 11:19:50

20 know or interact with them in some -- some fashion. 11:19:52

21 BY MS. KRAWIEC: 11:19:52

22 Q. Okay. So maybe we can explore that. So 11:19:54

1 prior to 2016, did you know Dr. Manos Antonakakis? 11:20:01

2 **A. I will take the Fifth on that.** 11:20:02

3 Q. Prior to 2016, did you know David Dagon? 11:20:07

4 **A. Same thing, take the Fifth on that.** 11:20:09

5 Q. Is there anyone that you recall where you 11:20:16

6 wouldn't take the Fifth that you can tell us about? 11:20:22

7 MR. TYRRELL: Give us a second. 11:20:24

8 Q. How about I give you a couple more names 11:20:35

9 and then I'll ask the question. That might be 11:20:35

10 helpful. 11:20:35

11 So Doug Blough, B-L-O-U-G-H? 11:20:38

12 **A. Never heard of him.** 11:20:39

13 Q. Raheem Beyah, B-E-Y-A-H? 11:20:44

14 **A. Never heard of him.** 11:20:45

15 Q. Mustaque Ahamad, M-U-S -- 11:20:45

16 **A. Never heard of him.** 11:20:53

17 Q. I'm sorry. I was just going to spell it 11:20:53

18 for the court reporter. 11:20:53

19 **A. You can spell it any way you want. Just** 11:20:57

20 **the sound, never heard of him.** 11:20:58

21 Q. Okay. Might be my pronunciation, so I'll 11:21:00

22 just spell it for completeness. 11:21:03





1 DNS related issues? 11:23:26

2 **A. No.** 11:23:31

3 Q. Can you tell us why Lisa Patel -- is 11:23:35

4 Miss Patel your -- was she your executive assistant 11:23:38

5 when you were at Neustar? 11:23:41

6 **A. She was.** 11:23:41

7 Q. And we observed that she has a 11:23:45

8 Centergate.com email address. 11:23:48

9 Did she work with you at CenterGate? 11:23:51

10 **A. She was never an employee of CenterGate.** 11:23:53

11 **She got a CenterGate email address because it was a** 11:23:58

12 **domain that I controlled, but she -- she was never an** 11:24:02

13 **employee.** 11:24:03

14 Q. Okay. So was it -- do you remember why you 11:24:09

15 set her up with a CenterGate.com email address? Was 11:24:12

16 it just to communicate, given that she was your 11:24:14

17 assistant? 11:24:14

18 **A. It was just for her to use as an email** 11:24:18

19 **address because it was easier to give her -- to have a** 11:24:22

20 **fixed email address that I could send her information.** 11:24:26

21 Q. Mr. Joffe, who is Peter Burke? 11:24:28

22 **A. Peter Burke was the chief technology** 11:24:34

1 officer at some point at Neustar. And I reported to 11:24:37

2 him at some point. 11:24:39

3 Q. Okay. Did he work on the Georgia Tech 11:24:42

4 DNS-related issues? 11:24:44

5 A. To the best of my knowledge -- oh. I have 11:24:50

6 no idea. 11:24:52

7 Q. What about Mohan Atreya? 11:24:58

8 A. I have no idea either. 11:24:59

9 Q. And just for the record, who is Mohan 11:25:00

10 Atreya? 11:25:03

11 A. Mohan was a -- a product manager or product 11:25:10

12 director or a VP at Neustar in the technical 11:25:14

13 organization. 11:25:16

14 Q. What about Brian Foster? Could you tell us 11:25:20

15 who he is? 11:25:21

16 A. Brian Foster was I think the vice president 11:25:25

17 of I think marketing maybe or sales for Neustar. 11:25:33

18 Q. Did he have any involvement in working with 11:25:38

19 Georgia Tech on DNS-related issues? 11:25:40

20 A. I have -- I have -- I don't recall. 11:25:42

21 Q. Steve DeJong? Who is Steve DeJong? 11:25:48

22 A. I have to take the Fifth -- the Fifth on 11:25:49





1 contract with Agency 1. I mean, I'm not sure who 11:27:10  
2 Agency 1 is either, but I also wouldn't know that side 11:27:13  
3 of it. So I'm going to take the Fifth on that. 11:27:15

4 Q. Okay. So, Mr. Joffe, would you have ever 11:27:19  
5 seen -- well, Videographer, if you could put up Tab 3. 11:27:23  
6 And if we could enter it as Exhibit 2. 11:27:28

7 - - - 11:27:28

8 (A document was marked as Exhibit Number 2.) 11:27:28

9 - - - 11:27:28

10 BY MS. KRAWIEC: 11:27:34

11 Q. Mr. Joffe, are you able to see this okay? 11:27:54

12 A. Yes. I am looking at it now. 11:27:57

13 MR. TYRRELL: So it's a 33-page document. 11:28:01

14 Margaret, is this a single document or is this a 11:28:04

15 collection as well? 11:28:06

16 MS. KRAWIEC: This is a single document, 11:28:07

17 and I'm not going to ask substantive questions about 11:28:11

18 the document. I'm simply trying to refresh Mr. 11:28:17

19 Joffe's recollection to see whether or not he's ever 11:28:19

20 seen this document before. 11:28:20

21 THE WITNESS: I don't believe I've ever 11:28:21

22 seen that document. 11:28:23

1 BY MR. KRAWIEC: 11:28:23

2 Q. Do you know whether or not this is the 11:28:24

3 contract between Georgia Tech and Agency 1? 11:28:27

4 A. I have no idea. 11:28:30

5 MS. KRAWIEC: We can take the exhibit down. 11:28:40

6 And, Joe, if you could put up Tab 1, and if the court 11:28:45

7 reporter could mark it as Exhibit 3. 11:28:47

8 - - - 11:28:47

9 (A document was marked as Exhibit Number 3.) 11:28:47

10 - - - 11:28:47

11 BY MS. KRAWIEC: 11:28:47

12 Q. So, Mr. Joffe, this is the indictment of 11:28:58

13 Michael Sussmann that I think you said you had 11:29:02

14 previously reviewed; is that -- is that correct? Is 11:29:04

15 that a fair representation of this document? 11:29:06

16 A. It looks like it. 11:29:13

17 Q. And, again, do you recall under what 11:29:14

18 circumstances you reviewed the indictment? 11:29:16

19 MR. TYRRELL: It's a yes or a no, if you 11:29:18

20 know. 11:29:18

21 A. Yeah. I don't remember. 11:29:19

22 Q. Do you remember who brought the indictment 11:29:21

1 to your attention or was it just wide-spread media 11:29:24  
2 reporting? 11:29:25  
3 MR. TYRRELL: It's a yes or a no. 11:29:27  
4 **A. I don't recall how I came -- had become 11:29:33**  
5 **aware of it. 11:29:34**  
6 Q. Have you read the indictment, Mr. Joffe? 11:29:37  
7 **A. Yes. Yes. 11:29:39**  
8 Q. Do you have any -- 11:29:41  
9 **A. As best I can. 11:29:42**  
10 Q. Do you have any personal opinions as to the 11:29:46  
11 indictment? 11:29:47  
12 **A. I'm going to take the Fifth on that. 11:29:55**  
13 MS. KRAWIEC: Joe, if we could move to 11:30:04  
14 paragraph 23B on page 10. 11:30:07  
15 BY MS. KRAWIEC: 11:30:07  
16 Q. So paragraph 23B of the indictment 11:30:26  
17 indicates that Originator 1. 11:30:28  
18 Do you know who Originator 1 is, Mr. Joffe? 11:30:30  
19 **A. I need to take the Fifth on that. 11:30:32**  
20 Q. Okay. I'm going to represent to you that 11:30:35  
21 at least we believe that Originator 1 is Ms. Lorenzen. 11:30:38  
22 And what this paragraph says is that Originator 1 was 11:30:45

1 not a participant in the contract but was a founder of 11:30:48  
2 a company that the Georgia Tech researchers were 11:30:52  
3 considering as a potential data provider under the 11:30:54  
4 contract. 11:30:56

5 Do you know of any companies that Georgia 11:30:59  
6 Tech researchers were considering as a potential data 11:31:03  
7 provider under the DARPA contract? 11:31:06

8 **A. I am going to invoke my -- my rights under 11:31:08**  
9 **the Fifth Amendment.** 11:31:09

10 Q. Do you know whether Ms. Lorenzen's Company 11:31:12  
11 is ZETALytics? 11:31:15

12 **A. I've got to invoke my rights.** 11:31:17

13 Q. Prior to the release of the indictment, 11:31:19  
14 were you aware that Georgia Tech was considering 11:31:22  
15 ZETALytics as a data -- as a DNS data provider? 11:31:25

16 **A. I'm going to invoke my -- my rights under 11:31:31**  
17 **the Fifth Amendment.** 11:31:32

18 Q. Do you know why ZETALytics did not 11:31:36  
19 ultimately become a contractor? 11:31:37

20 **A. I have to invoke my rights under the Fifth 11:31:40**  
21 **Amendment.** 11:31:41

22 Q. Prior to 2016, prior to the server 11:31:44

1 allegations, had you ever reviewed data, DNS data from 11:31:48

2 ZETalytics before? 11:31:51

3 **A. I have to invoke my rights under the Fifth 11:31:53**

4 **Amendment. 11:31:55**

5 Q. Prior to 2016, were you familiar with April 11:32:00

6 Lorenzen? 11:32:03

7 **A. Going to invoke my rights. 11:32:11**

8 Q. Generally speaking, are you aware of what 11:32:13

9 type of data ZETalytics has access to? 11:32:18

10 **A. I invoke my rights under the Fifth 11:32:20**

11 **Amendment again. 11:32:23**

12 Q. So going to paragraph 23C -- so, Joe, if 11:32:28

13 you could scroll to the next page. It says: Tech 11:32:33

14 Executive 1 and his employer, Internet Company 1, 11:32:37

15 would ultimately sell large amounts of historical and 11:32:39

16 ongoing DNS data to University 1 for use and analysis 11:32:43

17 under the Agency 1 contract. 11:32:47

18 Did Neustar sell large amounts of data to 11:32:50

19 Georgia Tech? 11:32:51

20 **A. I invoke my rights under the Fifth 11:32:54**

21 **Amendment. 11:32:54**

22 Q. Do you believe that the reference to 11:33:02

1 Internet Company 1 is in fact to Neustar? 11:33:06

2 **A. I have to invoke my rights under the Fifth** 11:33:07

3 **Amendment.** 11:33:08

4 Q. We can go to -- focus on D. So basically 11:33:14

5 what paragraph D notes is that -- excuse me -- the 11:33:18

6 Agency 1 contract was not signed until November 2016, 11:33:22

7 and that Georgia Tech was provided a proof of concept 11:33:25

8 for work done under the contract. 11:33:27

9 Are you familiar with this proof of 11:33:31

10 contract period -- concept period? 11:33:33

11 **A. I have to invoke my rights under the Fifth** 11:33:35

12 **Amendment.** 11:33:36

13 Q. So, in that paragraph it also says: Among 11:33:56

14 the data that University 1 accessed through Internet 11:34:00

15 Company 1 was the DNS data of an executive branch 11:34:02

16 office of the U.S. government which Internet Company 1 11:34:06

17 had come to possess as a subcontractor in a sensitive 11:34:09

18 relationship between the U.S. government and another 11:34:11

19 company. 11:34:13

20 Do you know -- 11:34:14

21 MR. TYRRELL: Sorry. Go ahead, Margaret. 11:34:16

22 I'm sorry. 11:34:17

1 Q. I was just going to ask Mr. Joffe whether 11:34:20  
2 or not he knows who the executive branch office of the 11:34:23  
3 U.S. government is? 11:34:25

4 A. I have to invoke my Fifth Amendment rights. 11:34:31

5 MR. TYRRELL: And Margaret, if I may, just 11:34:32  
6 -- I apologize. Just for the record, I want to be 11:34:34  
7 clear that -- that in invoking his rights and my 11:34:41  
8 allowing my client to invoke his rights, that should 11:34:44  
9 not be interpreted as an admission that the -- I mean, 11:34:53  
10 you'll argue whatever it is, if you do, that the 11:34:54  
11 allegations, which are just allegations in the 11:34:56  
12 indictment, are accurate. 11:34:59

13 MS. KRAWIEC: Understood. I understand. 11:35:03  
14 And obviously we reserve our rights. 11:35:05

15 MR. TYRRELL: Understood. 11:35:06

16 BY MS. KRAWIEC: 11:35:06

17 Q. And am I correct, Mr. Joffe, I can continue 11:35:10  
18 to go through all of the -- and I will plan to do so, 11:35:14  
19 but I just need to go through the indictment to see 11:35:21  
20 whether or not there is any information that you can 11:35:23  
21 provide; but just generally speaking, Mr. Tyrrell, Mr. 11:35:26  
22 Joffe, is there any information you can provide about 11:35:29

1 the allegations in the indictment? 11:35:31

2 MR. TYRRELL: I don't believe that my 11:35:34

3 client is in a position to do that at this time. I 11:35:36

4 mean, there may be some general questions that are 11:35:39

5 suggested by certain things in the indictment that he 11:35:42

6 might be able to answer, but I am not sure that those 11:35:45

7 would be particularly helpful to you. I don't know. 11:35:48

8 So I defer to you, Margaret, if you think 11:35:52

9 it's -- you know, if you want to make your record, 11:35:54

10 that's fine, but I don't think we are -- we are not 11:35:56

11 going to answer any questions about the specific 11:35:57

12 allegations. 11:35:57

13 MS. KRAWIEC: Okay. Well, why don't I come 11:36:09

14 back to the indictment so that I'll create my record 11:36:12

15 accordingly but, you know, maybe I can ask it 11:36:18

16 generally to see if there's any information and then, 11:36:21

17 if need be, come back to the indictment. 11:36:24

18 BY MS. KRAWIEC: 11:36:24

19 Q. Mr. Joffe, are you aware that the Russian 11:36:35

20 bank referenced in the indictment is Alfa-Bank? 11:36:38

21 A. I am going to invoke my Fifth Amendment 11:36:43

22 right. 11:36:43



1 Q. Are you aware that Law Firm Number 1 is -- 11:36:47

2 has been reported as being Perkins Coie? 11:36:50

3 **A. Invoke my Fifth Amendment right.** 11:36:53

4 Q. And am I correct that Mr. Sussmann was an 11:36:57

5 attorney for Neustar? 11:36:58

6 MR. TYRRELL: Could you be a little bit 11:37:10

7 more specific? 11:37:12

8 Q. Sure. I'm just asking whether or not Mr. 11:37:17

9 Joffe knows whether or not Mr. Sussmann at any point 11:37:21

10 in time served as an attorney for Neustar? 11:37:23

11 **A. Yes, he did.** 11:37:24

12 Q. And do you remember generally the time 11:37:26

13 period in which he served as an attorney for Neustar? 11:37:29

14 **A. My awareness was starting around 2010.** 11:37:32

15 Q. And do you remember until when he served as 11:37:35

16 an attorney for Neustar? 11:37:38

17 **A. To the best of my knowledge, it continued 11:37:43**

18 **until September when the indictment occurred.** 11:37:48

19 Q. So -- okay. And, Mr. Joffe, did Mr. 11:37:55

20 Sussmann ever represent you in an individual capacity? 11:37:59

21 **A. I'm going to invoke my Fifth Amendment 11:38:11**

22 **rights.** 11:38:11

1 Q. Okay. Prior to 2016 had Mr. Sussmann ever 11:38:19  
2 served as an attorney for you in your individual 11:38:19  
3 capacity? 11:38:21

4 A. I'm going to invoke my Fifth Amendment 11:38:22  
5 rights as well. 11:38:23

6 Q. Did Dr. Manos Antonakakis ever serve -- 11:38:32  
7 provide consulting services for Neustar? 11:38:35

8 A. I'm going to invoke my Fifth Amendment 11:38:48  
9 rights on that as well. 11:38:49

10 Q. Did Neustar ever provide Yoda data to the 11:38:52  
11 Georgia Tech researchers? 11:38:54

12 A. I'm going to invoke my Fifth Amendment 11:38:55  
13 right. 11:38:56

14 Q. Mr. Joffe, do you know what I mean when I 11:39:01  
15 refer to Yoda data? 11:39:03

16 A. I'm going to invoke my Fifth Amendment 11:39:05  
17 right on that. 11:39:07

18 Q. Did Neustar ever visit Georgia Tech? 11:39:15

19 A. Be more specific. I think there's many 11:39:25  
20 people in Neustar. 11:39:27

21 Q. Okay. Did the team -- 11:39:28

22 MR. TYRRELL: Could you be more specific, 11:39:31

1 please. 11:39:31

2 Q. Sure. Did a team from Neustar visit 11:39:35

3 Georgia Tech around August 15, 2016? 11:39:38

4 A. I don't recall. 11:39:41

5 Q. Do you have any recollection of ever 11:39:49

6 visiting Dr. Antonakakis's lab in Atlanta? 11:39:52

7 A. I'm going to invoke my Fifth Amendment 11:39:54

8 right. 11:39:54

9 Q. Do you have a recollection, Mr. Joffe, 11:39:55

10 generally at any time of being at Georgia Tech on 11:39:59

11 behalf of Neustar? 11:40:00

12 A. Once again I'm going to invoke my Fifth 11:40:03

13 Amendment right. 11:40:03

14 Q. Did you discuss the server allegations with 11:40:13

15 anyone at Georgia Tech? 11:40:15

16 A. Invoking my Fifth Amendment right. 11:40:18

17 Q. Did Georgia Tech ever ask you to do certain 11:40:29

18 DNS searches? 11:40:30

19 A. I'm invoking my Fifth Amendment right. 11:40:34

20 Q. If a customer were to ask Neustar to run 11:40:36

21 certain DNS searches, just generally speaking, not 11:40:40

22 with respect to the server allegations, who at Neustar 11:40:44

1 would be responsible for running those requests? 11:40:47

2 **A. I have to invoke my Fifth Amendment rights.** 11:40:55

3 Q. Would it be Mr. DeJong? 11:40:57

4 **A. Same thing. Fifth Amendment rights.** 11:41:00

5 Q. Mr. Joffe, is there anything that you can 11:41:16

6 tell me about the DNS data that Neustar -- the scope 11:41:20

7 of the DNS data that Neustar possessed? 11:41:23

8 **A. No. I have to invoke my Fifth Amendment** 11:41:29

9 **rights on that.** 11:41:32

10 Q. Would it be fair to say that Neustar had a 11:41:40

11 very large DNS repository? 11:41:42

12 **A. Have to invoke my Fifth Amendment rights on** 11:41:44

13 **that.** 11:41:44

14 Q. Mr. Joffe, what is the Neustar-Georgia Tech 11:41:57

15 Innovation Program on cybersecurity? 11:41:59

16 MR. TYRRELL: Can I have a minute, a 11:42:04

17 second, please. 11:42:05

18 (Counsel confers with witness off record.) 11:42:05

19 **A. I believe at some time Neustar had funded a** 11:42:28

20 **couple of researchers at Georgia Tech, or had talked** 11:42:38

21 **about doing it. I don't know if it ever occurred, but** 11:42:41

22 **I wasn't involved in it.** 11:42:43

1 Q. If we could put up Tab 8 and mark it as the 11:42:51  
2 next exhibit. 11:42:52

3 - - - 11:42:52

4 (A document was marked as Exhibit Number 4.) 11:42:52

5 - - - 11:42:52

6 MR. TYRRELL: This one is kind of hard to 11:43:07  
7 see. We may need this one a little larger. 11:43:09

8 THE WITNESS: I can't see it. Yeah. 11:43:21

9 MR. TYRRELL: Okay. I can't read the 11:43:23  
10 green. I'm sorry. 11:43:23

11 THE WITNESS: Could you make that bigger. 11:43:25

12 MR. TYRRELL: Yeah. Okay. All right. Can 11:43:32  
13 we go to the bottom of the email so we can start from 11:43:34  
14 the bottom? 11:43:35

15 THE WITNESS: Okay. 11:43:41

16 MR. TYRRELL: Okay. 11:43:43

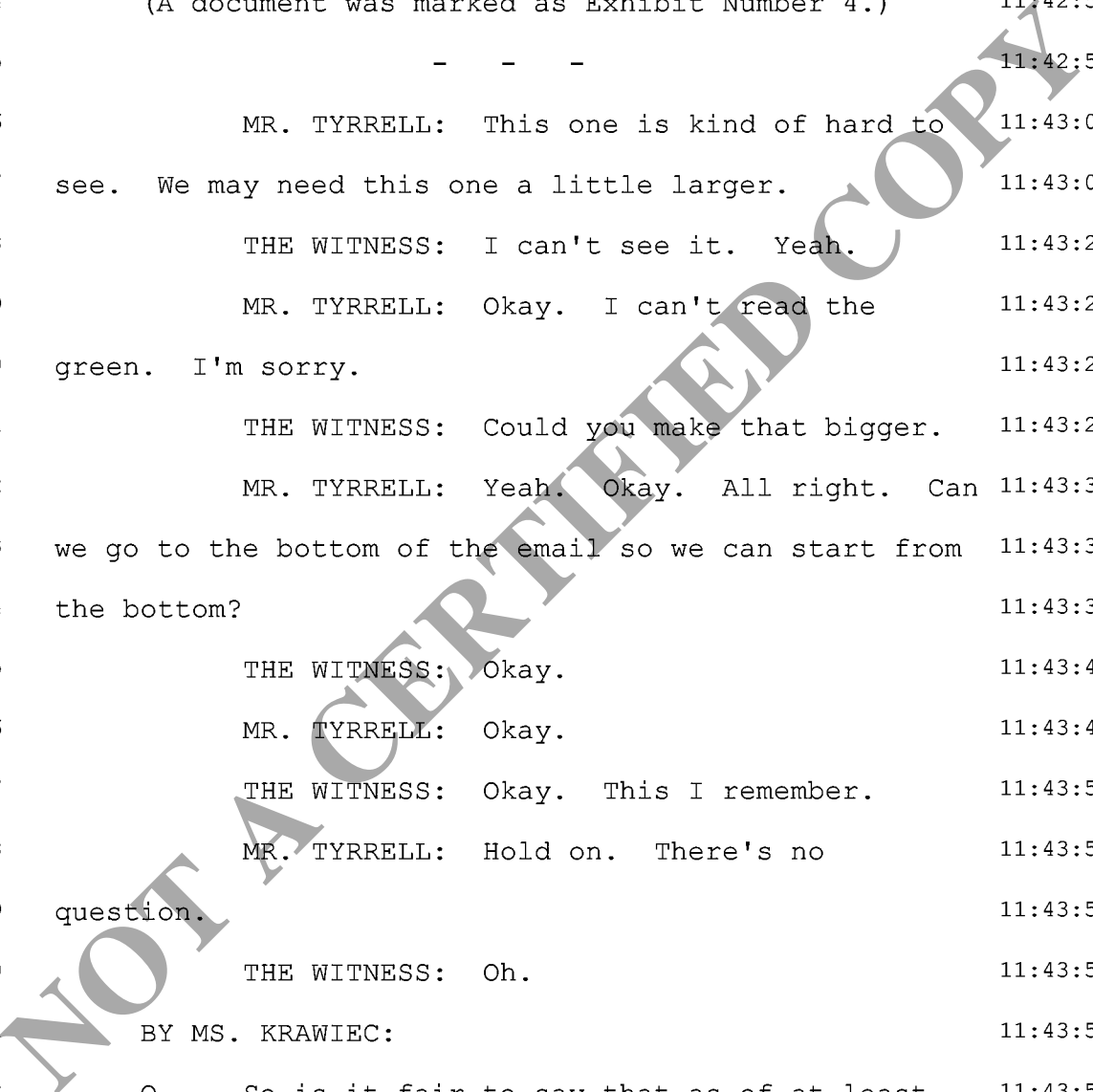
17 THE WITNESS: Okay. This I remember. 11:43:50

18 MR. TYRRELL: Hold on. There's no 11:43:51  
19 question. 11:43:53

20 THE WITNESS: Oh. 11:43:54

21 BY MS. KRAWIEC: 11:43:54

22 Q. So is it fair to say that as of at least 11:43:57



1 July 24, 2016, Mr. Joffe, you knew Manos, Dr. Manos 11:44:03

2 Antonakakis at Georgia Tech? 11:44:04

3 MR. TYRRELL: I would take five. 11:44:14

4 **A. Take five -- I'm going to invoke my Fifth 11:44:17**

5 **Amendment right on that. 11:44:18**

6 Q. What can you tell me about the 11:44:20

7 Neustar-Georgia Tech Innovation Program on 11:44:22

8 cybersecurity? If you go up to the top of the email, 11:44:26

9 that's what it's -- Joe, if you could just scroll up. 11:44:29

10 So you see it says, Regarding 11:44:36

11 Neustar-Georgia Tech Innovation Program on 11:44:39

12 cybersecurity? 11:44:42

13 MR. TYRRELL: Give us a second. I'm sorry. 11:44:44

14 **A. Yeah, I don't recall this ever happening. 11:44:51**

15 **I don't think it ever occurred. 11:44:53**

16 Q. Were there discussions between Neustar and 11:44:58

17 Georgia Tech to start some type of innovation program 11:45:00

18 on cybersecurity? 11:45:02

19 **A. It's quite possible, because that happens 11:45:04**

20 **with Neustar and most companies often from other 11:45:08**

21 **universities. So it's quite possible, but I don't 11:45:14**

22 **recall what happened with it. And I ultimately had 11:45:16**



1 obviously speaks for itself, but my client is not 11:46:29

2 going to talk about it. 11:46:31

3 MS. KRAWIEC: Okay. Can we put up Tab 5 11:46:39

4 and enter it as the next exhibit. 11:46:45

5 - - - 11:46:45

6 (A document was marked as Exhibit Number 5.) 11:46:45

7 - - - 11:46:45

8 BY MS. KRAWIEC: 11:46:45

9 Q. And if you could just take a minute to read 11:46:59

10 this, Mr. Joffe. I think it's a relatively short 11:47:03

11 email. 11:47:03

12 MR. TYRRELL: Just the -- can we scroll 11:47:05

13 down so we can see the whole train. Yeah. Down. 11:47:20

14 Okay. So it looks like it starts on the bottom of the 11:47:22

15 second page there. Okay. 11:47:24

16 Q. So in this email, Mr. Joffe, and I'll admit 11:47:37

17 that you are not on this bottom email, but it says -- 11:47:42

18 it's a bunch of people at Neustar, which we have 11:47:45

19 talked about, Mohan, Peter Burke. And it says: 11:47:50

20 Peter, we contacted Manos -- and up above it's to 11:47:54

21 Manos Antonakakis -- on his email account for 11:47:58

22 consulting purposes and his Georgia Tech email address 11:48:00



1 for interactions that relate with the university. 11:48:03

2 Do you know whether or not Neustar had a 11:48:07

3 consulting relationship with Dr. Manos Antonakakis? 11:48:14

4 **A. Going to take five on that.** 11:48:16

5 MR. TYRRELL: Can we scroll up so we can 11:48:19

6 see the rest of the email? 11:48:20

7 MS. KRAWIEC: Sure. Joe, if you could just 11:48:23

8 scroll it up. 11:48:39

9 MR. TYRRELL: Keep going, Joe. Okay. You 11:48:43

10 are on that one now. Okay. Thank you. 11:48:51

11 BY MS. KRAWIEC: 11:48:51

12 Q. And you see that it says, By now, all of 11:48:53

13 you should be aware of the great news from DARPA. We 11:48:58

14 have a five-year-long collaboration ahead of us. So I 11:49:01

15 think it would make sense for the Neustar team to 11:49:04

16 visit Atlanta and my lab. My lab referring to 11:49:06

17 Dr. Antonakakis's lab at Georgia Tech. 11:49:10

18 So were you aware that there was going to 11:49:12

19 be a five-year-long collaboration between Georgia Tech 11:49:16

20 and Neustar? 11:49:18

21 **A. I'm going to have to take five on that.** 11:49:23

22 Q. Do you know what consulting Dr. Antonakakis 11:49:32

1 provided for Neustar? 11:49:33

2 **A. Once again I have to take five on that.** 11:49:35

3 Q. So, again, do you have a recollection of 11:49:46

4 being on the trip that's referenced the week of August 11:49:48

5 15th to the Georgia Tech lab, Dr. Antonakakis's lab? 11:50:00

6 **A. I don't recall.** 11:50:00

7 Q. Do you remember at this juncture whether or 11:50:02

8 not the server allegations were being discussed 11:50:05

9 amongst Georgia Tech and Neustar? 11:50:07

10 **A. I have to take the Fifth on that.** 11:50:08

11 MS. KRAWIEC: If we can go to Tab 6, pull 11:50:23

12 up it on the record and enter it as an exhibit. 11:50:27

13 - - - 11:50:27

14 (A document was marked as Exhibit Number 6.) 11:50:27

15 - - - 11:50:27

16 BY MS. KRAWIEC: 11:50:27

17 Q. So this is an email from Dr. Antonakakis to 11:50:39

18 Steve DeJong copying you. And it's talking about 11:50:45

19 running prefixes overnight. 11:50:47

20 Do you know what this relates to? 11:50:48

21 **A. I have to take the Fifth on that.** 11:51:02

22 Q. Was Georgia Tech asking you to run certain 11:51:03

1 queries on your DNS database? 11:51:05

2 **A. I take the Fifth on that as well.** 11:51:07

3 Q. Do you know why there was a discussion to 11:51:11

4 use a decent iOS PGP mail app? 11:51:17

5 MR. TYRRELL: Could we have just a second, 11:51:20

6 please. 11:51:21

7 MS. KRAWIEC: Sure. 11:51:22

8 THE WITNESS: I have to take five on that. 11:51:40

9 BY MS. KRAWIEC: 11:51:40

10 Q. Okay. If we can pull up Tab 9 and enter it 11:51:50

11 as an exhibit. 11:51:52

12 - - - 11:51:52

13 (A document was marked as Exhibit Number 7.) 11:51:52

14 - - - 11:51:52

15 BY MS. KRAWIEC: 11:52:00

16 Q. Have you had a chance to read this email, 11:52:17

17 Mr. Joffe? 11:52:18

18 **A. I have.** 11:52:19

19 Q. Do you see the subject line saying: 11:52:21

20 Regarding the original data pull for 2015? 11:52:24

21 Is this a data pull related to the server 11:52:28

22 allegations? 11:52:29



1 Q. Did Neustar receive or share DNS data with 11:54:22  
2 internet service providers Cox or Comcast? 11:54:24

3 A. **Not to the best of my knowledge.** 11:54:30

4 Q. Any other ISPs that you can think of? 11:54:34

5 A. **Not that I recall.** 11:54:36

6 Q. I'm going to pivot back to the indictment, 11:54:43  
7 and I'll try and go through it. And I understand you 11:54:46  
8 will probably invoke the Fifth. We can take this 11:54:48  
9 exhibit down, but just -- just to go through that. 11:54:51

10 So when did you first meet Michael 11:54:56  
11 Sussmann? 11:54:57

12 A. **When Neustar hired him as an attorney in 11:55:12  
13 2010, about 2010.** 11:55:14

14 Q. And so was your familiarity with Mr. 11:55:20  
15 Sussmann always in a professional capacity? 11:55:24

16 A. **I'm going to take the Fifth on that.** 11:55:29

17 Q. When did you personally -- not personally, 11:55:35  
18 I'm sorry. When did you as an executive at Neustar 11:55:38  
19 first work with Mr. Sussmann on a legal engagement? 11:55:42

20 A. **2010.** 11:55:43

21 Q. And after 2010 did you continue to work 11:55:46  
22 with Mr. Sussmann on a regular basis on legal 11:55:49

1 engagements? 11:55:50

2 **A. I'll take the Fifth on that.** 11:55:54

3 Q. Can you answer whether or not you've worked 11:55:58

4 with Mr. Sussmann on one -- or on more than one legal 11:56:02

5 engagement? 11:56:02

6 **A. Take the Fifth on that.** 11:56:07

7 Q. Again, when did you first engage Mr. 11:56:11

8 Sussmann to represent you personally? 11:56:13

9 **A. I take the Fifth on that.** 11:56:14

10 MS. KRAWIEC: If we can go back to what was 11:56:17

11 Tab 1. Court Reporter, I can't remember which exhibit 11:56:20

12 the indictment was. Okay. So this has already been 11:56:42

13 entered as an exhibit in this deposition. We are just 11:56:44

14 going to go back to the indictment. So, Joe, if you 11:56:47

15 could take us to paragraph 14. 11:56:50

16 BY MS. KRAWIEC: 11:56:50

17 Q. So it says, In or about February 2015, Tech 11:57:06

18 Executive 1 retained Sussmann as his lawyer in 11:57:06

19 connection with a matter involving an agency of the 11:57:10

20 U.S. Government. Sussmann also frequently served as 11:57:13

21 outside counsel to Internet Company 1, which was a 11:57:16

22 significant source of revenue for Law Firm 1 and 11:57:20

1 Sussmann. At all times relevant to this indictment, 11:57:23  
2 Tech Executive 1 served as Sussmann's primary point of 11:57:26  
3 contact at Internet Company 1. 11:57:27  
4 Do you agree with that statement, Mr. 11:57:30  
5 Joffe? 11:57:30  
6 **A. I'm invoking my Fifth Amendment right.** 11:57:35  
7 **Q. Mr. Joffe, why did you engage Mr. Sussmann?** 11:57:41  
8 **A. I'm invoking my Fifth Amendment right.** 11:57:44  
9 **Q. Was this engagement memorialized with an 11:57:46**  
10 **engagement letter or other document?** 11:57:48  
11 **A. Invoking my Fifth Amendment right.** 11:57:53  
12 **Q. Did this engagement cover the work related 11:57:55**  
13 **to the server allegations?** 11:57:57  
14 **A. I'm invoking my Fifth Amendment right.** 11:57:59  
15 **Q. Did Mr. Sussmann contact you regarding the 11:58:06**  
16 **server allegations or did you contact Mr. Sussmann 11:58:08**  
17 **regarding the server allegations?** 11:58:11  
18 **A. Invoking my Fifth Amendment right.** 11:58:12  
19 **Q. Were you aware that Mr. Sussmann and his 11:58:14**  
20 **law firm served as attorneys for the DNC in the 11:58:18**  
21 **Hillary Clinton campaign?** 11:58:21  
22 **A. Invoking my Fifth Amendment rights.** 11:58:23

1 Q. Can you describe which individuals or 11:58:31  
2 entities you understood Mr. Sussmann to be 11:58:35  
3 representing in a legal capacity in 2016? 11:58:36

4 A. I'm invoking my Fifth Amendment rights. 11:58:37

5 Q. What did you understand Mr. Sussmann's 11:58:40  
6 relationship to be to the Clinton campaign? 11:58:42

7 A. Invoking my Fifth Amendment right. 11:58:45

8 Q. Were you paid by the Clinton campaign for 11:58:49  
9 your work on the server allegations, Mr. Joffe? 11:58:52

10 MR. TYRRELL: Can we have a moment. 11:58:56

11 (Counsel confers with witness off record.) 11:58:56

12 A. No. 11:58:56

13 Q. Were you or any entities with which you 11:59:05  
14 were associated ever served as consultants or 11:59:07  
15 contractors to the Clinton campaign? 11:59:09

16 A. No. 11:59:11

17 Q. Did you have an agreement with the Clinton 11:59:15  
18 campaign regarding the payment of Mr. Sussmann's fees? 11:59:18

19 A. No. 11:59:26

20 Q. Did you pay or cause any other person or 11:59:28  
21 entity to pay Mr. Sussmann for his representation of 11:59:31  
22 you related to the server allegations? 11:59:32



1           **A.     Fifth Amendment right. I'm going to invoke** 11:59:36

2           **my Fifth Amendment right.** 11:59:38

3           Q.     To your knowledge, did Mr. Sussmann 11:59:39

4           represent any other individuals with respect to the 11:59:42

5           server allegations? 11:59:44

6           MR. TYRRELL: Can we have just a moment, 11:59:44

7           please. 11:59:44

8           MS. KRAWIEC: Sure. 11:59:56

9           (Counsel confers with witness off record.) 11:59:56

10          MR. TYRRELL: Sorry. I'm sorry. Go ahead. 12:00:02

11          MS. KRAWIEC: Could we -- you are okay to 12:00:06

12          proceed? 12:00:07

13          MR. TYRRELL: Yes, please. I'm sorry. 12:00:08

14          MS. KRAWIEC: No problem. Can we go to 12:00:11

15          page 3, paragraph 6 of the indictment. 12:00:13

16          BY MS. KRAWIEC: 12:00:13

17          Q.     So paragraph 6 says, Had the FBI uncovered 12:00:33

18          the origins of the relevant data and analysis, and as 12:00:36

19          alleged below, it might have learned, among other 12:00:39

20          things, that: One, in compiling and analyzing the 12:00:42

21          Russian Bank-1 allegation, Tech Executive 1 had 12:00:47

22          exploited his access to non-public data at multiple 12:00:51

1 internet companies to conduct opposition research 12:00:53

2 concerning Trump. 12:00:55

3 Do you agree with that statement, Mr. 12:01:00

4 Joffe? 12:01:00

5 **A. Going to assert my Fifth Amendment rights.** 12:01:04

6 Q. Do you agree that Tech Executive 1 refers 12:01:12

7 to you in that paragraph? 12:01:13

8 **A. I'm going to exert my Fifth Amendment** 12:01:18

9 **rights.** 12:01:19

10 Q. We can go to page 5, paragraph 16. So this 12:01:37

11 paragraph reads, By in or around late July 2016, the 12:01:41

12 aforementioned computer researcher who used the 12:01:45

13 moniker Tea Leaves, Originator 1, had assembled 12:01:50

14 purported DNS data reflecting apparent DNS look-ups 12:01:54

15 between Russian Bank 1 and an e-mail domain, 12:01:57

16 Mail1.Trump-email.com, the Russian Bank Data. The 12:02:05

17 purported data spanned the time period from on or 12:02:09

18 about May 4, 2016, through on or about July 29, 2016. 12:02:12

19 Mr. Joffe, are you familiar with the bank, 12:02:17

20 the Russian Bank Data, as described in this paragraph? 12:02:20

21 **A. I'm going to take the Fifth on that.** 12:02:24

22 Q. Do you understand Tea Leaves, also referred 12:02:28

1 to this indictment as Originator 1, to be April 12:02:34  
2 Lorenzen? 12:02:35

3 **A. I'm going to take the Fifth on that one.** 12:02:37

4 Q. Why was the period May 4 to July 26, 2016, 12:02:39  
5 chosen? 12:02:41

6 **A. Going to take the Fifth on that one.** 12:02:44

7 Q. Were you aware of the server allegations 12:02:46  
8 before July 29, 2016? 12:02:48

9 **A. Going to take the Fifth on that.** 12:02:53

10 Q. If we can go to paragraph 18. It says, 12:03:10  
11 Also, in or about July 2016, Tech Executive 1 alerted 12:03:15  
12 Sussmann to the Russian Bank Data. 12:03:17

13 Did you alert Mr. Sussmann to the Russian 12:03:28  
14 Bank Data on or about July 2016? 12:03:30

15 **A. I'm going to take the Fifth on that.** 12:03:33

16 Q. Who else, if anyone, was present when you 12:03:35  
17 discussed the allegations with Mr. Sussmann on July 12:03:38  
18 29? 12:03:39

19 **A. Going to take the Fifth on that.** 12:03:43

20 Q. Was Marc Elias at that discussion? 12:03:45

21 **A. Going to take the Fifth on that.** 12:03:50

22 Q. Was anyone from Fusion GPS at that 12:03:53

1 discussion? 12:03:54

2 **A. Going to take the Fifth on that.** 12:03:55

3 Q. What about Christopher Steele? 12:03:58

4 **A. I've never met Christopher Steele.** 12:04:03

5 Q. So if we can go to paragraph 20A. So 12:04:18

6 according to the Sussmann indictment, Mr. Sussmann, 12:04:20

7 Mr. Elias and employees of GPS for Fusion GPS met on 12:04:24

8 or about July 29, 2016. Just let you read that. 12:04:29

9 MR. TYRRELL: Which one, A? 12:04:30

10 MS. KRAWIEC: Yes. 12:04:32

11 BY MS. KRAWIEC: 12:04:32

12 Q. Were you aware that Mr. Sussmann met with 12:04:42

13 Fusion GPS in July 2016? 12:04:46

14 **A. I'm going to take the Fifth on that.** 12:04:50

15 Q. Prior to -- you had said -- strike that. 12:04:53

16 Prior to 2016 were you familiar with Fusion 12:04:59

17 GPS? 12:05:00

18 **A. Never heard of them.** 12:05:03

19 Q. But you have heard of them today, correct? 12:05:06

20 **A. I have.** 12:05:10

21 Q. And can you tell us in what capacity you 12:05:12

22 learned to know Fusion GPS? 12:05:14

1           **A.     I'm going to take the Fifth on that.**           12:05:18

2           Q.     Do you remember the year in which you           12:05:20

3 became aware of Fusion GPS?           12:05:22

4           **A.     Going to take the Fifth on that.**           12:05:27

5           Q.     Did you attend this meeting that's           12:05:29

6 described in paragraph 20A of the Sussmann indictment?   12:05:34

7           MR. TYRRELL:   One second.           12:05:42

8           **A.     I'm going to take five on that.**           12:05:55

9           Q.     Did you ever meet with anyone from Fusion   12:05:55

10 GPS regarding the server allegations?           12:05:59

11          **A.     I'm going to take five on that.**           12:06:02

12          Q.     Well, I will represent to you that Peter   12:06:09

13 Fritsch, who's an executive at Fusion GPS, testified   12:06:13

14 that he attended meetings with you.   So I'm just going   12:06:19

15 to ask --           12:06:19

16          MR. TYRRELL:   Sorry, Margaret, you are           12:06:20

17 representing that Peter Fritsch represented that he   12:06:22

18 had attended meetings, with an S, or a meeting?   12:06:27

19          MS. KRAWIEC:   Well, let's pull up the --           12:06:29

20 the transcript, so that I don't muddle the record.   If   12:06:32

21 we can pull up Tab 10.   And if you could go -- if we   12:06:43

22 could mark this as the next exhibit.   And if you could   12:06:54

1 go to 101, line 1. 12:06:57  
2 - - - 12:06:57  
3 (A document was marked as Exhibit Number 8.) 12:06:57  
4 - - - 12:06:57  
5 BY MS. KRAWIEC: 12:06:57  
6 Q. So I'll just read it, to avoid confusion. 12:07:06  
7 So it says, How many times did you communicate with 12:07:10  
8 Rodney Joffe -- again this is the deposition 12:07:12  
9 transcript from Mr. Fritsch's deposition. I don't 12:07:14  
10 recall. Question: Was it more than once? Answer: I 12:07:19  
11 believe so. Yes. 12:07:21  
12 And then if we can scroll a little bit, 12:07:26  
13 Joe, just so I can keep reading. Question: Do you 12:07:30  
14 have any recollection of any communications? I'm not 12:07:33  
15 asking the subject of those communications, but any 12:07:36  
16 communications that you had with Mr. Joffe regarding 12:07:38  
17 either Alfa-Bank or the server allegations after the 12:07:43  
18 meeting you described in the summer of 2016. 12:07:45  
19 Answer: I have a vague recollection of one 12:07:48  
20 or two phone calls. Question: So no more in-person 12:07:55  
21 meetings other than the 2016 meeting; is that correct? 12:07:58  
22 Answer: Not that I call. Right. 12:08:02

1 Joe, if you could keep scrolling up. 12:08:05

2 Question: And so your recollection is one or two 12:08:09

3 telephone conversations; is that correct? Answer: 12:08:11

4 That's right. 12:08:13

5 Do you remember who was on the line with 12:08:17

6 you during those telephone communications other than 12:08:19

7 you and Mr. Joffe? Was anyone else on the -- and, 12:08:23

8 Joe, if you could move to the next page -- on the 12:08:26

9 phone, no. Question: So it was just you and Mr. 12:08:30

10 Joffe, correct? Answer: Correct. 12:08:34

11 Does this refresh your recollection as to 12:08:36

12 whether or not you spoke -- you met with Fusion GPS in 12:08:40

13 2016? 12:08:42

14 MR. TYRRELL: I -- just to be clear, I 12:08:46

15 don't think the witness indicated that he needed his 12:08:49

16 recollection refreshed. I think he took -- he invoked 12:08:52

17 his rights under the Fifth Amendment. If and when 12:08:55

18 he's able to respond to your questions, he may indeed 12:09:00

19 need his recollection refreshed, but I think at this 12:09:02

20 point he just invoked his rights under the Fifth 12:09:03

21 Amendment regarding any communications with Fusion 12:09:06

22 GPS. 12:09:09

1 I'm sorry, Margaret. 12:09:36

2 MS. KRAWIEC: No problem. 12:09:37

3 MR. TYRRELL: So, yeah, again I -- I don't 12:09:42

4 want to convey that my client necessarily has a 12:09:47

5 recollection of things or not, but in general I think 12:09:51

6 at this point he would invoke his rights under the 12:09:53

7 Fifth Amendment with regard to any questions about 12:09:57

8 interactions with anyone associated with Fusion GPS 12:10:01

9 whether he recalls it or not. 12:10:05

10 BY MS. KRAWIEC: 12:10:05

11 Q. Understood. So just to make the record 12:10:07

12 clear, Mr. Joffe, did you meet at any time with Fusion 12:10:12

13 GPS regarding the server allegations? 12:10:14

14 **A. I'm going to take the Fifth.** 12:10:16

15 Q. Did you speak with anyone at Fusion GPS 12:10:19

16 over the phone about the server allegations? 12:10:22

17 **A. Going to take the Fifth on that.** 12:10:24

18 Q. Did you email with anyone at Fusion GPS 12:10:28

19 regarding the server allegations? 12:10:29

20 **A. Take the Fifth on that.** 12:10:35

21 Q. Are you aware that Mr. Sussmann met with 12:10:37

22 Mr. Steele, Christopher Steele and discussed the 12:10:41



1 server allegations? 12:10:43

2 (Counsel confers with witness off record.) 12:10:51

3 **A. I had no idea. I only read -- I remember** 12:11:12

4 **reading about it in the press, but I had no firsthand** 12:11:15

5 **knowledge of that ever happening. I had no idea who** 12:11:17

6 **Steele was.** 12:11:18

7 Q. Got it. Did you ever provide any documents 12:11:20

8 to Fusion GPS, Mr. Joffe? 12:11:22

9 **A. I'm going to take the Fifth on that.** 12:11:28

10 Q. Did Fusion GPS ever provide you with any 12:11:33

11 documents? 12:11:33

12 **A. I'm going to take the Fifth on that.** 12:11:35

13 Q. Did Fusion GPS ever provide you with any 12:11:38

14 information related to Alfa-Bank? 12:11:40

15 MR. TYRRELL: Information or documents? 12:11:46

16 Q. Information. 12:11:48

17 **A. I'll take five on that.** 12:11:54

18 Q. Did they provide you any documents 12:11:56

19 regarding Alfa-Bank? 12:11:58

20 **A. I'll take five on that.** 12:12:04

21 Q. Did you ever communicate with anyone from 12:12:07

22 Fusion on any occasion? 12:12:10



1           **A.       I'm going to take the Fifth on that.**                               12:13:27

2           Q.       How was the DNS data at issue both public                               12:13:34

3 and nonpublic?   12:13:37

4           **A.       I'm going to take the Fifth on that.**                               12:13:37

5           Q.       What was the narrative that you were trying                               12:13:38

6 to create, Mr. Joffe?   12:13:40

7           **A.       I'm going to take the Fifth on that.**                               12:13:45

8           Q.       Why were you looking into the server                               12:13:47

9 allegations?   12:13:48

10          **A.       Going to take the Fifth on that.**                               12:13:53

11          Q.       Mr. Joffe, would you consider yourself a                               12:13:55

12 political person, someone that's very interested in                               12:13:58

13 politics?   12:13:59

14          **A.       In politics per se, no.**   12:14:11

15          Q.       So when you say per se, why the qualifier?                               12:14:15

16          **A.       Because I've never been interested in**                               12:14:19

17 **politics. I've never been involved in politics. I**                               12:14:23

18 **haven't voted for many, many years. I haven't donated**                               12:14:26

19 **to any parties or any -- or given any kind of benefit**                               12:14:29

20 **to any parties, but I certainly over the last few**                               12:14:35

21 **years have had an interest in the politics of the**                               12:14:38

22 **country that I live in.**   12:14:40

1 Q. And was that because Trump was going to 12:14:44

2 potentially be President? 12:14:47

3 **A. I'm going to take the Fifth on that.** 12:14:49

4 Q. Can you tell us how you feel about 12:14:54

5 President Trump? 12:14:55

6 **A. I'm going to take the Fifth on that.** 12:14:57

7 Q. If we can go to paragraph 22E. So it says, 12:15:11

8 In connection with this tasking, Tech Executive 1 12:15:12

9 later stated that he was working with someone who had 12:15:16

10 close ties to the democratic party and to Hillary 12:15:20

11 Clinton. 12:15:20

12 Who is the person that is referenced as 12:15:23

13 having close -- who you were working with and who had 12:15:25

14 close ties to the democratic party and Hillary 12:15:29

15 Clinton? 12:15:30

16 **A. I have to take the Fifth on that.** 12:15:31

17 Q. Was it Mr. Sussmann? 12:15:34

18 **A. I have to take the Fifth on that.** 12:15:35

19 Q. Is it Mr. Elias? 12:15:37

20 **A. I have to take the Fifth on that.** 12:15:40

21 Q. Is it GPS Fusion -- Fusion GPS? 12:15:44

22 **A. I have to take the Fifth on that.** 12:15:46

1 Q. Mr. Joffe, are you familiar with Marc 12:15:50

2 Elias? 12:15:51

3 A. Have to take the Fifth on that. 12:15:55

4 Q. At any time did Perkins Coie or anyone from 12:16:03

5 the Clinton campaign or DNS -- I'm sorry, or DNC 12:16:03

6 discuss with you a potential job in the Clinton 12:16:06

7 administration as suggested in the indictment? 12:16:09

8 MR. TYRELL: Could -- could you read back 12:16:11

9 that question, Joe, please, or not Joe, our court 12:16:11

10 reporter. I'm sorry. 12:16:11

11 MR. KRAWIEC: Elizabeth. 12:16:31

12 - - - 12:16:31

13 (Whereupon the following portion of the testimony 12:16:31

14 was repeated by the court reporter: 12:16:31

15 "QUESTION: At any time did Perkins Coie -- 12:16:31

16 or DNS [sic] discuss with you a potential job in the 12:16:31

17 Clinton administration as suggested in the 12:16:31

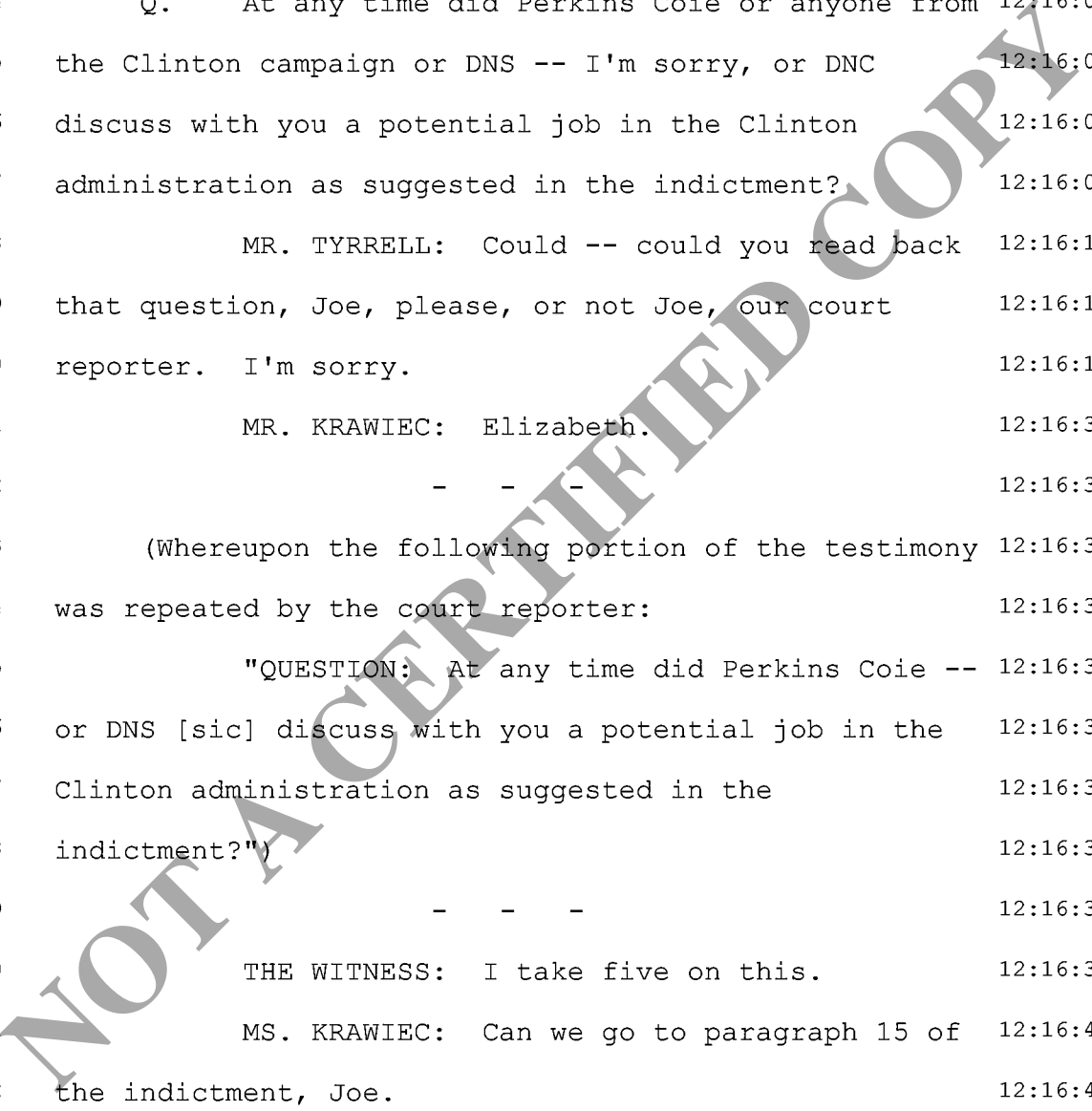
18 indictment?" 12:16:31

19 - - - 12:16:31

20 THE WITNESS: I take five on this. 12:16:39

21 MS. KRAWIEC: Can we go to paragraph 15 of 12:16:41

22 the indictment, Joe. 12:16:43



1 BY MS. KRAWIEC: 12:16:43

2 Q. So the paragraph says, In or about November 12:16:55

3 2016, Tech Executive 1 claimed to have been previously 12:16:59

4 offered a position in the government in the event 12:17:01

5 Hillary Clinton won the presidency, stating in an 12:17:04

6 email days after the U.S. presidential election, 12:17:07

7 quote, I was tentatively offered the top cybersecurity 12:17:10

8 job by the Democrats when it looked like they would 12:17:14

9 win. I definitely would not take the job under Trump. 12:17:18

10 End quote. 12:17:19

11 What type of job did you anticipate holding 12:17:21

12 in the Clinton administration, Mr. Joffe? 12:17:23

13 A. None. 12:17:30

14 Q. So you disagree with this statement in 12:17:34

15 paragraph 15? 12:17:36

16 MR. TYRRELL: What statement is that, 12:17:38

17 Margaret? 12:17:39

18 Q. Quote, I was tentatively offered the top 12:17:43

19 cybersecurity job by the Democrats when it looked like 12:17:47

20 they would win. 12:17:48

21 MR. TYRRELL: So are you asking if he was 12:17:50

22 ever offered the top cybersecurity job by the 12:17:53

1 Democrats if they had won? 12:17:55

2 MS. KRAWIEC: Sure. Yeah. That's a fair 12:17:56

3 way to phrase it. 12:17:57

4 **A. No.** 12:17:58

5 BY MS. KRAWIEC: 12:17:58

6 Q. So it's not true that the statement that 12:18:04

7 says, I was tentatively offered the top cybersecurity 12:18:08

8 job by the Democrats when it looked like they would 12:18:12

9 win? 12:18:13

10 **A. Can I consult with my attorney?** 12:18:17

11 Q. Sure. 12:18:17

12 MR. TYRRELL: So, I'm sorry, was there a 12:18:50

13 question pending? 12:18:51

14 Q. Yes. I just asked, I thought -- I don't 12:18:57

15 want to misstate the record, but I thought Mr. Joffe 12:18:59

16 was disagreeing with that quote: I was tentatively 12:19:03

17 offered the top cybersecurity job by the Democrats 12:19:04

18 when it looked like they'd win. 12:19:05

19 MR. TYRRELL: Well, I don't think he 12:19:06

20 disagreed with the -- the quote. 12:19:07

21 MS. KRAWIEC: Okay. 12:19:09

22 MR. TYRRELL: I think what he said is he 12:19:10

1 was not offered the top cybersecurity job by the 12:19:12

2 Democrats when it looked like they'd win. 12:19:15

3 BY MS. KRAWIEC: 12:19:15

4 Q. So did Mr. Joffe write this email? 12:19:21

5 **A. I'm going to have to take five on that.** 12:19:34

6 Q. Okay. Mr. Joffe, do you still have this 12:19:36

7 email? 12:19:37

8 **A. I have to take five on that.** 12:19:45

9 Q. Mr. Joffe, did you tell anyone that you 12:19:47

10 were offered the top cybersecurity job by the 12:19:51

11 Democrats? 12:19:53

12 MR. TYRELL: Can we have just a moment. 12:20:01

13 But, Margaret, you have a tendency to ask questions 12:20:05

14 that assume facts that are not in evidence. And I 12:20:08

15 know that objections to form, you know, are -- I 12:20:12

16 assume all are preserved, but that sometimes makes it 12:20:16

17 a little difficult. So if -- I don't want to be 12:20:19

18 speaking excessively on the record. I appreciate 12:20:21

19 that's not necessarily something I should be doing. 12:20:24

20 So, but that sometimes does make it 12:20:26

21 difficult the way you phrase some of your questions, 12:20:28

22 so -- 12:20:28



1 MS. KRAWIEC: Well, I'm happy for Mr. Joffe 12:20:31  
2 to correct me that the challenge I'm having is that 12:20:34  
3 it's been widely reported, including by The New York 12:20:38  
4 Times, that Mr. Joffe is Tech Executive 1 in the 12:20:42  
5 indictment. So I'm working on that assumption. 12:20:46

6 And I'm trying to understand what Mr. Joffe 12:20:49  
7 agrees with versus disagrees with, or what information 12:20:53  
8 he can provide related to these subjects. So I'm 12:20:56  
9 doing my best working within those parameters. 12:20:59

10 MR. TYRRELL: No, no, I appreciate it's a 12:21:00  
11 challenging situation for you too. And again we are 12:21:03  
12 not admitting that Mr. Joffe is anybody for purposes 12:21:06  
13 of this deposition. Perhaps at some later date we can 12:21:08  
14 have a conversation about that, but -- but if you 12:21:11  
15 could just give us a second. 12:21:13

16 MS. KRAWIEC: Sure. 12:21:40

17 MR. TYRRELL: You know, again, our position 12:21:41  
18 on this is Mr. Joffe is happy to answer the question 12:21:47  
19 that was posed about whether he was ever offered the 12:21:49  
20 top cybersecurity job by the Democrats when it looked 12:21:54  
21 like they'd win. I think he's answered that question. 12:21:57

22 He's not going to answer questions about 12:22:00

1 communications that he may or may not have had with 12:22:03  
2 other people about that topic. And as to those, he 12:22:11  
3 would invoke his rights under the Fifth Amendment. 12:22:15

4 BY MS. KRAWIEC: 12:22:15

5 Q. Okay. Mr. Joffe, who did you -- did you 12:22:20  
6 have communications just generally with anyone within 12:22:24  
7 the DNC or the Hillary Clinton campaign? 12:22:30

8 MR. TYRRELL: I think if we could just -- 12:22:48  
9 as I understand it, Margaret, there are two separate 12:22:51  
10 legal entities. There is the Clinton campaign, which 12:22:55  
11 I think people have referred to as HFA; and then 12:23:00  
12 there's the Democratic National Committee or DNC. 12:23:05

13 And I don't know that my client necessarily 12:23:08  
14 appreciates the legal distinction. And he certainly 12:23:13  
15 doesn't know whether there might have been people 12:23:15  
16 working for both, or what have you, but if you could 12:23:19  
17 maybe sort of ask your question again, we'll do our 12:23:23  
18 best to answer. 12:23:24

19 Q. Right. So the HFA, which is the Hillary 12:23:27  
20 for America, I refer to that as the Clinton campaign. 12:23:29  
21 Is that fair, Mr. Joffe, for me to make that reference 12:23:34  
22 to you? 12:23:34



1           A.     I can't remember, but it was someone in the 12:24:33  
2 computer security role for one of those organizations. 12:24:38  
3 And they specifically had asked for my advice on how 12:24:43  
4 to protect the -- their organization from a 12:24:47  
5 distributed denial of service attack that they were 12:24:51  
6 undergoing or expecting. 12:24:55

7           Q.     Do you remember the general time frame of 12:24:56  
8 that conversation? 12:24:58

9           A.     I don't, other than it was before the 12:25:02  
10 election. 12:25:02

11          Q.     Okay. And you don't remember the name of 12:25:05  
12 the individual, correct? 12:25:07

13          A.     I don't. I know it was a male. 12:25:08

14          Q.     Can you tell us anything about the 12:25:17  
15 suggestion of any type of job offer -- 12:25:19

16               MR. TYRRELL: I'm sorry. He was -- was 12:25:21  
17 wanting to finish his answer, Margaret. I apologize. 12:25:24

18               THE WITNESS: Which will be useful. 12:25:25

19 Outside of that one conversation, I don't believe I've 12:25:27  
20 ever talked to anyone in the HFA or DNC organization 12:25:33  
21 itself. 12:25:33

22               BY MS. KRAWIEC: 12:25:33

1 Q. If Hillary Clinton had won, was there any 12:25:40

2 consideration on your part to join her administration? 12:25:48

3 A. **Not in the vaguest. I am --** 12:25:51

4 MR. TYRRELL: Just answer. 12:25:53

5 A. **Not in the vaguest. No possible interest.** 12:25:56

6 Q. I understand. I am not into politics 12:25:59

7 either. I mean, the -- the date -- 12:26:04

8 A. **It's not even the politics. It's the -- I** 12:26:07

9 **am in business already. I've got, you know --** 12:26:11

10 MR. TYRRELL: That's fine. 12:26:11

11 A. **It's not -- politics is not my place.** 12:26:14

12 Q. Understood. Understood. And what about 12:26:16

13 Marc Elias, did you have -- he was the general counsel 12:26:18

14 of the campaign, the Hillary Clinton campaign. 12:26:24

15 Did you have any communications with him 12:26:25

16 that would have not been privileged? 12:26:27

17 A. **I have to invoke the Fifth.** 12:26:31

18 Q. Okay. So if we can go to paragraph 22F, 12:26:36

19 which is on page 9 of the indictment. So this 12:26:52

20 paragraph suggests that there were personnel at 12:26:58

21 Internet Company 3 that were uncomfortable regarding a 12:27:02

22 tasking from Tech Executive 1 because they believed 12:27:06

1 that using the company's data was inappropriate. It 12:27:11  
2 says, They complied with the task, however, because 12:27:13  
3 Tech Executive 1 was a powerful figure at both 12:27:16  
4 companies. 12:27:17

5 Do you know to whom these -- these 12:27:21  
6 personnel, these individuals, the reference is to? 12:27:26

7 **A. I have to take the Fifth.** 12:27:29

8 Q. Were you aware of their discomfort? 12:27:30

9 **A. I have to take the Fifth on that as well.** 12:27:35

10 Q. Did you use your clout to pressure 12:27:38  
11 employees to research the server allegations? 12:27:41

12 **A. Take the Fifth on that.** 12:27:43

13 Q. Did you ask employees to access data in 12:27:47  
14 violation of use agreements in order to research the 12:27:50  
15 server allegations? 12:27:52

16 **A. Take the Fifth on that.** 12:27:54

17 Q. If we can go to 20 -- in G it says, In 12:28:00  
18 connection with this tasking, Tech Executive 1 12:28:03  
19 e-mailed to Internet Company 3 personnel a five-page 12:28:08  
20 document, the Trump Associates List, listing six 12:28:11  
21 associates of Trump and a purported U.S.-based 12:28:14  
22 lobbyist for Russian Bank 1 who was also discussed in 12:28:18

1 written materials prepared by the U.S. investigative 12:28:21  
2 firm that Sussmann would later provide to the FBI 12:28:24  
3 general counsel. 12:28:26

4 Do you know who -- what this list is, Mr. 12:28:27  
5 Joffe? 12:28:28

6 **A. I have to take the -- take the Fifth on 12:28:31  
7 that. 12:28:32**

8 Q. Did Fusion GPS bring information to you 12:28:38  
9 about Alfa-Bank? 12:28:40

10 **A. I have to take the Fifth on that. 12:28:42**

11 Q. Did Fusion GPS bring information to you 12:28:46  
12 regarding Ambassador Rick Burt? 12:28:49

13 **A. Take the Fifth on that. 12:28:50**

14 Q. So the -- the paragraph goes on to say, The 12:28:55  
15 Trump Associates List contained detailed personal 12:28:57  
16 information for these individuals, including, for 12:29:00  
17 example, their names, home addresses, personal email 12:29:02  
18 addresses, business names, business websites and email 12:29:05  
19 domains, suspected IP addresses for those domains, and 12:29:08  
20 information pertaining to the spouse of one of these 12:29:11  
21 associates. Tech Executive 1 directed that these 12:29:13  
22 individuals should be a focus of Internet Company 3's 12:29:19

1 data queries and analysis. 12:29:20

2 Did you direct Internet Company 3 to focus 12:29:24

3 on these individuals with respect to data queries and 12:29:26

4 analysis? 12:29:29

5 **A. I'm going to take five on that.** 12:29:31

6 **Q.** If we can go to paragraph 22I. It says, 12:29:59

7 During the same time period, employees of Internet 12:30:00

8 Company 3 also drafted and provided to Tech Executive 12:30:02

9 1 a written paper reflecting, in substance, some of 12:30:05

10 the same technical observations contained in the 12:30:07

11 Russian Bank 1 allegations that Sussmann later 12:30:09

12 conveyed to the FBI. 12:30:12

13 Do you know what this written paper is, Mr. 12:30:20

14 Joffe? 12:30:21

15 **A. I have to take five on that.** 12:30:23

16 **Q.** Did you ask someone to draft the paper 12:30:25

17 referenced in I? 12:30:28

18 **A. Take five on that.** 12:30:30

19 **Q.** Do you still have this document, Mr. Joffe? 12:30:33

20 **A. Take five on that.** 12:30:36

21 **MR. TYRRELL:** And again, Margaret, I think 12:30:39

22 you are assuming that he had it, assuming it even 12:30:43



1 exists, and I'm -- I'm not sure. Again, I'm not sure 12:30:46

2 that that's an accurate assumption. 12:30:48

3 MS. KRAWIEC: Understood your objection, 12:30:50

4 Mr. Tyrrell. I'm just going based on the allegations 12:30:54

5 in the indictment and trying to get information from 12:30:56

6 Mr. Joffe. 12:30:57

7 MR. TYRRELL: Yes. 12:30:58

8 BY MS. KRAWIEC: 12:30:59

9 Q. Did you identify any shortcomings regarding 12:31:02

10 the claim that Alfa-Bank and the Trump organization 12:31:05

11 were communicating together? 12:31:07

12 A. **Have to take five on that.** 12:31:10

13 Q. Did you provide copies of the document to 12:31:12

14 anyone? 12:31:12

15 A. **Take five on that.** 12:31:16

16 Q. Mr. Joffe, did you task April Lorenzen, 12:31:25

17 David Dagon and Manos Antonakakis to search broadly 12:31:29

18 through internet data for any information about 12:31:32

19 Trump's potential ties to Russia? 12:31:34

20 A. **Take five on that.** 12:31:35

21 Q. Did you have authority to task Mr. Dagon, 12:31:37

22 Mr. Antonakakis and Ms. Lorenzen? 12:31:40





1 1, Researcher 1, and Researcher 2, stating, among 12:35:05  
2 other things, that, quote, Even if we found what 12:35:10  
3 brackets tech executive, end brackets, asks us to 12:35:15  
4 finds in DNS, we don't see the money flow. And we 12:35:18  
5 don't see the content of some message saying send the 12:35:21  
6 money here. Originator 1 then explained that it would 12:35:23  
7 be possible to, quote, fill out a sales form on two 12:35:27  
8 web sites, faking the other company's email address in 12:35:30  
9 each form, end quote, and thereby cause them, quote, 12:35:35  
10 to appear to communicate with each other in DNS. End 12:35:38  
11 quote. 12:35:38  
12 Originator 1 then concluded, quote, if, 12:35:43  
13 brackets, Tech Executive 1, end brackets, can take the 12:35:47  
14 inference we gained through this team exercise, then 12:35:49  
15 work to develop even an inference may be worthwhile. 12:35:53  
16 It's just not the case that you can rest assured that 12:35:56  
17 Hillary's opposition research and whatever 12:35:59  
18 professional governments and investigative journalists 12:36:02  
19 are also digging will come up with the same things. 12:36:06  
20 Do you recall discussing with Ms. Lorenzen 12:36:09  
21 the use of two web sites, sales forms on two web sites 12:36:15  
22 to fake the other company's email address in each form 12:36:19

1 and thereby causing them to appear to communicate with 12:36:22

2 each other in DNS? 12:36:23

3 **A. I have to take the Fifth on that.** 12:36:29

4 Q. Is it possible, just generally taking it 12:36:31

5 outside the context of the server allegations, but 12:36:33

6 what's described here, is it possible to fill out a 12:36:39

7 form or engage in certain conduct that would cause 12:36:44

8 pings or cause communications that from a DNS 12:36:48

9 perspective would appear to look like some kind of 12:36:51

10 communication? 12:36:52

11 MR. TYRRELL: Just a second. 12:36:55

12 **A. I have no idea. I don't understand that.** 12:37:04

13 **I don't have any idea.** 12:37:05

14 Q. Okay. Do you have this email, Mr. Joffe? 12:37:16

15 **A. Which email?** 12:37:17

16 MR. TYRRELL: The one that's -- well, she's 12:37:20

17 suggesting that this paragraph -- 12:37:21

18 THE WITNESS: I have to -- 12:37:22

19 MR. TYRRELL: Yeah. It says email. 12:37:23

20 THE WITNESS: I've got to take -- take five 12:37:25

21 on that. 12:37:26

22 BY MS. KRAWIEC: 12:37:26

1 Q. If we can go to the next paragraph after H. 12:37:37  
2 So, Joe, just scroll down. So it says, On or about 12:37:40  
3 the same date, Tech Executive 1 clarified in an email 12:37:43  
4 to Originator 1, Researcher 1 and Researcher 2 that 12:37:47  
5 the task he had given them was indeed broad, and 12:37:50  
6 further stated in part: Being able to provide 12:37:53  
7 evidence of anything that shows an attempt to behave 12:37:55  
8 badly in relation to this, the VIPs would be happy. 12:37:59  
9 They are looking for a true story that could be used 12:38:01  
10 as the basis for a closer examination. 12:38:04  
11 So again, Mr. Joffe, did you send this 12:38:06  
12 email? 12:38:06  
13 **A. I have to take the Fifth on that.** 12:38:09  
14 Q. Do you still have this email? 12:38:13  
15 **A. Once again take the -- take five on that.** 12:38:15  
16 Q. Mr. Joffe, did you engage in any 12:38:22  
17 manipulation of the DNS data supporting the server 12:38:24  
18 allegations? 12:38:26  
19 **A. No.** 12:38:28  
20 Q. Did you engage in any sifting of the DNS 12:38:33  
21 data related to the server allegations? 12:38:35  
22 **A. No.** 12:38:36

1 Q. Did you engage in any conduct that would 12:38:42  
2 create false pings or false touch points between Trump 12:38:49  
3 and Alfa-Bank that would then be supported in DNS 12:38:54  
4 data? 12:38:56

5 A. No. 12:38:57

6 MS. KRAWIEC: Can -- I know it's 12:40, if 12:39:10  
7 we could go off the record. So if we could just take 12:39:15  
8 a lunch break. 12:39:17

9 VIDEOGRAPHER: Going off the record at 12:39:20  
10 12:39 p.m. 12:39:23

11 - - - 12:39:23

12 (Recessed at 12:39 p.m.) 12:39:23

13 (Reconvened at 1:34 p.m.) 12:39:23

14 - - - 12:39:23

15 VIDEOGRAPHER: Back on the record at 1:34 13:35:01  
16 p.m. 13:35:03

17 BY MS. KRAWIEC: 13:35:03

18 Q. Mr. Joffe, we just have a handful more of 13:35:09  
19 questions left for you today, reserving our rights to 13:35:12  
20 keep the deposition open, in light of the 13:35:14  
21 representation that your client -- your attorney made 13:35:17  
22 at the beginning of the deposition, that there's an 13:35:20

1 anticipation that the Durham investigation would be 13:35:23  
2 wrapping up in a few weeks. So we've tried to be 13:35:27  
3 really judicious and respectful of your time. And so 13:35:31  
4 let me just wrap up with a handful of questions and 13:35:34  
5 hopefully we can get you out of there. 13:35:36

6 MR. TYRRELL: Yes. Margaret, just to be 13:35:37  
7 clear, I described it as a hope -- 13:35:40

8 MS. KRAWIEC: I understand. 13:35:40

9 MR. TYRRELL: And you rightly have, you 13:35:42  
10 know, I'll say rightly have recognized that implicitly 13:35:44  
11 anyway that we have no control over it. It's just 13:35:50  
12 that the events that we understand are within the 13:35:52  
13 scope of the investigation, I think are getting 13:35:54  
14 further and further in the rearview mirror. And our 13:35:58  
15 hope is that either we will be notified that the 13:36:01  
16 investigation is over, at least insofar as it relates 13:36:06  
17 to any activities that Mr. Joffe may have in some way 13:36:09  
18 been connected to or connected with, or a report will 13:36:14  
19 be issued that will reflect that it's over or, you 13:36:17  
20 know, we'll be able to make an informed judgment about 13:36:21  
21 that. But, again, we are hopeful that it will be in 13:36:25  
22 the next few weeks, but obviously as you have rightly 13:36:28



1 recognized, and -- 13:36:29

2 MS. KRAWIEC: Understood and appreciate 13:36:30

3 that. I think it's why we have truncated rather than 13:36:34

4 sort of have to make Mr. Joffe sit for hours and 13:36:36

5 hours, because we are focused hopefully you've seen 13:36:41

6 through this deposition in getting to real facts and 13:36:42

7 real information. 13:36:43

8 BY MS. KRAWIEC: 13:36:43

9 Q. So, Mr. Joffe, just to kind of conclude 13:36:48

10 things, so were you or the other researchers 13:36:53

11 specifically looking for information that could 13:36:55

12 potentially link Trump to a Russian financial 13:36:58

13 institution? 13:37:01

14 A. So, let me -- 13:37:02

15 MR. TYRRELL: Yeah. 13:37:04

16 A. **As a result of the ongoing investigation of** 13:37:05

17 **the Office of Special Counsel, on the advice of my** 13:37:05

18 **attorney, I decline to answer that question based on** 13:37:10

19 **my rights under the Fifth Amendment to the U.S.** 13:37:13

20 **Constitution and Section 8 of the Virginia** 13:37:15

21 **Constitution.** 13:37:15

22 Q. Okay. Understood. And just for purposes 13:37:18

1 of -- so that you don't have to read that every time, 13:37:21  
2 I think going forward we can just refer to your Fifth 13:37:23  
3 Amendment assertion, and we'll have an agreement that 13:37:27  
4 it also encompasses your rights under the Virginia 13:37:28  
5 Constitution. 13:37:29

6 **A. I appreciate that.** 13:37:30

7 Q. Sure. 13:37:31

8 **A. And that it also relates -- the reasons** 13:37:33  
9 **relate to the ongoing investigation.** 13:37:35

10 Q. Understood. Yup. Okay. 13:37:36

11 So, Mr. Joffe, were you or the other 13:37:38  
12 researchers specifically looking for information that 13:37:42  
13 could potentially link Trump to Alfa-Bank? 13:37:45

14 **A. Take the Fifth on that.** 13:37:50

15 Q. Sorry. You are going to take the Fifth on 13:37:52  
16 that? 13:37:52

17 **A. Yes.** 13:37:52

18 Q. Did you ask Mr. Dagon, Mr. Antonakakis or 13:37:57  
19 Ms. Lorenzen to look at data regarding the server 13:38:01  
20 allegations? 13:38:02

21 **A. I'm going to take the Fifth on that as** 13:38:09  
22 **well.** 13:38:09

1 Q. Did you ask them to look at any analysis or 13:38:12  
2 white papers regarding the server allegations? 13:38:15

3 A. **Going to take the Fifth on that.** 13:38:16

4 Q. Did anyone raise with you any potential 13:38:19  
5 shortcomings regarding the data supporting or the 13:38:22  
6 conclusions regarding the server allegations? 13:38:26

7 A. **I'm going to take the Fifth on that as 13:38:28  
8 well.** 13:38:28

9 Q. Did anyone raise with you any potential 13:38:30  
10 shortcomings regarding any analytical papers or white 13:38:34  
11 papers supporting, or the conclusions regarding the 13:38:37  
12 server allegations? 13:38:38

13 A. **Taking the Fifth on that as well.** 13:38:43

14 Q. Did anyone raise with you any potential 13:38:48  
15 shortcomings regarding the data supporting or the 13:38:51  
16 conclusions regarding the server allegations? 13:38:53

17 A. **Taking the Fifth on that.** 13:38:56

18 Q. Do you think it's realistic to say that 13:38:59  
19 anyone has access to nearly comprehensive DNS data? 13:39:04

20 MR. TYRRELL: Can we have a second to 13:39:14  
21 confer. 13:39:15

22 MS. KRAWIEC: Sure. 13:39:16

1 MR. TYRRELL: Margaret, again, you know, in 13:39:54  
2 the spirit of trying to answer when we can, could you 13:39:57  
3 be a little bit more specific about what you mean by 13:40:00  
4 comprehensive? 13:40:01

5 BY MS. KRAWIEC: 13:40:01

6 Q. Sure. I think there was a media report 13:40:09  
7 where the description was that these computer 13:40:12  
8 researchers had near -- access to nearly comprehensive 13:40:17  
9 DNS data. And I'm just trying to understand what Mr. 13:40:22  
10 Joffe's view is. 13:40:23

11 Like the way DNS has been described to me, 13:40:25  
12 and I'm embarrassed to even pretend that I know 13:40:29  
13 anything about DNS, but that it's difficult to have 13:40:30  
14 all DNS traffic in one place, and that there are 13:40:35  
15 service providers and what have you that sort of have 13:40:37  
16 different pieces of the pie. And given Mr. Joffe's, 13:40:40  
17 you know, knowledge of DNS, I'm trying to understand 13:40:45  
18 his view of, you know, whether or not someone could 13:40:50  
19 have access to near comprehensive DNS traffic. 13:40:55

20 Does that make sense? 13:40:56

21 MR. TYRRELL: Not -- well, in terms of your 13:40:59  
22 -- in terms of your reference to representations or 13:41:07

1 reports or what have you connected to this case, I 13:41:09  
2 don't think we can answer questions as to that but, 13:41:12  
3 you know, when you talk about whether people can 13:41:16  
4 access comprehensive DNS data, I guess what I'm trying 13:41:19  
5 to understand from you is in your mind what is 13:41:23  
6 comprehensive in your question? Is it, you know, is 13:41:26  
7 it 100 percent of the DNS activity in the world? Is 13:41:29  
8 it 20 percent? Is it -- you know, what do you -- I 13:41:34  
9 don't understand the term comprehensive in your 13:41:36  
10 question, and that's what I -- that's where I'm 13:41:38  
11 struggling. 13:41:38  
12 I don't know whether my client would even 13:41:41  
13 be able to answer it once you -- if you are able to be 13:41:44  
14 more specific, but I'm trying to get there, if we can. 13:41:48  
15 MS. KRAWIEC: Understood. 13:41:48  
16 BY MS. KRAWIEC: 13:41:48  
17 Q. Mr. Joffe, maybe I can ask it this way. 13:41:52  
18 Putting aside the server allegations of this kind of 13:41:56  
19 pie, using my analogy of sort of DNS data traffic 13:42:00  
20 that's out there, how much a percent of the pie would 13:42:03  
21 Neustar, for example, have? 13:42:05  
22 A. Okay. I think I'm going to -- 13:42:08

1 MR. TYRRELL: Take five. 13:42:10

2 A. I think I'm going to have to take five on 13:42:12

3 that. 13:42:14

4 Q. Would you agree with the statement that one 13:42:33

5 provider, or a person could have access to the 13:42:34

6 overwhelming majority of DNS traffic? 13:42:38

7 A. I'm going to take five on that. 13:42:40

8 Q. Were you aware that Mr. Sussmann provided 13:42:47

9 documents including white papers and data files to the 13:42:50

10 FBI? 13:42:50

11 A. Going to take five on that. 13:42:56

12 Q. Were you aware that Mr. Sussmann provided 13:42:58

13 documents including white papers and data files to the 13:43:02

14 CIA? 13:43:04

15 A. Going to take five on that as well. 13:43:06

16 Q. Were you aware that Mr. Sussmann provided 13:43:09

17 documents including white papers and data files to 13:43:11

18 Congress? 13:43:12

19 A. Going to take five on that as well. 13:43:15

20 Q. And when I mean Congress, just for the 13:43:17

21 record, that would include staff members, you know, 13:43:19

22 not just actual senators or representatives but their 13:43:25

1 staff. Is that understood, Mr. Joffe, and would that 13:43:28  
2 change your question? 13:43:29

3 **A. I understand that.** 13:43:30

4 Q. I mean your response? 13:43:30

5 **A. Yeah. And I'm still going to take five.** 13:43:33

6 Q. Okay. Did you direct Mr. Sussmann to 13:43:41  
7 provide such documents to the FBI? 13:43:42

8 **A. I'm going to take five on that.** 13:43:50

9 Q. Did you direct Mr. Sussmann to provide such 13:43:52  
10 documents to the CIA? 13:43:53

11 **A. I'm taking five on that.** 13:43:54

12 Q. Did you direct Mr. Sussmann to provide such 13:43:55  
13 documents to Congress? 13:43:56

14 **A. Taking five on that as well.** 13:43:58

15 Q. Did Mr. Sussmann attend any meetings with 13:44:04  
16 the FBI on your behalf? 13:44:06

17 **A. Can I --** 13:44:16

18 MR. TYRRELL: Is your question focused on 13:44:26  
19 the server allegations? 13:44:28

20 MS. KRAWIEC: Yes. 13:44:28

21 MR. TYRRELL: Okay. 13:44:31

22 **A. Going to take five on that.** 13:44:33

1 BY MS. KRAWIEC: 13:44:33

2 Q. Okay. What about any meetings with the CIA 13:44:37

3 related to the server allegations? 13:44:39

4 A. **Have to take five on that.** 13:44:41

5 Q. And any meetings with Congress or on the 13:44:44

6 Hill with members, staff, related to the server 13:44:46

7 allegations? 13:44:47

8 A. **Take five on that.** 13:44:48

9 Q. Did you provide or cause to be provided any 13:44:52

10 of the documents that Mr. Sussmann was alleged to have 13:44:55

11 provided to the FBI? 13:44:56

12 A. **Take five on that.** 13:45:01

13 Q. Same question as to the CIA? 13:45:03

14 A. **Same answer.** 13:45:05

15 Q. And same question as to documentation 13:45:07

16 provided to Congress? 13:45:08

17 A. **Take five on that.** 13:45:09

18 Q. Which members of the media did you or your 13:45:14

19 attorney communicate with regarding the server 13:45:16

20 allegations? 13:45:16

21 A. **Take five on that.** 13:45:21

22 Q. Which members of the media did you or your 13:45:23



1 attorney communicate with regarding the Alfa to 13:45:27  
2 members of the media? 13:45:28  
3 **A. Take five on that.** 13:45:35  
4 Q. Mr. Joffe, have you used the pseudonym Max 13:45:38  
5 to speak to journalists? 13:45:40  
6 **A. Take five on that.** 13:45:42  
7 Q. Have you used the pseudonym Max generally 13:45:49  
8 with others to speak about the server allegations? 13:45:51  
9 **A. Take five on that.** 13:45:52  
10 Q. Mr. Joffe, have you used the name John Gaul 13:45:56  
11 to speak to third parties regarding the server 13:45:58  
12 allegations? 13:46:00  
13 **A. Take five on that.** 13:46:03  
14 Q. Did you speak with Dexter Filkins, Mr. 13:46:08  
15 Joffe? 13:46:10  
16 **A. I have to take five on that.** 13:46:12  
17 Q. Did you tell Mr. Filkins that the DNS data 13:46:14  
18 showed a human interaction between Trump and 13:46:19  
19 Alfa-Bank? 13:46:19  
20 **A. Take five on that.** 13:46:32  
21 Q. Did you speak with members of the media on 13:46:38  
22 your own volition or at someone else's direction? 13:46:39



1 Q. Have you reviewed your records in light of 13:47:52

2 the Sussmann indictment? 13:47:53

3 MR. TYRRELL: Give us one second. 13:48:07

4 A. So I've reviewed all of my documents when I 13:48:25

5 first engaged Steve as counsel. 13:48:30

6 Q. Okay. And -- 13:48:33

7 MR. TYRRELL: Which would have been? 13:48:34

8 A. Which would have been a year and a half 13:48:37

9 ago. 13:48:38

10 Q. Okay. And other than at that time, you 13:48:43

11 haven't since gone back in light of either factual 13:48:46

12 developments or the issuance of the indictment or what 13:48:50

13 have you to otherwise review the documents? 13:49:00

14 A. Not recently. 13:49:02

15 Q. Have you requested copies of the emails or 13:49:05

16 documents from anyone else, such as other computer 13:49:07

17 researchers, in light of the Sussmann indictment? 13:49:11

18 MR. TYRRELL: Margaret, you are asking 13:49:23

19 whether Mr. Joffe has? 13:49:25

20 MS. KRAWIEC: Yes. 13:49:25

21 A. I haven't asked anyone. 13:49:45

22 BY MS. KRAWIEC: 13:49:45

1 Q. Okay. Could you please describe the work 13:49:49

2 that you completed for TDIP? 13:49:52

3 MR. TYRRELL: Margaret, again, I just -- 13:50:14

4 maybe ask the threshold question which is did my 13:50:18

5 client ever perform any work for TDIP. Is that -- is 13:50:24

6 that your -- 13:50:24

7 MS. KRAWIEC: Sure. We can start with 13:50:25

8 that. 13:50:26

9 MR. TYRRELL: Your question assumed -- I 13:50:26

10 think your question assumed that he did. So if you 13:50:29

11 are asking if he ever performed any work for TDIP, I 13:50:33

12 think he can answer that question. 13:50:34

13 MR. KRAWIEC: Sure. And, I'm sorry, I 13:50:36

14 didn't mean to assume it. When we deposed Mr. Jones, 13:50:39

15 he had testified that he had liaised with Mr. Joffe on 13:50:44

16 various issues related to the server allegations. And 13:50:49

17 so my apologies for presupposing the question and not 13:50:52

18 laying the foundation. 13:50:54

19 MR. TYRRELL: Well, I -- we certainly don't 13:50:54

20 want to mislead on this point. If you are going to 13:50:56

21 ask my client about conversations, if he ever spoke 13:51:00

22 with -- 13:51:02

1 MS. KRAWIEC: Right. 13:51:02

2 MR. TYRRELL: -- had conversations with Mr. 13:51:03

3 Jones, he's going to take five on that. If you are 13:51:06

4 specifically asking whether he did any work for him, 13:51:09

5 you know, sort of like in a retained capacity, I think 13:51:13

6 we would answer that question. I think we can answer 13:51:17

7 that question. 13:51:18

8 So I don't want to draw too fine a line 13:51:20

9 here. I don't want to mislead by interpreting your 13:51:23

10 question too literally. 13:51:25

11 BY MS. KRAWIEC: 13:51:25

12 Q. Well, let me -- let me start over. So, Mr. 13:51:27

13 Joffe, have you ever spoken to Daniel Jones about the 13:51:30

14 server allegations? 13:51:32

15 A. I have to take five on that. 13:51:33

16 Q. Were you aware that Mr. Jones was working 13:51:37

17 on a report regarding the server allegations? 13:51:39

18 A. I have to take five on that as well. 13:51:45

19 Q. Were you aware that the goal of the report 13:51:47

20 was to provide it to various members within the 13:51:50

21 government? 13:51:52

22 A. I have to take five on that. 13:51:59

1 Q. Were you aware that there was a view by Mr. 13:52:02  
2 Jones that the government had not done enough to 13:52:03  
3 properly investigate the server allegations? 13:52:06

4 MR. TYRRELL: Again you are asking was he 13:52:10  
5 aware ever? I mean, if -- 13:52:15

6 MS. KRAWIEC: Sure. 13:52:16

7 MR. TYRRELL: -- hypothetically he had read 13:52:17  
8 Mr. Jones' report, he would know what it, you know, 13:52:19  
9 says right, so -- 13:52:21

10 MS. KRAWIEC: Sure. Why don't I ask this. 13:52:22

11 BY MS. KRAWIEC: 13:52:22

12 Q. Did Mr. Jones ever tell you that the hope 13:52:26  
13 of drafting the report was to basically get the 13:52:33  
14 attention of other government officials? 13:52:34

15 A. I'm going to take five on that. 13:52:37

16 Q. Did you provide advice or answer questions 13:52:43  
17 that Mr. Jones posed to you regarding the server 13:52:46  
18 allegations? 13:52:47

19 A. Have to take five on that. 13:52:48

20 Q. Did you ask or did you tell Mr. Jones that 13:52:52  
21 he should reach out to Ms. Lorenzen and Mr. Dagon to 13:52:57  
22 discuss the technical aspects of the server 13:52:59

1 allegations? 13:53:00

2 **A. I have to take five on that.** 13:53:03

3 Q. Mr. Jones, can you -- sorry. Mr. Joffe, 13:53:08

4 can you describe to us how it was that you became 13:53:15

5 known to or introduced to Mr. Jones? 13:53:17

6 **A. I should take five on that.** 13:53:21

7 Q. And apology if I asked you this, but just 13:53:33

8 so the record is clear, were you aware that TDIP was 13:53:36

9 creating a several-hundred-page report on the server 13:53:39

10 allegations? 13:53:39

11 **A. I have to take five on that.** 13:53:46

12 Q. Were you aware that there were hundreds of 13:53:48

13 pages devoted to Alfa-Bank, irrespective of the server 13:53:54

14 allegations, but just Alfa-Bank and any public 13:53:57

15 allegations regarding Alfa-Bank? 13:53:59

16 MR. TYRRELL: Again you are saying were you 13:54:02

17 aware, meaning when Mr. Jones was writing the report 13:54:05

18 was he aware that the report was going to include 13:54:08

19 hundreds of pages -- 13:54:10

20 MS. KRAWIEC: Sure. 13:54:11

21 MR. TYRRELL: -- about it? Is that your 13:54:11

22 question? 13:54:13

1 MS. KRAWIEC: Let's start there. 13:54:14

2 BY MS. KRAWIEC: 13:54:14

3 Q. When Mr. Jones was drafting the report, was 13:54:16

4 it your understanding that there would be a voluminous 13:54:18

5 section dedicated to Alfa-Bank? 13:54:22

6 A. I have to take five on that. 13:54:24

7 Q. Have you seen the report, Mr. Joffe? 13:54:27

8 A. In its entirety, no. 13:54:29

9 Q. Have you seen iterations of the report? 13:54:32

10 A. I've seen the pieces of the report that 13:54:39

11 were filed in the DC case that involved Alfa-Bank and 13:54:45

12 TDIP. 13:54:48

13 Q. So the recent? 13:54:51

14 A. Correct. 13:54:51

15 Q. It was a recent filing as opposed to 13:54:53

16 contemporaneously? Okay. Understood. 13:54:56

17 Can you please describe any data regarding 13:55:01

18 the server allegations that you provided or caused to 13:55:03

19 be provided to TDIP or Mr. Jones? 13:55:06

20 A. I have to take the Fifth on that. 13:55:09

21 Q. Do you understand that Mr. Jones provided 13:55:10

22 Mr. Sussmann data that was sourced from you? 13:55:16



1 I'm sorry. Do you understand that Mr. 13:55:17  
2 Sussmann provided Mr. Jones data that was sourced from 13:55:20  
3 you? 13:55:21  
4 **A. I have to take five on that.** 13:55:24  
5 Q. Did Mr. Sussmann provide this data to Mr. 13:55:27  
6 Jones at your behest? 13:55:28  
7 **A. I have to take five on that.** 13:55:32  
8 Q. Did you give him permission to provide that 13:55:34  
9 data? 13:55:35  
10 **A. I have to take five on that.** 13:55:36  
11 Q. Can you describe any analysis or work 13:55:40  
12 product you provided to TDIP or Mr. Jones? 13:55:44  
13 **A. I have to take five on that.** 13:55:48  
14 Q. Did you assist Ms. Lorenzen or Mr. Dagon in 13:55:50  
15 providing analysis regarding the server allegations 13:55:51  
16 for TDIP? 13:55:56  
17 **A. I have to take five on that.** 13:55:58  
18 Q. Were you aware that in the scope of 13:56:00  
19 drafting the report that Mr. Jones was drafting, 13:56:02  
20 additional look-ups from non-Alfa entities such as 13:56:06  
21 Heartland Payment Services that were not part of the 13:56:09  
22 original population of purported look-ups of the Trump 13:56:12

1 server were identified? 13:56:14

2 **A. I have to take five on that.** 13:56:29

3 Q. Did you tell Mr. Jones or anyone associated 13:56:31

4 with Mr. Jones that you, Ms. Lorenzen, and Mr. Dagon 13:56:34

5 could see a little over 50 percent of DNS traffic 13:56:38

6 going into the U.S. and a little less than 50 percent 13:56:42

7 inside the U.S.?

8 **A. I have to take five on that.** 13:56:46

9 Q. Mr. Joffe, can you describe any 13:56:49

10 communications you had with anyone from the Armed -- 13:56:53

11 the Senate Armed Services Committee or the Senate 13:56:55

12 Select Committee on Intelligence or their staff? 13:56:59

13 **A. I have to take five on that.** 13:57:01

14 Q. Could you tell us about the content of 13:57:03

15 those communications and how the interactions came 13:57:06

16 about? 13:57:06

17 **A. I have to take five on that.** 13:57:08

18 Q. You mentioned earlier that you knew Kirk 13:57:12

19 McConnell. Could you please describe your 13:57:14

20 communications that you had with Mr. McConnell 13:57:17

21 regarding the server allegations? 13:57:19

22 **A. I have to take five on that.** 13:57:21

1 Q. Can you tell us when you became in contact 13:57:26  
2 with Mr. McConnell? 13:57:28

3 A. **Have to take five on that.** 13:57:30

4 Q. Have you spoken to Mr. McConnell about 13:57:38  
5 Alfa-Bank's lawsuit? 13:57:39

6 A. **I have to take five on that.** 13:57:42

7 Q. Have you spoken to anyone on the Hill about 13:57:47  
8 Alfa-Bank's lawsuit? 13:57:49

9 A. **I have to take five on that.** 13:57:56

10 Q. Have you spoken to Fusion GPS about 13:57:59  
11 Alfa-Bank's lawsuit? 13:58:02

12 A. **I have not.** 13:58:06

13 Q. Have you spoken to Mr. Jones about 13:58:10  
14 Alfa-Bank's lawsuit? 13:58:13

15 A. **I have not.** 13:58:14

16 Q. Have you spoken to Ms. Lorenzen about 13:58:22  
17 Alfa-Bank's lawsuit? 13:58:23

18 A. **I have to take five on that.** 13:58:24

19 Q. Have you spoken to Mr. Dagon about 13:58:27  
20 Alfa-Bank's lawsuit? 13:58:28

21 A. **I have -- I have to take five on that.** 13:58:45

22 Q. And what about Dr. Antonakakis, have you 13:58:48

1 spoken to him about Alfa-Bank's lawsuit? 13:58:51

2 **A. I have to take five on that.** 13:58:56

3 Q. Mr. Joffe, did you attend a meeting at the 13:59:00

4 Senate Armed Services Committee offices on August 17, 13:59:03

5 2017, with Mr. Dickerson, Mr. Weaver, Mr. Jones, 13:59:09

6 employees of Mandiant and staff from the Senate Armed 13:59:14

7 Services Committee? 13:59:14

8 **A. No.** 13:59:16

9 Q. Have you ever worn masks, a mask at a 13:59:20

10 meeting on the Hill? 13:59:21

11 **A. Good grief, no. Not even on the Halloween.** 13:59:27

12 Q. Did you take any meetings on the Hill 13:59:35

13 regarding the server allegations? 13:59:37

14 **A. I have to take five on that.** 13:59:40

15 Q. Mr. Joffe, did anyone raise with you any 13:59:47

16 potential shortcomings regarding the data supporting 13:59:50

17 or the conclusions regarding the server allegations? 13:59:52

18 **A. I have to take five on that.** 13:59:54

19 Q. And just a few questions more. Mr. Joffe, 13:59:57

20 are you a member of the so-called Union of Concerned 14:00:03

21 Nerds as described by L. Jean Camp? Basically she's 14:00:07

22 used it as a description to describe a group of 14:00:11

1 computer researchers who search for malware and other 14:00:13

2 malicious content and actors on the internet. 14:00:18

3 **A. I have -- I have -- can't remember having 14:00:21**

4 **heard that term. And I don't belong to any 14:00:23**

5 **organization. 14:00:24**

6 **Q. Are you a member of a group of individuals 14:00:30**

7 who sought to investigate potential foreign 14:00:32

8 interference in the 2016 U.S. Presidential Election? 14:00:36

9 **MR. TYRRELL: Are you talking -- Margaret, 14:01:02**

10 does your question include the server allegations? 14:01:04

11 **MS. KRAWIEC: Yes. 14:01:05**

12 **MR. TYRRELL: Or as separate from the 14:01:06**

13 server allegations? 14:01:07

14 **MS. KRAWIEC: It would include the server 14:01:09**

15 allegations and just broadly election interference 14:01:11

16 issues. 14:01:12

17 **MR. TYRRELL: Okay. 14:01:13**

18 **THE WITNESS: I have to take five on that. 14:01:14**

19 **BY MS. KRAWIEC: 14:01:14**

20 **Q. And would you sort of associate yourself as 14:01:18**

21 a member of a group of individuals who sought to 14:01:20

22 investigate the server allegations? 14:01:22



1 Dagon and some other people, I think from Georgia Tech 14:03:42

2 and from DARPA, but I didn't know in advance, and I 14:03:47

3 wasn't invited, and I wasn't part of it. 14:03:48

4 Q. Thank you. And, Mr. Joffe, do you remember 14:03:50

5 how you became aware of that? 14:03:53

6 A. I don't recall. 14:03:53

7 Q. Okay. Do you know who attended that 14:04:04

8 meeting that you just described? I know you said Mr. 14:04:07

9 Dagon and others from Georgia Tech, Kirk McConnell, 14:04:09

10 potentially people from DARPA. Anyone else? 14:04:14

11 A. I can't -- I don't know. I seem to 14:04:18

12 remember those names, but I don't remember any other 14:04:21

13 names. 14:04:21

14 Q. And do you -- 14:04:23

15 A. I think I -- I think I may have picked up 14:04:25

16 names as you asked the question earlier, but -- 14:04:28

17 Q. Understood. 14:04:31

18 A. Yeah. 14:04:32

19 Q. And, Mr. Joffe, just last question. Do you 14:04:34

20 remember the general time frame of this learning that 14:04:37

21 -- this meeting that I know you didn't attend but that 14:04:40

22 you heard of, you heard about? 14:04:41

1 MR. TYRRELL: Sorry. I'm sorry. 14:04:47

2 A. I don't recall. 14:04:49

3 Q. Are we talking about in the context of sort 14:04:53

4 of the period of the server allegations, 2016, 2017, 14:04:57

5 that time period, or you don't recall? 14:04:59

6 A. I just don't recall. I know it wasn't in 14:05:01

7 the last six months. 14:05:02

8 MS. KRAWIEC: Understood. Okay. Well, 14:05:06

9 thank you very much, Mr. Joffe. I appreciate that it 14:05:09

10 was challenging to navigate, but I think we did it 14:05:11

11 probably as civilly as we could have. And we 14:05:14

12 certainly endeavored to treat you right despite the 14:05:17

13 challenging circumstances. 14:05:18

14 I will, just as I've been transparent 14:05:22

15 throughout the course of the deposition, we do have to 14:05:26

16 keep the deposition open. And we've intentionally cut 14:05:29

17 it short because partly the representation that Mr. 14:05:31

18 Tyrrell, which we are not going to hold him to, but 14:05:35

19 the hope is that the Durham investigation will wrap 14:05:38

20 up, and you'll be able to freely be able to talk about 14:05:40

21 some of these factual issues that you otherwise had to 14:05:42

22 take the Fifth Amendment on. 14:05:42



1           And, for that reason, we are reserving our   14:05:43  
2   rights, because we have seven hours allotted to us for   14:05:47  
3   a deposition; and so we are going to reserve the rest   14:05:50  
4   of our time if, you know, in fact you are able to       14:05:54  
5   speak to us freely once that investigation comes to a   14:05:57  
6   conclusion. So thank you again for your time.           14:06:00

7           MR. TYRRELL: And, Margaret, thank you for   14:06:02  
8   your civility. I would just say that we have no       14:06:07  
9   objection to keeping the deposition open, so that if   14:06:12  
10  circumstances change, you know, we can come back and   14:06:14  
11  we can endeavor to answer all of your questions,       14:06:18  
12  subject to the objections that we may have on the       14:06:20  
13  other grounds I mentioned.                               14:06:21

14           I will say, however, we don't want to come   14:06:23  
15  back in two or three weeks if circumstances haven't   14:06:25  
16  changed, and go through this exercise again and cover   14:06:28  
17  the same questions and the same areas. So, if you       14:06:31  
18  feel that there's a need to come back, notwithstanding   14:06:35  
19  that there has not been a change of circumstances, I   14:06:37  
20  hope that you and I can confer about whatever           14:06:41  
21  different areas you want to explore and then, you       14:06:44  
22  know, have a conversation about that as opposed to       14:06:46

1 fighting over it. 14:06:48

2 MS. KRAWIEC: Absolutely. No, that's fair. 14:06:50

3 And that's not our present intention. We reserve our 14:06:53

4 rights, but obviously the goal was to do what we 14:06:56

5 needed, should -- you know, in the confines that we 14:07:01

6 are working in with the hope that we can revisit these 14:07:03

7 topics. 14:07:03

8 MR. TYRRELL: Yeah. Sounds good. All 14:07:05

9 right. Thank you. 14:07:06

10 MS. KRAWIEC: Thank you everyone. 14:07:07

11 THE WITNESS: Thanks very much. Have a 14:07:09

12 good one. Pleased to meet you. 14:07:10

13 MR. TYRRELL: Take care. 14:07:10

14 MS. KRAWIEC: Nice to meet you. 14:07:10

15 VIDEOGRAPHER: Going off the record at 14:07:25

16 2:07. 14:07:25

17 - - - 14:07:25

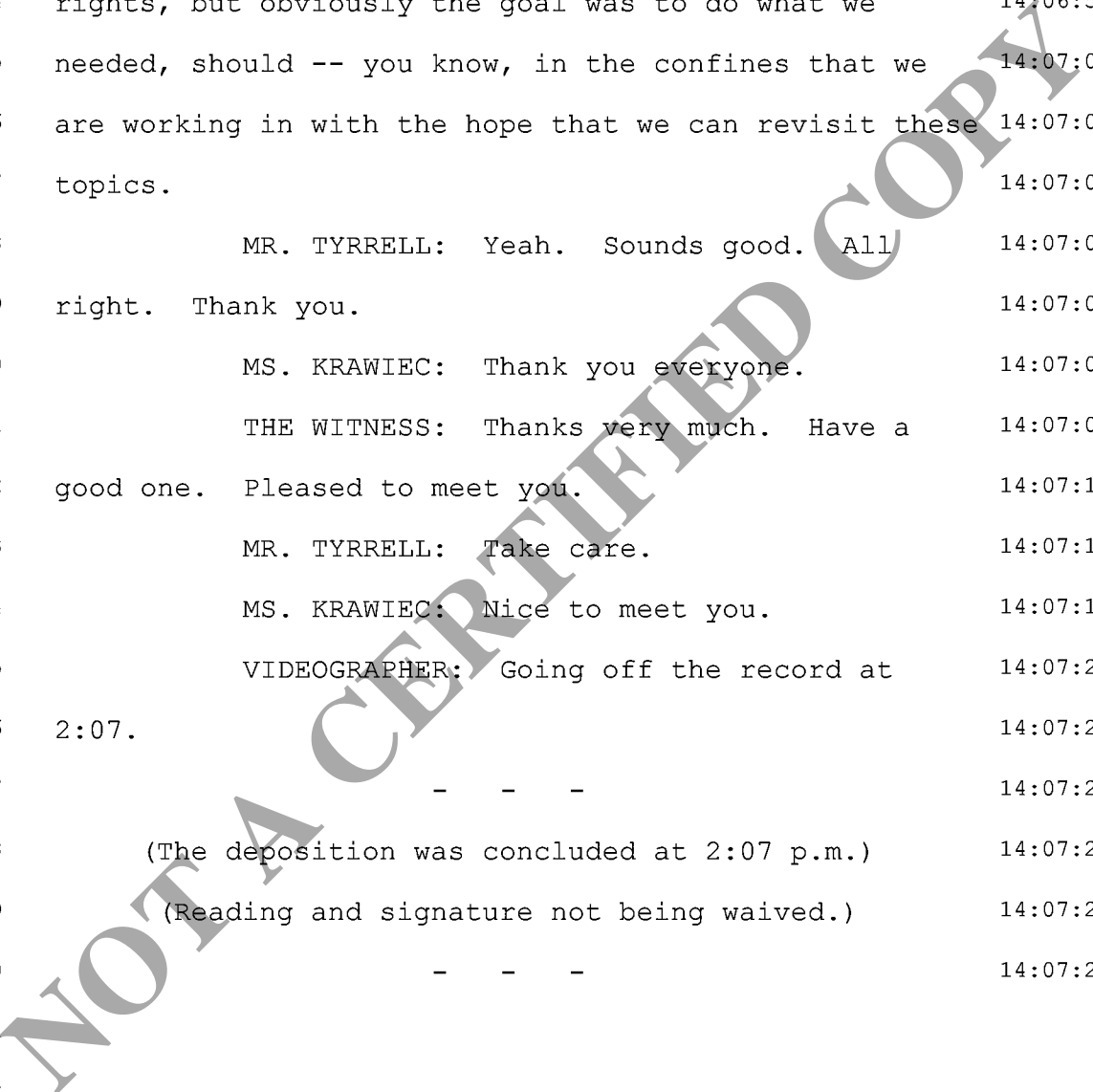
18 (The deposition was concluded at 2:07 p.m.) 14:07:25

19 (Reading and signature not being waived.) 14:07:25

20 - - - 14:07:25

21

22



1 ACKNOWLEDGMENT OF DEPONENT 14:07:25

2 14:07:25

3 I, \_\_\_\_\_, do hereby 14:07:25

4 acknowledge that I have read and examined the 14:07:25

5 foregoing testimony, and the same is a true, correct 14:07:25

6 and complete transcription of the testimony given by 14:07:25

7 me, and any corrections appear on the attached Errata 14:07:25

8 Sheet signed by me. 14:07:25

9 14:07:25

10 \_\_\_\_\_ 14:07:25

11 (DATE) (SIGNATURE) 14:07:25

12 14:07:25

13 NOTARIZATION (If Required) 14:07:25

14 State of \_\_\_\_\_ 14:07:25

15 County of \_\_\_\_\_ 14:07:25

16 Subscribed and sworn to (or affirmed) before me on 14:07:25

17 this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by 14:07:25

18 \_\_\_\_\_, proved to me on the 14:07:25

19 basis of satisfactory evidence to be the person who 14:07:25

20 appeared before me. 14:07:25

21 Signature: \_\_\_\_\_ 14:07:25

22 (Seal) 14:07:25

1 C E R T I F I C A T E 14:07:25

2 UNITED STATES OF AMERICA ) 14:07:25

3 ss: 14:07:25

4 DISTRICT OF COLUMBIA ) 14:07:25

5 I, ELIZABETH MINGIONE, Registered 14:07:25

6 Professional Reporter and Notary Public within and for 14:07:25

7 the District of Columbia, do hereby certify: 14:07:25

8 That the witness whose testimony appears in 14:07:25

9 the foregoing deposition was duly sworn, and that the 14:07:25

10 within transcript is a true record of the testimony 14:07:25

11 given by such witness. 14:07:25

12 I further certify that I am not related to 14:07:25

13 any of the parties to this action by blood or 14:07:25

14 marriage, and that I am in no way interested in the 14:07:25

15 outcome of this matter. 14:07:25

16 IN WITNESS WHEREOF, I have hereunto set my 14:07:25

17 hand this 14th day of February 2022. 14:07:25

18 14:07:25

19 14:07:25

20 Elizabeth Mingione 14:07:25

21 My Commission Expires: 14:07:25

22 July 14, 2025 14:07:25

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# **Exhibit 3**

*NOT A CERTIFIED COPY*

IN THE CIRCUIT COURT 00:00:00

FOR THE FIFTEENTH JUDICIAL CIRCUIT 00:00:00

IN AND FOR PALM BEACH COUNTY, FLORIDA 00:00:00

-----x 00:00:00

AO ALFA-BANK, 00:00:00

Plaintiff, : Case No.: 00:00:00

vs. : 50-2020-CA-006304- 00:00:00

JOHN DOE, et al., : XXXX-MB 00:00:00

Defendants. : 00:00:00

-----x 00:00:00

VOLUME II 00:00:00

VIDEOTAPED DEPOSITION OF PETER FRITSCH 00:00:00

via remote videoconference 00:00:00

Monday, February 14, 2022 00:00:00

Videotaped Deposition of PETER FRITSCH, held 00:00:00

remotely via Zoom videoconference, commencing at 9:32 00:00:00

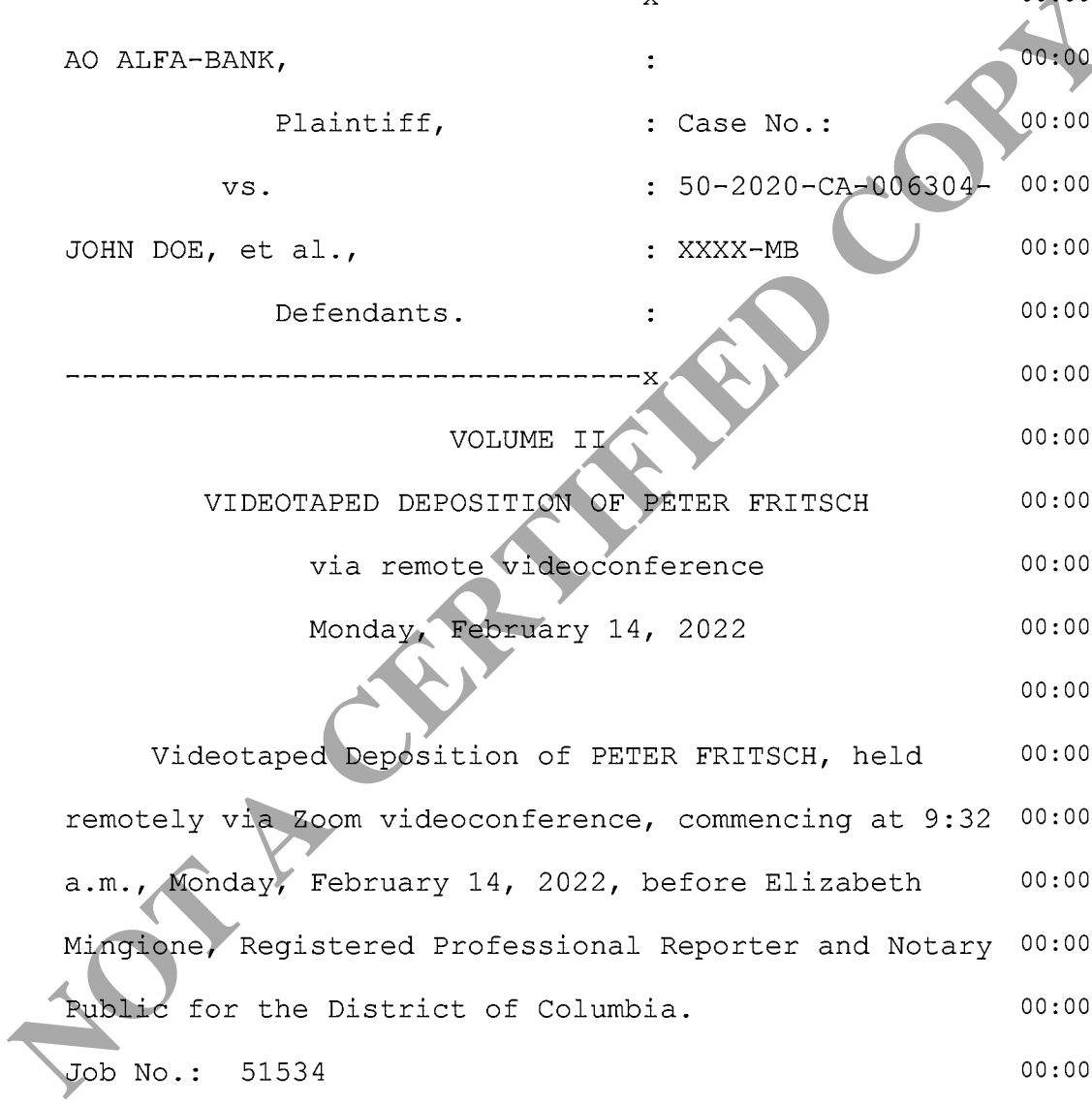
a.m., Monday, February 14, 2022, before Elizabeth 00:00:00

Mingione, Registered Professional Reporter and Notary 00:00:00

Public for the District of Columbia. 00:00:00

Job No.: 51534 00:00:00

Pages: 294 - 448 00:00:00



1	A P P E A R A N C E S O F C O U N S E L:	00:00:00
2	ON BEHALF OF ALFA-BANK, PLAINTIFF:	00:00:00
3	SKADDEN ARPS SLATE MEAGHER & FLOM, LLP	00:00:00
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22	(Appearances Continued)	00:00:00

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9	Jal@levyfirestone.com	00:00:00
10	Kpc@firestone.com	00:00:00
11	Eas@levyfirestone.com	00:00:00
12		00:00:00
13	A L S O P R E S E N T	00:00:00
14	Joe Townsend, Videographer	00:00:00
15		
16		
17		
18		
19		
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22		

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1 C O N T E N T S 00:00:00

2 WITNESS: PETER FRITSCH 00:00:00

3 EXAMINATION BY: PAGE 00:00:00

4 Ms. Krawiec ..... 301 00:00:00

5 00:00:00

6 \* \* \* 00:00:00

7 00:00:00

8 DEPOSITION EXHIBITS 00:00:00

9 PETER FRITSCH 00:00:00

10 NUMBER DESCRIPTION PAGE 00:00:00

11 Exhibit 31 Tab 138, December 1, 2021 Transcript 00:00:00

12 of Peter Fritsch ..... 312 00:00:00

13 Exhibit 32 Tab 58, Glenn Simpson Interview ..... 326 00:00:00

14 Exhibit 33 Tab 111, Defendant Privilege Log .... 344 00:00:00

15 Exhibit 34 Tab 80, "Russian Roulette" Excerpt .. 352 00:00:00

16 Exhibit 35 Tab 48, Email Chain, DEFS0000328 .... 357 00:00:00

17 Exhibit 36 Tab 49, Email Chain, DEFS0000308 .... 358 00:00:00

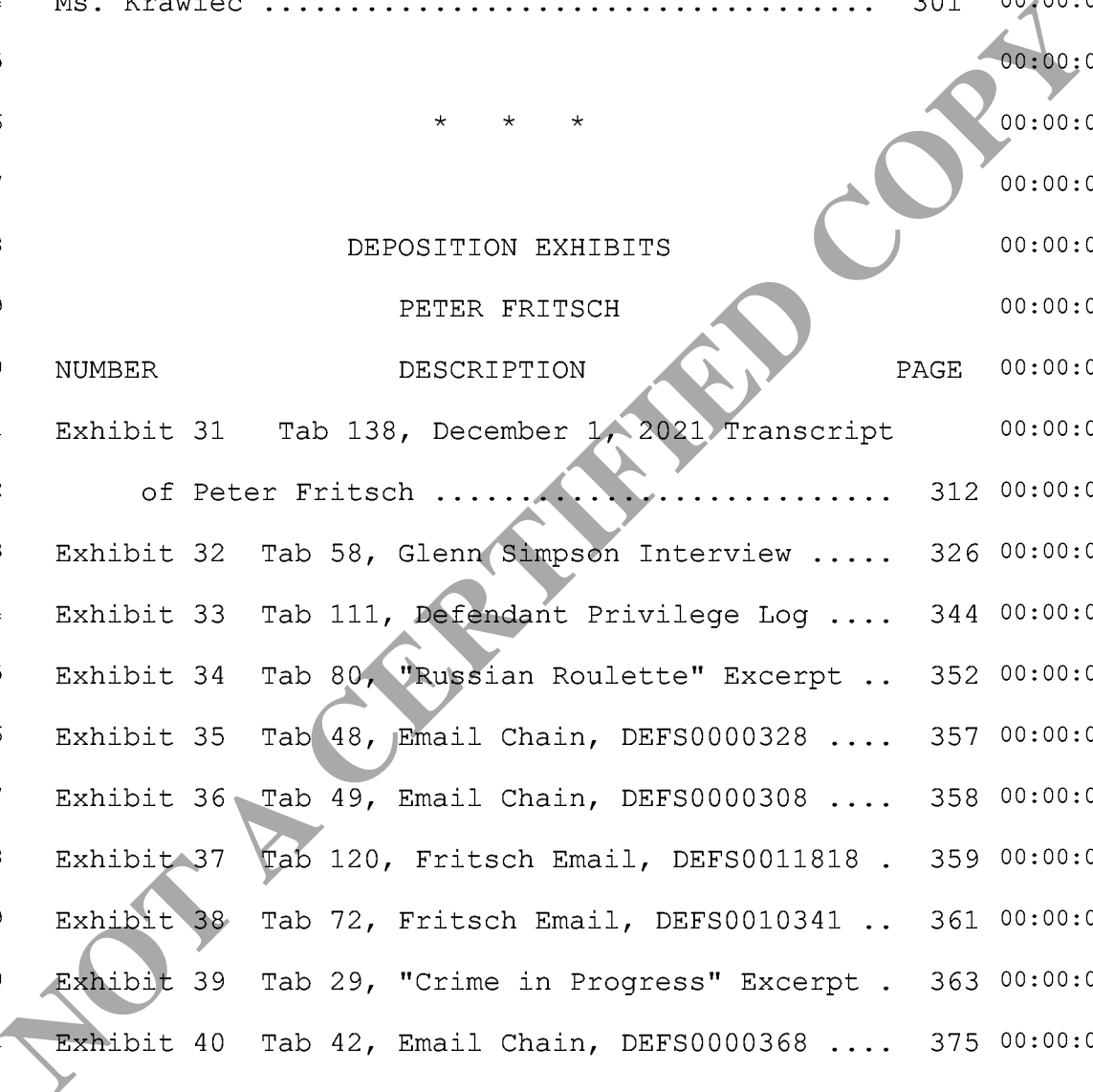
18 Exhibit 37 Tab 120, Fritsch Email, DEFS0011818 . 359 00:00:00

19 Exhibit 38 Tab 72, Fritsch Email, DEFS0010341 .. 361 00:00:00

20 Exhibit 39 Tab 29, "Crime in Progress" Excerpt . 363 00:00:00

21 Exhibit 40 Tab 42, Email Chain, DEFS0000368 .... 375 00:00:00

22 Exhibit 41 Tab 45, Mosk Email, DEFS0000333 ..... 377 00:00:00



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3		GDD53 and Slate .....	379	00:00:00
4	Exhibit 43	Tab 46, Fritsch/Hosenball Emails,		00:00:00
5		DEFS0010225 .....	382	00:00:00
6	Exhibit 44	Tab 102, Fritsch Email, DEFS0010277	384	00:00:00
7	Exhibit 45	Tab 60, Email Chain, DEFS0000337 ...	386	00:00:00
8	Exhibit 46	Tab 65, Email with NYTimes Annotated		00:00:00
9		Story, DEFS0000300 .....	390	00:00:00
10	Exhibit 47	Tab 64, Fritsch Email, DEFS0000335 .	402	00:00:00
11	Exhibit 48	Tab 99, Backgrounder Document .....	426	00:00:00
12	Exhibit 49	Tab 55, FM FF Email, DEFS0000413 ...	431	00:00:00
13	Exhibit 50	Tab 139, USA v. Sussman Document ...	434	00:00:00
14				00:00:00
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16				00:00:00
17				00:00:00
18				00:00:00
19		(Exhibits Attached to Transcript)		00:00:00
20				00:00:00
21				
22				

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1	P R O C E E D I N G S	00:00:00
2	VIDEOGRAPHER: Here begins Volume 2 in the	09:32:48
3	videotaped deposition of Peter Fritsch taken in the	09:32:51
4	matter of AO Alfa-Bank v. John Doe, in the Circuit	09:32:58
5	Court for the 15th Judicial Circuit in and for Palm	09:33:04
6	Beach County, Florida, Case No.	09:33:05
7	50-2020-CA-006304-XXX-MB. Today's date is February	09:33:20
8	14, 2022. The time is 9:33 a.m. Eastern standard	09:33:24
9	time.	09:33:26
10	This deposition is being held remotely via	09:33:28
11	Zoom video conference. Court reporter is Elizabeth	09:33:34
12	Mingione. My name is Joe Townsend. I am the video	09:33:37
13	camera operator. We are both here on behalf of	09:33:40
14	Henderson Legal Services.	09:33:42
15	Will counsel please introduce themselves	09:33:45
16	and state whom they represent.	09:33:48
17	MS. KRAWIEC: Margaret Krawiec on behalf of	09:33:50
18	AO Alfa-Bank.	09:33:53
19	MS. MURDAY: Rebecca Murday on behalf of AO	09:33:58
20	Alfa-Bank.	09:33:59
21	MR. MCINTOSH: Michael McIntosh on behalf	09:34:01
22	of AO Alfa-Bank.	09:34:03

1 MR. LEVY: Margaret, is there anyone with 09:34:07  
2 you in the room who's representing Alfa-Bank? 09:34:09  
3 MS. KRAWIEC: Yeah. We have associates in 09:34:11  
4 the room. 09:34:12  
5 MR. LEVY: Do they want to go on the 09:34:14  
6 record. 09:34:14  
7 MS. KRAWIEC: We don't need to. I'm happy 09:34:16  
8 to identify them if you would like. 09:34:19  
9 MR. LEVY: Sure. 09:34:19  
10 MS. KRAWIEC: Nicole Clemenshaw, Pam 09:34:21  
11 Ameachi and Todd Kelly. 09:34:22  
12 MR. LEVY: Thank you. I'm Joshua Levy on 09:34:26  
13 behalf of the witness Peter Fritsch. 09:34:28  
14 MR. SHARP: Andrew Sharp on behalf of the 09:34:33  
15 witness Peter Fritsch. 09:34:35  
16 MR. LEVY: Let me just introduce the other 09:34:40  
17 attorneys here so we don't have feedback issues. 09:34:41  
18 Kevin Crenny is also here on behalf of the witness. 09:34:47  
19 VIDEOGRAPHER: Would the court reporter 09:34:48  
20 please administer the oath. 09:34:48  
21 COURT REPORTER: Good morning. My name is 09:34:48  
22 Elizabeth Mingione. I'm a registered professional 09:34:48

1 shorthand reporter and notary public for the District 09:34:48  
 2 of Columbia. Due to the fact that the deposition is 09:34:48  
 3 being held remote via Zoom videoconference, the 09:34:48  
 4 witness and I are not in the same room; however, the 09:34:48  
 5 witness will be sworn in remotely, pursuant to 09:34:48  
 6 agreement of all parties that the testimony is being 09:34:48  
 7 given as if the witness was sworn in person. 09:34:48

8 Is that agreeable, Counsel? 09:34:48

9 MS. KRAWIEC: Yes. 09:35:17

10 MR. LEVY: Yes. 09:35:18

11 MS. KRAWIEC: It's agreeable. 09:35:18

12 - - - 09:35:18

13 Whereupon, 09:35:18

14 PETER FRITSCH, 09:35:18

15 Having been duly sworn was examined 09:35:18

16 and testified as follows: 09:35:18

17 - - - 09:35:18

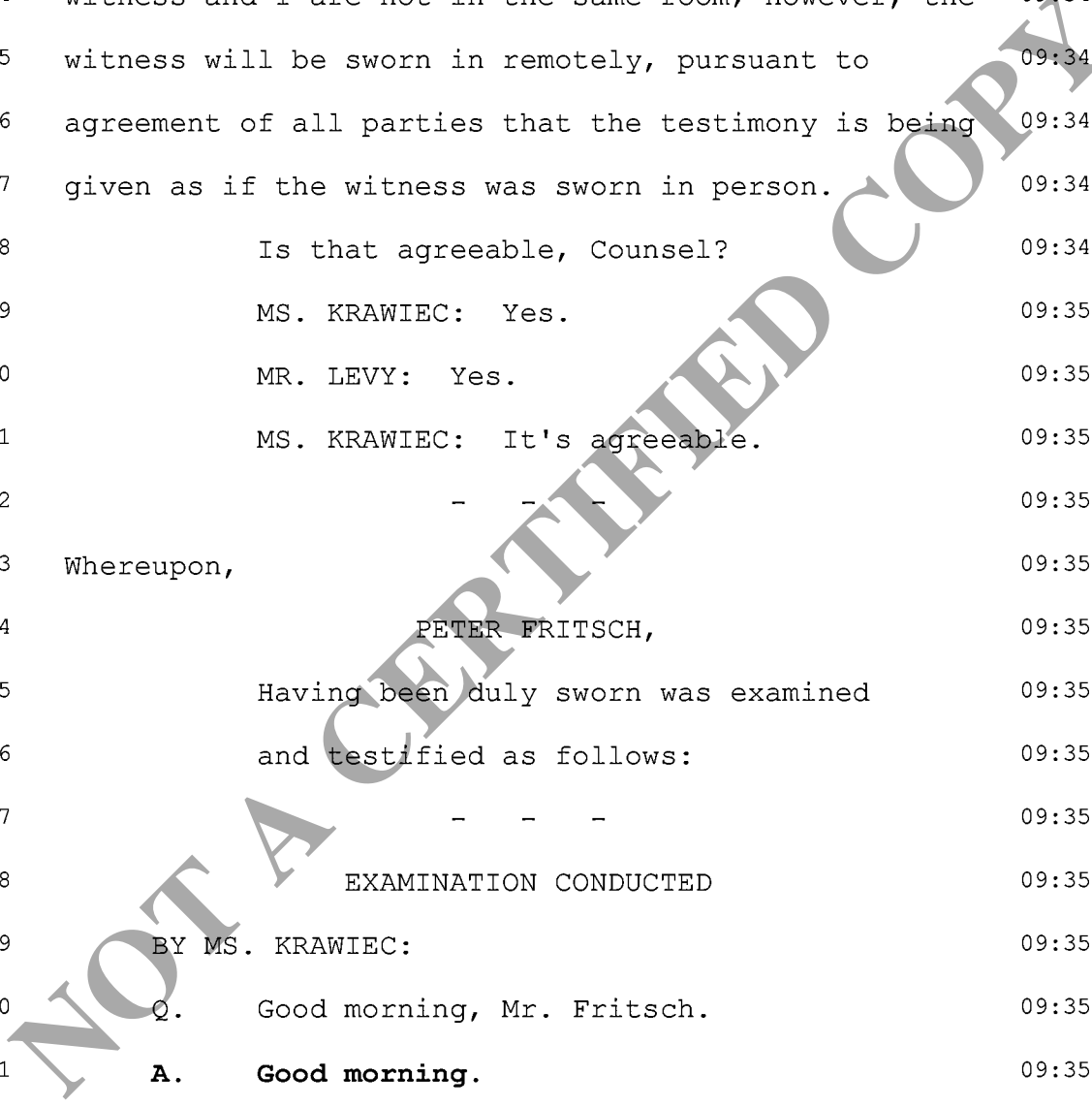
18 EXAMINATION CONDUCTED 09:35:18

19 BY MS. KRAWIEC: 09:35:18

20 Q. Good morning, Mr. Fritsch. 09:35:37

21 A. **Good morning.** 09:35:37

22 Q. I would like to pick up sort of where we 09:35:48



1 left off with your last deposition and ask various 09:35:51  
2 questions that the court has now ruled can be posed to 09:35:54  
3 you. So starting off with the John Durham 09:35:57  
4 investigation, have you or Fusion been contacted by 09:36:01  
5 John Durham Special Counsel's office? 09:36:04

6 **A. On advice of counsel, I'm asserting my 09:36:07**  
7 **right not to testify under Article 22 of the Maryland 09:36:10**  
8 **Declaration of Rights and the Fifth Amendment to the 09:36:11**  
9 **Constitution and decline to answer your question. 09:36:16**

10 Q. I'm going to break that up. So have you 09:36:21  
11 been contacted by John Durham Special Counsel's 09:36:24  
12 office? 09:36:24

13 **A. On advice of counsel, I'm asserting my 09:36:24**  
14 **right not to testify under Article 22 of the Maryland 09:36:24**  
15 **Declaration of Rights and the Fifth Amendment to the 09:36:24**  
16 **U.S. Constitution. And I decline to answer the 09:36:24**  
17 **question. 09:36:24**

18 Q. Understood. And just for ease going 09:36:27  
19 forward, Josh, Mr. Fritsch, if it's acceptable, you 09:36:42  
20 can just say "I'm asserting my Fifth Amendment right," 09:36:45  
21 if you guys are comfortable with that; and we will be 09:36:48  
22 in agreement that it subsumes the rights under both 09:36:51

1 the Maryland Constitution and the U.S. Constitution. 09:36:55

2 MR. LEVY: I think -- Mr. Fritsch, if you 09:36:57

3 are going to assert your rights, you should do so 09:37:00

4 under Article 22 and the Fifth Amendment. 09:37:04

5 THE WITNESS: Yeah. No. I'll -- I'm happy 09:37:05

6 to say "same answer," but I'm not going to put one 09:37:09

7 below the other. 09:37:10

8 BY MS. KRAWIEC: 09:37:10

9 Q. Whatever you are comfortable with. I was 09:37:12

10 just trying to accommodate, but we are happy to have 09:37:15

11 you put both on the record. Okay. 09:37:18

12 Has Fusion been contacted by John Durham's 09:37:21

13 Special Counsel's office? 09:37:24

14 A. Same answer. 09:37:25

15 Q. Are you aware of anyone at Fusion having 09:37:27

16 any communications with anyone from Special Counsel 09:37:30

17 John Durham's office? 09:37:32

18 A. Same answer. 09:37:34

19 MR. LEVY: Mr. Fritsch, if you could just 09:37:36

20 say on advice of counsel that you are asserting your 09:37:39

21 right not to testify under Article 22 and the Fifth 09:37:41

22 Amendment, that's fine. I just want to make sure 09:37:43

1 there's a clean assertion of the rights. 09:37:45

2 THE WITNESS: On advice -- I'll repeat. 09:37:48

3 I'll amend my answer. On advice of counsel, I'm 09:37:51

4 asserting my right not to testify under Article 22 of 09:37:53

5 the Maryland Declaration of Rights and the Fifth 09:37:56

6 Amendment to the U.S. Constitution, and decline to 09:37:59

7 answer. 09:37:59

8 BY MS. KRAWIEC: 09:37:59

9 Q. Did you or anyone at Fusion produce -- 09:38:03

10 well, let me take that -- each step. 09:38:06

11 Did you produce any documents to Special 09:38:08

12 Counsel John Durham's office? 09:38:11

13 A. On advice of counsel, I'm asserting my 09:38:13

14 right not to testify under Article 22 of the Maryland 09:38:13

15 Declaration of Rights and the Fifth Amendment to the 09:38:13

16 U.S. Constitution and decline to answer. 09:38:13

17 Q. Did anyone at Fusion produce any documents 09:38:25

18 to Special Counsel Durham's office? 09:38:27

19 A. On advice of counsel, I'm asserting my 09:38:28

20 right not to testify under Article 22 of the Maryland 09:38:28

21 Declaration of Rights and the Fifth Amendment to the 09:38:28

22 U.S. Constitution and decline to answer. 09:38:42

1 Q. Did you provide testimony for Special 09:38:44  
2 Counsel Durham's investigation? 09:38:46

3 A. On advice of counsel, I am asserting my 09:38:48  
4 right not to testify under Article 22 of the Maryland 09:38:51  
5 Declaration of Rights and the Fifth Amendment to the 09:38:53  
6 U.S. Constitution and decline to answer. 09:38:55

7 Q. Did anyone at Fusion provide testimony for 09:38:57  
8 Special Counsel Durham's investigation? 09:39:00

9 A. On advice of counsel, I'm asserting my 09:39:00  
10 right not to testify under Article 22 of the Maryland 09:39:00  
11 Declaration of Rights and the Fifth Amendment to the 09:39:00  
12 U.S. Constitution and decline to answer. 09:39:00

13 Q. Did you provide a proffer through an 09:39:13  
14 attorney or otherwise for Special Counsel Durham's 09:39:13  
15 investigation? 09:39:16

16 A. On advice of counsel, I'm asserting my 09:39:16  
17 right not to testify under Article 22 of the Maryland 09:39:16  
18 Declaration of Rights and the Fifth Amendment to the 09:39:16  
19 U.S. Constitution, and I decline to answer. 09:39:16

20 Q. Did anyone at Fusion provide a proffer 09:39:32  
21 through an attorney or otherwise for Special Counsel 09:39:35  
22 Durham's investigation? 09:39:38

1           **A.**     **On advice of counsel, I'm asserting my**           09:39:38  
2     **right not to testify under Article 22 of the Maryland**           09:39:38  
3     **Declaration of Rights and the Fifth Amendment to the**           09:39:38  
4     **U.S. Constitution and decline to answer.**                   09:39:38

5           **Q.**     **Did you provide an interview through an**           09:39:53  
6     **attorney or otherwise for Special Counsel Durham's**           09:39:56  
7     **investigation?**   09:39:56

8           **A.**     **Same answer.**   09:39:57

9           MR. LEVY: That's okay. We -- just to make           09:40:02  
10    it clear on the record, Ms. Krawiec, that you agree           09:40:06  
11    that when going forward, when Mr. Fritsch says "same           09:40:11  
12    answer" in response to the questions you are going to           09:40:13  
13    ask, he is invoking his rights under Article 22 of the           09:40:17  
14    Maryland Declaration of Rights and the Fifth Amendment           09:40:19  
15    to the U.S. Constitution and is not going to answer           09:40:21  
16    the question.   09:40:23

17           MS. KRAWIEC: I agree. Understood.                   09:40:24

18           MR. LEVY: Thank you.                                   09:40:26

19           BY MS. KRAWIEC:   09:40:26

20           **Q.**     **Did anyone at Fusion provide an interview**           09:40:28  
21    **through an attorney or otherwise to Special Counsel**           09:40:32  
22    **Durham's investigation?**                                       09:40:33









1           **A.       It's the Maryland Declaration of Rights.**           09:43:43

2           **And it's the same answer.**                                   09:43:46

3           Q.       Thank you for the clarification. Mr.           09:43:57

4           Fritsch, you testified previously that you could not           09:44:00

5           recall who Seb Sosman was. If I represented that Mr.           09:44:04

6           Sosman worked at Trace International in 2012, a due           09:44:08

7           diligence firm, does that refresh your recollection           09:44:10

8           regarding Seb Sosman?   09:44:14

9           **A.       Same answer.**   09:44:16

10           MS. KRAWIEC: Could the court reporter           09:44:19

11           please -- I'm sorry, could the videographer please put           09:44:22

12           up Exhibit 3 from the last deposition, which is Tab           09:44:25

13           131.   09:44:27

14           VIDEOGRAPHER: Okay. Stand by, please.           09:44:32

15           BY MS. KRAWIEC:   09:44:32

16           Q.       So, Mr. Fritsch, we previously discussed           09:44:46

17           this email which is from Seb Sosman to yourself and           09:44:49

18           Glenn Simpson, the subject being Alfa lobbying, and           09:44:49

19           the date being February 4, 2012. As you see, the           09:45:03

20           email and the attachments relate to Alfa-Bank or Alfa           09:45:03

21           lobbying.   09:45:03

22           Does this document refresh your                           09:45:05

1 recollection that in fact you were working on things 09:45:06

2 related to Alfa in 2012? 09:45:08

3 **A. I need a second to talk to my attorney.** 09:45:11

4 Q. Sure. 09:45:12

5 MR. LEVY: Could we take a break? 09:45:13

6 MS. KRAWIEC: Sure. Joe, do you mind 09:45:15

7 putting us in a breakout room, Mike and Becca, and if 09:45:20

8 we could just go back on the record. Josh, what do 09:45:23

9 you want, 10-15 minutes? Five minutes? 09:45:25

10 MR. LEVY: Not even. Five is fine. 09:45:27

11 MS. KRAWIEC: Five. Okay. We'll come back 09:45:28

12 on in five. Thank you. 09:45:30

13 VIDEOGRAPHER: (Going off the record at 9:45 09:45:32

14 a.m. 09:45:32

15 - - - 09:45:33

16 (Recessed at 9:45 a.m.) 09:45:33

17 (Reconvened at 9:49 a.m.) 09:45:33

18 - - - 09:45:33

19 VIDEOGRAPHER: Back on the record at 9:49 09:49:26

20 a.m. 09:49:28

21 MR. LEVY: So while reserving our rights, 09:49:29

22 Margaret, if you are going to ask Mr. Fritsch about 09:49:34

1 testimony that he gave in the prior deposition and 09:49:36  
2 whether that remains his testimony, if you could just 09:49:39  
3 show him that part of the testimony from the last 09:49:45  
4 deposition, and then he can answer that question. 09:49:48

5 MS. KRAWIEC: Okay. Understood. So for 09:49:53  
6 purposes of -- we can pull up -- let's see, it's 09:50:00  
7 Exhibit -- I'm sorry. Tab 138. Joe, if you could 09:50:05  
8 please pull that up, and if we could mark that, Liz, 09:50:10  
9 as an exhibit to this deposition. And if we could go 09:50:16  
10 to page 78, lines 2 and 3. 09:50:19

11 - - - 09:50:19

12 (A document was marked as Exhibit Number 31.) 09:50:19

13 - - - 09:50:19

14 BY MS. KRAWIEC: 09:50:26

15 Q. Okay. So, Mr. Fritsch, just starting at 2, 09:50:40  
16 I think there's the testimony as your counsel asked me 09:50:42  
17 to please point you to. Just please let me know when 09:50:46  
18 you've had a chance to review that. 09:50:47

19 A. Yes. I'm done. 09:50:51

20 Q. Okay. So, again, has your position changed 09:50:57  
21 as to whether or not you were in fact working on 09:51:01  
22 Alfa-Bank related issues in 2012? 09:51:06

1           **A.    No.   My position has not changed.**                           09:51:10

2           Q.    And so could you repeat for the clarity of                   09:51:13

3 the record, because I know there's been assertions of                   09:51:16

4 the Fifth Amendment and your rights under the Maryland               09:51:20

5 Declaration of Rights, and I just want to make sure I                   09:51:23

6 understand your answer to this question.                               09:51:26

7           MR. LEVY:  Objection.  He's -- form.  He's                   09:51:31

8 answered it.   09:51:33

9           MS. KRAWIEC:  I'm sorry.  I don't know what               09:51:34

10 the answer is.   09:51:34

11           MR. LEVY:  Want to repeat the question?                   09:51:37

12           MS. KRAWIEC:  Sure.   09:51:38

13           BY MS. KRAWIEC:   09:51:38

14           Q.    Mr. Fritsch, were you working on Alfa-Bank           09:51:45

15 matters in 2012 in light of this email?                               09:51:50

16           **A.    Not that I recall.  No.  I agree that I**               09:52:00

17 **received an email.**   09:52:02

18           Q.    Thank you.  And are you familiar with Trace           09:52:03

19 International?   09:52:04

20           **A.    I am not.**   09:52:05

21           MR. LEVY:  I'm going to go off the record.               09:52:07

22 Can we go off the record, take a quick break?                       09:52:13

1 MS. KRAWIEC: Sure. 09:52:14  
2 MR. LEVY: Thanks. 09:52:15  
3 VIDEOGRAPHER: Going off the record at 9:52 09:52:16  
4 a.m. 09:53:46  
5 - - - 09:53:46  
6 (Recessed at 9:52 a.m.) 09:53:46  
7 (Reconvened at 9:54 a.m.) 09:53:46  
8 - - - 09:53:46  
9 VIDEOGRAPHER: Back on the record at 9:54 09:54:25  
10 a.m. 09:54:28  
11 MR. LEVY: Ms. Krawiec, his testimony is 09:54:32  
12 going to be -- is going to remain unchanged from the 09:54:35  
13 last deposition. So if -- if you have questions that 09:54:41  
14 you want to ask that the judge has allowed in the 09:54:45  
15 February 3 order, that's fine, and ask follow-up 09:54:49  
16 questions, that's fine. But in terms of his 09:54:53  
17 testimony, he's not going to change his testimony from 09:54:56  
18 the last time. 09:54:57  
19 And if there are -- the questions that the 09:54:59  
20 judge has allowed Alfa-Bank to ask, feel free to ask 09:55:03  
21 them. And follow-up questions to those questions, 09:55:06  
22 feel free to ask them. I just wanted to be clear just 09:55:09



1 for efficiency sake that he's not going to be changing 09:55:12  
2 his testimony from the last deposition. 09:55:14

3 MS. KRAWIEC: Understood. And it was at 09:55:16  
4 your suggestion, Mr. Levy, that we bring up the prior 09:55:20  
5 testimony. So I was posing questions, just follow-up 09:55:27  
6 questions related to some of these subjects. And you 09:55:29  
7 had asked that if anything related to his prior 09:55:32  
8 testimony, that I pull up the transcript and walk him 09:55:34  
9 through it. So I'm not trying to complicate the 09:55:37  
10 issue. 09:55:37

11 It might be cleaner, in light of that, to 09:55:40  
12 just ask questions. And unless there's a need to 09:55:42  
13 refer back to the testimony, if the witness requests 09:55:46  
14 that, then we can do it that way. 09:55:47

15 MR. LEVY: Yeah. No. I don't -- I don't 09:55:49  
16 think anyone's trying to complicate matters. It was 09:55:51  
17 more just I had thought you had asked a question about 09:55:54  
18 his prior testimony. And rather than trying to 09:55:56  
19 characterize it one way or the other, to put that 09:55:58  
20 testimony in front of him. But I don't know that 09:56:00  
21 that's one of the questions that was listed in Alfa's 09:56:02  
22 order. 09:56:06

1 MS. KRAWIEC: And we don't think that the 09:56:07  
2 order restricts us to just the questions that were 09:56:09  
3 laid out in the order. There's appropriate follow-up. 09:56:13  
4 And one of the questions was talking about the work 09:56:17  
5 that Mr. Fritsch did while at Fusion related to 09:56:20  
6 Alfa-Bank. 09:56:21

7 MR. LEVY: All right. 09:56:23

8 BY MS. KRAWIEC: 09:56:23

9 Q. So this is work related to Alfa-Bank as per 09:56:26  
10 a 2012 email. And it's appropriately within the scope 09:56:30  
11 of permissible follow-up. 09:56:31

12 MR. LEVY: All right. I disagree with that 09:56:33  
13 position, but let's just continue with the deposition. 09:56:35

14 BY MS. KRAWIEC: 09:56:35

15 Q. Okay. Mr. Fritsch, who completed work on 09:56:43  
16 Alfa-related issues at Fusion? 09:56:45

17 **A. On advice of counsel, I'm asserting my 09:56:49**  
18 **right not to testify under Article 22 of the Maryland 09:56:51**  
19 **Declaration of Rights and the Fifth Amendment to the 09:56:51**  
20 **U.S. Constitution and decline to answer. 09:56:52**

21 Q. If I went through individual Fusion 09:56:59  
22 employees and asked that question, would your answer 09:57:01

1 be the same? 09:57:02

2 **A. I would give the same answer.** 09:57:03

3 Q. Did Fusion create any work product related 09:57:06

4 to Alfa-Bank? 09:57:07

5 **A. Same answer.** 09:57:09

6 Q. For what purpose was such work product 09:57:13

7 generated? 09:57:13

8 **A. Same answer.** 09:57:15

9 Q. On behalf of what client was it generated? 09:57:17

10 **A. Same answer.** 09:57:19

11 Q. With whom did Fusion share Alfa-Bank 09:57:22

12 related work product? 09:57:24

13 **A. Same answer.** 09:57:26

14 Q. Did Fusion share such work product with 09:57:29

15 reporters? 09:57:30

16 **A. Same answer.** 09:57:32

17 Q. Did Fusion share such work product with 09:57:35

18 Marc Elias? 09:57:37

19 **A. Same answer.** 09:57:38

20 Q. Did Fusion share such product with Rodney 09:57:40

21 Joffe? 09:57:41

22 **A. Same answer.** 09:57:42

1 Q. Did Fusion share such work product with 09:57:45  
2 Michael Sussmann? 09:57:46  
3 A. Same answer. 09:57:47  
4 Q. Did Fusion share such work product with the 09:57:49  
5 Clinton campaign or the DNC? 09:57:51  
6 A. Same answer. 09:57:52  
7 Q. Did Fusion share such work product with 09:57:56  
8 members of Congress or their staff or committees 09:57:59  
9 within -- 09:58:00  
10 A. Same answer. 09:58:02  
11 Q. Did Fusion share this work product with 09:58:05  
12 Jean Camp? 09:58:06  
13 A. Same answer. 09:58:07  
14 Q. Did Fusion share this work product with 09:58:10  
15 David Dagon? 09:58:12  
16 A. Same answer. 09:58:13  
17 Q. Did Fusion share this work product with the 09:58:15  
18 FBI? 09:58:16  
19 A. Same answer. 09:58:17  
20 Q. Did Fusion share this work product with the 09:58:19  
21 CIA? 09:58:21  
22 A. Same answer. 09:58:21

1 Q. Did you ask any subcontractors for 09:58:23  
2 assistance on research or work related to Alfa-Bank? 09:58:28

3 A. Same answer. 09:58:28

4 Q. Did you ask Christopher Steele for 09:58:31  
5 assistance on research or work related to Alfa-Bank? 09:58:34

6 A. Same answer. 09:58:36

7 Q. Same answer as to anyone at Orbis? 09:58:42

8 A. On advice of counsel, I'm asserting my 09:58:45  
9 right not to testify under Article 22 of the Maryland 09:58:45  
10 Declaration of Rights and the Fifth Amendment to the 09:58:45  
11 U.S. Constitution and decline to answer. 09:58:46

12 Q. Did you ask any subcontractors such as Igor 09:58:54  
13 Danchenko to assist on research or work related to 09:58:59  
14 Alfa-Bank? 09:59:00

15 A. Well, I actually object to the form of that 09:59:03  
16 question. Not being a counsel, you called Igor 09:59:05  
17 Danchenko a subcontractor, but maybe if you rephrase 09:59:09  
18 it, I'll -- 09:59:09

19 MR. LEVY: Peter, just -- just assert your 09:59:13  
20 rights. I object to the question on form. 09:59:16

21 A. Same answer. 09:59:17

22 Q. Just so the record is clear, did you ask 09:59:19

1 Igor Danchenko to work on any research or work related 09:59:19

2 to Alfa-Bank? 09:59:25

3 **A. On advice of counsel, I'm asserting my 09:59:27**

4 **right not to testify under Article 22 of the Maryland 09:59:30**

5 **Declaration of Rights and the Fifth Amendment to the 09:59:34**

6 **U. S. Constitution and decline to answer. 09:59:36**

7 Q. Did you ask Ed Baumgartner for assistance 09:59:36

8 on research or work related to Alfa-Bank? 09:59:39

9 **A. Same answer. 09:59:42**

10 Q. What about Lloyd Green? 09:59:45

11 **A. Same answer. 09:59:50**

12 Q. Did you review any work product generated 09:59:58

13 by such subcontractors? 09:59:59

14 **A. Same answer. 10:00:01**

15 Q. What were you researching regarding 10:00:02

16 Alfa-Bank in 2016? 10:00:04

17 **A. Same answer. 10:00:06**

18 Q. Were you researching any individuals 10:00:08

19 associated with Alfa-Bank as well, such as Mikhail 10:00:10

20 Fridman? 10:00:12

21 **A. Same answer. 10:00:14**

22 Q. Peter Aven? 10:00:18

1	A.	Same answer.	10:00:19
2	Q.	German Khan?	10:00:21
3	A.	Same answer.	10:00:21
4	Q.	Richard Burke?	10:00:23
5	A.	Same answer.	10:00:24
6	Q.	How did the Alfa-Bank research come about?	10:00:29
7	A.	Same answer.	10:00:29
8	Q.	Was it part of Project Bangor?	10:00:32
9	A.	Same answer.	10:00:33
10	Q.	Was it a lead that Fusion developed itself?	10:00:37
11	A.	Same answer.	10:00:38
12	Q.	Was Fusion asked to look at Alfa by a	10:00:41
13		client?	10:00:41
14	A.	Same answer.	10:00:43
15	Q.	Who worked on this research at Fusion?	10:00:45
16	A.	Same answer.	10:00:46
17	Q.	Did any Fusion subcontractors perform	10:00:49
18		research on Alfa-Bank?	10:00:52
19	A.	Same answer.	10:00:54
20	Q.	Was Perkins Coie aware of these	10:00:57
21		subcontractors?	10:00:57
22	A.	Same answer.	10:00:58

1 Q. What was the impetus of the research that 10:01:03

2 you did for Alfa-Bank? 10:01:05

3 A. Same answer. 10:01:06

4 Q. How did Alfa-Bank rise to your attention in 10:01:08

5 2016? 10:01:09

6 A. Same answer. 10:01:10

7 Q. Were you taking instruction at that time 10:01:14

8 from Perkins Coie? 10:01:17

9 A. Same answer. 10:01:17

10 Q. Did you understand your work for Perkins 10:01:30

11 Coie to be supported -- be in support of the Hillary 10:01:31

12 Clinton campaign? 10:01:31

13 A. Same answer. 10:01:32

14 Q. Did you understand your work for Perkins 10:01:34

15 Coie to be in support of the DNC? 10:01:37

16 A. Same answer. 10:01:37

17 Q. Were you aware that Marc Elias and Perkins 10:01:40

18 Coie was also representing the DNC? 10:01:42

19 A. Same answer. 10:01:44

20 Q. Were you aware that Marc Elias and Perkins 10:01:48

21 Coie were also representing the Hillary Clinton 10:01:49

22 campaign? 10:01:52



1	<b>A. Same answer.</b>	10:01:53
2	Q. Who did you receive payment from for the	10:01:56
3	2016 Perkins Coie engagement?	10:01:58
4	<b>A. Same answer.</b>	10:01:59
5	Q. Did Marc Elias suggest that you look into	10:02:01
6	Alfa-Bank?	10:02:02
7	<b>A. Same answer.</b>	10:02:02
8	Q. Did Michael Sussmann suggest that you look	10:02:06
9	into Alfa-Bank?	10:02:07
10	<b>A. Same answer.</b>	10:02:08
11	Q. Did Fusion suggest to Mr. Elias that	10:02:11
12	Alfa-Bank should be a target for research?	10:02:13
13	<b>A. Same answer.</b>	10:02:15
14	Q. Did Fusion suggest to Michael Sussmann that	10:02:17
15	Alfa-Bank should be a target for research?	10:02:20
16	<b>A. Same answer.</b>	10:02:21
17	Q. Did Mr. Elias ever provide you with	10:02:28
18	information -- I'm sorry.	10:02:28
19	Did Mr. Elias ever provide Fusion with	10:02:31
20	information that came from the Clinton campaign or the	10:02:35
21	DNC?	10:02:36
22	<b>A. Same answer.</b>	10:02:37

1 Q. Did Mr. Elias ever provide you, Mr. 10:02:39  
2 Fritsch, with information that came from the Clinton 10:02:41  
3 campaign or the DNC? 10:02:44  
4 A. Same answer. 10:02:46  
5 Q. From whom did you first learn about the 10:02:56  
6 server allegations? 10:02:57  
7 A. Same answer. 10:02:58  
8 Q. Did you learn about the server allegations 10:02:59  
9 from Mr. Sussmann? 10:03:00  
10 A. Same answer. 10:03:01  
11 Q. What were you told about how the DNS data 10:03:08  
12 related to the server allegations was discovered? 10:03:11  
13 A. Same answer. 10:03:13  
14 Q. What did you know that wasn't in the public 10:03:16  
15 record about the server allegations at that time? 10:03:19  
16 A. Same answer. 10:03:22  
17 Q. What was the basis of your belief at the 10:03:37  
18 time that the allegations were credible? 10:03:40  
19 A. Same answer. 10:03:43  
20 Q. Were you aware of any information at the 10:03:45  
21 time that needed further investigation? 10:03:47  
22 A. Same answer. 10:03:49

1 Q. Were you aware of information that would 10:03:53  
2 tend to make the allegations that there was 10:03:55  
3 communication between the Trump organization and 10:03:59  
4 Alfa-Bank less likely? 10:04:00  
5 A. Same answer. 10:04:00  
6 Q. Why did you believe that the potential 10:04:02  
7 server connections formed the back channel of 10:04:05  
8 communication? 10:04:06  
9 A. Same answer. 10:04:08  
10 Q. Did you believe Trump was colluding with 10:04:10  
11 Russia? 10:04:11  
12 A. Same answer. 10:04:13  
13 Q. Did you believe Russia was interfering in 10:04:17  
14 the U.S. election? 10:04:19  
15 A. Same answer. 10:04:21  
16 Q. Did you believe that Alfa-Bank was an agent 10:04:23  
17 of the Kremlin? 10:04:24  
18 A. Same answer. 10:04:25  
19 Q. How did you understand DNS to be implicated 10:04:30  
20 with respect to the server allegations? 10:04:32  
21 A. Same answer. 10:04:33  
22 Q. Are you aware that Glenn Simpson testified 10:04:39

1 before the Senate Judiciary Committee? 10:04:41

2 A. Same answer. 10:04:44

3 Q. Did you discuss his testimony with him? 10:04:47

4 A. Same answer. 10:04:47

5 Q. Are you aware that Mr. Simpson was asked if 10:04:51

6 he had information about the server allegations? 10:04:53

7 A. Same answer. 10:04:55

8 MS. KRAWIEC: I would like to enter into 10:04:58

9 exhibit Tab 58. Joe, if you could pull up Exhibit 58 10:05:14

10 on the screen. And, Liz, if you could enter it as the 10:05:17

11 next exhibit, I believe Exhibit 32. 10:05:21

12 - - - 10:05:21

13 (A document was marked as Exhibit Number 32.) 10:05:21

14 - - - 10:05:21

15 MS. KRAWIEC: And if you could please go to 10:05:24

16 page 304 starting with line 21. 10:05:27

17 VIDEOGRAPHER: Sorry. Repeat that page 10:05:47

18 number. 10:05:47

19 MS. KRAWIEC: Should be 304. 10:05:49

20 VIDEOGRAPHER: Oh, I see. 10:05:50

21 MS. KRAWIEC: And it's line 21. And it 10:05:52

22 will carry over to page 305. So perhaps the witness 10:05:56

1 could read this section, and then I have a few 10:06:07

2 questions. 10:06:07

3 THE WITNESS: Where am I reading? 10:06:11

4 BY MS. KRAWIEC: 10:06:11

5 Q. Starting with line 21 at the bottom of page 10:06:14

6 304 and carried over to 305. 10:06:16

7 A. So do you have any information there have 10:06:19

8 been reports? 10:06:20

9 Q. Correct. If it's easier, I can read it 10:06:23

10 into the record. 10:06:23

11 A. Nope. Okay. You can keep scrolling. 10:06:40

12 MS. KRAWIEC: Joe, if you could make it 10:06:41

13 visible until line 13, that would be much appreciated. 10:06:45

14 THE WITNESS: Okay. 10:06:51

15 MS. KRAWIEC: So, Joe, if you could go 10:06:52

16 back, I'm just going to read this into the record to 10:06:55

17 avoid any confusion. 10:06:56

18 BY MS. KRAWIEC: 10:06:56

19 Q. So the question posed was, Question: Do 10:06:59

20 you have any information there have been reports about 10:07:01

21 potential communications between a server at Alfa-Bank 10:07:05

22 and potentially servers that belong to the Trump 10:07:07

1 organization or Trump -- some entity associated with 10:07:09  
2 Donald Trump? Do you have any information about those 10:07:13  
3 particular reports? Answer: That's kind of an 10:07:15  
4 open-ended question. I think what I said is we were 10:07:19  
5 asked about that, and it wasn't -- that information 10:07:22  
6 wasn't generated by us. And I'm happy to say it's 10:07:24  
7 beyond our competence to have generated, but in the 10:07:28  
8 course of being asked about it, you know, people gave 10:07:31  
9 us information. I don't know what else to say. 10:07:34

10 Question: And what information were you 10:07:35  
11 given? Answer: A bunch of data. I mean, we were 10:07:38  
12 shown, like, do you know what this would mean; does 10:07:40  
13 this mean -- and it's beyond -- it's really -- it's 10:07:43  
14 certainly beyond my competence. 10:07:44

15 Mr. Fritsch, what is the bunch of data that 10:07:50  
16 Fusion was given? 10:07:51

17 **A. On advice of counsel, I'm asserting my 10:07:56**  
18 **right not to testify under Article 22 of the Maryland 10:07:59**  
19 **Declaration of Rights and the Fifth Amendment to the 10:07:59**  
20 **U.S. Constitution and decline to answer. 10:08:02**

21 Q. Does this refer to the DNS logs? 10:08:04

22 A. Same answer. 10:08:06

1 Q. Mr. Simpson commented that people gave us 10:08:09  
2 information. Do you agree with Mr. Simpson that it is 10:08:14  
3 more than one person who provided the information? 10:08:16  
4 A. Same answer. 10:08:17  
5 Q. Do you know the identity of the people who 10:08:18  
6 provided the information? 10:08:20  
7 A. Same answer. 10:08:20  
8 Q. Did you receive information from Mr. 10:08:22  
9 Sussmann? 10:08:24  
10 A. Same answer. 10:08:25  
11 Q. Did you receive information from Mr. Joffe? 10:08:29  
12 A. Same answer. 10:08:31  
13 Q. Did you receive information from Tea 10:08:34  
14 Leaves? 10:08:36  
15 A. Same answer. 10:08:37  
16 Q. Did you receive information from April 10:08:38  
17 Lorenzen? 10:08:39  
18 A. Same answer. 10:08:41  
19 Q. Did you receive information from David 10:08:43  
20 Dagon? 10:08:44  
21 A. Same answer. 10:08:46  
22 Q. Did you receive information from Dr. Manos 10:08:49

1 Antonakakis? 10:08:52

2 A. Same answer. 10:08:52

3 Q. Did you receive information from reporters? 10:08:54

4 A. Same answer. 10:08:56

5 Q. Anyone else that you received information 10:08:58

6 from, Mr. Fritsch? 10:08:59

7 A. Same answer. 10:09:00

8 MS. KRAWIEC: Thank you. Joe, if you could 10:09:10

9 put this particular exhibit down. Thank you. 10:09:12

10 BY MS. KRAWIEC: 10:09:12

11 Q. Mr. Fritsch, do you understand that Mr. 10:09:15

12 Joffe was the one that brought the information 10:09:16

13 regarding the server allegations to Mr. Sussmann? 10:09:19

14 A. Same answer. 10:09:20

15 Q. What do you understand Mr. Joffe's 10:09:22

16 relevance to be with regard to the server allegations? 10:09:26

17 A. Same answer. 10:09:28

18 Q. Did you understand Mr. Joffe to have access 10:09:30

19 to DNS data? 10:09:32

20 A. Same answer. 10:09:40

21 Q. Mr. Joffe never told you as to the source 10:09:42

22 of the DNS data that he posed, is that -- possessed; 10:09:42



1 is that correct? 10:09:42

2 A. Same answer. 10:09:43

3 Q. Do you recall asking who the originator was 10:09:45

4 or otherwise trying to do due diligence on who the 10:09:49

5 originator was? 10:09:51

6 A. Same answer. 10:09:51

7 Q. Do you know who the originator of the DNS 10:09:55

8 data at issue was? 10:09:57

9 A. Same answer. 10:09:58

10 Q. Did you do any due diligence as to the 10:10:00

11 original source or the originator of the data? 10:10:04

12 A. Same answer. 10:10:05

13 Q. Why did you not have any concerns about not 10:10:07

14 knowing who originated or who the source of the data 10:10:10

15 is? 10:10:10

16 A. Same answer. 10:10:12

17 Q. Turning back to Mr. Simpson's testimony, he 10:10:16

18 stated that the data was beyond our competence to have 10:10:18

19 generated. Do you agree with that statement? 10:10:21

20 A. Same answer. 10:10:23

21 Q. So what due diligence did Fusion do to 10:10:27

22 satisfy itself as to the reliability of either the 10:10:29

1 source, the data or anything like that? 10:10:32

2 **A. Same answer.** 10:10:33

3 Q. Separate and apart from anything with 10:10:37

4 Perkins Coie, did Fusion do anything to satisfy itself 10:10:40

5 as to the authenticity or the veracity of their 10:10:44

6 origination? 10:10:45

7 **A. Same answer.** 10:10:46

8 Q. Did you do anything to confirm that the 10:10:47

9 data was not manipulated in any way? 10:10:50

10 **A. Same answer.** 10:10:54

11 Q. Mr. Fritsch, do you believe Mr. Simpson's 10:10:57

12 testimony on the Hill was truthful? 10:10:59

13 **A. Same answer.** 10:10:59

14 Q. Did Fusion's tech maven, Laura Seago, 10:11:05

15 analyze the data? 10:11:08

16 **A. Sorry. What did you call her?** 10:11:14

17 Q. Using your words, tech maven? 10:11:17

18 MR. LEVY: Please rephrase the question or 10:11:19

19 just restate the question. Excuse me. 10:11:21

20 MS. KRAWIEC: You can answer, Mr. Fritsch. 10:11:24

21 MR. LEVY: Can you just repeat the 10:11:24

22 question, please. 10:11:26

1 BY MS. KRAWIEC: 10:11:26

2 Q. Sure. Did Fusion's tech maven, Laura 10:11:28

3 Seago, analyze the data? 10:11:30

4 A. Same answer. 10:11:32

5 Q. Did Mr. Berkowitz analyze the data? 10:11:38

6 A. Same answer. 10:11:39

7 Q. Did Mr. Fritsch analyze the data? 10:11:43

8 A. Same answer. 10:11:45

9 Q. Did Mr. Simpson analyze the data? 10:11:48

10 A. Same answer. 10:11:49

11 Q. Was the data culled in any way? 10:12:01

12 A. Was the data what? 10:12:03

13 Q. Culled in any way? 10:12:05

14 MR. LEVY: C-U-L-L-E-D? 10:12:06

15 Q. Correct. 10:12:08

16 A. I'm not sure what you mean by that, but I'm 10:12:11

17 giving you the same answer. 10:12:12

18 Q. So that's the invocation of the Fifth and 10:12:16

19 the Maryland -- 10:12:17

20 A. On advice of counsel, I'm asserting my 10:12:18

21 right not to testify under Article 22 of the Maryland 10:12:18

22 Declaration of Rights and the Fifth Amendment to the 10:12:18

1 **U.S. Constitution and decline to answer.** 10:12:18

2 Q. Are you aware of the data being edited in 10:12:34

3 any way? 10:12:34

4 **A. Same answer.** 10:12:34

5 Q. Are you aware of the data being manipulated 10:12:34

6 in any way? 10:12:35

7 **A. Same answer.** 10:12:36

8 Q. Did anyone at Fusion manipulate the data? 10:12:39

9 **A. Same answer.** 10:12:40

10 Q. To the best of your knowledge, did you or 10:12:44

11 anyone else selectively sift or edit the data? 10:12:48

12 **A. Same answer.** 10:12:49

13 Q. Was the data that Fusion had in text file 10:12:54

14 format? 10:12:56

15 **A. Oh, that was -- is that the end of the** 10:13:03

16 **question?** 10:13:04

17 Q. Yes, it is. 10:13:04

18 **A. Same answer.** 10:13:05

19 Q. Did you suggest that search terms be 10:13:19

20 applied to the data to look for anything Alfa related? 10:13:22

21 **A. Same answer.** 10:13:23

22 Q. Did anyone at Fusion suggest that search 10:13:25

1 terms be applied to look for anything related to Alfa? 10:13:28

2 **A. Same answer.** 10:13:29

3 Q. When did you first hear that Alfa-Bank was 10:13:32

4 identified in the DNS data? 10:13:34

5 **A. Same answer.** 10:13:34

6 Q. Was the data generated as a result of 10:13:43

7 targeted searches? 10:13:45

8 **A. Same answer.** 10:13:47

9 Q. Was information specifically related to 10:13:49

10 Russian entities targeted? 10:13:52

11 **A. Same answer.** 10:13:53

12 Q. Was information specifically related to 10:13:54

13 Russian financial institutions targeted? 10:13:58

14 **A. Same answer.** 10:14:00

15 Q. Was information specifically related to 10:14:02

16 Alfa-Bank or individuals associated with Alfa-Bank 10:14:05

17 targeted? 10:14:06

18 **A. Same answer.** 10:14:08

19 Q. Were you aware of a narrative attempting to 10:14:10

20 connect Trump to a Russian financial institution? 10:14:14

21 **A. Same answer.** 10:14:15

22 Q. Was the data pulled from database? 10:14:18

1 MR. LEVY: Can you repeat the question, 10:14:22  
2 please. 10:14:24  
3 Q. Sure. Sorry. Was the data pulled from a 10:14:25  
4 database? 10:14:26  
5 A. Same answer. 10:14:28  
6 Q. Did the people who pulled the data need 10:14:30  
7 special permission to access the data? 10:14:33  
8 A. Same answer. 10:14:34  
9 Q. Were there any other sources of computer 10:14:37  
10 data you obtained? 10:14:39  
11 A. Same answer. 10:14:41  
12 Q. Were you given any information that was not 10:14:43  
13 publicly posted on the internet? 10:14:46  
14 A. Same answer. 10:14:46  
15 Q. The Sussmann indictment describes an 10:14:55  
16 analysis white paper that was drafted by David Dagon 10:14:58  
17 called, "White Paper Comments: Time Series Analysis 10:15:01  
18 of Recursive Queries." 10:15:04  
19 Are you familiar with this white paper? 10:15:07  
20 A. Same answer. 10:15:10  
21 Q. If we could pull it up, it's Exhibit 5 from 10:15:13  
22 the prior deposition. It's Tab 106, just to make sure 10:15:17

1 the witness could review and confirm that answer. 10:15:21

2 It's on page 19. If you could scroll down. There we 10:15:49

3 go. If you could keep scrolling, just so we can have 10:15:52

4 the little i. There we go. Okay. 10:15:54

5 So, Mr. Fritsch, you see the F 2 little i, 10:16:02

6 a white paper drafted by Researcher 2, which was 10:16:02

7 entitled White Paper Comments: Time Series Analysis 10:16:02

8 of Recursive Queries? 10:16:02

9 **A. Um-hmm.** 10:16:05

10 **Q.** Just so there's no confusion on the record, 10:16:08

11 so are you familiar with the document that's 10:16:11

12 referenced -- this document that's referenced in the 10:16:14

13 Sussmann indictment? 10:16:15

14 **A. On advice of counsel, I'm asserting my** 10:16:16

15 **right not to testify under Article 22 of the Maryland** 10:16:20

16 **Declaration of Rights and the Fifth Amendment to the** 10:16:20

17 **U.S. Constitution and decline to answer your question.** 10:16:20

18 MS. KRAWIEC: Joe, if we could pull up 10:16:39

19 exhibit -- I'm sorry. 10:16:39

20 BY MS. KRAWIEC: 10:16:39

21 **Q.** Before we do, Mr. Fritsch, did you or 10:16:42

22 anyone at Fusion help draft this document? 10:16:42







1 litigation, that we please ask for that information 10:19:03  
2 from counsel for the plaintiffs in the Bean 10:19:06  
3 litigation, which we did. 10:19:08  
4 Do you see the entries on 10/5/2016 where 10:19:13  
5 it says, Glenn Simpson, Peter Fritsch; and the forward 10:19:17  
6 is: So this is safe to look at. And then there's 10:19:20  
7 sort of some back and forth, and then Ms. Seago also 10:19:24  
8 appears to be involved in the email communications. 10:19:28  
9 And then there's a number of attachments going down? 10:19:31  
10 **A. I see what you are reading. Yes.** 10:19:34  
11 Q. Okay. So this reflects that on October 5th 10:19:40  
12 Mr. Simpson e-mailed you with, quote, forward, so this 10:19:44  
13 is safe to look at, correct? 10:19:47  
14 **A. On advice of counsel, I'm asserting my 10:19:47**  
15 **right not to testify under Article 22 of the Maryland 10:19:48**  
16 **Declaration of Rights and the Fifth Amendment to the 10:19:48**  
17 **U.S. Constitution and decline to answer your question.** 10:19:57  
18 Q. Did Tea Leaves post data related to the 10:19:59  
19 server allegations on October 25? 10:20:02  
20 **A. Same answer.** 10:20:02  
21 Q. Was Mr. Simpson sending you a link to this 10:20:05  
22 data? 10:20:05



1 Q. Did you know what conclusion regarding the 10:20:48  
2 data was posited before you accessed the data or 10:20:52  
3 website? 10:20:54

4 A. Same answer. 10:20:55

5 Q. What is your understanding of why Mr. 10:20:57  
6 Simpson wrote, This is safe to look at? 10:20:59

7 A. Same answer. 10:21:00

8 Q. Was the data corrupted? 10:21:02

9 A. Same answer. 10:21:05

10 Q. Was there a concern that there was malware 10:21:07  
11 or something dangerous about the files or links? 10:21:11

12 A. Same answer. 10:21:12

13 Q. Was there concern that the data was posted 10:21:14  
14 to the Dark Web? 10:21:14

15 A. Same answer. 10:21:15

16 Q. Why did you send the data to Ms. Seago? 10:21:23

17 A. Same answer. 10:21:24

18 Q. Did you ask her to access and download the 10:21:27  
19 data? 10:21:27

20 A. Same answer. 10:21:28

21 Q. Did you ask her to interpret the data? 10:21:30

22 A. Same answer. 10:21:31

1 Q. Ms. Seago emails you back with several 10:21:34  
2 documents with a, quote, GDD.zip in the file names. 10:21:43  
3 Do you see that? Is that correct, Mr. Fritsch? 10:21:46  
4 A. Um-hmm. 10:21:46  
5 Q. Did these files contain information 10:21:50  
6 regarding the server allegation? 10:21:52  
7 A. The same answer. 10:21:53  
8 Q. Were these DNS logs? 10:21:55  
9 A. Same answer. 10:21:57  
10 Q. Did any of the documents referenced -- 10:21:59  
11 reference information regarding Alfa-Bank or other 10:22:03  
12 entities involved in the server allegations that 10:22:05  
13 Fusion had provided to Mr. Elias, Mr. Sussmann or Mr. 10:22:08  
14 Joffe? 10:22:08  
15 A. Same answer. 10:22:09  
16 Q. Did Ms. Seago provide any analysis or 10:22:24  
17 commentary regarding the files, data or website the 10:22:26  
18 information was downloaded from? 10:22:28  
19 A. Same answer. 10:22:29  
20 Q. If you look at PRIV 264 -- so, Joe, if we 10:22:42  
21 could scroll to the next -- there we go. There's an 10:22:44  
22 email that you sent to Thomas Catan, and the Regarding 10:22:48

1 line says, Forward, very interesting. And there's a 10:22:50  
2 number of attachments. 10:22:52

3 Were you forwarding Tom Catan the documents 10:22:56  
4 that Ms. Seago downloaded? 10:22:59

5 **A. Same answer.** 10:23:00

6 **Q.** Why were you sending it to him? 10:23:01

7 **A. Same answer.** 10:23:04

8 **Q.** If you go down to 274, you send an email to 10:23:17  
9 Ed Baumgartner, and you attach several documents. 10:23:18

10 Were you forwarding Ed Baumgartner the documents that 10:23:21  
11 Ms. Seago downloaded? 10:23:22

12 **A. On the advice of counsel, I'm asserting my 10:23:25  
13 right not to testify under Article 22 of the Maryland 10:23:25  
14 Declaration of Rights and the Fifth Amendment to the 10:23:25  
15 U.S. Constitution and decline to answer.** 10:23:25

16 MS. KRAWIEC: Joe, we are going to come 10:23:41  
17 back to this, but could you pull up Tab 111. And if 10:23:45  
18 we could please, Liz, enter that as the next exhibit. 10:23:48

19 - - - 10:23:48

20 (A document was marked as Exhibit Number 33.) 10:23:48

21 - - - 10:23:48

22 MS. KRAWIEC: And if you could go to PRIV, 10:24:01

1 the 506. And if you could just move the screen a 10:24:10

2 little bit so he could see the subject line, Joe, that 10:24:13

3 would be much appreciated. Great. 10:24:16

4 BY MS. KRAWIEC: 10:24:16

5 Q. So this is an email that you, Mr. Fritsch, 10:24:19

6 sent to yourself. And the subject line is Tea Leaves. 10:24:22

7 This -- I'll represent to you that this date as we 10:24:29

8 were looking at on October 5, 2016, these are the same 10:24:37

9 date that we were looking at the emails where we -- 10:24:42

10 Ms. Seago appears to have downloaded certain files. 10:24:45

11 Why were you emailing yourself a document 10:24:50

12 with the subject line Tea Leaves? 10:24:52

13 A. Same answer. 10:24:54

14 Q. Was anyone else blind copied? 10:24:58

15 A. Same answer. 10:25:00

16 Q. What did this email contain? 10:25:03

17 A. Same answer. 10:25:04

18 MS. KRAWIEC: If we could go back, Joe, to 10:25:08

19 Tab 92, Exhibit 11. 10:25:11

20 THE WITNESS: Can I take a quick break and 10:25:15

21 talk to Josh? 10:25:16

22 MS. KRAWIEC: Sure. How long would you 10:25:17

1 like? 10:25:18

2 THE WITNESS: Just a minute or two. 10:25:20

3 MS. KRAWIEC: Okay. 10:25:20

4 VIDEOGRAPHER: Going off the record at 10:25:21

5 10:25 a.m. 10:25:23

6 - - - 10:25:23

7 (Recessed at 10:25 a.m.) 10:25:23

8 (Reconvened at 10:30 a.m.) 10:25:23

9 - - - 10:25:23

10 VIDEOGRAPHER: Going back on the record at 10:30:54

11 10:30 a.m. 10:30:55

12 MS. KRAWIEC: Joe, could we -- is this Tab 10:31:01

13 92, Exhibit 11, that's up? 10:31:04

14 VIDEOGRAPHER: Yes. 10:31:11

15 MS. KRAWIEC: Great. Could you please go 10:31:12

16 to 283 to 287. Perfect. It was actually right -- oh, 10:31:18

17 sorry. 10:31:18

18 BY MS. KRAWIEC: 10:31:18

19 Q. So, Mr. Fritsch, if you could look at the 10:31:22

20 entries marked 283 to 287. It looks as though you 10:31:27

21 exchanged emails with Ms. Seago, Mr. Simpson and Mr. 10:31:31

22 Baumgartner in a chain with the subject line Alfa; is 10:31:35



1 that correct? 10:31:36

2 **A. On advice of counsel, I'm asserting my** 10:31:36

3 **right not to testify under Article 22 of the Maryland** 10:31:40

4 **Declaration of Rights and the Fifth Amendment to the** 10:31:40

5 **U.S. Constitution and decline to answer.** 10:31:44

6 **Q. Were you discussing the data provided by** 10:31:46

7 **Tea Leaves in this thread?** 10:31:48

8 **A. Same answer.** 10:31:49

9 **Q. If you look at 288, the entry there, it's** 10:31:55

10 **an email from Laura Seago to Mr. Berkowitz, Mr.** 10:31:58

11 **Simpson, and yourself. And the subject line says:** 10:32:02

12 **More from Tea Leaves, attaching a pdf with the file** 10:32:07

13 **name A, period, TDF.** 10:32:10

14 **What did this relate to?** 10:32:11

15 **A. Same answer.** 10:32:13

16 **Q. What is your understanding of how Ms. Seago** 10:32:17

17 **was alerted to More from Tea Leaves?** 10:32:19

18 **A. Same answer.** 10:32:20

19 **Q. Was it your understanding that Ms. Seago** 10:32:22

20 **got this information directly from Tea Leaves?** 10:32:25

21 **A. Same answer.** 10:32:25

22 **Q. If we could go to PRIV 302. And if you** 10:32:43

1 could scroll over a little bit, Joe, just to show past 10:32:46  
2 the Reddit post, FYI. Okay. And, sorry, could you go 10:32:59  
3 back now to the numbers, the 302. 10:33:01

4 So you see that Ms. Seago is emailing Mr. 10:33:05  
5 Simpson, yourself, and Mr. Berkowitz with the Reddit 10:33:09  
6 post, FYI? 10:33:11

7 **A. Yup.** 10:33:13

8 **Q.** Do you know what this relates to, Mr. 10:33:15  
9 Fritsch? 10:33:16

10 **A. Same answer.** 10:33:17

11 **Q.** If you can scroll down. And, Joe, if you 10:33:25  
12 could move over -- sorry. Stay on the 302, but if you 10:33:29  
13 could show the subject line of the attachments. 10:33:30

14 So do you see that there's a number of 10:33:33  
15 attachments that they say Trump Russian Bank DNS? 10:33:40  
16 What were these documents, Mr. Fritsch? 10:33:42

17 **A. Same answer.** 10:33:43

18 **Q.** Where do they originate from? 10:33:46

19 **A. Same answer.** 10:33:47

20 **Q.** How was Fusion alerted to these documents? 10:33:49

21 **A. Same answer.** 10:33:50

22 **Q.** If we could go to PRIV 318. Do you see 10:34:07

1 that, Mr. Fritsch, you e-mailed Ms. Seago memos with 10:34:11  
2 attachments on that date? And if you could scroll, 10:34:14  
3 Joe, so you could show the subject matter of the 10:34:18  
4 memos. 10:34:22

5 So, Mr. Fritsch, do you see that one 10:34:24  
6 document says, Server findings dot doc x, and the 10:34:27  
7 other says Alfa Group overview? Did I read that 10:34:31  
8 correctly, Mr. Fritsch? 10:34:32

9 **A. Appears so.** 10:34:35

10 Q. It appears that you sent Ms. Seago not only 10:34:39  
11 a document regarding server findings but also the Alfa 10:34:42  
12 Group overview dated September 1, 2016. 10:34:46

13 Why did you send her this document? 10:34:48

14 **A. Same answer.** 10:34:51

15 Q. Created the server findings document? 10:34:54

16 COURT REPORTER: Ms. Krawiec -- 10:35:01

17 MR. LEVY: You want to restate the 10:35:03

18 question? I don't know if the witness heard it. 10:35:03

19 BY MS. KRAWIEC: 10:35:03

20 Q. Sure. Who created the server findings 10:35:06

21 document? 10:35:07

22 **A. Same answer.** 10:35:09

1 Q. Could we go to PRIV 321. And this is from 10:35:20  
2 Laura Seago to Peter Fritsch and Jake Berkowitz. And 10:35:23  
3 if you can go to the subject line, it says: Check 10:35:26  
4 this out. More Tea Leaves. 10:35:28

5 What did this relate to, Mr. Fritsch? 10:35:30

6 A. Same answer. 10:35:31

7 Q. Where did this additional information come 10:35:34  
8 from? 10:35:35

9 A. Same answer. 10:35:37

10 Q. Can we go to PRIV 509 through 521. Oh, I'm 10:35:48  
11 sorry. This is the supplemental privilege log. If 10:35:58  
12 you could go to Tab 111, which I think we entered in 10:36:02  
13 as Exhibit 32, I believe. 33. 10:36:04

14 So, sorry, Joe, you need to go to -- got 10:36:10  
15 it. Okay. And if you could go to 509. And if you 10:36:18  
16 could put 509 at the top of the page just so that we 10:36:22  
17 could show -- like scroll up, just so that you could 10:36:25  
18 show through 521. 10:36:27

19 VIDEOGRAPHER: Yeah. I'm sorry. For this 10:36:30  
20 document, it seems to be jumping to the next page if I 10:36:32  
21 get to the bottom. So I'm not able to show all of 10:36:36  
22 them at the same time. Sorry about that. 10:36:38

1 MS. KRAWIEC: No problem. Okay. So if you 10:36:39  
2 could scroll over just so Mr. Fritsch can see the 10:36:42  
3 subject line. 10:36:42

4 BY MS. KRAWIEC: 10:36:42

5 Q. So this is 10/22/2016. You are emailing 10:36:45  
6 Laura Seago, and Laura Seago's emailing you back and 10:36:48  
7 forth. You guys are going back and forth regarding 10:36:50  
8 Tea Leaves. 10:36:51

9 What were you discussing regarding Tea 10:37:01  
10 Leaves? 10:37:01

11 A. Same answer. 10:37:02

12 Q. Was there new information regarding Tea 10:37:04  
13 Leaves? 10:37:05

14 A. Same answer. 10:37:05

15 Q. Why did you believe the DNS data to be 10:37:08  
16 credible? 10:37:08

17 A. Same answer. 10:37:09

18 Q. Do you remember discussions regarding 10:37:15  
19 reaching out to the media about the server 10:37:18  
20 allegations? 10:37:19

21 A. Same answer. 10:37:20

22 MS. KRAWIEC: Joe, if you could put Tab 80 10:37:22

1 up. And if we could enter that as Exhibit -- I 10:37:27

2 believe it's 34, Liz. 10:37:27

3 - - - 10:37:27

4 (A document was marked as Exhibit Number 34.) 10:37:27

5 - - - 10:37:27

6 BY MS. KRAWIEC: 10:37:27

7 Q. Mr. Fritsch, are you familiar with Michael 10:37:40

8 Isikoff and David Corn's book titled Russian Roulette? 10:37:44

9 A. Same answer. 10:37:44

10 Q. If we could go to page 274 to 276. Just 10:37:55

11 looking for the line that I wanted to focus you on. 10:38:13

12 Joe, could you scroll just a little bit 10:38:15

13 down. If we could go to the next page, maybe it's on 10:38:36

14 that page. Could you keep scrolling down. Okay. 10:38:50

15 So do you see the part where it says, "The 10:38:58

16 Clintonites were sorely disappointed by the Times 10:39:02

17 article. We had been waiting for the Alfa-Bank story 10:39:06

18 to come out, Podesta recalled. Then, boom. It gets 10:39:06

19 smacked down. The campaign, although it had no real 10:39:13

20 proof to substantiate it, had prepared a video 10:39:14

21 promoting the Trump-Alfa Bank server connection and 10:39:17

22 was poised to make an all-out push through social 10:39:20

1 media. That plan was canned." 10:39:22

2 Mr. Fritsch, were you aware that the 10:39:26

3 Clinton campaign had prepared a video to release about 10:39:29

4 the server allegations once the media started to 10:39:31

5 report on them? 10:39:32

6 A. Same answer. 10:39:33

7 Q. When did you learn this information? 10:39:35

8 A. Same answer. 10:39:36

9 Q. Did anyone at Fusion ever discuss the 10:39:38

10 video? 10:39:38

11 A. Same answer. 10:39:39

12 Q. Did you see a copy of the video? 10:39:41

13 A. Same answer. 10:39:42

14 Q. Were you asked to verify or vet the 10:39:45

15 contents of the video? 10:39:46

16 A. Same answer. 10:39:47

17 Q. Do you know whether anyone at Fusion 10:39:49

18 contributed to the video project? 10:39:51

19 A. Same answer. 10:39:52

20 Q. Were you aware that the Clinton campaign 10:39:56

21 planned a large social media push to elevate the 10:39:57

22 server allegations once it was reported on in the 10:40:00

1 media? 10:40:00

2 A. Same answer. 10:40:01

3 Q. When did you learn this information and 10:40:02

4 from whom? 10:40:03

5 A. Same answer. 10:40:06

6 Q. Did anyone at Fusion ever discuss the 10:40:08

7 social media campaign? 10:40:10

8 A. Same answer. 10:40:16

9 Q. Were you asked to verify or vet the 10:40:19

10 contents of the social media campaign? 10:40:20

11 A. Same answer. 10:40:21

12 Q. Do you know whether anyone at Fusion helped 10:40:23

13 plan the social media push? 10:40:24

14 A. Same answer. 10:40:26

15 Q. Was there any pressure on Fusion to get 10:40:28

16 reporters to publish a story about the server 10:40:32

17 allegations so that the Clinton campaign could release 10:40:33

18 its video or promote the allegations? 10:40:35

19 A. Same answer. 10:40:37

20 Q. Was the Clinton campaign's planned release 10:40:40

21 of this video on social media campaign a factor in 10:40:43

22 efforts by Fusion to push reporters to publish a story 10:40:46



1 on the server allegations? 10:40:48

2 **A. Same answer.** 10:40:50

3 Q. If we can go to Tab 68, which is Exhibit 6, 10:41:00

4 previous Exhibit 6. And if you could scroll down to 10:41:24

5 the next page, Joe. Sorry. If you could at the 10:41:32

6 beginning, the very first email in the chain. Sorry. 10:41:35

7 If you could keep going, Joe. 10:41:35

8 Okay. So do you see this October 30, 2016, 10:41:53

9 email that you sent? It says, Time to hurry. 10:42:00

10 **A. Same answer.** 10:42:02

11 Q. I didn't pose a question yet, Mr. Fritsch. 10:42:05

12 **A. You asked me if I saw it, so I said -- I 10:42:09**

13 **gave you my answer.** 10:42:10

14 Q. Thank you. Did Mr. Sussmann encourage you 10:42:12

15 to push the media to publish? 10:42:15

16 **A. Same answer.** 10:42:16

17 Q. Did Mr. Elias encourage you to push the 10:42:19

18 media to publish? 10:42:20

19 **A. Same answer.** 10:42:21

20 Q. Did the Clinton campaign encourage you to 10:42:24

21 push the media to publish? 10:42:25

22 **A. Same answer.** 10:42:26

1 Q. Did the DNC encourage you to push the media 10:42:29  
2 to publish? 10:42:30

3 A. Same answer. 10:42:31

4 MS. KRAWIEC: Sorry to jump around, Joe, 10:42:40  
5 but could we go back to the privilege log. And if you 10:42:44  
6 could go to entry 332. I think it's Tab 30 -- I'm 10:42:47  
7 sorry, Tab 92. If you could go to 328. And if you 10:43:14  
8 could just scroll just to show anything beyond the 10:43:20  
9 Google. Sorry. Let's see. Okay. 10:43:38

10 Can you go back to the PRIV 332. Okay. 10:43:50  
11 Great. 10:43:51

12 BY MS. KRAWIEC: 10:43:51

13 Q. So if you -- do you see where it says, 10:43:53  
14 Peter Fritsch, Glenn Simpson; and the subject line 10:43:56  
15 says: Forward response from Alfa-Bank? 10:43:59

16 Mr. Fritsch, did this relate to an email 10:44:06  
17 you received from Franklin Foer regarding Alfa-Bank's 10:44:06  
18 denial of the server allegations and Mandiant's 10:44:08  
19 statement on the record regarding the same? 10:44:12

20 A. Same answer. 10:44:13

21 MS. KRAWIEC: Can we put up Tab 48. If we 10:44:22  
22 could enter that as the next exhibit, Liz. 10:44:24

1 - - - 10:44:24

2 (A document was marked as Exhibit Number 35.) 10:44:24

3 - - - 10:44:24

4 BY MS. KRAWIEC: 10:44:24

5 Q. Do you see that this email, Mr. Fritsch, 10:44:33

6 has the same subject line: Response from Alfa-Bank? 10:44:34

7 A. On advice of counsel, I'm asserting my 10:44:34

8 right not to testify under Article 22 of the Maryland 10:44:39

9 Declaration of Rights and the Fifth Amendment to the 10:44:39

10 U.S. Constitution and decline to answer your 10:44:46

11 questions. 10:44:47

12 Q. If you look at this email, it looks like 10:44:49

13 Mr. Birnbaum, Jeff Birnbaum at BGR sends Mr. Foer an 10:44:55

14 excerpt from The New York Times about the server 10:45:02

15 allegations which says the FBI concluded that there 10:45:02

16 could be an innocuous explanation. It looks like Foer 10:45:02

17 sends the email to Lichtblau and writes, Oh, well. 10:45:07

18 If you could scroll up, Joe. And Mr. Foer 10:45:10

19 then forwards the conversation to you. So if you 10:45:15

20 could go the other direction, Joe. Hold on one sec. 10:45:31

21 MR. LEVY: I don't see that language in 10:45:41

22 this document. 10:45:42

1 MS. KRAWIEC: Sorry, Joe. This is Tab 49? 10:45:52

2 I think this is 48. Okay. Sorry. Can we enter -- 10:45:56

3 can we pull up 49? 10:45:58

4 VIDEOGRAPHER: Okay. Do you still want 48 10:46:04

5 to be marked? 10:46:06

6 MS. KRAWIEC: Yes, please. 10:46:06

7 - - - 10:46:06

8 (A document was marked as Exhibit Number 36.) 10:46:06

9 - - - 10:46:06

10 BY MS. KRAWIEC: 10:46:06

11 Q. So here's the language, the continuation 10:46:16

12 where the email is forwarded to you. And your 10:46:20

13 response is: Shameful. Cowards covering ass. 10:46:24

14 Did I read that correctly? 10:46:25

15 A. Same answer. 10:46:28

16 Q. Who did you think were cowards? 10:46:34

17 A. Same answer. 10:46:35

18 Q. What were they doing that made you think 10:46:37

19 they were covering ass? 10:46:38

20 A. Same answer. 10:46:39

21 Q. Why was this shameful? 10:46:41

22 A. Same answer. 10:46:42

1 Q. Why didn't you believe The New York Times 10:46:44  
2 report regarding the FBI's conclusion that there could 10:46:48  
3 be an innocuous explanation? 10:46:50

4 A. Same answer. 10:46:51

5 Q. What did you make of Mandiant's theory that 10:47:12  
6 the pings could be common DNS look-ups to spam sent to 10:47:17  
7 it by a marking server? 10:47:18

8 A. Same answer. 10:47:18

9 Q. Did you or anyone else at Fusion seek to 10:47:21  
10 validate or refute this theory? 10:47:23

11 A. Same answer. 10:47:25

12 MS. KRAWIEC: If we can go to Tab 120 and 10:47:29  
13 enter it as the next exhibit. 10:47:42

14 - - - 10:47:42

15 (A document was marked as Exhibit Number 37.) 10:47:42

16 - - - 10:47:42

17 BY MS. KRAWIEC: 10:47:45

18 Q. So, Mr. Fritsch, it appears that on October 10:47:48  
19 28, 2016, you sent Mandiant contact information to 10:47:53  
20 Frank Foer. Why did you send Mandiant's contact 10:47:56  
21 information to Mr. Foer? 10:47:58

22 A. Same answer. 10:47:58

1 Q. Did you distrust Mandiant's results? 10:48:02

2 A. Same answer. 10:48:03

3 Q. Did you ever communicate with Mandiant 10:48:05

4 about the server allegations or Alfa? Sorry. Did you 10:48:13

5 hear my question, Mr. Fritsch? 10:48:15

6 MR. LEVY: Can you restate the question. 10:48:18

7 Q. Sure. Did you ever communicate with 10:48:19

8 Mandiant about the server allegations or Alfa-Bank? 10:48:22

9 A. Same answer. 10:48:23

10 Q. Did you ever attend a meeting with Mandiant 10:48:31

11 on the Hill? 10:48:33

12 A. Same answer. 10:48:34

13 Q. Going back to the privilege log -- well, 10:48:45

14 strike that. 10:48:45

15 MS. KRAWIEC: Can we take a 10-minute 10:49:04

16 break, Mr. Levy? 10:49:05

17 MR. LEVY: Sure. 10:49:06

18 VIDEOGRAPHER: Going off the record at 10:49:09

19 10:49 a.m. 10:49:10

20 - - - 10:49:10

21 (Recessed at 10:49 a.m.) 10:49:10

22 (Reconvened at 10:57 a.m.) 10:49:10

1 - - - 10:49:10

2 VIDEOGRAPHER: Back on the record at 10:57 10:57:18

3 a.m. 10:57:19

4 MS. KRAWIEC: Joe, if you could please put 10:57:24

5 Tab 72 on the screen. And, Liz, if you could please 10:57:30

6 enter that as the next exhibit. 10:57:32

7 - - - 10:57:32

8 (A document was marked as Exhibit Number 38.) 10:57:32

9 - - - 10:57:32

10 MS. KRAWIEC: So, Mr. Fritsch, if you could 10:57:47

11 review this email. It's an email from yourself to 10:57:51

12 Eric Lichtblau copying Mr. Simpson, and the subject is 10:58:00

13 follow up. 10:58:00

14 And, Joe, if you could just scroll so that 10:58:06

15 the witness could read. Keep scrolling. Perfect. If 10:58:50

16 you could stop there, I think that's the start. 10:58:52

17 BY MS. KRAWIEC: 10:58:52

18 Q. So there's the Saturday 24, 2016, email. 10:58:55

19 Mr. Fritsch, it says, Gents, good to see you 10:58:58

20 yesterday. Sounded like you might be interested in 10:59:00

21 some of the attached Russia-related material. These 10:59:06

22 are internal, open-source research drafts. As agreed, 10:59:10

1 please treat this as background, not for attribution. 10:59:14  
2 As you'll see, it's all easily replicated anyway. Can 10:59:18  
3 also send you a Shnaider/Toronto memo once I dig it 10:59:19  
4 out. I'm skipping over Felix Sater and Bayrock. I 10:59:34  
5 believe you guys have done that up. Leave it to you 10:59:34  
6 to distribute internally or not, as you see fit. I 10:59:34  
7 don't believe Sunny Isles, Hollywood or Panama, or 10:59:35  
8 Toronto have been touched by brands X, Y or Z. 10:59:35  
9 Amazingly don't think anyone has done up the Trump 10:59:37  
10 Tower poker ring story either. Pretty vivid color 10:59:38  
11 there. 10:59:38  
12 And then if you scroll up, it looks like 10:59:45  
13 Eric Lichtblau followed up saying, Did you say that 10:59:49  
14 Millian had an Alfa email address, or was that someone 10:59:54  
15 else? And then there was the follow-up email. 10:59:57  
16 So you saw at the bottom of that email you 11:00:05  
17 had sent an email to Gents. Who did you send the 11:00:06  
18 email to? 11:00:07  
19 **A. On advice of counsel, I'm asserting my 11:00:07**  
20 **right not to testify under Article 22 of the Maryland 11:00:11**  
21 **Declaration of Rights and the Fifth Amendment to the 11:00:11**  
22 **U.S. Constitution and decline to answer your 11:00:14**



1 **questions.** 11:00:16

2 Q. The email that you sent also says 11:00:19

3 yesterday. Does this refer to the briefing that you, 11:00:21

4 Mr. Simpson, and Christopher Steele provided to 11:00:24

5 journalists at the Tabard Inn? 11:00:27

6 **A. Same answer.** 11:00:28

7 Q. Can we go to tab -- put up on the screen 11:00:33

8 Tab 29. And if we could enter that in as an exhibit. 11:00:47

9 - - - 11:00:47

10 (A document was marked as Exhibit Number 39.) 11:00:47

11 - - - 11:00:47

12 BY MS. KRAWIEC: 11:00:47

13 Q. Mr. Fritsch, this is your and Mr. Simpson's 11:00:50

14 book "Crime in Progress," correct? 11:00:53

15 **A. It appears to be.** 11:00:55

16 MR. LEVY: Peter. 11:00:58

17 MS. KRAWIEC: If you could turn to please, 11:01:03

18 videographer, Joe, if you could please turn to page 11:01:06

19 109. 11:01:06

20 BY MS. KRAWIEC: 11:01:06

21 Q. So if you see at the bottom it says, Steele 11:01:23

22 flew to Washington on September 21. And then it says, 11:01:28

1 Fritsch reserved two private rooms at 10:00 a.m. the 11:01:31  
2 next day at the Tabard Inn, a quiet, discreet and 11:01:36  
3 charmingly shabby spot a little bit removed from 11:01:41  
4 Washington's power corridors. The meetings were 11:01:44  
5 organized in one-hour sessions with breaks staggered 11:01:44  
6 between the rooms to prevent journalists from bumping 11:01:44  
7 into one another as they came and went. 11:01:51

8 The guest list included Jane Mayer of The 11:01:57  
9 New Yorker, Michael Isikoff of Yahoo News, Matthew 11:01:58  
10 Mosk of ABC News, and Erick Lichtblau and David Sanger 11:01:58  
11 of the Times. Later, the Fusion partners took Steele 11:02:02  
12 to the offices of The Washington Post, where they met 11:02:07  
13 with Tom Hamburger and Dana Priest. Collectively, 11:02:10  
14 these reporters boasted more than 150 years of 11:02:12  
15 experience reporting in Washington, and had won 11:02:15  
16 virtually every award the news profession has to 11:02:17  
17 offer. 11:02:18

18 Fusion laid the ground rules. Steele would 11:02:20  
19 speak only on background, meaning any information the 11:02:23  
20 reporters wished to quote could only be attributed to 11:02:25  
21 a former senior western intelligence official. His 11:02:30  
22 name and nationality were off limits. 11:02:33

1 Fusion, they explained, had hired Steele to 11:02:35  
2 look into Trump's business dealings with Russia, but 11:02:38  
3 he had developed information along the way that 11:02:41  
4 pointed to a more sinister relationship, one with 11:02:43  
5 serious national security implications. The 11:02:45  
6 information was Steele's, not Fusion's. 11:02:48

7 Yes, Fusion was working for a client 11:02:49  
8 opposed to Trump. No, Fusion would not identify that 11:02:52  
9 client. If that meant the reporters didn't want to 11:02:55  
10 hear from Steele, no problem. 11:02:57

11 So going back to the Tab 72 which we 11:03:12  
12 entered in as an exhibit, again does this refer to the 11:03:20  
13 briefing you, Simpson, and Christopher Steele provided 11:03:23  
14 to journalists at the Tabard Inn? 11:03:26

15 **A. Same answer.** 11:03:28

16 Q. Why was Alfa-Bank discussed at this 11:03:35  
17 briefing? 11:03:35

18 MR. LEVY: Objection. Go ahead and answer. 11:03:37

19 **A. Yeah, same answer.** 11:03:38

20 Q. On behalf of what client was the briefing 11:03:41  
21 undertaken? 11:03:41

22 **A. Same answer.** 11:03:43

1 Q. With respect to the follow-up from 11:03:45  
2 Lichtblau, it suggests that Millian was discussed 11:03:50  
3 during the Tabard Inn meetings. Why were you 11:03:53  
4 discussing Millian? 11:03:55  
5 MR. LEVY: Objection. 11:03:58  
6 A. Same -- yeah, please. Same answer. 11:04:02  
7 Q. Well, Mr. Lichtblau says, Did you say that 11:04:05  
8 Millian had an Alfa email address or was that someone 11:04:08  
9 else, correct? 11:04:12  
10 A. Same answer. 11:04:16  
11 Q. On behalf of what client was the briefing 11:04:18  
12 undertaken? 11:04:19  
13 A. Same answer. 11:04:20  
14 Q. Mr. Elias was aware that Fusion would be 11:04:25  
15 discussing the dossier including Alfa with the press, 11:04:29  
16 correct? 11:04:29  
17 A. Same answer. 11:04:31  
18 Q. Did you believe Millian to be a source of 11:04:35  
19 Steele's? 11:04:36  
20 A. Same answer. 11:04:37  
21 Q. Did you tell that to the reporters? 11:04:39  
22 A. Same answer. 11:04:40

1 Q. You discussed with Mr. Elias which outlets, 11:04:48  
2 media outlets to approach, correct? 11:04:51

3 A. Same answer. 11:04:52

4 Q. You discussed with Mr. Elias which media 11:04:54  
5 outlets to approach to discuss Alfa-Bank, correct? 11:04:59

6 A. Same answer. 11:05:00

7 Q. Did you discuss Mr. Fridman, Mikhail 11:05:06  
8 Fridman, Peter Aven or German Khan at the briefings? 11:05:12

9 A. Same answer. 11:05:12

10 Q. Did you discuss the server allegations at 11:05:15  
11 the briefings at the Tabard Inn? 11:05:18

12 A. Same answer. 11:05:19

13 MS. KRAWIEC: So, Joe, if you could go up 11:05:22  
14 so that we can see how Mr. Fritsch responded to Mr. 11:05:27  
15 Lichtblau's request for Millian's supposed Alfa email 11:05:35  
16 address. 11:05:36

17 BY MS. KRAWIEC: 11:05:36

18 Q. So, Mr. Fritsch, you responded with DNS 11:05:38  
19 information that appears to show that Mr. Millian's 11:05:42  
20 Russian-American Chamber of Commerce was using an Alfa 11:05:45  
21 service provider, correct? 11:05:47

22 MR. LEVY: Objection. 11:05:47

1	<b>A.</b>	<b>Same answer.</b>	11:05:49
2	<b>Q.</b>	How did you become aware of this fact?	11:05:52
3	<b>A.</b>	<b>Same answer.</b>	11:05:54
4	<b>Q.</b>	Did you pull this DNS information yourself?	11:05:57
5	<b>A.</b>	<b>Same answer.</b>	11:05:58
6	<b>Q.</b>	If not, who assisted you?	11:06:00
7	<b>A.</b>	<b>Same answer.</b>	11:06:02
8	<b>Q.</b>	What is your level of familiarity with DNS	11:06:04
9		data?	11:06:05
10	<b>A.</b>	<b>Same answer.</b>	11:06:06
11	<b>Q.</b>	Is DNS data something that Fusion regularly	11:06:12
12		reviews in the course of its research projects?	11:06:13
13	<b>A.</b>	<b>Same answer.</b>	11:06:14
14	<b>Q.</b>	Were you specifically looking at	11:06:15
15		Alfa-related DNS data?	11:06:17
16	<b>A.</b>	<b>Same answer.</b>	11:06:20
17	<b>Q.</b>	If we could put up Tab 27, which was	11:06:29
18		previously marked as Exhibit 12. So if you go down in	11:06:51
19		the middle, this is an email chain that you were	11:06:53
20		having with Mr. Lichtblau. And it says, FYI, found	11:06:59
21		this published on the web and downloaded it. Super	11:07:01
22		interesting in the context of our discussions. This	11:07:04

1 is the Media Fire link that we previously discussed at 11:07:08  
2 your prior testimony. 11:07:10

3 You see that it says, In the context of our 11:07:16  
4 discussions, correct? 11:07:17

5 A. Same answer. 11:07:18

6 Q. What was located at the Media Fire link? 11:07:21

7 A. Same answer. 11:07:22

8 Q. Did you download the documents from the 11:07:24  
9 site? 11:07:24

10 A. Same answer. 11:07:26

11 Q. Did anyone assist you? 11:07:28

12 A. Same answer. 11:07:29

13 MS. KRAWIEC: If we can go back to Tab 92, 11:07:40  
14 which was Exhibit 11. And, please, Joe, scroll to 11:07:42  
15 PRIV entry 256. 11:07:44

16 VIDEOGRAPHER: Was that 256? 11:08:01

17 MS. KRAWIEC: Yes. Thank you. And if you 11:08:13  
18 could scroll over. 11:08:13

19 BY MS. KRAWIEC: 11:08:13

20 Q. You see the emails from Laura Seago to 11:08:16

21 Peter Fritsch. And it says, So this is safe to look 11:08:20

22 at. And we see the same GDD.zip reference to the 11:08:25

1 attachment, correct? 11:08:29

2 **A. Same answer.** 11:08:35

3 Q. Did anyone alert you to the fact that 11:08:37

4 interesting information might be published soon about 11:08:39

5 Alfa? 11:08:40

6 **A. Same answer.** 11:08:41

7 Q. Why were these documents interesting in 11:08:48

8 light of your discussion with Mr. Lichtblau? 11:08:51

9 **A. Same answer.** 11:08:55

10 Q. If we could go back to that prior tab, 11:08:59

11 Exhibit 12, Tab 27. 11:09:00

12 THE WITNESS: You mind if I take a quick 11:09:14

13 break? 11:09:14

14 MS. KRAWIEC: Sure. 11:09:15

15 THE WITNESS: Thanks. 11:09:17

16 VIDEOGRAPHER: Going off the record at 11:09:18

17 11:09 a.m. 11:09:19

18 - - - 11:09:19

19 (Recessed at 11:09 a.m.) 11:09:19

20 (Reconvened at 11:14 a.m.) 11:09:19

21 - - - 11:09:19

22 VIDEOGRAPHER: Back on the record at 11:14 11:14:28



1 a.m. 11:14:30

2 BY MS. KRAWIEC: 11:14:30

3 Q. Mr. Fritsch, we were discussing this email 11:14:37

4 chain between you and Mr. Lichtblau. And Mr. 11:14:40

5 Lichtblau asks you where the mediafire.com file came 11:14:43

6 from. And your response is: No idea. Our tech maven 11:14:46

7 says it was first posted via Reddit. I see it has a 11:14:51

8 tutanota contact, so someone anonymous and encrypted. 11:14:56

9 So it's either someone real, who has real info, or one 11:14:56

10 of Donald's 400-pounders. The de vos stuff looks rank 11:14:56

11 to me. Weird. 11:14:56

12 Were you aware of tutanota prior to seeing 11:15:09

13 the contact information on the Media Fire website? 11:15:13

14 **A. On advice of counsel, I'm asserting my 11:15:13**

15 **right not to testify under Article 22 of the Maryland 11:15:18**

16 **Declaration of Rights and the Fifth Amendment to the 11:15:18**

17 **U.S. Constitution and decline to answer. 11:15:21**

18 Q. What did you do to ascertain the source of 11:15:23

19 the data? 11:15:24

20 **A. Same answer. 11:15:25**

21 Q. What did you know about the source of the 11:15:26

22 data? 11:15:27

1 MR. LEVY: Do you want to repeat the 11:15:33  
2 question? 11:15:33  
3 Q. What did you know about the source of the 11:15:35  
4 data? 11:15:35  
5 A. Same answer. 11:15:36  
6 Q. Why did you believe the user was anonymous? 11:15:39  
7 A. Same answer. 11:15:41  
8 Q. Do all tutanota users need to be anonymous? 11:15:45  
9 A. Same answer. 11:15:46  
10 Q. Do you understand Tea Leaves to be this 11:15:48  
11 tutanota contact? 11:15:50  
12 A. Same answer. 11:15:51  
13 Q. What did you mean by one of Donald's 11:15:55  
14 400-pounders? 11:15:58  
15 A. Same answer. 11:15:59  
16 Q. Does this refer to Donald Trump's comment 11:16:02  
17 in the first presidential debate of 2016 where he said 11:16:05  
18 that the DNC hackers could be China, Russia, or 11:16:09  
19 somebody sitting on their bed that weighs 400 pounds? 11:16:12  
20 A. Same answer. 11:16:13  
21 Q. Did you mean that this could be somebody 11:16:16  
22 amateur? 11:16:17

1           **A.     Same answer.**   11:16:17

2           Q.     Did you mean that this could be somebody             11:16:19

3     that made the information up?                                     11:16:20

4           **A.     Same answer.**   11:16:22

5           Q.     What did you mean when you said that the             11:16:26

6     information, the stuff, the de vos stuff looks rank?             11:16:36

7           **A.     Same answer.**   11:16:37

8           Q.     Did it affect your impression regarding the             11:16:37

9     accuracy of the data?   11:16:38

10          **A.     Same answer.**   11:16:40

11          Q.     If we could pull up Tab 32, which was                 11:16:48

12     previously entered as Exhibit 15.                                 11:16:50

13                 So, Mr. Fritsch, you see the same GDD.zip             11:17:06

14     reference. And it looks as though you are sending it             11:17:10

15     to Mark Hosenball; is that correct?                                 11:17:12

16          **A.     Same answer.**   11:17:14

17          Q.     So you sent it to Hosenball, correct?                 11:17:19

18          **A.     Same answer.**   11:17:21

19          Q.     Mr. Hosenball was not the person who first             11:17:23

20     informed you that the information would be posted on             11:17:26

21     the internet regarding the server allegations,                     11:17:28

22     correct?   11:17:28



1 Q. We can go to Tab 42 and enter that as the 11:18:37  
2 next exhibit. 11:18:37

3 - - - 11:18:38

4 (A document was marked as Exhibit Number 40.) 11:18:38

5 - - - 11:18:38

6 BY MS. KRAWIEC: 11:19:03

7 Q. Mr. Fritsch, if you could take a minute 11:19:11  
8 just to familiarize yourself with this document. If 11:19:13  
9 you could just let me know when you are ready to 11:19:38  
10 discuss the document. 11:19:39

11 A. Ready. 11:19:39

12 Q. So Ms. Seago writes that Krypt3ia noticed 11:19:43  
13 Tea Leaves work. 11:19:46

14 Do you know how Krypt3ia became aware of 11:19:48  
15 the Tea Leaves site? 11:19:49

16 A. Same answer. 11:19:53

17 Q. Later in her email, Ms. Seago writes, This 11:19:55  
18 is rather on the nose, and then quotes from Krypt3ia's 11:19:57  
19 post where he says it was suggested to him that he was 11:20:00  
20 tipped off about the i2p site purposefully as part of 11:20:04  
21 a plan to induce him to blog about Tea Leaves. 11:20:07

22 What did you understand Ms. Seago to mean 11:20:10

1 when she said this was on the nose? 11:20:11

2 **A. Same answer.** 11:20:12

3 Q. Do you know who contacted Krypt3ia about 11:20:14

4 the i2p Tea Leaves site? 11:20:18

5 **A. Same answer.** 11:20:20

6 Q. Did Fusion ever discuss engaging a 11:20:22

7 cybersecurity expert to analyze Tea Leaves data and 11:20:24

8 conclusions? 11:20:25

9 **A. Same answer.** 11:20:26

10 Q. Do you know of anyone who may have tipped 11:20:34

11 off the Krypt3ia or other cybersecurity bloggers or 11:20:36

12 experts about Tea Leaves posting or the server 11:20:37

13 allegations? 11:20:38

14 **A. Same answer.** 11:20:38

15 Q. Ms. Seago also wrote in her email to you, I 11:20:41

16 think we continue to move in the direction of having a 11:20:44

17 leg to stand on. 11:20:46

18 What did you mean -- what did you 11:20:46

19 understand her to mean by this? 11:20:47

20 **A. Same answer.** 11:20:48

21 Q. Why did you need a leg to stand on? Did 11:20:50

22 you -- 11:20:51

1           **A.      Same answer.**                               11:20:52

2           Q.      -- have concerns regarding the accuracy of 11:20:54

3 the server allegations?                               11:20:55

4           **A.      Same answer.**                               11:20:56

5           Q.      Were you pressured by anyone to find that 11:20:58

6 Krypt3ia did not completely dispute Tea Leaves' 11:21:01

7 analysis regarding the server allegations?               11:21:04

8           **A.      Same answer.**                               11:21:05

9           Q.      Did you have pressure to get Krypt3ia to 11:21:08

10 support Tea Leaves' analysis regardless of any 11:21:10

11 contradictory evidence?                               11:21:12

12           **A.      Same answer.**                               11:21:13

13           Q.      Mr. Fritsch, did Perkins Coie instruct you 11:21:15

14 to send the link and the DNS documents to reporters? 11:21:18

15           **A.      Same answer.**                               11:21:20

16               MS. KRAWIEC: If we could go to Tab 45 and 11:21:31

17 enter that as an exhibit.                               11:21:31

18                               -   -   -                               11:21:31

19           (A document was marked as Exhibit Number 41.) 11:21:31

20                               -   -   -                               11:21:31

21           BY MR. KRAWIEC:                               11:21:32

22           Q.      Mr. Fritsch, this is an email with Matthew 11:21:39

1 Mosk, dated October 24. And you say, Are you able to 11:21:44  
2 send me whatever Alfa, Trump and Mandiant have sent 11:21:47  
3 you. I want to see if Laura and the Krypt3ia blogger 11:21:50  
4 can unpack their explanations. Thanks, Man. And Mosk 11:21:54  
5 says, Give me a ring to discuss. 11:21:57

6 Did Mr. Mosk send you any materials? 11:22:05

7 **A. Same answer.** 11:22:06

8 **Q.** Did you discuss this plan with Ms. Seago? 11:22:09

9 **A. Same answer.** 11:22:09

10 **Q.** Did you discuss this with Krypt3ia? 11:22:13

11 **A. Same answer.** 11:22:14

12 **Q.** Did you call Mr. Mosk? 11:22:15

13 **A. Same answer.** 11:22:16

14 **Q.** Were any materials provided by Mr. Mosk? 11:22:24

15 **A. Same answer.** 11:22:25

16 **Q.** Did you pass materials on to Ms. Seago in 11:22:30  
17 connection with this exchange with Mr. Mosk? 11:22:33

18 **A. Same answer.** 11:22:33

19 **Q.** Did you pass materials on to Krypt3ia in 11:22:36  
20 connection with this exchange with Mr. Mosk? 11:22:38

21 **A. Same answer.** 11:22:39

22 **Q.** If you go to Tab 50, and enter it as the 11:22:46



1 next exhibit. 11:22:54

2 - - - 11:22:54

3 (A document was marked as Exhibit Number 42.) 11:22:54

4 - - - 11:22:54

5 MS. KRAWIEC: If you could review this. I 11:22:58

6 think it's titled, Shits Gone Plaid: GDD53 and Slate. 11:23:04

7 And it's a Krypt3ia post from November 31, 2016. 11:23:14

8 Joe, if you could just scroll down so that 11:23:18

9 Mr. Fritsch could review this document. You can stop 11:23:46

10 right there. 11:23:47

11 BY MS. KRAWIEC: 11:23:47

12 Q. So, in particular, the blog from Krypt3ia 11:23:53

13 says, Unfortunately, Tea still shopped this around 11:23:56

14 until someone took the bait, hook, line, and sinker. 11:23:59

15 Foer. Putting out speculation, anonymous testimony, 11:24:02

16 and not much more as proof positive that Trump is in 11:24:07

17 league with Russia's Alfa-Bank via secret emails and 11:24:10

18 configured servers. 11:24:11

19 Evidence: There was none. There was a lot 11:24:14

20 of speculation and theory, but what Tea had put on the 11:24:18

21 dark net and had been shopping around was not 11:24:19

22 forensically proven. And, in fact, all of the 11:24:22

1 metadata that may have existed had been stamped out of 11:24:26  
2 all documents or never existed in the first place as 11:24:28  
3 they were using text files. 11:24:29

4 In looking at the so-called evidence, I 11:24:31  
5 called bullshit and began questioning Tea. Tea 11:24:34  
6 e-mailed me trying to pimp more of the story, but I 11:24:38  
7 asked pointed, forensic questions and about the 11:24:40  
8 provenance of their data. After doing so, Tea claimed 11:24:43  
9 they never got the email. 11:24:45

10 This was utter bullshit, because I even 11:24:46  
11 created an account on the same encrypted email server 11:24:49  
12 as theirs to send it to them. Clearly they did not 11:24:53  
13 want to or could not answer my direct questions on 11:24:55  
14 authenticity. 11:24:56

15 Were you aware that Krypt3ia responded to 11:25:02  
16 Foer's article in Slate? 11:25:05

17 **A. Same answer.** 11:25:05

18 Q. Krypt3ia dismisses Tea Leaves as a 11:25:11  
19 fabricator, correct? 11:25:12

20 **A. Same answer.** 11:25:12

21 Q. He also believed that Tea Leaves shopped 11:25:15  
22 the story around, correct? 11:25:17





1 ask of how to get behind it, and you say, Not easily. 11:27:34

2 Alas. And then, Joe, if you could scroll up a little 11:27:38

3 bit. You then respond, copying Glenn Simpson, Though 11:27:45

4 first step is to send that explanation to the source 11:27:48

5 who posted this stuff. I understand the Trump 11:27:51

6 explanations can be refuted. 11:27:54

7 Mr. Fritsch, who is the source that posted 11:27:58

8 this stuff? 11:27:58

9 **A. Same answer.** 11:28:00

10 Q. What did you expect the poster to do with 11:28:05

11 the explanation? 11:28:05

12 **A. Same answer.** 11:28:06

13 Q. What made you understand that the Trump 11:28:08

14 explanation could be refuted? 11:28:10

15 **A. Same answer.** 11:28:11

16 Q. Did you talk to anyone about that 11:28:13

17 explanation? 11:28:15

18 **A. Same answer.** 11:28:16

19 Q. Did the Trump -- the Trumpees, as Mr. 11:28:19

20 Hosenball refers to them, did their explanation give 11:28:22

21 you pause? 11:28:23

22 **A. Same answer.** 11:28:27

1 MS. KRAWIEC: We could put up Tab 102 and 11:28:39  
2 enter it as an exhibit. 11:28:49  
3 - - - 11:28:49  
4 (A document was marked as Exhibit Number 44.) 11:28:49  
5 - - - 11:28:49  
6 BY MS. KRAWIEC: 11:28:53  
7 Q. You sent Mr. Isikoff the Alfa Group 11:28:55  
8 overview dated 9/1/2016 on October 5, correct? 11:29:01  
9 A. Same answer. 11:29:02  
10 Q. The subject says Alfa, correct? 11:29:05  
11 A. Same answer. 11:29:06  
12 Q. And the message you said, Off the record, 11:29:10  
13 all open source tho; correct? 11:29:13  
14 A. Same answer. 11:29:15  
15 Q. How did you know Mr. Lichtblau -- I'm 11:29:17  
16 sorry. How did you know that Mr. Isikoff was 11:29:20  
17 interested in Alfa? 11:29:21  
18 A. Same answer. 11:29:23  
19 MS. KRAWIEC: Can we go to Tab 138. And 11:29:43  
20 can we enter that as an exhibit. If we can go to -- 11:29:48  
21 sorry. This is already -- is this Tab 138. It is. 11:29:54  
22 okay. Can you go to line 232. 11:29:57

1 MR. LEVY: Page 232? 11:30:07

2 MS. KRAWIEC: Yes. I'm sorry. Page 232, 11:30:09

3 line 9 and 10. 11:30:11

4 VIDEOGRAPHER: And this is tab -- excuse 11:30:32

5 me. This has been marked as Exhibit 31, just FYI. 11:30:35

6 MS. KRAWIEC: Thank you, Joe. Appreciate 11:30:35

7 it. 11:30:35

8 BY MS. KRAWIEC: 11:30:35

9 Q. So, Question: Did you learn from Mr. 11:30:40

10 Lichtblau that he was interested in the story? 11:30:43

11 A. Same answer. 11:30:50

12 Q. Your answer was: To the extent this 11:30:51

13 doesn't implicate privileged communications with 11:30:51

14 counsel, yes; I was interested in the server story. 11:30:51

15 Did I read that correctly, Mr. Fritsch? 11:30:57

16 A. Same answer. 11:30:59

17 Q. How did you learn that Mr. Lichtblau was 11:31:04

18 interested in the story? 11:31:14

19 A. Same answer. 11:31:15

20 MS. KRAWIEC: If we could put up Tab 60 and 11:31:18

21 enter that as an exhibit. 11:31:20

22 - - - 11:31:20

1 (A document was marked as Exhibit Number 45.) 11:31:20

2 - - - 11:31:20

3 MS. KRAWIEC: So if you could scroll down, 11:31:43

4 Joe, just to the beginning of the email. 11:31:46

5 BY MS. KRAWIEC: 11:31:46

6 Q. So it looks like you sent Mr. Lichtblau a 11:31:57

7 Facebook post from Scott Horton, and you write: Don't 11:31:59

8 know if still interested in Alfa but this is very 11:32:01

9 interesting. 11:32:02

10 Was Mr. Lichtblau still interested in Alfa? 11:32:05

11 A. Same answer. 11:32:06

12 Q. Mr. Horton's post says, I keep hearing from 11:32:11

13 folks at Alfa that they've been helping the Trump 11:32:15

14 campaign with high-level encrypted communications. 11:32:17

15 What on earth is that about? 11:32:20

16 Why did you send Mr. Lichtblau this post? 11:32:22

17 A. Same answer. 11:32:23

18 Q. Did you contact Mr. Horton about the 11:32:24

19 contents of his claim? 11:32:26

20 A. Same answer. 11:32:27

21 Q. Did you know anyone who did? 11:32:29

22 A. Same answer. 11:32:30



1 Q. Did you do any due diligence with respect 11:32:33  
2 to this claim? 11:32:34

3 A. Same answer. 11:32:37

4 Q. So if you can scroll up. So it says, Any 11:32:45  
5 idea what he's talking about regarding encrypted 11:32:49  
6 emails. And your response is, No, but the email 11:32:51  
7 traffic cited by those Tea Leaves folks. 11:32:54

8 So you refer to the Tea Leaves folks in the 11:32:58  
9 plural, correct? 11:32:59

10 A. Same answer. 11:33:01

11 Q. Who are you referring to when you say, 11:33:03  
12 Those Tea Leave folks? 11:33:05

13 A. Same answer. 11:33:07

14 Q. It appears as though you do in fact have 11:33:10  
15 familiarity with the Tea Leaves folks, correct, Mr. 11:33:13  
16 Fritsch? 11:33:13

17 MR. LEVY: Objection. 11:33:14

18 Q. You can answer. 11:33:16

19 A. Same answer. 11:33:18

20 Q. So if you keep reading, it says, Those Tea 11:33:24  
21 Leave folks almost certainly would have been 11:33:26  
22 encrypted. You don't reconfigure a mail server to 11:33:30

1 make MX look-ups look like a look-up and then plant a 11:33:35  
2 tor exit node on someone's server and then not encrypt 11:33:39  
3 the email. 11:33:40  
4 Can you explain the text of your email in 11:33:43  
5 layperson's terms, Mr. Fritsch? 11:33:46  
6 **A. Same answer.** 11:33:47  
7 Q. Was this in fact an explanation that was 11:33:49  
8 provided to you from the Tea Leaves folks? 11:33:52  
9 **A. Same answer.** 11:33:53  
10 Q. Do you speak in such technical terms, Mr. 11:33:56  
11 Fritsch? 11:33:56  
12 **A. Same answer.** 11:33:58  
13 Q. Did you understand that the Trump or Alfa 11:34:03  
14 servers had been reconfigured from a mail server? 11:34:07  
15 **A. Same answer.** 11:34:07  
16 Q. Where did that understanding come from? 11:34:10  
17 **A. Same answer.** 11:34:10  
18 Q. What did it mean to you? 11:34:11  
19 **A. Same answer.** 11:34:12  
20 Q. What did you mean when you said reconfigure 11:34:16  
21 a mail server to make MZ look-ups look like a 11:34:20  
22 look-ups? 11:34:21

1	<b>A. Same answer.</b>	11:34:22
2	Q. What does this mean in layperson's term?	11:34:25
3	<b>A. Same answer.</b>	11:34:25
4	Q. Why do you believe the server was	11:34:27
5	reconfigured in this way?	11:34:29
6	<b>A. Same answer.</b>	11:34:29
7	Q. What did you mean by, plan to tor exit node	11:34:36
8	on someone's server?	11:34:37
9	<b>A. Same answer.</b>	11:34:38
10	Q. What is a tor exit node?	11:34:41
11	<b>A. Same answer.</b>	11:34:41
12	Q. What did you mean when you said it had been	11:34:44
13	planted on someone's server?	11:34:45
14	<b>A. Same answer.</b>	11:34:47
15	Q. Did you think this was part of a ruse to	11:34:48
16	make it look like there were communications that did	11:34:50
17	not actually exist?	11:34:52
18	<b>A. Same answer.</b>	11:34:52
19	Q. Did you understand that the tor exit node	11:34:55
20	was on Spectrum Health's system?	11:34:58
21	<b>A. Same answer.</b>	11:35:00
22	Q. And that someone planted it?	11:35:01





1 Q. In your opening thoughts you write that the 11:36:59  
2 reason for what the Times says is Frank's mistake. Is 11:37:04  
3 that, quote, the FBI looked and it all checked out. 11:37:08  
4 It all definitely does not check out, even if the 11:37:10  
5 server story is difficult to unpack. And we know that 11:37:14  
6 since the server info all emerged in the summer, that 11:37:16  
7 have by definition only taken the most cursory look at 11:37:20  
8 this, if that. End quote. 11:37:23

9 Are you talking about the server 11:37:25  
10 allegations here? 11:37:27

11 A. Same answer. 11:37:28

12 Q. When did you understand the server story to 11:37:30  
13 emerge? 11:37:30

14 A. Same answer. 11:37:31

15 Q. Who did you speak to about the server story 11:37:33  
16 during the summer of 2016? 11:37:34

17 A. Same answer. 11:37:35

18 Q. Does the information in all caps in the 11:37:38  
19 notes denote your comments, Mr. Fritsch? 11:37:43

20 A. Same answer. 11:37:44

21 Q. If we can go to the fourth page of these 11:37:50  
22 comments. So do you see in that second full 11:38:04

1 paragraph, the in classified sessions, you wrote, 11:38:08

2 Wait. How do they know these are financial ties? 11:38:11

3 Totally imprecise. I am sure they just concluded they 11:38:15

4 were financial due to the involvement of a bank, but 11:38:18

5 this fails to grasp the context on who Alfa is and the 11:38:22

6 role they play. I am not surprised the FBI doesn't 11:38:25

7 get that. 11:38:27

8 You were talking about Alfa-Bank here, 11:38:29

9 correct? 11:38:30

10 **A. Same answer.** 11:38:31

11 Q. Why did you assume that the briefing given 11:38:32

12 to congressional leaders regarding the possibility of 11:38:35

13 financial ties between Russians and people connected 11:38:39

14 to Trump was related to Alfa-Bank? 11:38:41

15 **A. Same answer.** 11:38:42

16 Q. Was it the context on who Alfa is that you 11:38:44

17 referenced here? 11:38:45

18 **A. Same answer.** 11:38:46

19 MR. LEVY: Objection. 11:38:46

20 Q. You can answer. 11:38:50

21 **A. Same answer.** 11:38:50

22 Q. What is the role Alfa plays that you 11:38:55

1 referenced here? 11:38:56

2 MR. LEVY: Objection. 11:38:56

3 Q. You can answer. 11:38:57

4 A. Same answer. 11:38:59

5 Q. Why were you not surprised that the FBI 11:39:01

6 doesn't get that context? 11:39:03

7 A. Same answer. 11:39:05

8 Q. On what basis did you believe yourself 11:39:07

9 better informed than the FBI, Mr. Fritsch? 11:39:10

10 A. Same answer. 11:39:12

11 Q. Why did you doubt their abilities, Mr. 11:39:14

12 Fritsch? 11:39:15

13 A. Same answer. 11:39:16

14 Q. So in the next paragraph the article states 11:39:20

15 that FBI officials spent weeks examining computer data 11:39:24

16 showing an odd string of activity to a Trump 11:39:27

17 organization server and Alfa-Bank. It appears that 11:39:29

18 you wrote, They did? Question mark. Exclamation 11:39:32

19 point. Exclamation point. 11:39:35

20 Does this change your assessment of whether 11:39:37

21 the timing of the investigation was sufficient? 11:39:39

22 A. Same answer. 11:39:41



1 Q. In the same paragraph it states that the 11:39:45  
2 FBI ultimately concluded that there could be an 11:39:46  
3 innocuous explanation. And you wrote, So, wait. This 11:39:51  
4 part of the investigation is over? Did the FBI 11:39:54  
5 interview the sources you had access to, Tea Leaves, 11:39:57  
6 et al? You should be able to report that. If they 11:40:01  
7 don't interview the original source of the logs, how 11:40:04  
8 deep and serious an investigation has this been. 11:40:07  
9 Here you are suggesting that Tea Leaves, et 11:40:10  
10 al., all were the source of the logs, correct? 11:40:13  
11 MR. LEVY: Objection. 11:40:15  
12 A. Same answer. 11:40:17  
13 Q. Who is the "et al." you are referring to, 11:40:19  
14 Mr. Fritsch? 11:40:20  
15 A. Same answer. 11:40:21  
16 Q. Did you communicate with Tea Leaves or any 11:40:23  
17 of these individuals? 11:40:24  
18 MR. LEVY: Objection. 11:40:24  
19 A. Same answer. 11:40:26  
20 Q. Did Mr. Foer or anyone else tell you about 11:40:29  
21 their communications with Tea Leaves or any of these 11:40:32  
22 individuals? 11:40:33



1 adequate resources, Mr. Fritsch? 11:41:27

2 **A. Same answer.** 11:41:29

3 MS. KRAWIEC: Looking at the time. Mr. 11:41:39

4 Fritsch, Mr. Levy, if we could take just a 11:41:44

5 five-minute break, a quick break. 11:41:46

6 MR. LEVY: Sure. How long do you think you 11:41:48

7 have? 11:41:48

8 MS. KRAWIEC: Probably an hour. 11:41:52

9 MR. LEVY: At 10:10 you said it was an hour 11:41:55

10 and a half. 11:41:56

11 MS. KRAWIEC: Understood. 11:41:58

12 VIDEOGRAPHER: Going off the record at 11:42:00

13 11:42 a.m. 11:42:03

14 - - - 11:42:03

15 (Recessed at 11:42 a.m.) 11:42:03

16 (Reconvened at 11:51 a.m.) 11:42:03

17 - - - 11:42:03

18 VIDEOGRAPHER: Back on the record at 11:51 11:51:25

19 a.m. 11:51:27

20 BY MS. KRAWIEC: 11:51:27

21 Q. Mr. Fritsch, was there any work agreement 11:51:34

22 between Mr. Joffe and Fusion? 11:51:36

1           **A.**     **On advice of counsel, I am asserting my**           11:51:36  
2     **rights under the Article 22 of the Maryland**           11:51:49  
3     **Declaration of Rights and the Fifth Amendment to the**   11:51:49  
4     **United States Constitution and decline to answer your**   11:51:54  
5     **questions today.**           11:51:55  
6           **Q.**     **Did Fusion enter into any privilege**           11:52:00  
7     **agreement with Mr. Joffe?**           11:52:01  
8           **A.**     **Same answer.**           11:52:02  
9           **Q.**     **Was there any common interest agreement**   11:52:05  
10    **between Perkins Coie, Joffe and Fusion?**           11:52:08  
11    **A.**     **Same answer.**           11:52:09  
12    **Q.**     **When you were speaking to Mr. Joffe, did**           11:52:12  
13    **you or Perkins Coie or anyone tell you that your**       11:52:15  
14    **communications would be privileged?**           11:52:16  
15    **A.**     **Same answer.**           11:52:17  
16    **Q.**     **Did Mr. Sussmann ever refer to Rodney Joffe**   11:52:20  
17    **as Max?**           11:52:21  
18    **A.**     **Same answer.**           11:52:22  
19    **Q.**     **What did you understand as to Mr. Joffe's**       11:52:25  
20    **background?**           11:52:26  
21    **A.**     **Same answer.**           11:52:28  
22    **Q.**     **What was it that Mr. Joffe told you that**       11:52:30

1 gave you confidence in him? 11:52:34

2 **A. Same answer.** 11:52:34

3 Q. Did you at any time conduct internet 11:52:36

4 research or do any due diligence with respect to Mr. 11:52:41

5 Joffe on your own? 11:52:42

6 **A. Same answer.** 11:52:42

7 Q. How did the meeting come about with Mr. 11:52:45

8 Joffe that you previously described with Mr. Sussmann, 11:52:48

9 Mr. Elias, members of the Fusion team, and Mr. Joffe? 11:52:52

10 **A. Same answer.** 11:52:56

11 Q. Do you remember what the purpose of the 11:53:07

12 meeting was? 11:53:07

13 **A. Same answer.** 11:53:08

14 Q. Why were you meeting with Mr. Joffe? 11:53:10

15 **A. Same answer.** 11:53:10

16 Q. What communications did you have with 11:53:12

17 Rodney Joffe? 11:53:12

18 **A. Same answer.** 11:53:14

19 Q. What did you discuss with Mr. Joffe during 11:53:16

20 those phone call communications? 11:53:19

21 **A. Same answer.** 11:53:20

22 Q. Was Mr. -- was Alfa-Bank discussed at the 11:53:26

1 meeting with Mr. Joffe? 11:53:27

2 **A. Same answer.** 11:53:28

3 Q. Did you receive any documents or files at 11:53:33

4 the meeting? 11:53:34

5 **A. Same answer.** 11:53:36

6 Q. Are you aware of any other meetings between 11:53:39

7 personnel of Fusion and Mr. Joffe? 11:53:42

8 **A. Same answer.** 11:53:43

9 Q. Are you aware that Ms. Seago emailed Mr. 11:53:45

10 Joffe? 11:53:46

11 **A. Same answer.** 11:53:48

12 Q. In what context did you hear of Mr. Dagon? 11:53:56

13 **A. Same answer.** 11:53:57

14 Q. How was it that you knew of David Dagon? 11:54:00

15 **A. Same answer.** 11:54:01

16 Q. Did you tell people within Fusion about Mr. 11:54:18

17 Dagon? 11:54:19

18 **A. Same answer.** 11:54:20

19 Q. Did Mr. Berkowitz in fact bring Mr. Dagon 11:54:22

20 to your attention? 11:54:23

21 **A. Same answer.** 11:54:25

22 Q. Did you ask Mr. Berkowitz to conduct 11:54:30

1 research regarding Mr. Dagon? 11:54:32

2 **A. Same answer.** 11:54:33

3 Q. Did you learn about Mr. Dagon from Mr. 11:54:35

4 Sussmann? 11:54:36

5 **A. Same answer.** 11:54:38

6 Q. Did you learn about Mr. Dagon from Mr. 11:54:42

7 Joffe? 11:54:42

8 **A. Same answer.** 11:54:42

9 Q. We previously had discussed your suggestion 11:54:54

10 that Mr. Hosenball talked to Mr. Dagon. Did you 11:54:56

11 understand that Mr. Dagon could help validate the 11:54:59

12 data? 11:54:59

13 **A. Same answer.** 11:55:01

14 Q. Did you understand that Mr. Dagon had 11:55:03

15 access to the underlying data set? 11:55:05

16 **A. Same answer.** 11:55:07

17 Q. How did you know Mr. Dagon was affiliated 11:55:09

18 with Georgia Tech? 11:55:11

19 **A. Same answer.** 11:55:11

20 Q. Were you aware that Mr. Dagon was working 11:55:15

21 on issues related to the server allegations? 11:55:17

22 **A. Same answer.** 11:55:19

1 Q. From whom did you learn that Dagon was 11:55:23  
2 involved in analysis or issues related to the server 11:55:27  
3 allegations? 11:55:27  
4 A. Same answer. 11:55:29  
5 Q. Were you familiar with the work that Mr. 11:55:31  
6 Dagon was doing with respect to the server 11:55:33  
7 allegations? 11:55:34  
8 A. Same answer. 11:55:35  
9 Q. Do you know who Steve Bellovin is at 11:55:44  
10 Columbia University? 11:55:46  
11 A. Same answer. 11:55:46  
12 Q. Why did you bring Steve Bellovin to the 11:55:49  
13 attention of Mr. Mosk at ABC? 11:55:52  
14 MR. LEVY: Objection. 11:55:53  
15 A. Same answer. 11:55:58  
16 Q. Did you communicate directly with Mr. 11:56:00  
17 Bellovin? 11:56:01  
18 A. Same answer. 11:56:02  
19 MS. KRAWIEC: If we could put up Tab 64 and 11:56:09  
20 enter it as an exhibit. 11:56:12  
21 - - - 11:56:12  
22 (A document was marked as Exhibit Number 47) 11:56:12



1 - - - 11:56:20

2 THE WITNESS: Sorry. One question. You 11:56:26

3 asked -- 11:56:27

4 MR. LEVY: Peter, let's go off the record 11:56:29

5 if you have a question. 11:56:30

6 THE WITNESS: Okay. 11:56:32

7 MR. LEVY: Can we take a two-minute break? 11:56:35

8 MS. KRAWIEC: Sure. 11:56:37

9 MR. LEVY: Thanks. 11:56:38

10 VIDEOGRAPHER: Going off the record, 11:56 11:56:41

11 a.m. 11:56:42

12 - - - 11:56:42

13 (Recessed at 11:56 a.m.) 11:56:42

14 (Reconvened at 11:58 a.m.) 11:56:42

15 - - - 11:56:42

16 VIDEOGRAPHER: Back on the record, 11:58 11:58:41

17 a.m. 11:58:42

18 BY MS. KRAWIEC: 11:58:42

19 Q. So, Mr. Fritsch, you're emailing with 11:58:49

20 Matthew Mosk, and you sent him a link regarding Steve 11:58:55

21 Bellovin. It says, Evidently, he is one of New York 11:59:01

22 Time's sources validators so has no -- he knows all 11:59:06

1 the bullshit Alfa and Trump explanations. Also heard 11:59:12

2 New York Times story not dead, but who knows if when 11:59:15

3 they go. Anyway, let me know how it goes. 11:59:19

4 How is it that you knew that Mr. Bellovin 11:59:22

5 was one of The New York Times sources and validators? 11:59:25

6 **A. Same answer.** 11:59:27

7 MR. LEVY: Objection. 11:59:27

8 Q. Was that shared to you by The New York 11:59:29

9 Times reporter? 11:59:30

10 **A. Same answer.** 11:59:31

11 Q. Generally speaking, do reporters share 11:59:35

12 their sources or validators to people outside of those 11:59:38

13 sources or validators? 11:59:41

14 **A. Same answer.** 11:59:43

15 Q. And you believed that all of Alfa and 11:59:49

16 Trump's explanations were bullshit, correct? 11:59:51

17 MR. LEVY: Objection. 11:59:52

18 **A. Same answer.** 11:59:53

19 Q. Okay. We can take this down. Mr. Fritsch, 12:00:18

20 in your last deposition we had talked about the 12:00:21

21 Alfa-Bank overview with the report on Alfa-Bank and 12:00:23

22 its background. 12:00:23



1 Q. Why did you get Baumgartner involved? 12:01:13

2 A. Same answer. 12:01:14

3 Q. Wasn't this the type of open source 12:01:21

4 research that was totally up Fusion's alley? 12:01:24

5 A. Same answer. 12:01:25

6 Q. So why did you need help here? 12:01:27

7 MR. LEVY: Objection. 12:01:27

8 A. Same answer. 12:01:30

9 Q. If we can just quickly go to Tab 92, which 12:01:38

10 was Exhibit 11, and if we could scroll to PRIV 143. 12:01:42

11 So here on 8/30/2016 it appears that you e-mailed Ed 12:02:06

12 Baumgartner copying Glenn Simpson. The subject says 12:02:12

13 you will see the holes and what this means. And if 12:02:14

14 you scroll over -- I'm sorry, not over, but right 12:02:23

15 underneath it says the attachment was the Alfa Group 12:02:24

16 overview, correct? 12:02:27

17 A. Same answer. 12:02:27

18 Q. What was the origin of this Alfa overview? 12:02:31

19 A. Same answer. 12:02:32

20 Q. Was it previous Fusion work product? 12:02:36

21 A. Same answer. 12:02:36

22 Q. When was it created? 12:02:38



1 Q. Did this work on the document relate to the 12:03:18  
2 server allegations? 12:03:19

3 A. Same answer. 12:03:19

4 Q. So if you go to 147 on this same document, 12:03:27  
5 it looks as though Mr. Baumgartner sent you an updated 12:03:31  
6 draft on 8/31/2016; is that correct? 12:03:36

7 A. Same answer. 12:03:38

8 Q. What did Mr. Baumgartner add to the 12:03:41  
9 document? 12:03:41

10 A. Same answer. 12:03:43

11 Q. Did he find what was missing and fill the 12:03:45  
12 holes? 12:03:46

13 A. Same answer. 12:03:46

14 MS. KRAWIEC: Joe, if you could take us to 12:03:51  
15 150 to 153, just scroll up a little bit. And if you 12:03:56  
16 could scroll over a little bit. 12:03:57

17 BY MS. KRAWIEC: 12:03:57

18 Q. So there's emails and attachments going 12:04:04  
19 back and forth about an Alfa Group overview. It says 12:04:09  
20 EB track changes. Appears there were several drafts 12:04:13  
21 of the Alfa Group overview, correct? 12:04:16

22 A. Same answer. 12:04:17

1 Q. Who added these changes? 12:04:18

2 A. Same answer. 12:04:19

3 Q. Did you edit the document? 12:04:22

4 A. Same answer. 12:04:22

5 Q. Did you review the document? 12:04:23

6 A. Same answer. 12:04:24

7 Q. Does EB stand for Ed Baumgartner? 12:04:33

8 A. Same answer. 12:04:35

9 Q. If you look just down, then you see Alfa 12:04:39

10 Group Overview EB-GS. Does GS stand for Glenn 12:04:44

11 Simpson? 12:04:45

12 A. Same answer. 12:04:45

13 Q. Did Mr. Simpson edit the document? 12:04:48

14 A. Same answer. 12:04:54

15 MS. KRAWIEC: Joe, if we could go to PRIV 12:04:56

16 154. 12:04:57

17 BY MS. KRAWIEC: 12:04:57

18 Q. So Glenn Simpson sent you and Ed 12:05:00

19 Baumgartner an email copying Jake Berkowitz. Attaches 12:05:03

20 another document, this time without the date and the 12:05:08

21 file link. 12:05:09

22 Does the AG subject line stand for Alfa 12:05:15

410

1 Group? 12:05:16

2 A. Same answer. 12:05:16

3 Q. What's the difference between this document 12:05:18

4 and the one labeled EB-GS-9.1.2016? 12:05:24

5 A. Same answer. 12:05:25

6 Q. Which one was created first? 12:05:26

7 A. Same answer. 12:05:31

8 Q. PRIV 161. Joe, if you could just take us 12:05:37

9 there and 162. 12:05:43

10 You are emailing with Ed Baumgartner, Glenn 12:05:45

11 Simpson, and Jake Berkowitz. And again it's regarding 12:05:48

12 AG, correct? 12:05:49

13 A. Same answer. 12:05:50

14 Q. Were you discussing Alfa Group overview? 12:05:53

15 A. Same answer. 12:05:55

16 Q. If we can go to PRIV 232. So this is an 12:06:18

17 email from Edward Baumgartner to Peter Fritsch, Jacob 12:06:19

18 Berkowitz. And it says, Alfa Memo, correct? 12:06:22

19 A. Same answer. 12:06:23

20 Q. Why were you emailing about the overview 12:06:35

21 four weeks later? 12:06:36

22 A. Same answer. 12:06:37



1 Q. If we could go to PRIV 238 and 239. So Mr. 12:06:48

2 Baumgartner emails you back in the same email thread 12:06:51

3 attaching the document with file name Alfa Group 12:06:54

4 Overview, Update Tracked. 12:06:58

5 Joe, if you could just scroll over a little 12:07:01

6 bit so we can read. I don't know if you can see that. 12:07:04

7 There you go. Perfect. 12:07:04

8 Was this document an updated version of the 12:07:06

9 9/1/2016 overview? 12:07:09

10 A. Same answer. 12:07:10

11 Q. What did Mr. Baumgartner add? 12:07:12

12 A. Same answer. 12:07:12

13 Q. What is your understanding of the impetus 12:07:16

14 for the revisions? 12:07:17

15 A. Same answer. 12:07:19

16 Q. On page 11 of the Alfa Group Overview, it 12:07:19

17 discusses an allegation that Diligence, LLC, conducted 12:07:29

18 a trash stealing operation at the home of a Wall 12:07:32

19 Street Journal. Are you familiar with that 12:07:34

20 allegation? 12:07:35

21 A. Same answer. 12:07:36

22 Q. How did you come to know about this 12:07:37

1 incident? 12:07:37

2 A. Same answer. 12:07:39

3 Q. Do you know who the reporter was? 12:07:41

4 A. Same answer. 12:07:42

5 Q. Did you ever discuss this with Glenn 12:07:44

6 Simpson? 12:07:45

7 A. Same answer. 12:07:47

8 Q. Who did Fusion provide the Alfa Group 12:07:51

9 Overview to? 12:07:53

10 A. Same answer. 12:07:54

11 Q. We previously had entered Exhibit 10, which 12:08:02

12 shows that you had sent Hosenball the Alfa Group 12:08:06

13 Overview. Was Perkins Cole aware that you were 12:08:08

14 sending journalists the Alfa-Bank Overview? 12:08:12

15 A. Same answer. 12:08:13

16 Q. So based on the various entries that we 12:08:18

17 looked at in the log, it appears that Mr. Baumgartner 12:08:21

18 was involved in a significant amount of work product 12:08:25

19 regarding Alfa-Bank. 12:08:25

20 Would it be fair to describe him as the 12:08:29

21 individual most involved in researching Alfa-Bank 12:08:32

22 during the time period and leading up to the 2016 12:08:35

1 election? 12:08:36

2 **A. Same answer.** 12:08:36

3 Q. Was he involved in vetting the claims 12:08:38

4 surrounding the server allegations? 12:08:41

5 **A. Same answer.** 12:08:42

6 Q. Was he involved in vetting the claims in 12:08:43

7 CIR-112? 12:08:46

8 **A. Same answer.** 12:08:46

9 Q. If we can go to PRIV 144, 145. There we 12:09:13

10 go. Okay. So Edward Baumgartner on 8/30/2016 sent 12:09:18

11 you and Glenn Simpson an email called the Alfa 12:09:21

12 Playbook. 12:09:23

13 What was the Alfa Playbook? 12:09:25

14 **A. Same answer.** 12:09:27

15 Q. Could you please describe this document for 12:09:29

16 us? 12:09:29

17 **A. Same answer.** 12:09:31

18 Q. What was the purpose of the Alfa Playbook? 12:09:35

19 **A. Same answer.** 12:09:36

20 Q. What had Fusion tasked Mr. Baumgartner to 12:09:38

21 research? 12:09:38

22 **A. Same answer.** 12:09:41

1 Q. If we look at 222 to 225, PRIV 222 to 225. 12:09:53

2 So there's emails back and forth between you, Glenn 12:10:05

3 Simpson, and Edward Baumgartner regarding Putin 12:10:07

4 praise. And if you could scroll over a little bit, 12:10:11

5 Joe. So it says Alfa's praise of Putin, draft 1.docX. 12:10:22

6 Were you asking Mr. Baumgartner to look for 12:10:24

7 information that would suggest that the Alfa server 12:10:28

8 allegations were true? 12:10:28

9 A. Same answer. 12:10:30

10 Q. Did you also ask Mr. Baumgartner to look 12:10:32

11 for information that suggests that the Alfa server 12:10:35

12 allegations were untrue? 12:10:37

13 A. Same answer. 12:10:38

14 Q. Did Mr. Baumgartner provide any information 12:10:41

15 that could suggest that the server allegations were 12:10:43

16 not true? 12:10:43

17 A. Same answer. 12:10:44

18 Q. Did Mr. Baumgartner provide any information 12:10:47

19 that indicated that Alfa was not coordinating with 12:10:51

20 Russia with respect to the 2016 U.S. election? 12:10:54

21 A. Same answer. 12:10:54

22 MS. KRAWIEC: Joe, if we could go to PRIV 12:10:59

1 412 to 414. 12:11:00

2 BY MS. KRAWIEC: 12:11:00

3 Q. So here Edward Baumgartner on 11/2/2016 is 12:11:19

4 emailing you, Glenn Simpson, Jake Berkowitz and is it 12:11:21

5 Peter Corcoran? And the subject line says, Ilya on 12:11:27

6 Alfa. Does this refer to Ilya Zaslavskiy? 12:11:37

7 **A. Same answer.** 12:11:37

8 Q. Are you familiar with Mr. Zaslavskiy? 12:11:39

9 **A. Same answer.** 12:11:40

10 Q. Did Fusion discuss the server allegations 12:11:42

11 with Mr. Zaslavskiy? 12:11:44

12 **A. Same answer.** 12:11:47

13 Q. What did Mr. Baumgartner's email say 12:11:48

14 regarding Zaslavskiy? 12:11:48

15 **A. Same answer.** 12:11:49

16 Q. What was Zaslavskiy's take on Alfa? 12:11:54

17 **A. Same answer.** 12:11:55

18 Q. Have you ever spoken directly with Mr. 12:11:55

19 Zaslavskiy about Alfa? 12:11:55

20 **A. Same answer.** 12:12:01

21 Q. Has anyone at Fusion spoken directly with 12:12:02

22 Mr. Zaslavskiy about Alfa? 12:12:02



1 Q. So at the July meeting you discussed the 12:12:59

2 server allegations, correct? 12:13:01

3 MR. LEVY: Objection. 12:13:02

4 A. Same answer. 12:13:04

5 Q. What was the purpose of this meeting? 12:13:07

6 A. Same answer. 12:13:09

7 Q. Did Mr. Simpson instruct Mr. Steele to 12:13:24

8 produce intelligence on Alfa Group, its principals, 12:13:24

9 and any links to President Putin? 12:13:24

10 MR. LEVY: Objection. 12:13:26

11 A. Say that again. 12:13:26

12 Q. Did Mr. Simpson instruct Mr. Steele to 12:13:35

13 produce intelligence on Alfa Group, its principals, 12:13:40

14 and any links to President Putin? 12:13:40

15 MR. LEVY: Objection. 12:13:44

16 A. Same answer. 12:13:45

17 Q. Were you involved in the decision to ask 12:13:47

18 Mr. Steele to investigate Alfa? 12:13:50

19 A. Same answer. 12:13:50

20 MR. LEVY: Objection. 12:13:51

21 Q. What was your understanding of the impetus 12:13:53

22 to investigate Alfa? 12:13:54

1 MR. LEVY: Objection. 12:13:55

2 A. Same answer. 12:13:57

3 Q. Did you or anyone else at Fusion request 12:14:00

4 that Steele create a report on Alfa, Mikhail Fridman, 12:14:05

5 Peter Aven, or German Khan after learning of the 12:14:09

6 server allegations? 12:14:10

7 MR. LEVY: Objection. 12:14:11

8 Q. You can answer. 12:14:11

9 A. Same answer. 12:14:13

10 Q. What did Fusion say to Mr. Steele regarding 12:14:18

11 the research request? 12:14:19

12 MR. LEVY: Objection. 12:14:20

13 A. Same answer. 12:14:23

14 Q. Did you do anything to assess the accuracy 12:14:27

15 of Mr. Steele's report? 12:14:31

16 A. Same answer. 12:14:32

17 Q. Are you aware that this report later became 12:14:37

18 known as CIR-112? 12:14:40

19 A. Same answer. 12:14:47

20 Q. I wanted to turn now to the -- to our 12:14:50

21 discussion previously with TDIP. There were just a 12:14:53

22 handful of questions, the Democracy Integrity Project. 12:14:57



1 Mr. Fritsch, I had asked you at the last deposition 12:14:59  
2 who the individuals were that you met with during the 12:15:01  
3 TDIP prospect in trips. Can you please tell me the 12:15:05  
4 names of those individuals? 12:15:06  
5 **A. Same answer.** 12:15:09  
6 Q. Was there an assumption from the beginning 12:15:15  
7 that TDIP would hire Fusion? 12:15:17  
8 **A. Same answer.** 12:15:18  
9 MR. LEVY: Objection. 12:15:18  
10 Q. Was there an agreement or assumption that 12:15:19  
11 TDIP would hire associates or subcontractors of Fusion 12:15:23  
12 like Orbis? 12:15:25  
13 **A. Same answer.** 12:15:26  
14 Q. Were donors told of Fusion's involvement? 12:15:29  
15 **A. Same answer.** 12:15:30  
16 MR. LEVY: Objection. 12:15:31  
17 Q. Who ultimately donated to TDIP? 12:15:36  
18 MR. LEVY: Objection. 12:15:36  
19 **A. Same answer.** 12:15:37  
20 MS. KRAWIEC: And Joe, sorry, if we could 12:15:39  
21 take down the exhibit, that would be super helpful. 12:15:42  
22 Thank you. 12:15:43

1 BY MS. KRAWIEC: 12:15:43

2 Q. How much money did these donors donate? 12:15:47

3 MR. LEVY: Objection. 12:15:49

4 **A. Same answer.** 12:15:51

5 Q. Were donors told during the initial 12:15:53  
6 prospecting trip or thereafter that one of TDIP's 12:15:57  
7 projects would be to investigate the server 12:15:59  
8 allegations? 12:16:00

9 MR. LEVY: Objection. 12:16:00

10 **A. Same answer.** 12:16:01

11 Q. Why did Fusion team up with Mr. Jones? 12:16:03

12 **A. Same answer.** 12:16:07

13 Q. Why did Fusion assist Jones with the 12:16:09  
14 Alfa-Bank information included in the report? 12:16:12

15 MR. LEVY: Objection. 12:16:12

16 Q. You can answer. 12:16:14

17 **A. Same answer.** 12:16:17

18 Q. We can go to Tab 53, Exhibit 30. It was 12:16:35  
19 previously marked as Exhibit 30 in the last 12:16:37  
20 deposition. 12:16:38

21 Mr. Fritsch, you may recall that we had 12:16:44  
22 discussed the backgrounder, Russia's Alfa Group. Do 12:16:47

1 you recall this document? 12:16:51

2 MR. LEVY: Objection. 12:16:53

3 MS. KRAWIEC: What's the objection, Mr. 12:17:01

4 Levy? 12:17:02

5 MR. LEVY: Form. Just go -- you can answer 12:17:03

6 the question. 12:17:03

7 BY MS. KRAWIEC: 12:17:03

8 Q. Okay. 12:17:04

9 **A. What's the question?** 12:17:06

10 Q. I just asked if you were familiar with this 12:17:07

11 document or if you needed to scroll through it? 12:17:11

12 MR. LEVY: Peter, do you need -- do you 12:17:16

13 need the technician to scroll through the document? 12:17:20

14 MS. KRAWIEC: Joe, could you just go maybe 12:17:22

15 to the first couple pages, just... 12:17:25

16 THE WITNESS: So what's the question? 12:17:27

17 MR. LEVY: She just wanted to know if you 12:17:28

18 needed to read the document to refresh your 12:17:30

19 recollection. 12:17:31

20 THE WITNESS: No. 12:17:33

21 BY MS. KRAWIEC: 12:17:33

22 Q. Who -- 12:17:34





1 Q. Do you know the identity of the East and 12:19:22  
2 West Coast researchers? 12:19:24  
3 MR. LEVY: Objection. 12:19:25  
4 A. Same answer. 12:19:25  
5 Q. Did you play a role in recruiting those 12:19:28  
6 teams? 12:19:29  
7 A. Same answer. 12:19:30  
8 Q. Did Fusion play a role in recruiting those 12:19:33  
9 teams? 12:19:34  
10 MR. LEVY: Objection. 12:19:35  
11 A. Same answer. 12:19:36  
12 Q. Were any of the researchers referred to by 12:19:41  
13 a moniker of Max? 12:19:44  
14 A. Same answer. 12:19:45  
15 MR. LEVY: Objection. 12:19:45  
16 Q. Were any of the computer researchers 12:19:48  
17 referred to by a moniker of Leto? 12:19:52  
18 MR. LEVY: Objection. 12:19:53  
19 A. Same answer. 12:19:54  
20 Q. Were any of the researchers referred to by 12:19:57  
21 a moniker of Paul? 12:19:59  
22 MR. LEVY: Objection. 12:19:59







1 BY MS. KRAWIEC: 12:21:35

2 Q. So the custodian of this document was Jake 12:21:43

3 Berkowitz. And if you could scroll, Joe, to the 12:21:48

4 document. Stop right there, please. 12:21:55

5 So the backgrounder now is Russia's Alfa 12:21:58

6 Group, U.S. influence operations and Benczkowski 12:22:02

7 nomination. Did I read that correctly, Mr. Fritsch? 12:22:09

8 A. Same answer. 12:22:10

9 Q. If you go back up to the file name, the 12:22:12

10 first page, it says that this is a version from August 12:22:14

11 28, 2017, which is four days after the previous 12:22:17

12 version that we looked at. This version appears to 12:22:20

13 have added a section on the nomination of Brian 12:22:23

14 Benczkowski. 12:22:23

15 Who drafted this additional information? 12:22:26

16 A. Same answer. 12:22:27

17 Q. For what purpose? 12:22:29

18 A. Same answer. 12:22:30

19 Q. Why was there now a focus on the 12:22:33

20 Benczkowski nomination? 12:22:36

21 A. Same answer. 12:22:36

22 Q. Were you asked to include information on 12:22:39

1 the Benczkowski nomination? 12:22:39

2 **A. Same answer.** 12:22:42

3 Q. By whom were you asked to include 12:22:43

4 information on the Benczkowski nomination? 12:22:45

5 MR. LEVY: Objection. 12:22:47

6 Q. You can answer. By whom were you asked to 12:22:56

7 include information on the Benczkowski nomination? 12:22:58

8 MR. LEVY: Objection. 12:22:58

9 **A. Same answer.** 12:23:02

10 Q. Did you discuss the Benczkowski nomination 12:23:05

11 with Dan Jones? 12:23:06

12 **A. Same answer.** 12:23:09

13 Q. To your knowledge was this document 12:23:13

14 distributed to anyone in the media? 12:23:16

15 **A. Same answer.** 12:23:18

16 Q. To your knowledge was this document 12:23:19

17 distributed to anyone in the government? 12:23:22

18 **A. Same answer.** 12:23:24

19 Q. Was there a plan to notify the media or 12:23:27

20 government officials about Benczkowski's connections 12:23:29

21 to Alfa-Bank? 12:23:32

22 MR. LEVY: Objection. 12:23:33





1 - - - 12:25:26

2 (Recessed at 12:25 p.m.) 12:25:26

3 (Reconvened at 12:38 p.m.) 12:25:26

4 - - - 12:25:26

5 VIDEOGRAPHER: No worries. Going back on 12:38:08

6 the record at 12:38 p.m. 12:38:09

7 MS. KRAWIEC: I'm sorry. Joe, if you could 12:38:11

8 put Tab 55 up. And I would like to enter 55 as the 12:38:17

9 next exhibit. 12:38:18

10 - - - 12:38:18

11 (A document was marked as Exhibit Number 49.) 12:38:18

12 - - - 12:38:18

13 BY MS. KRAWIEC: 12:38:18

14 Q. So, Mr. Fritsch, this is an email dated 12:38:29

15 April 14, 2017, the subject says FM FF. And it seems 12:38:37

16 to have some technical information related to DNS 12:38:45

17 issues. If you could take a minute to read it. 12:38:54

18 MR. LEVY: He's going to be asserting his 12:38:55

19 privileges with regard to each of the questions so 12:38:58

20 long as they are relevant to your complaint, which is 12:38:58

21 the same subject matter of an ongoing investigation 12:39:02

22 which his company's been cooperating for over a year. 12:39:05

1 So if you just want to go ahead and ask the questions, 12:39:07

2 that's fine. 12:39:08

3 MS. KRAWIEC: Okay. Understood. 12:39:09

4 BY MS. KRAWIEC: 12:39:09

5 Q. So, as best as we can tell, Mr. Fritsch, it 12:39:11

6 appears that you sent yourself notes regarding certain 12:39:13

7 Alfa server allegation theories specifically related 12:39:17

8 to the technical operation of the allegations and 12:39:19

9 communications. What does the subject line FM FF 12:39:24

10 refer to? 12:39:25

11 A. Same answer. 12:39:28

12 Q. Does FF refer to Franklin Foer? 12:39:31

13 A. Same answer. 12:39:32

14 Q. Does FM refer to Fergus McIntosh? 12:39:38

15 A. Same answer. 12:39:40

16 Q. So McIntosh is the New Yorker fact checker 12:39:45

17 who worked with Dexter Filkins, correct? 12:39:46

18 A. Same answer. 12:39:49

19 Q. Does this email refer to the server 12:39:52

20 allegations? 12:39:52

21 A. Same answer. 12:39:53

22 Q. Did you author the contents of this email? 12:39:56



1 Q. The first paragraph also says, In this 12:40:44  
 2 case, the DNS data is from a Metron meeting banking 12:40:48  
 3 session. What was the DNS data referred to here? 12:40:51

4 A. Same answer. 12:40:52

5 Q. What is the database theory? 12:40:57

6 A. Same answer. 12:40:57

7 Q. Criticism 1 says that the Metron app was 12:40:59  
 8 used by Trump/Alfa/Spectrum. How did you determine 12:41:04  
 9 that? 12:41:06

10 A. Same answer. 12:41:06

11 Q. Why were you looking into the server 12:41:08  
 12 allegations in 2017, Mr. Fritsch? 12:41:08

13 A. Same -- 12:41:09

14 MR. LEVY: Objection. 12:41:11

15 A. Same answer. 12:41:12

16 Q. Was this related to TDIP? 12:41:13

17 A. Same answer. 12:41:15

18 Q. If we could put up Tab 139 and enter it as 12:41:22  
 19 the next exhibit. 12:41:23

20 - - - 12:41:23

21 (A document was marked as Exhibit Number 50.) 12:41:23

22 - - - 12:41:23



1 BY MS. KRAWIEC: 12:41:23

2 Q. And if you could go to paragraph 5. So 12:41:45

3 paragraph 5 and 6 are talking about data, among other 12:41:50

4 things, related to the Executive Office of the 12:41:52

5 President of the United States, EOP. 12:42:02

6 MR. LEVY: Is there a question? 12:42:04

7 Q. Yeah. What were you told about the DNS 12:42:05

8 data relevant to the Executive Office of the 12:42:05

9 President? 12:42:06

10 MR. LEVY: Objection. 12:42:07

11 A. Same answer. 12:42:10

12 Q. Did you understand that Rodney Joffe had 12:42:12

13 DNS data relevant to the Executive Office of the 12:42:17

14 President? 12:42:18

15 A. Same answer. 12:42:19

16 Q. Did you understand that Michael Sussmann 12:42:20

17 had DNS data relevant to the Executive Office of the 12:42:25

18 President? 12:42:25

19 A. Same answer. 12:42:26

20 Q. Did you understand that the computer 12:42:27

21 scientists, including Tea Leaves, had DNS data 12:42:31

22 relevant to the Executive Office of the President? 12:42:34



1 data to the server allegations? 12:43:39

2 MR. LEVY: Objection. 12:43:40

3 A. Same answer. 12:43:40

4 Q. Did you assist with these attempts to link 12:43:45

5 this data? 12:43:46

6 MR. LEVY: Objection. 12:43:46

7 Q. You can answer. 12:43:50

8 A. Same answer. Yeah. Same answer. 12:43:52

9 Q. Did you provide any information to Mr. 12:43:54

10 Sussmann or computer scientists regarding Alfa-Bank 12:43:56

11 after the 2016 election? 12:43:59

12 A. Same answer. 12:44:00

13 Q. Were you aware that Mr. Sussmann provided 12:44:03

14 data and analysis related to the server allegations to 12:44:06

15 the CIA in 2017? 12:44:08

16 A. Same answer. 12:44:11

17 Q. Paragraph 6 also states that Mr. Joffe and 12:44:13

18 his associates collected more data than was presented 12:44:18

19 to the CIA, and that the more comprehensive set of 12:44:20

20 data showed that the alleged connections were less 12:44:22

21 remarkable than the Joffe team suggested. 12:44:26

22 Do you know whether the entire data set 12:44:28

1 collected related to Alfa-Bank was provided to law 12:44:33

2 enforcement? 12:44:33

3 MR. LEVY: Objection. 12:44:34

4 A. Same answer. 12:44:35

5 Q. Do you know whether the entire data set 12:44:37

6 collected related to Alfa-Bank was provided to 12:44:39

7 researchers analyzing the data? 12:44:41

8 MR. LEVY: Objection. 12:44:42

9 A. Same answer. 12:44:43

10 Q. Given this claim, sure that the Alfa-Bank 12:44:45

11 look-ups were as remarkable as Mr. Joffe alleged they 12:44:49

12 were? 12:44:50

13 MR. LEVY: Objection. 12:44:51

14 A. Same answer. 12:44:54

15 Q. Did you discuss the server allegations with 12:45:04

16 David Kramer, Mr. Fritsch? 12:45:06

17 A. Same -- same answer. 12:45:11

18 MS. KRAWIEC: If we can just quickly pull 12:45:14

19 up Tab 106, which is the Sussmann indictment. It's 12:45:18

20 been previously entered as an exhibit. 12:45:21

21 And, Joe, if you could please go to 12:45:22

22 paragraph 22G. 22G. Thank you. 12:45:46

1 BY MS. KRAWIEC: 12:45:46

2 Q. So, paragraph G says, In connection with 12:46:00

3 this tasking, Tech Executive 1 emailed to Internet 12:46:02

4 Company 3 personnel a five-page document, the Trump 12:46:04

5 Associates Lists, listing six associates of Trump and 12:46:06

6 a purported U.S.-based lobbyist for Russia Bank 1, 12:46:12

7 Russian Bank-1, who was also discussed in written 12:46:14

8 materials prepared by the U.S. investigative firm that 12:46:17

9 Sussmann would later provide to the FBI General 12:46:21

10 Counsel. 12:46:21

11 The Trump Associates List contained 12:46:23

12 detailed personal information for these individuals 12:46:26

13 including, for example, their names, home addresses, 12:46:28

14 personal email addresses, business names, business 12:46:31

15 websites and email domains, suspected IP addresses for 12:46:36

16 those domains, and information pertaining to the 12:46:39

17 spouse of one of those -- these associates. Tech 12:46:41

18 Executive 1 directed that these individuals should be 12:46:43

19 a focus of Internet Company 3's data queries and 12:46:47

20 analysis. 12:46:48

21 Are you familiar with this Trump Associates 12:46:53

22 list? 12:46:53

1	<b>A. Same answer.</b>	12:46:57
2	Q. Did Fusion draft this document?	12:46:59
3	<b>A. Same answer.</b>	12:47:02
4	Q. Did Fusion provide this document to Perkins	12:47:05
5	Coie?	12:47:05
6	<b>A. Same answer.</b>	12:47:07
7	Q. Did Perkins Coie ask Fusion to draft this	12:47:10
8	document?	12:47:10
9	<b>A. Same answer.</b>	12:47:12
10	Q. Mr. Fritsch, do you know who the Trump	12:47:15
11	Associates List includes?	12:47:16
12	<b>A. Same answer.</b>	12:47:18
13	Q. Mr. Fritsch, did you or anyone at Fusion	12:47:28
14	create or assist in the creation of any materials	12:47:31
15	containing false statements regarding the Alfa-Bank	12:47:35
16	server allegations that were submitted to the FBI?	12:47:38
17	MR. LEVY: Objection.	12:47:38
18	<b>A. Same answer.</b>	12:47:42
19	Q. Did you or anyone at Fusion create or	12:47:45
20	assist in the creation of any materials containing	12:47:49
21	false statements regarding the Alfa-Bank server	12:47:52
22	allegations that were submitted to the CIA?	12:47:55

1 MR. LEVY: Objection. 12:47:56

2 A. Same answer. 12:47:56

3 Q. Did you or anyone at Fusion assist in the 12:48:00

4 creation of any materials containing false statements 12:48:03

5 regarding the Alfa-Bank server allegations that were 12:48:05

6 submitted to Congress? 12:48:08

7 A. Same answer. 12:48:09

8 MR. LEVY: Objection. 12:48:09

9 Q. Did you or anyone at Fusion provide 12:48:11

10 information related to the Alfa-Bank server 12:48:13

11 allegations to the FBI with the intent that the FBI 12:48:17

12 investigate those allegations? 12:48:19

13 MR. LEVY: Objection. 12:48:20

14 A. Same answer. 12:48:21

15 Q. Did you or anyone at Fusion provide 12:48:23

16 information related to the Alfa-Bank server 12:48:26

17 allegations to the CIA with the intent that the CIA 12:48:30

18 investigate those allegations? 12:48:31

19 A. Same answer. 12:48:35

20 Q. Did you or anyone at Fusion provide 12:48:37

21 information related to the Alfa-Bank server 12:48:39

22 allegations to Congress with the intent of influencing 12:48:42

1 formal Congressional proceedings? 12:48:46

2 MR. LEVY: Objection. 12:48:46

3 A. Same answer. 12:48:47

4 Q. Did you or anyone at Fusion fabricate or 12:48:51

5 cause to be fabricated DNS data showing look-ups 12:48:54

6 between Alfa-Bank and the Trump organization? 12:48:58

7 MR. LEVY: Objection. 12:48:58

8 A. Same answer. 12:49:04

9 Q. Did you or anyone at Fusion alter or cause 12:49:08

10 to be altered DSN data related to the Alfa-Bank server 12:49:11

11 allegations? 12:49:12

12 MR. LEVY: Objection. 12:49:13

13 A. Same answer. 12:49:14

14 Q. Did you or anyone at Fusion selectively 12:49:16

15 present or spin DNS data related to the Alfa-Bank 12:49:19

16 server allegations? 12:49:23

17 MR. LEVY: Objection. 12:49:23

18 A. Same answer. 12:49:25

19 Q. Were you or anyone at Fusion part of a 12:49:27

20 group of individuals who investigated suspected 12:49:30

21 foreign interference in the 2016 U.S. Presidential 12:49:33

22 Election? 12:49:34





1 Q. Mr. Fritsch, did you intend to cause 12:50:24  
2 reputational harm to Alfa-Bank? 12:50:26  
3 MR. LEVY: Objection. 12:50:28  
4 A. Same answer. 12:50:30  
5 Q. Did you intend to cause harm to Alfa's 12:50:33  
6 business objectives? 12:50:35  
7 MR. LEVY: Objection. 12:50:36  
8 A. Same answer. 12:50:36  
9 MS. KRAWIEC: Mr. Levy, we are going to 12:50:44  
10 keep this deposition open, given the Fifth Amendment 12:50:46  
11 assertions, to the extent that there comes a time when 12:50:49  
12 Mr. Fritsch no longer is going to assert his Fifth 12:50:52  
13 Amendment rights or his rights under the Maryland 12:50:54  
14 Declaration of Rights. 12:50:54  
15 MR. LEVY: May I provide some context for 12:51:01  
16 Mr. Fritsch's assertion of his rights today? 12:51:04  
17 MS. KRAWIEC: Sure. And I just going to 12:51:06  
18 ask actually about that. I know at the end you had 12:51:10  
19 made a statement on the record that Fritsch's company 12:51:12  
20 has been cooperating with the Office of Special 12:51:15  
21 Counsel for over a year, so if you could elaborate on 12:51:17  
22 that. I don't know if that's what you wanted to talk 12:51:19

1 about, Mr. Levy. 12:51:21

2 MR. LEVY: I'm just going to state that 12:51:22

3 Alfa is taking the position that each of the questions 12:51:24

4 it's been asking today of Mr. Fritsch is relevant to 12:51:29

5 Alfa's complaint whose subject matter is the 12:51:33

6 Alfa-Trump server allegations -- strike that -- the 12:51:36

7 Alfa-Trump server communications. 12:51:40

8 And that subject matter is the same subject 12:51:43

9 matter of an ongoing criminal investigation. And Mr. 12:51:47

10 Fritsch's company as you know, Fusion GPS, has been 12:51:50

11 cooperating with that investigation for close to year. 12:51:54

12 As an owner of that company, Mr. Fritsch is a subject 12:51:57

13 of the investigation and is invoking his right not to 12:52:00

14 testify today under Article 22 of the Maryland 12:52:03

15 Declaration of Rights and the Fifth Amendment to the 12:52:05

16 U.S. Constitution. 12:52:07

17 These privileges under Article 22 and the 12:52:10

18 Fifth Amendment were designed to protect the innocent, 12:52:13

19 such as Mr. Fritsch, quote, who otherwise might be 12:52:16

20 ensnared by ambiguous circumstances. End of quote. 12:52:19

21 That's Ohio v. Reiner, 532 U.S. 17 at page 21, a 2001 12:52:23

22 case. See also Newman v. State, 384 Maryland, 285, at 12:52:32

1 pages 314 to 316. 2004. 12:52:36

2 And no adverse inference shall be drawn 12:52:40

3 from his election to remain silent under Article 22 of 12:52:44

4 the Maryland Declaration of Rights, see Crosby v. 12:52:48

5 State, 366 Maryland, 518, at pages 526 to 528 and 12:52:54

6 footnote 8. It's a 2001 case. 12:52:58

7 These privileges can apply merely to 12:53:00

8 information that, quote, would furnish a link in the 12:53:04

9 chain of evidence that could lead to prosecution. End 12:53:07

10 of quote. Or, quote, could be used against him in a 12:53:11

11 criminal prosecution. End of quote. 12:53:13

12 Maness v. Meyers, 419, U.S. 449 at page 12:53:18

13 461. It's a 1975 case, emphasis added, citing Hoffman 12:53:23

14 v. United States, 341, U.S. 479 at page 46. That's a 12:53:32

15 1951 case. Thank you. 12:53:33

16 MS. KRAWIEC: Thank you. Joe, we can go 12:53:41

17 off. 12:53:41

18 VIDEOGRAPHER: Going off the record at 12:53:43

19 12:53 p.m. 12:53:43

20 (Discussion off the video record.) 12:53:43

21 COURT REPORTER: Mr. Levy, did you want a 12:53:43

22 copy of the transcript? 12:53:43

1 MR. LEVY: Yes, please. 12:54:12

2 COURT REPORTER: And, Ms. Krawiec, did you 12:54:12

3 want the transcript? 12:54:12

4 MS. KRAWIEC: Yes. If we could get it 12:54:15

5 expedited, I would appreciate it. 12:54:16

6 12:54:16

7 - - - 12:54:16

8 (The deposition was concluded at 12:54 p.m.) 12:54:16

9 (Reading and signature is being waived.) 12:54:16

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NOT A CERTIFIED COPY

1 C E R T I F I C A T E 12:54:16

2 UNITED STATES OF AMERICA ) 12:54:16

3 ss: 12:54:16

4 DISTRICT OF COLUMBIA ) 12:54:16

5 I, ELIZABETH MINGIONE, Registered 12:54:16

6 Professional Reporter and Notary Public within and for 12:54:16

7 the District of Columbia, do hereby certify: 12:54:16

8 That the witness whose testimony appears in 12:54:16

9 the foregoing deposition was duly sworn, and that the 12:54:16

10 within transcript is a true record of the testimony 12:54:16

11 given by such witness. 12:54:16

12 I further certify that I am not related to 12:54:16

13 any of the parties to this action by blood or 12:54:16

14 marriage, and that I am in no way interested in the 12:54:16

15 outcome of this matter. 12:54:16

16 IN WITNESS WHEREOF, I have hereunto set my 12:54:16

17 hand this 16th day of February 2022. 12:54:16

18 12:54:16

19 Elizabeth Mingione 12:54:16

20 My Commission Expires: 12:54:16

21 July 14, 2025 12:54:16

22

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# **Exhibit 4**

*NOT A CERTIFIED COPY*

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

-----X  
: :  
AO ALFA-BANK, : Docket No.: 2021 CA2 000683  
Plaintiff, : :  
vs. : :  
JOHN DOE, et al., : :  
Defendants. : :  
: Thursday, February 10, 2022  
-----X : Washington, D.C.

The above-entitled action came on for hearing  
before the HONORABLE HEIDI M. PASICHOW, Associate Judge,  
in Courtroom Number 516.

APPEARANCES:

On Behalf of the Plaintiff:  
MARGARET E. KRAWIEC, ESQUIRE  
Washington, D.C.

On behalf of the Respondent:

JOSHUA A. LEVY, ESQUIRE  
KEVIN P. CRENNY, ESQUIRE  
E. ANDREW SHARP, ESQUIRE  
Washington, D.C.

22-00449

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C O N T E N T S

MISCELLANY

OPENING ARGUMENT - PLAINTIFF	5
OPENING ARGUMENT - RESPONDENT	13
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CLOSING ARGUMENT - RESPONDENT	100

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P R O C E E D I N G S

1  
2 THE DEPUTY CLERK: Your Honor, now calling the  
3 matter of AO Alfa-Bank versus John Doe, et al., Case No.  
4 2021 CA 683.

5 Parties, please unmute your audio device and state  
6 your name for the record, starting with the plaintiff.

7 MS. KRAWIEC: Your Honor, Margaret Krawiec, on  
8 behalf of AO Alfa-Bank.

9 THE COURT: Thank you very much. Welcome back.

10 MS. KRAWIEC: Thank you.

11 MR. LEVY: Good afternoon, Your Honor. Joshua  
12 Levy on behalf of Laura Seago.

13 THE COURT: Thank you very much.

14 Anybody else here for this hearing?

15 MR. SHARP: Andy Sharp here on behalf of Laura  
16 Seago.

17 THE COURT: Okay. Thank you, Mr. Sharp.

18 MR. CRENNY: Kevin Crenny on behalf of Laura  
19 Seago.

20 THE COURT: Okay. Thank you.

21 Anybody else? No. Okay. I think the last time  
22 you heard from me was --

23 MS. KRAWIEC: Sorry, Your Honor. We do have an  
24 observing party.

25 THE COURT: Oh.

1 MS. KRAWIEC: I don't know. But just to flag it  
2 for Your Honor.

3 THE COURT: Okay.

4 MS. KRAWIEC: Kevin Schofield is what the name is  
5 coming up. And it just says, "Observing." But I don't know  
6 who Mr. Schofield is.

7 THE COURT: Okay.

8 MR. LEVY: And we don't --

9 THE DEPUTY CLERK: Your Honor, this is the  
10 Courtroom Clerk. That's one of the staff members. They're  
11 fine.

12 MR. LEVY: I see.

13 MS. KRAWIEC: Okay, great then.

14 THE COURT: Thank you.

15 MR. LEVY: All right.

16 THE DEPUTY CLERK: Mm-hmm.

17 THE COURT: So if you're all ready to proceed, I  
18 did want to indicate at this -- the fact that I did -- you  
19 did last year for me, by order, denying non-party Seago's  
20 motion to stay discovery pending a PO, holding in abeyance  
21 motion to compel, which is why we're here today granting  
22 non-party Seago's motion for a seven-day extension to time  
23 to file opposition to Alfa's motion to compel.

24 So let me just indicate -- I have the  
25 documentation that's been sent to me regarding this motion.



1 The opposition. I also believe I have the list of  
2 deposition questions that were not answered based upon what  
3 I understand to be attorney/client privilege assertion and  
4 work product doctrine.

5 My first question, if, if it's -- if there's  
6 something that you did file that I'm not noting for some  
7 reason, because we did have a -- sort of a thorough review  
8 of this matter on once again. And when I say "we" I'm  
9 referring to judicial clerk and myself.

10 What I didn't see is -- is the issue regarding  
11 whether or not there was a certification or a request on the  
12 part of counsels to discuss this matter before filing the  
13 motion to compel. I think that's required by our rules.  
14 And I, I -- I didn't catch that, if that was done. It's a  
15 meeting prior to the filing; meeting to resolve discovery  
16 disputes.

17 MS. KRAWIEC: Your Honor, we have -- we did file  
18 that. We have the Rule 37 certificate. It should be at the  
19 back of our initial filing, Your Honor. I -- I'm happy to,  
20 to read into the record if that would be helpful.

21 THE COURT: Let me just see what you're referring  
22 to. Would you mind reading it into the record, just so that  
23 we can --

24 **OPENING ARGUMENT - PLAINTIFF**

25 MS. KRAWIEC: Yes. Absolutely. So accompanying

1 our motion was a Rule 37 certificate, which was just in  
2 front of the certificate of service, and it says, "I,  
3 Margaret E. Krawiec, hereby certify that in accordance with  
4 Rule 37 of the D.C. Superior Court Rules of Civil Procedure,  
5 counsel for AO Alpha-Bank made a good faith effort to secure  
6 the requested discovery, including through a meeting with  
7 Laura Seago's counsel.

8 "Throughout the October 8, 2021, deposition of  
9 Seago, counsel for Alpha-Bank engaged in discussion with  
10 Seago's counsel regarding the deposition testimony being  
11 withheld and the basis for counsel's instruction not to  
12 provide the deposition testimony at issue.

13 "Counsel for Alpha-Bank also informed Seago's  
14 counsel that Alpha-Bank would file this motion and confirm  
15 that Seago opposed the motion and would not consent to  
16 providing the withheld testimony. With Alpha-Bank's good  
17 faith efforts rebuffed, including a face-to-face discussion,  
18 Alpha-Bank submitted this motion to the Court."

19 THE COURT: Okay. Thank you very much. I  
20 appreciate that. I just wanted to make sure that we --  
21 unless there's some dispute about that, that we're  
22 proceeding as we should be proceeding.

23 I've also taken another look at -- which we kind  
24 of do on a fairly regular basis, the Rule 26(b) in  
25 particular. And Rule 26(b) involves discovery scopes and

1 limits. Now, correct me if I'm wrong. And I'm not trying  
2 to simplify, but I am trying to understand what we're doing  
3 in terms of the deposition and the claim that the defendant  
4 in this case is making regarding attorney/client privilege  
5 and work product doctrine.

6 I do state and focus on Rule 26, because as you  
7 know, there is a proportionality test. And I, I focus on  
8 it. Parties may obtain discovery regarding any non-  
9 privileged matter; that's number one. And that's at issue  
10 as I understand it. That is relevant to any parties claim  
11 or defense and proportional to the needs of the case.

12 Considering the importance of the issues at stake  
13 and the acts, then the amounts in controversy, the party's  
14 relevant access to relevant information through other means,  
15 the party's resources, the importance of the discovery and  
16 resolving any issues and whether the burden or expense of  
17 the proposed discovery outweighs its likely benefit.  
18 Information within this scope of discovery need not be  
19 admissible in evidence to be discoverable.

20 So I just want to indicate that that is in the  
21 forefront of my mind as we address this motion. And I think  
22 that -- I, I need to ask some questions because the case is  
23 not with me. The only reason you're here is because there  
24 was an interest in enforcing a subpoena that was provided to  
25 one of our residents here in the District of Columbia.

1           So without having a more fulsome understanding of  
2 the, the claim and defenses, it makes it a little bit more  
3 challenging for me to -- to weigh and balance as I think  
4 that I should under the circumstances of the rules.

5           So keeping that in mind, I did have the  
6 opportunity to take a look at the motion and to take a look  
7 -- as I said, the other documents filed. I think we also  
8 have the questions that were not answered. And is there  
9 anything that either side wants to add to this?

10           MR. LEVY: Your Honor, yes.

11           MS. KRAWIEC: Your Honor --

12           THE COURT: There's probably a good -- yes?

13           MS. KRAWIEC: Your Honor, we also filed a  
14 supplement. A supplemental authority. The Maryland Court  
15 just on -- I believe it was February 5th, ordered Ms.  
16 Seago's boss to sit for his deposition. The circumstances  
17 are almost identical to what happened here with Ms. Seago.

18           Specifically, Your Honor, Mr. Fritsch, same  
19 procedural history, had tried to quash the subpoena. In the  
20 first instance, Maryland Court rejected that. Fritsch  
21 eventually sat similar to Seago where -- you know, answered  
22 a couple -- I, I should have said, you recall the way that  
23 these depositions started is that there were two procedural  
24 non-substantive questions that the witnesses would answer:  
25 Ms. Seago and, and the Maryland case I'm telling you about

1 Mr. Fritsch.

2 That then prompted an avalanche of briefing which  
3 resulted in both the Maryland Court and this Court ruling  
4 that in fact Ms. Seago and Mr. Fritsch needs to sit for  
5 their depositions.

6 Mr. Fritsch, similar to Ms. Seago, sat for his  
7 deposition and invoked instructions. His counsel invoked  
8 instructions not to answer on basically the same privilege  
9 grounds, approximately 75 times. Those like we did here, we  
10 filed a motion to compel to the Maryland Court outlining all  
11 of the different instructions not to answer that we thought  
12 were inappropriate.

13 We received an order just the other day on  
14 February 5th from the Maryland Court ruling whole cloth that  
15 every single objection that Mr. Levy made, that we had  
16 flagged for the Court, was improper in terms of the  
17 privilege assertions from attorney/client, work product in  
18 terms of the 60 -- on the relevance objections that were  
19 made.

20 Mr. Fritsch is supposed to sit for his deposition  
21 on February 14th. Now they filed an emergency motion with  
22 the Maryland Special Court of Appeals, but we think it's  
23 highly relevant, Your Honor, that the same -- what we  
24 believe is gamesmanship, and quite frankly, Your Honor, your  
25 October 1st order, which you may recall, we took on and had

1 a very robust discussion from a 6 -- 26(b) perspective, what  
2 would be appropriate from a scope of discovery perspective  
3 because Ms. Seago's counsel was arguing that the window of  
4 what could be asked was very, very narrow, that it only  
5 essentially -- what was relevant was whether or not Ms.  
6 Seago knew who perpetuated the alleged cyber-attacks.

7 We argued to this Court that the scope had to be  
8 so much broader because with John Doe suits, you need to  
9 employ a more of a connect-the-dot theory. So many  
10 different roads and avenues are relevant for purposes of  
11 garnering and gathering facts that could help you ultimately  
12 get to the John Doe defendants.

13 And Your Honor actually agreed with us. And I  
14 specifically remember what really resonated with me, Your  
15 Honor, was the reference that you made to -- it was a case  
16 where there were over a hundred John Doe defendants. It was  
17 the context of an anti-trust case. And you had said that  
18 you had given very wide, broad-scoped discovery pursuant to  
19 26(b) because it was critical for the parties to have that  
20 kind of leeway for purposes of ultimately naming the  
21 defendants. And that, in fact, in that case the example you  
22 used, the plaintiffs were able to substitute for the John  
23 Does as a result of giving them that leeway. And my  
24 recollection, Your Honor, is not only was there a robust  
25 discussion during the hearing that we had that led to your

1 October 1st ruling, but that you also included a discussion  
2 of that in your October 1st ruling.

3 So while we fully appreciate sort of the Court's  
4 like, looking at it from the 26(b) perspective, that  
5 argument was already addressed and taken on by the -- this  
6 Court when it issued its October 1st ruling. And under that  
7 guidance is how we proceeded when we deposed Ms. Seago.

8 And we believe that, you know, Ms. Seago's counsel  
9 is trying to relitigate an issue that this Court already  
10 ruled on in providing the guidance on and therefore making  
11 unfounded relevance objections that we think are  
12 inconsistent with this Court's already ruling as it found in  
13 its October 1st opinion.

14 And, and so bringing back to sort of Mr. Fritsch,  
15 which we had a very similar situation where there was  
16 essentially an obstruction that led to the, you know, the,  
17 the -- you know, not allowing us to get to some really  
18 critical evidence.

19 And the Maryland Court recognized that, and that's  
20 why Mr. Fritsch has to sit on Monday. And we're asking this  
21 Court to follow exactly sort of what the Maryland Court, you  
22 know, concluded.

23 There's also, you know, a pattern that we're  
24 seeing, Your Honor, with these obstructions. Mr. Levy  
25 worked in a so-called common interest agreement/arrangement

1 with Berkowitz, another Fusion employee who's represented by  
2 another attorney. During that deposition, it was the exact  
3 same thing that happened, Your Honor. The obstructions --  
4 the instructions not to answer, and not only that, but we  
5 had 215 answers of, "I don't recall" in a 5-hour deposition.

6 So this is kind of a calculated plan to  
7 essentially prevent Alpha-Bank from getting information when  
8 it's already been established in our last hearing that these  
9 Fusion employees have relevant information that we need to  
10 get to, and we believe that the privilege objections are  
11 unfounded just like the Maryland Court found.

12 MR. LEVY: Your Honor, may I be heard?

13 THE COURT: Yes. But I have one question.

14 When you talk about privilege, I did see the order  
15 addressing privilege. And the Judge found there that he had  
16 -- I think it's -- you said it's a he, that the individual  
17 is a he -- that in that case, did not have a privilege. But  
18 it doesn't say anything about work product.

19 MS. KRAWIEC: Your Honor --

20 THE COURT: That order, it -- it says privilege.

21 So I don't know what the argument was regarding work -- the  
22 work product doctrine.

23 MR. LEVY: Your Honor --

24 THE COURT: Mr. Levy, did you want to comment on  
25 that?





1 document that Your Honor just recently mentioned.

2 And in the Court's October 1 order, the Court  
3 addressed the issue of privilege at that time, before the  
4 deposition had taken place. And here's what the Court said:

5 "Ms. Seago does not know what information Alpha-  
6 Bank is planning to ask, and thus does not know if  
7 information related to attorney/client privilege would be  
8 asked. A request to this Court to quash a subpoena due to  
9 the possibility that Alpha-Bank could ask sensitive  
10 questions that implicate privileged information is based  
11 only on speculation and does not support a motion to quash."

12 Now you're --

13 THE COURT: That's on page 7. I was just --

14 MR. LEVY: That's correct.

15 THE COURT: -- taking a look at that.

16 MR. LEVY: That's -- that seems about right.

17 THE COURT: Mm-hmm.

18 MR. LEVY: You're welcome. We are now well beyond  
19 speculation, Your Honor. Alpha-Bank has probed over 60  
20 questions -- posed over 60 questions regarding the  
21 privilege. Alpha-Bank spent much more of its time in the  
22 deposition not asking about the cyber-attack -- the alleged  
23 cyber-attack. They devoted all of one question to that.  
24 They, they asked counsel several questions about the basis  
25 for the privilege. And that privilege was established in

1 2016 by the law firm of Perkins Coie.

2 Perkins -- Alpha-Bank asked over 60 questions  
3 about Laura Seago's work for a law firm. A national law  
4 firm of the Washington, D.C. office. In 2016 in an acutely  
5 litigious environment, Perkins Coie was advising, was  
6 providing legal advice to its clients, the Democratic  
7 National Committee, and the Hillary for America campaign.  
8 It was concerned about a palpably identifiable litigant in  
9 Donald Trump, who had, at that point of the engagement in  
10 2016, filed over a thousand lawsuits. His associates and  
11 other people who were the subject of concern were also  
12 litigious and the DNC and the Hillary campaign were  
13 concerned that should they make public statements directly  
14 or indirectly, what is their risk of defamation.

15 They needed advice from their lawyers. And their  
16 lawyers went to Fusion GPS, Ms. Seago's employer, to get  
17 expertise on the facts. They needed the outside expertise  
18 of Fusion GPS, who had -- for months had already been  
19 researching Mr. Cobb, who had over 20 years of experiences  
20 -- investigative journalist who had over 20 years of  
21 experience researching the former Soviet Union, a topic of  
22 concern for the clients of Perkins Coie. And that expertise  
23 was used to help provide legal advice to Perkins Coie's  
24 clients in anticipation of litigation, i.e., defamation --  
25 e.g., defamation.

1           And so Alpha-Bank has abused this Court's order by  
2 making sure that most of its time during that deposition was  
3 consumed with asking questions about communications it knew  
4 was -- were privileged. And as you just heard from counsel  
5 for Alpha-Bank, they did that in other depositions of other  
6 Fusion employees. And we agree with the Court that it is  
7 appropriate to focus on Rule 26(b). And, and it's, and it's  
8 very important in this context.

9           Alpha-bank, after deposing Ms. Seago for over 4  
10 hours, has not met its burden to show that additional time  
11 is needed for Ms. Seago to testify, particularly in light of  
12 the privilege, which the Court of course must consider under  
13 Rule 26(b). And it's -- it's -- the context is critical  
14 here. Alpha-Bank has alleged in its Florida complaint a  
15 cyber-attack. A digital crime. And it has alleged digital  
16 John Doe defendants participated in this alleged cyber-  
17 attack. Alpha-Bank and its lawyers know how to take  
18 discovery to identify a digital defendant.

19           But they have to serve a subpoena on an internet  
20 service provider. They have not done that. They know --  
21 they have suspicions about IP addresses. They, they have  
22 not served a single subpoena on an internet service provider  
23 in the many months they've been taking discovery before  
24 naming a defendant. In the Exhibit 7 to their complaint,  
25 Your Honor, there's a report from an Alpha contractor that

1 identifies 321 IP addresses of suspicious IP addresses.  
2 And, and Alpha has its public record whom Alpha has  
3 subpoenaed in this case, purportedly to find information on  
4 who these John Doe defendants -- the first entity that they  
5 should be subpoenaing is the ISP, the internet service  
6 provider, to figure out who these IP addresses are.

7           Instead, they're -- they want to subpoena Ms.  
8 Seago and depose her not once, but twice. And, and here,  
9 Your Honor, this is -- this Rule 26(b) requirement is  
10 obviously critical and the D.C. Courts recently, in November  
11 of 2021, found -- and this is the *Diamond Services*  
12 *Management Company, LLC* case, it said that -- 339 FRD 334 at  
13 page 339 and it's DDC 2021 -- and that Court said:

14           "Where potentially important legal rights are  
15 implicated by a subpoena and alternative sources are more  
16 convenient or less burdensome, those alternatives should be  
17 explored first."

18           And here, Your Honor, Alpha has not explored those  
19 less burdensome, more convenient sources. It has not served  
20 a single subpoena on an ISP. It asked questions of Ms.  
21 Seago for over 4 hours. She answered them and privilege now  
22 is no longer speculative, Your Honor, it's real. And Ms.  
23 Seago should not have to sit for additional testimony.

24 Thank you.

25           THE COURT: Thank you.

1 MS. KRAWIEC: Your, Your Honor, may I -- may I  
2 respond?

3 THE COURT: Yes. But let me just indicate one,  
4 one -- one opinion I do have.

5 I agree with Mr. -- is it Levy or Levy?

6 MR. LEVY: It's Levy, Your Honor. Thank you.

7 THE COURT: Got it. Okay. I'm sorry. I agree  
8 with Mr. levy to the extent that I didn't rule on what I'm  
9 going to be ruling on either today or in a written order. I  
10 just ruled in my order that the deposition should go forward  
11 and that along with that, that the defendant in this case,  
12 the, the third-party defendant in this case should  
13 participate.

14 I believe that what Mr. Levy just indicated on  
15 page 7 of that October 1st order says exactly that. It says  
16 nothing about compelling the witness to answer specific  
17 questions, because we know the questions would be. So I  
18 just want to correct, if you will, I think your argument  
19 that, you know, we're back to the same round. And I don't  
20 think we are.

21 MS. KRAWIEC: No, Your Honor. I'm, I'm -- I'm  
22 sorry if I wasn't clear. The only point I was trying to  
23 make, and obviously I wasn't sufficiently articulate, is  
24 that we had this very discussion because what Mr. Levy was  
25 trying to do at the last argument was to limit the questions

1 that were posed to Ms. Seago. And that led to a robust  
2 discussion with the Court about whether or not a connecting-  
3 the-dot theory was important to employ for purposes of the  
4 deposition. And Your Honor, at least during the context of  
5 our discussion, that's when you gave the example of the case  
6 that you had with the John Does and the importance of giving  
7 sufficient leeway to be able to connect the dots.

8 And Your Honor, I just point the Court to the  
9 *Daniels* case which is a case from 2014 which says:

10 "Relevancy to the subject matter is construed most  
11 liberally to the point that discovery should be granted  
12 where there is any possibility that the information sought  
13 may be relevant to the subject matter of the action."

14 So Your Honor, I just want to -- I, I have some --  
15 THE COURT: But, but let me just -- let me just  
16 respond to that. Relevance is, is one factor.

17 MS. KRAWIEC: Correct, Your Honor. Yes.

18 THE COURT: But if -- but it -- it's not the be  
19 all and end all of what I see as Rule 26(b), which involves  
20 what is a proportionality test. And part of that is I  
21 believe the -- again, Mr. levy indicated, it's the burden.  
22 It's your burden --

23 MS. KRAWIEC: Well --

24 THE COURT: -- to indicate that the expense of  
25 purposed discovery outweighs its likely --

1 MS. KRAWIEC: But, but there's also the burden on  
2 them, Your Honor.

3 THE COURT: Its likely benefit -- excuse me. I'm  
4 sorry?

5 MS. KRAWIEC: The burden is on them as in the --  
6 the invokers of the privilege to establish the legitimacy of  
7 the privilege, which Mr. Levy asserted at least 6 -- over 60  
8 times to instruct his client not to answer.

9 And Your Honor, I think -- so when you look at the  
10 briefs, it looks as though we're talking about sort of  
11 wrinkles in the law and how the law should be interpreted.  
12 But let's look at the application in the context of the  
13 deposition.

14 If Your Honor will indulge me. I'm just going to  
15 read some of the questions, and the instructions not to  
16 answer that Mr. Levy, you know, -- when he made the  
17 objection was always attorney/client and work product. So  
18 when you were asking about the Maryland order, which it said  
19 about -- just about privilege, when you look at the  
20 transcript in both the Maryland deposition of Mr. Fritsch  
21 and Ms. Seago, the objections are always coupled with  
22 attorney/client and -- and work product.

23 THE COURT: But don't you agree that there is a  
24 distinction between the two?

25 MS. KRAWIEC: Absolutely, Your Honor. But Mr.



1 Levy was applying both as to each question.

2 THE COURT: Right. But that's not what the Court  
3 -- that's not what the Court did.

4 MS. KRAWIEC: The Maryland Court, Your Honor? The  
5 Maryland Court looked at -- we listed, just like we did for  
6 Your Honor, every single question and instruction not to  
7 answer that we felt was improper under the invocation of  
8 privilege. And the Court agreed with us. The Maryland  
9 Court said -- every single question and instruction not to  
10 answer that we flagged for the Court, the Court agreed was  
11 an improper invocation of privilege. That's what the  
12 Maryland Court found, Your Honor.

13 THE COURT: But what I'm saying -- what I'm  
14 suggesting is exactly that. I can't tell if the Maryland  
15 Court precluded its analysis for some reason. Although  
16 there doesn't seem to be much of analysis at all here, but  
17 okay, that -- that being said, this -- I trust that this  
18 Juris heard the arguments maybe or considered some paper  
19 filed. I can't tell.

20 MS. KRAWIEC: Your Honor, the --

21 MR. LEVY: (Indiscernible -- simultaneous  
22 discussion.)

23 THE COURT: (Indiscernible) is there seemed to be  
24 a motion. Okay? There seems to be a motion that the Court  
25 there considered. But I don't see anything in this Court

1 order that indicates that there was a focus on work product.

2 MR. LEVY: We cannot -- a) Your Honor, there is  
3 no --

4 MS. KRAWIEC: Your Honor, the briefing -- if you  
5 look at the briefing, Your Honor, there was a discussion of  
6 both attorney/client and work product. Your Honor, Mr. Levy  
7 is smiling -- agreeing with you that there was no hearing.  
8 No party requested a hearing. Alpha-Bank did not request a  
9 hearing. Ms. Seago did not request a hearing. The motion  
10 was submitted on the papers. There was robust briefing just  
11 like the papers that were submitted to Your Honor. And the  
12 Maryland Court ruled on the papers because no party asked  
13 for a hearing.

14 MR. LEVY: And there is no --

15 THE COURT: I'm -- but I'm not focusing on that.  
16 I'm just indicating that --

17 MR. LEVY: Your Honor, we struggled to understand  
18 the order as well, because it lacks a memorandum decision.  
19 There's no analysis. In addition to it being a Maryland  
20 decision with no -- with no binding effect in this Court --

21 THE COURT: If the only thing -- excuse me one  
22 moment. I think you did say that already. But it, it says  
23 as the -- "It is further ordered that the information that  
24 Fritsch withheld on the basis of privilege is at this  
25 December 1, 2021, deposition, is not privileged."

1           Now I don't see any ruling unless the Judge is  
2 clumping both arguments into one. But there is -- when you  
3 say -- you specifically said that on each objection there  
4 were two bases, and those two bases are -- are  
5 distinguishable.

6           MS. KRAWIEC: Your Honor --

7           THE COURT: So I don't see a ruling on the second  
8 bases.

9           MS. KRAWIEC: First of all, Your Honor, we would  
10 be more than happy to submit Mr. Fritsch's brief where you  
11 will see that the privileges are --

12           THE COURT: That's not -- there could be a brief  
13 on 15 matters. The issue is what was -- what the ruling  
14 says.

15           MS. KRAWIEC: So Your Honor, let me --

16           THE COURT: And -- if the Judge -- if somebody  
17 wants to ask the Judge to reconsider and, and amend or add  
18 an addendum or somehow articulate whether or not he's -- he  
19 or she -- he is using the term privilege for both  
20 attorney/client privilege and a work product doctrine then  
21 it should say that.

22           So I don't know -- I mean, it's not really clear  
23 to me. Other than the -- I mean, aside from the fact it's,  
24 it's not binding.

25           MS. KRAWIEC: Right.

1 THE COURT: But, but we know that it's not  
2 binding. What I'm not clear about is, you know, there may  
3 have been an assertion of both.

4 MS. KRAWIEC: There was.

5 THE COURT: But I don't see a ruling on both.

6 MS. KRAWIEC: Understood.

7 THE COURT: And maybe the Judge determined he  
8 doesn't have to do that because he's ordered that the show  
9 must go on. The deposition must go on and the deposition  
10 and, and -- and essentially granted your motion to compel  
11 that it take place.

12 MS. KRAWIEC: Well Your Honor, I think it would be  
13 very helpful for our discussion if we focused on some of the  
14 instructions not to answer.

15 So just to give you an example of how broad the  
16 instructions not to answer were, there was one question  
17 where we asked: "So who have you discussed Alpha-Bank with  
18 at Fusion?"

19 Mr. Levy: "I'm going to instruct the witness not  
20 to answer that question because the answer would implicate  
21 the attorney/client privilege and the attorney work product  
22 doctrine."

23 THE COURT: Well, wouldn't it?

24 MS. KRAWIEC: To ask at Fusion who was conducting  
25 opposition research? They testified on the Hill. Both Mr.

1 Simpson, who's the founder of Fusion, and John Podesta, who,  
2 as you know, headed up Hillary Clinton's campaign. Both  
3 testified on the Hill that Fusion's job was to conduct  
4 opposition research. Political opposition research. And  
5 when you look, for example, work product, you need to look  
6 at whether or not work is done for purposes of a, you know,  
7 anticipated litigation or whether or not the work would have  
8 been irrespective of the litigation.

9 Mr. Levy told you, and it's in the public  
10 transcripts from the hearing, that before Fusion was hired  
11 by Perkins Coie, they were conducting opposition research  
12 for the Washington Free Beacon. Then they were hired by  
13 Perkins Coie to continue that political opposition research.  
14 This is not a scenario where they were conducting research  
15 to help with legal advice or in anticipation of litigation.

16 Your Honor, so if, if you have someone that's  
17 conducting opposition research and the simple question is,  
18 "Who have you discussed Alpha-Bank with at Fusion?"

19 So within Fusion, Fusion employees were basically  
20 saying, "Who at Fusion was working on Alpha-Bank-related  
21 issues?" That's it. So if you have to do a privilege log,  
22 Your Honor, wouldn't you have to at least give that  
23 information in order for Alpha-Bank to be able to assess the  
24 privilege? To identify --

25 THE COURT: Well maybe the -- maybe -- maybe the

1 question could have been, "Were there any other employees at  
2 Fusion?"

3 MR. LEVY: Your Honor, may I be heard?

4 MS. KRAWIEC: That's what -- that's the next  
5 question, Your Honor.

6 THE COURT: But, but -- wait a second. But wait.  
7 I don't, I don't see that you -- but you're asking, "Who  
8 have you discussed?" Okay.

9 MS. KRAWIEC: Not like, "Did you discuss?" "Who."

10 THE COURT: Well my -- my issue is what  
11 information would that provide you with that -- that would  
12 further what you're looking for? I mean, what -- it's not  
13 even clear to me at this juncture reviewing these questions  
14 what you're looking for from this particular individual --

15 MS. KRAWIEC: Absolutely.

16 THE COURT: -- other than attempting to find out  
17 who -- if, if she was working on this. If she was, who did  
18 she work with.

19 MS. KRAWIEC: Correct.

20 THE COURT: And, and why wouldn't you -- why  
21 wouldn't you use the -- an -- the internet server to  
22 determine some of the questions that you're asking for  
23 instead of trying to seek information from a -- an entity.  
24 A member or an employee of an entity that's hired by a firm  
25 who was concerned about litigation. I think somewhere I saw

1 that there was litigation involving some of the issues that  
2 are being raised in this case, as far as I could tell in the  
3 *Florida Repo* case, as, as I understand it.

4 And so why is this employee of this entity hired  
5 by a law firm to provide an expertise, if you will, to  
6 protect the law firm or prepare for what seemed inevitable  
7 or what had been ongoing.

8 And so you want to ask if, if -- if you hire -- if  
9 you, yourself, have hired a similar entity to assist --  
10 based upon the expertise that you don't have, for example,  
11 as an attorney, hired by your firm, and you talk to that  
12 entity about what you're looking for and you're guiding them  
13 and you're -- they -- you're, you're having communications  
14 with them about this particular substance, this particular  
15 issue or these issues involving cases involving the bank,  
16 for example, as your client, you'd be asserting the same  
17 thing. You'd be asserting attorney/client privilege, or --  
18 or rather you'd be asserting work product.

19 MS. KRAWIEC: Your Honor, but that doesn't mean  
20 that it wouldn't be an appropriate assertion if you  
21 zealously advocate for your client. Here, there is an  
22 admission under oath, Your Honor, by the founder of Fusion  
23 and by John Podesta of the Hillary Clinton campaign saying  
24 that Fusion was hired to conduct political opposition  
25 research.

1           So when you have the work product test, because  
2 you seem to be focusing on this in -- in anticipation of  
3 litigation, one of the lines of cases says that if the work  
4 product that you -- would have generated, would have  
5 otherwise been generated irrespective of the litigation, the  
6 work product doesn't apply. The privilege doesn't apply.

7           I'll point Your Honor to the -- I'm going to  
8 pronounce the name wrong. But the *Guo Wengui v. Clark Hill*  
9 case, and it was a cyber security firm that was hired to  
10 conduct an investigation, but there was also litigation  
11 relevant to that cyber security attack. And what the Court  
12 found is that that cyber security firm would have conducted  
13 the investigation irrespective of the litigation.

14           Your Honor, the -- there has been public testimony  
15 that Fusion did not, in any way, work with the Hillary  
16 Clinton campaign. So you have a scenario where Perkins Coie  
17 hires them to conduct political opposition research and to  
18 broadly disseminate the server allegations to the media,  
19 right, so you also have waivers. Both -- not only actual  
20 waiver but implicit waiver because part and parcel of what  
21 they were hired to do was to conduct opposition research and  
22 to disseminate that to the media.

23           And this is not a scenario where Perkins Coie is  
24 coming to them with information. They were the ones that  
25 were conducting the opposition research. They were, as to



1 put it with Mr. Simpson's own words, as he testified on the  
2 Hill, they were the architects of the research. They  
3 decided what opposition research they conducted. They were  
4 not being guided by Perkins Coie. And again, they were  
5 conducting this political opposition research before Perkins  
6 Coie hired them.

7 THE COURT: But it doesn't matter because Perkins  
8 Coie then hired them and it changed their posture vis a vis  
9 the relationship with the law firm.

10 MS. KRAWIEC: But Your Honor, it -- if I hire an  
11 expert, does that mean that every little thing that the  
12 expert does is privileged simply because I, as a lawyer,  
13 hired them?

14 THE COURT: It depends.

15 MS. KRAWIEC: It depends. And Your Honor, if you  
16 look at the questions you asked me when I gave you the  
17 example, respectfully, you said, "Well by asking who at  
18 Fusion worked on Alpha, why does that get you closer to  
19 connecting the dots?"

20 The reason it gets you closer to connecting to the  
21 dots is because people within Fusion were speaking to the  
22 computer scientists. People within Fusion were speaking  
23 with the likes of Rodney Joffe, who was the individual that  
24 had the computer data, right, so we are trying to get to the  
25 people that had the computer data. And then those people

1 that had the computer data, where did they get that  
2 information from?

3 So Your Honor, I want to give you an example,  
4 which I think is one of the most egregious examples. When  
5 we asked questions about Mr. Rodney Joffe and the  
6 communications that -- that Fusion had with Mr. Joffe.

7 So again, Mr. Joffe is an individual that had the  
8 computer data at issue. And what we uncovered during the  
9 deposition was that Fusion employees had touch points with  
10 Mr. Joffe. Those discussions with Mr. Joffe were completely  
11 shut down by Mr. Levy in -- in apparent application of a pro  
12 hac common interest agreement.

13 So let me read this to you, Your Honor. "Are you  
14 aware of any agreements regarding confidentiality or shared  
15 privilege with Rodney Joffe?"

16 Answer: "I am not aware of any. We were meeting  
17 with Rodney Joffe in the presence of who I understood to be  
18 his attorney. Not Fusion's attorney. His attorney. It's a  
19 third party."

20 So question: "So on whose" -- "On whose basis are  
21 you claiming privilege of this meeting if Rodney Joffe was a  
22 third-party?"

23 Mr. Levy: "I'm claiming a privilege. The meeting  
24 was between Fusion and Perkins Coie and among other Perkins  
25 Coie attorney and his client and the entire meeting was

1 privileged and under common interest."

2 Question: "So you're" -- "There's a common  
3 interest agreement between Rodney and Joffe and Fusion and  
4 the other of Fusion's client?"

5 Mr. Levy: "For that meeting, yes."

6 Mr. Kelly: "Is there a signed agreement that  
7 you're aware of?"

8 "Not that I'm aware of."

9 "And has Perkins Coie relayed that" -- "this  
10 common interest to you?"

11 "I just told you that I'm not aware of a written  
12 agreement, but there was an agreement."

13 "So what is your understanding of when this common  
14 interest agreement was entered into?"

15 "I don't know."

16 "And when is the" -- "What is the purpose of the  
17 common interest?"

18 "I don't know."

19 "What is the common interest?"

20 "I'm not sure, except to discuss confidential  
21 material that was of interest to both clients."

22 Here was the server communications.

23 MR. LEVY: May -- may I be heard, Your Honor?

24 THE COURT: Yes.

25 MR. LEVY: Thank you very much. Now there are two

1 points in Alpha's counsel's (indiscernible) they'd like to  
2 address. The first --

3 MS. KRAWIEC: I'm sorry. Mr. Levy, I -- I'm  
4 having a hard time hearing you. I don't know if it's on my  
5 end.

6 THE COURT: No. I, I do think you could speak up  
7 a little bit. Thank you for --

8 MR. LEVY: No problem. I'm just trying not to  
9 shout. I wanted to address two points that Alpha's counsel  
10 raised. The first is Alpha is trying to obfuscate the facts  
11 in the law when they're discussing privilege and whether it  
12 should apply or not.

13 THE COURT: I think you have to speak up even  
14 more. It is very difficult to hear.

15 MR. LEVY: Thank you, Your Honor. Sorry about  
16 that.

17 THE COURT: Okay. Thanks.

18 MR. LEVY: The law in D.C. is clear that the work  
19 that an expert hired by a law firm need not be exclusively  
20 to provide legal advice. A primary purpose is the test in  
21 the District. That's the *KDR* decision. It's a D.C. Circuit  
22 decision in 2014. Another D.C. Circuit decision called  
23 *Deloitte*, which is cited in our papers, talked about how  
24 there could be multiple purposes, multiple uses of work that  
25 an expert hired by a lawyer or a law firm contract.

1           So there are multiple cases. The case that  
2 Alpha's counsel just cited to you is not the D.C. case test  
3 in D.C., this has been much litigated, is that the work  
4 conducted pursuant to the Kovel letter, pursuant to an  
5 engagement with the law firm or a lawyer in the District is  
6 protected by the privilege -- by the attorney/client  
7 privilege if it is -- if a primary purpose of that work is  
8 to help the lawyer provide legal advice to its clients.

9           And as Your Honor has said today, in 2016, in an  
10 acutely litigious environment, the DNC and the Hillary  
11 campaign sought and obtained legal advice from Perkins Coie  
12 on the defamation risks of -- in the litigation risks of  
13 material that they would disclose or share directly or  
14 indirectly through surrogates. Fusion's expertise was used  
15 to inform the lawyers, because the lawyers, as, as Your  
16 Honor has said, did not have that in-house expertise.

17           So I want to make that clear that the law is a  
18 primary purpose test. Not the purpose. Not the only  
19 purpose. Not the only use. That's not the law in the  
20 District of Columbia.

21           THE COURT: Can you please recite -- give me the  
22 cites for the case that you cited --

23           MR. LEVY: Sure.

24           THE COURT: -- on behalf of the plaintiff? I  
25 think you said it was *Guo* or --

1 MS. KRAWIEC: Sorry. The, the *Clark Hill*? Is  
2 that what you're asking Your Honor? And that is a D.C. Case  
3 despite Mr. Levy's suggestion otherwise.

4 THE COURT: I didn't think that was the one that  
5 you just cited.

6 MS. KRAWIEC: It's the -- the *Clark Hill*? Is that  
7 what you're asking, Your Honor?

8 THE COURT: Yeah.

9 MR. LEVY: You were talking about --

10 THE COURT: You said -- "I don't think I can  
11 pronounce this" --

12 MR. LEVY: Yes. It was *Guo Wengui versus Clark*  
13 *Hill*.

14 THE COURT: Okay.

15 MR. LEVY: So it's *G-u-o W-e-n-g-u-i versus Clark*  
16 *Hill, PLC*.

17 THE COURT: Okay.

18 MR. LEVY: And the cite is 338 Frd.7d DC 2021.

19 THE COURT: Okay. And then you also cited a --  
20 you also said *Daniels*.

21 MS. KRAWIEC: Oh. Yes, Your Honor. That's the  
22 *Daniels* --

23 THE COURT: On relevance.

24 MS. KRAWIEC: That's the *Daniels versus Potomac*  
25 *Electric Power Company*. It's 100 A.3d [REDACTED].

1 THE COURT: Okay.

2 MS. KRAWIEC: And, and Your Honor, the *Deloitte*  
3 case, it's important for you to understand, Your Honor, that  
4 the *Deloitte* case is very different factually despite Mr.  
5 Levy's representation. *Deloitte* did not claim work product  
6 over all internal work. Only a single memorandum that  
7 summarized a meeting among Dow. Dow's outside counsel and  
8 *Deloitte*, as well as two documents prepared by attorneys.  
9 It recorded the thoughts of outside counsel regarding the  
10 prospect of litigation.

11 So what the *Deloitte* case says is that it needs to  
12 contain the thoughts and opinions of counsel developed in  
13 anticipation of litigation. And that memo was subjected to  
14 an in-camera review to determine whether there were thoughts  
15 or other analyses by non-attorneys, which would not be  
16 protected. And Fusion's thoughts and impressions are not  
17 protected despite a suggestion of a Kovel arrangement.

18 Could you imagine, Your Honor, if any time an  
19 attorney hired a consultant that anything the consultant did  
20 would be privileged? There's a beautiful quote in the *Clark*  
21 *Hill* case that I referenced. "When" -- it says, "When the  
22 true objective is to obtain the retained firm's expertise  
23 and not the assistance of legal advice, the Kovel doctrine  
24 does not apply."

25 So again, we go back to the own admission of

1 Fusion's founder, Glenn Simpson, and John Podesta, when  
2 testifying on the Hill about what Fusion was doing. They  
3 were conducting political opposition research to use those  
4 terms. Research that they controlled; that Mr. Simpson said  
5 they were the master of the architect of the research.

6 And if you look at this *Calvin Klein Trademark*  
7 *Trust* case, there's really helpful language in there, Your  
8 Honor. Even though admittedly it's a Southern District of  
9 New York Case. But in there, what the Court said was -- it  
10 says, "Nothing in the policy of the Kovel privilege suggests  
11 that attorneys, simply by placing accountants, scientists or  
12 investigators on their payrolls result in the attorney being  
13 able to protect all communications to such experts or  
14 communications among such experts, especially when such  
15 experts are operating as the Court put it, 'under their own  
16 steam.'"

17 So here, you have Fusion given full range to  
18 conduct opposition research to try and damage, you know,  
19 then candidate Trump's presidential campaign to benefit  
20 Hillary Clinton. So that's what Fusion's doing. And  
21 implying -- there's the waiver that I referenced, because as  
22 part of parcel of that opposition research, they were also  
23 trying to disseminate the server allegations to various  
24 members of the media.

25 So you've got -- they were not doing this to



1 provide legal advice to assist Perkins Coie in providing  
2 legal advice to its client. And so when you go to the cyber  
3 security firm case that I pointed the -- the Court to, when  
4 you look at the language in *Clark Hill*, you need to look at  
5 the true objective of what the retention of the firm is.  
6 And if the expertise is not to assist with legal advice, you  
7 can't hide behind Kovel like they're doing, Your Honor.

8 MR. LEVY: Your Honor, our, our client's  
9 contractor, the law firm, is not hiding behind the Kovel.  
10 The law firm and its clients have maintained the privilege.  
11 They've not authorized Fusion to waive privilege. Alpha's  
12 counsel tries to obfuscate what happened by talking about  
13 what Fusion was doing before the engagement for a totally  
14 different client that didn't have a lawyer, that wasn't  
15 interested in legal advice. It's irrelevant here.

16 What's -- all that's relevant is what the law firm  
17 of Perkins Coie did. They engaged Fusion for expertise to  
18 help advise their clients on litigation risk. That's --  
19 that's a primary purpose and there's an engagement letter  
20 and, and that is -- it's made clear to Fusion that that is a  
21 primary purpose of the engagement. If there are other  
22 purposes of the engagement, it's immaterial so long as the  
23 primary purpose -- or not the primary purpose but a primary  
24 purpose, and that's *KDR 756 F.3d 754 D.C. Circuit 2014*.

25 A primary purpose is the provision of legal

1 advice. The privilege is protected. And certainly, as, as  
2 Alpha's counsel and this Court and any reasonable person can  
3 conjure, sure, there can be more than one purpose of work  
4 that's conducted for a law firm, but if the primary purpose  
5 -- or a primary purpose is to help provide legal advice,  
6 then it's protected. That's the test.

7 THE COURT: So have any of -- has this particular  
8 individual, your client or any other individuals that are  
9 working with that -- or were working with or are working  
10 with the initial entities, the -- I think you said the DNC  
11 and the, and the campaign, through the law firm, were they  
12 public about the work that they were doing?

13 MS. KRAWIEC: Yes, Your Honor --

14 MR. LEVY: What do you -- what do you mean by  
15 that? I'm trying to understand your question.

16 THE COURT: Did they testify? Did they -- when I  
17 hear that they provided information to publication authors,  
18 what have you, is that a waiver?

19 MR. LEVY: It is not a waiver, Your Honor. And  
20 it's not a waiver because the case law is clear. No  
21 disclosures were made for an advantage in litigation and  
22 that's *In Re: Sealed Case* 676 F.2d 793 at 818. It's a D.C.  
23 Circuit Case from 1982.

24 Second and importantly, the privilege holders have  
25 not authorized a waiver of the privilege and that's very

1 important here. So whatever disclosures Fusion may have  
2 made at different times, that was not authorized by Perkins  
3 Coie or its clients. And Ms. Seago is not a party to the  
4 litigation so the subject matter waiver cannot apply and  
5 that's the *Banneker Ventures, LLC* decision at 253 F. Supp.  
6 3d 64 at page 74, D.D.C 2017 and *Williams and Connolly*  
7 *versus SEC* at 662 F.3d 1240 at 1244. It's a D.C. Circuit  
8 case from 2011. And --

9 THE COURT: Wait a second. Let me just ask this  
10 question. You say the -- the issue -- that the privilege  
11 wasn't waived.

12 MR. LEVY: Correct.

13 THE COURT: If there was a privilege, wasn't  
14 waived.

15 MR. LEVY: Right.

16 THE COURT: When or if and when the entity that  
17 was hired -- I'm sorry, what was the name of entity, I just  
18 -- it just flipped out of my --

19 MR. LEVY: The company is called --

20 THE COURT: Fusion. Fusion.

21 MR. LEVY: Fusion. Yes.

22 THE COURT: When, when Fusion communicated  
23 publicly about issues pertaining to Trump or, or the bank,  
24 in particular. The bank in particular that it wouldn't be  
25 considered a waiver because it wasn't approved by the

1 client? Is that -- by the firm? Is that what you're  
2 saying? It was, it was --

3 MR. LEVY: Number one --

4 THE COURT: It was not authorized --

5 MR. LEVY: That's right.

6 THE COURT: -- you said. Not authorized.

7 MR. LEVY: The privilege holders did not authorize  
8 Fusion in some of these instances to disclose material. And  
9 so they're not authorizing a waiver. And because of that  
10 there's no waiver.

11 In other instances, there are -- there are all  
12 kinds of cases, Your Honor, and *In Re. Grand Jury Subpoenas*,  
13 a Southern District of New York case that we've cited as one  
14 of them where law firms hire, under Kovel Letter, a PR  
15 company. And the Courts have upheld the use of a PR company  
16 under a Kovel letter. And obviously the -- that PR firm  
17 from time to time is going to talk to the public.

18 But the internal communications with that PR firm  
19 are going to be protected. They're going to be privileged.  
20 And if the PR firm inadvertently, or, or even intentionally  
21 discloses one of those communications or documents without  
22 authorization from the law firm or the client, then it's not  
23 going to be a waiver. And what, what Alpha's counsel has  
24 been making hay of is a game of gotcha with privilege. You  
25 could see it in the way they're, they're questioning counsel

1 for Ms. Seago during the deposition.

2           The communications at a law firm meeting, Perkins  
3 Coie, with Perkins Coie's lawyers and a Perkins Coie client,  
4 everybody in that meeting, Your Honor, had an expectation  
5 that that meeting is confidential -- that the meeting was  
6 privileged and confidential. Nobody had any other  
7 expectation. And for Alpha-Bank's lawyers to try to  
8 penetrate that privilege by playing gotcha to obtain  
9 evidence they could much more easily obtain by going to an  
10 internet service provider and just asking about an IP  
11 address when Ms. Seago has testified for over 4 hours, 26(b)  
12 requires that the Court balance those different interests.

13           And the *Daniels* case in 26(b), it's not just about  
14 relevance, Your Honor. The Court is correct. There's a  
15 privilege. There's an important legal interest here. There  
16 are important legal rights that the privilege holders hold.  
17 They've not waived those privileges. They've not authorized  
18 the, the waiver of those privileges, and they are the  
19 commander of those privileges.

20           They determine whether they've been waived or not  
21 and they have not authorized Fusion to waive the privilege.  
22 They've not authorized anybody else to waive the privilege.  
23 And we're not the instructor, Your Honor, we were  
24 instructing our clients throughout these depositions not to  
25 waive privilege. We're doing what lawyers do. We follow

1 the instructions of counsel for privilege holders. And for  
2 those reasons, Ms. Seago should not have to sit for  
3 additional testimony.

4 MS. KRAWIEC: Your Honor, if I may respond. Mr.  
5 Levy has brought up numerous times this notion that we  
6 haven't subpoenaed the ISPs. So let me give some background  
7 to the Court. Those relate to the attacks that occurred in  
8 2017. We are focusing right now on 2016 as Ms. Seago and  
9 Fusion were integrally related -- involved in knowledge  
10 related to what happened in 2016. They were aware of the  
11 data -- the computer data at issue. They were aware of it  
12 before the server allegations were made public by the media  
13 in 2016.

14 And how were they aware of it, Your Honor?  
15 Because they were having meetings with the individual that  
16 had the computer data, and yet they're preventing us from  
17 being able to understand what that person knew about the  
18 data, how he got the data, what he told Fusion about the  
19 data.

20 So they're aware of the server allegations and the  
21 supposed computer data that supports this bogus allegation  
22 against our client that they were engaged in covert backdoor  
23 communications channel to facilitate communications between  
24 Trump and the Kremlin. And they're blocking us from being  
25 able to understand what Mr. Joffe -- right? Mr. Joffe, the

1 person with that data, what he told them.

2 And so the ISP is a red herring. And before  
3 Skadden was involved, Your Honor, there was another law firm  
4 that investigated these issues for many years. So what Mr.  
5 Levy is not telling the Court is there was an investigation  
6 done.

7 So maybe there's not a subpoena on the floor to  
8 docket, but there was a look, if you will, into the issues  
9 that Mr. Levy is suggesting that we haven't done anything  
10 about. And it's improper for him to suggest that. We don't  
11 need to reveal our mental impressions, our work product, how  
12 we're conducting the case.

13 Your Honor, we have proceeded in nothing but good  
14 faith. But for him to suggest to the Court that we have  
15 improperly not sought information related to the ISPs in --  
16 in 2017 is just not correct.

17 MR. LEVY: Your Honor --

18 MS. KRAWIEC: And I'm not getting to the reasons  
19 here in a public hearing to -- to expose our work product.  
20 But that's a red herring.

21 MR. LEVY: Your Honor --

22 MS. KRAWIEC: Second, Your Honor, he's talking  
23 about --

24 THE COURT: But, but if -- wait a second. If --

25 MS. KRAWIEC: Why are you smiling, Mr. Levy?

1 THE COURT: If, if Mr. Levy was focusing on 2016  
2 as opposed to 2017, then why wouldn't the same research or  
3 investigative methods apply that you utilize as, as you say,  
4 in 2017? Why wouldn't you utilize the methods in 2016?

5 MS. KRAWIEC: Yes. Your Honor, we have worked  
6 with cyber experts -- cyber security experts who have  
7 advised us as to some real problems with the 2017 -- these  
8 were look-ups, Your Honor.

9 And so you have a scenario where there's wide  
10 dissemination of the server allegations, and there were a  
11 lot of people out there out of interest, whether it's media  
12 members, people under pseudonyms, what have you, that were  
13 conducting lookups in 2017. So we've worked with our cyber  
14 security experts to better understand the benefit of that  
15 evidence. And Your Honor, we're following guidance from our  
16 cyber security experts, as well as investigations that were  
17 conducted by another law firm before Skadden got involved.

18 So to suggest that we haven't done enough is  
19 improper and misleading to this Court.

20 MR. LEVY: Your Honor, may I be heard?

21 THE COURT: I -- I've --

22 MS. KRAWIEC: Your Honor, I'd, I'd like to finish  
23 my thought if I can before Mr. Levy jumps in because I think  
24 he made a big deal about Perkins Coie not authorizing the  
25 release of this information because I think Your Honor is



1 very appropriately focused on the waiver that occurred here.

2 Perkins Coie has not sought to intervene in this  
3 litigation. Perkins Coie has not submitted a letter to this  
4 Court. Perkins Coie has done nothing to suggest that this  
5 privilege that they have awarded to Fusion to apply is so  
6 vital because they know in the Maryland case where it was  
7 the exact same briefing and the exact same issues that were  
8 presented to the Maryland Court. Perkins Coie did not  
9 intervene in that Maryland proceeding.

10 Mr. Fritsch, as of this moment, is scheduled to  
11 sit on Monday and has to answer all of the questions that  
12 Mr. Levy instructed him not to answer on the basis of  
13 attorney/client, work product, 6(e) and relevance. The  
14 Maryland Court said you must answer all of those questions.  
15 Perkins Coie has not intervened. They've done nothing.

16 And Your Honor, I need to take the Court back to  
17 the *In Re. Grand Jury Subpoenas* case that --

18 THE COURT: One second, please.

19 MS. KRAWIEC: Yes.

20 THE COURT: Mr. Levy, why isn't it -- or why  
21 wouldn't it be helpful to understand what, if any -- I'm  
22 going to say evidence, would substantiate the contractual  
23 relationship between the law firm and your client's employer  
24 and/or your client?

25 MR. LEVY: We've offered to provide the Court the

1 engagement letter in-camera ex parte -- can you hear me?

2 THE COURT: Yes.

3 MR. LEVY: And if the Court wants to have an  
4 evidentiary hearing on this matter, we're open to it and we  
5 can present more evidence to the Court if it's in a  
6 privileged nature; it would have to be ex parte and in-  
7 camera, but we can do that.

8 MS. KRAWIEC: Your Honor, why couldn't it be  
9 submitted so that both us and the Court can review the  
10 letter so that we could have a real discussion? We asked at  
11 the deposition that Mr. Levy provide us with that supposed  
12 Kovel letter and they've refused at all turns. How are we  
13 supposed to --

14 THE COURT: But they're not refusing to provide it  
15 to the Court for in-camera review.

16 MS. KRAWIEC: Correct, Your Honor. But this  
17 matter has been pending since -- March 25th is the first  
18 time that Ms. Seago sat. March 25th when Mr. Levy didn't  
19 get a protective order from this Court, allowed but two  
20 questions to be posed during the deposition before  
21 unilaterally shutting down. That led to an avalanche of  
22 briefing before this Court and this Court holding a hearing  
23 that resulted in the October 1st opinion.

24 Your Honor, you may recall that you actually left  
25 the door open for sanctions when we filed a motion for

1 sanctions because of the shenanigans that we believe Mr.  
2 Levy had engaged in. And you said that you were going to  
3 deny the sanctions motion at this juncture.

4           So to come now -- fast forward to October 1st when  
5 we have a deposition wherein, we're -- tried to proceed in  
6 good faith and all of our questions are blocked. And now we  
7 have to go through another round of briefing, and we have  
8 this hearing. Now we have to wait for an opinion from the  
9 Court, and now he's proposing an evidentiary hearing when he  
10 should have provided the Kovel letter with this briefing  
11 filing it under seal with the motion asking the Court to  
12 allow it under seal.

13           So are we going to allow this to now expand for  
14 another four months when we have a March 3rd deadline with  
15 the Florida Court from a service perspective?

16           So a year ago, almost, we were trying to get this  
17 information from Ms. Seago. And now they're trying to  
18 extend it for several months in proposing an evidentiary  
19 hearing. Why don't they file it under seal, Your Honor,  
20 with a motion to file under seal?

21           Your Honor, we -- they've been given so many bites  
22 at the apple. You saw the post hac assertion of the common  
23 interest agreement. Mr. Levy couldn't even tell you what  
24 the common interest was, who the parties were. He knew  
25 nothing. But he asserted it in order to block questions

1 about communications that Fusion had with Rodney Joffe who's  
2 the individual that had the computer data that Fusion was  
3 made aware of before the server allegations were made  
4 public. Before they were made public.

5 And Your Honor, a suggestion that Perkins Coie --  
6 so Perkins Coie is going to pick and choose what they're  
7 going to allow Fusion to talk to the media about? Marc  
8 Elias, who was representing the Hillary Clinton campaign and  
9 the DNC, he was aware that Fusion was meeting with the  
10 media.

11 So when Mr. Levy told Your Honor, when you were  
12 focusing on waiver, he said, "Some of these" -- some. Not  
13 all of these things. So Perkins Coie is going to pick and  
14 choose who Fusion's allowed to go talk to in the media?  
15 Why? Because they're conducting opposition research with  
16 the part and parcel of their job was to disseminate the  
17 server allegations to the media.

18 Your Honor, Mr. Fritsch and Mr. Simpson of Fusion  
19 wrote a book where they talk about this. It's called,  
20 "Crime and Progress." There's also testimony and another  
21 book out there written by David Corn, who's another media  
22 member, which talks about John Podesta, who testified on the  
23 Hill that Fusion was conducting political opposition  
24 research.

25 Podesta says that the server allegations, the

1 media push in October regarding the Alpha-Bank, Trump and  
2 the server allegations was their last, you know, push.  
3 Their last hope to kind of get -- and presidential --  
4 potential President Elect Hillary Clinton cross the finish  
5 line.

6           And then when the New York Times article came out  
7 and said that the FBI was not -- didn't find validity with  
8 respect to the server allegations and wasn't investigating  
9 it further, Podesta said it was like a lead balloon, it shot  
10 all of their efforts to use the server allegations to push  
11 Hillary across the, the finish line.

12           So you have a scenario here where you have  
13 widespread dissemination by Fusion to the media. And you  
14 have Marc Elias, who is the lawyer at Perkins Coie that's  
15 representing DNC and Clinton campaign, and he's aware that  
16 Fusion is taking these meetings.

17           So how is it that waiver doesn't apply here and  
18 doesn't do both attorney/client work product? They can't  
19 have it both ways. They can't use it as a shield and a  
20 sword and present it when they want to.

21           And Your Honor, I want to focus the Court back on  
22 the case that Mr. Levy brought to your attention, *In Re.*  
23 *Grand Jury Subpoenas* case. There, the Court specifically  
24 limited its holding --

25           THE COURT: Wait. One second.

1 MS. KRAWIEC: Yes.

2 THE COURT: One minute, please. If there is so  
3 much information in the media, according to you, that was  
4 disseminated, then why is your focus on this particular  
5 individual? If you have so much information that you can  
6 read about?

7 MS. KRAWIEC: Your Honor, what -- the point I'm  
8 trying to make there is they were taking information and  
9 getting it from third parties and then giving it to the  
10 media. And then are trying to shield from us the  
11 conversations they had with third parties.

12 So for example, this individual called Tea Leaves.  
13 Tea Leaves is a woman -- we believe it's a woman that has  
14 been reported now, after Monday morning quarterbacking, an  
15 assessment indictment, but it's not certain, there's no  
16 confirmation. But back in 2016, Ms. Seago was communicating  
17 with Tea Leaves, a random third party, anonymous computer  
18 scientist. And they are saying that Ms. Seago's  
19 communications with this random third party are out of  
20 bounds, privileged because of the Kovel arrangement.

21 Could you imagine that kind of a ruling from this  
22 Court? It would turn its head on the Kovel arrangement,  
23 which is supposed to be narrowly construed.

24 THE COURT: When you say -- I, I lost you when you  
25 said -- are you talking about the individual who was talking

1 to the media or are you talking about the media themselves?

2 MS. KRAWIEC: I'm talking about the -- no. I'm  
3 sorry, Your Honor. Let me slow down. So -- we've been  
4 living this case for a while, so sometimes I realize that I  
5 need to lay out more clearly, some of the players.

6 So Tea Leaves --

7 THE COURT: Mm-hmm.

8 MS. KRAWIEC: -- is an anonymous computer  
9 scientist who was connected to the computer data that we're  
10 trying to figure out who generated that computer data. Who  
11 gave it to Rodney Jofee? How did Tea Leaves get it, right?  
12 This is critical to connecting the dots.

13 So Tea Leaves is an individual that had posted the  
14 computer data online. Ms. Seago reached out to Tea Leaves  
15 in order to talk to her. When we tried to ask Ms. Seago  
16 about her communications with Tea Leaves, Mr. Levy  
17 instructed Ms. Seago not to answer any questions related to  
18 Tea -- the discussion with Tea Leaves under this purported  
19 various privileges: attorney/client, Kovel, you know, work  
20 product.

21 Similarly, you heard me talk about Rodney Joffe.  
22 Rodney Joffe is a computer, you know, tech executive who  
23 also had the data and who Fusion had a meeting with to talk  
24 about the data before it was even posted publicly. Mr. Levy  
25 shut down all questions that we asked about the meeting and

1 the discussions with Mr. Joffe under the basis of that  
2 common interest agreement that I read to you, Your Honor,  
3 where Mr. Levy couldn't even tell us the parameters that you  
4 need to be able to articulate in order to establish a common  
5 interest.

6 And fundamentally, a conversation with a third  
7 party is not privileged in the first place. So you don't  
8 have privileged discussion, number one. And then you try  
9 and block it by a common interest where you can't even  
10 articulate the basis of the common interest. You have to  
11 have a meeting of the minds in advance when you talk about  
12 supposed confidential information to block information  
13 pursuant to a common interest agreement. Mr. Levy couldn't  
14 even -- I, I -- you know, Your Honor, I can read it again.

15 But when we asked him about the foundational  
16 elements of what establishes a common interest agreement,  
17 Mr. Levy said, "I don't know." "I don't know." But he's  
18 asserting it to block it.

19 MR. LEVY: Your Honor, she's mischaracterizing  
20 what I said at the -- at the deposition. I said that the  
21 common interest with the server allegations. Both clients  
22 had a common interest in understanding the legal  
23 implications of the server allegations.

24 And I wasn't blocking questions. I was calmly  
25 instructing a witness not to answer questions that would



1 implicate attorney client privilege, attorney work product  
2 doctrine, and Grand Jury privilege at times when it was  
3 applicable, no different than Ms. Krawiec right now saying  
4 she doesn't want to get into certain matters because she  
5 believes they're privileged.

6 I'm not telling her or the Court that Ms. Krawiec  
7 is trying is block anything by that. She's making a good  
8 faith assertion of privilege.

9 That said it is important for Alfa to take the  
10 basic step of serving a subpoena on an ISP to obtain the  
11 information that is most easily identifiable to help Alfa  
12 identify the people associated with these IP addresses.

13 Ms. -- the Alfa-Bank's lawyers only response here  
14 is that you're right as to 2017. You're right there. But  
15 we're more interested in 2016 with Ms. Seago.

16 But what Alfa-Bank's contractor says in the same  
17 exact report attached to the Alfa-Bank complaint in Exhibit  
18 7 is that Mandiant, another Alfa-Bank contractor, looked  
19 into these matters in 2016 and shortly identified suspicious  
20 IP addresses there.

21 And why hasn't Alfa-Bank gone to the internet  
22 service providers and gotten the data -- gotten the  
23 information from the internet service providers to help  
24 Alfa-Bank understand who these -- who these people are  
25 associated with the IP addresses.

1           Instead, they're going backwards. They're,  
2 they're trying to burden people like Ms. Seago who -- who  
3 already told Alfa-Bank that she doesn't have this  
4 information and asking her about communications with a law  
5 firm is not going to change that testimony.

6           And so when we're balancing the factors that we  
7 need to balance in 2016, when we've got a privilege here --  
8 an attorney-client privilege, attorney-work product  
9 doctrine, Grand Jury privilege, with marginally relevant  
10 information relative to what Alfa could do -- if they don't  
11 want to talk about it that's fine -- but they need to do  
12 that if they're going to -- and exhaust their efforts before  
13 they're going to burden Ms. Seago who couldn't have been  
14 more polite during the deposition.

15           And you'll note Alfa-Bank's lawyers do not talk  
16 about Ms. Seago saying I don't recall 252 times. She  
17 provided testimony. She answered questions. Alfa-Bank  
18 chose to consume most of the deposition asking about  
19 communications it new was privileged.

20           And it shouldn't be permitted to ask Ms. Seago  
21 additional four hours of questions about privilege  
22 communications for information it could much more easily  
23 obtain from other third parties -- from other sources and  
24 doesn't need to serve a subpoena as Alfa-Bank's lawyer said.  
25 Maybe they figured it out already. That's fine. They don't

1 need to burden Ms. Seago with this.

2           And as, as to the Tea Leaves communications,  
3 Fusion, like any researcher or an investigator or expert  
4 that's contracted by a law firm by necessity can engage in  
5 confidential communications with third parties to help  
6 provide expertise to the lawyers and the law firms to help  
7 the lawyers and law firms advise clients on the law.

8           So whether that's going to a librarian or an  
9 investigator interviewing witnesses that, that confidential  
10 witness interview conducted by an investigator hired by a  
11 law firm is going to be privileged.

12           And indeed in the *Clemmons v. Acad. for Educ. Dev.*  
13 case at 300 FRD 6 at page 9. It's a D.D.C. case from 2013,  
14 it protected his work product -- the identity of people that  
15 the attorney consulted.

16           And counsel didn't identify in a privilege log the  
17 people who are interviewed because it's part of the work  
18 product -- no different here.

19           Ms. Seago was talking to this person whom she  
20 understood was a computer scientist that might have some  
21 information that would help her provide some more expertise  
22 advice and information to the law firm is that it could  
23 provide legal advice to -- to its clients. She can keep  
24 that confidential.

25           And were I to allow her to answer that question,

1 you can better believe Alfa-Bank's lawyer would be sitting  
2 here today saying, look, they waived. They waived  
3 privilege. They allowed -- they allowed their, their  
4 witness to testify about that, but not about this. We  
5 cannot risk waiver in this environment.

6 This whole exercise from the start -- our concern  
7 was -- and the Court was -- Court, Court said what it said  
8 in, in its order on October 1 that at that time in October  
9 it was premature -- it was speculating about whether Alfa  
10 would use it's time in this deposition to ask most of its  
11 questions about privileged communications.

12 Now, we know that wasn't speculation. That's what  
13 they were doing. And they're playing gotcha with privilege.  
14 They're playing gotcha, putting me on the spot at a  
15 deposition about a meeting in a national law firms  
16 Washington, D.C.'s office with two of the most -- with, with  
17 two very fine, incredibly well respected lawyers and their  
18 clients and a contractor that's under a Kovel letter --  
19 Kovel letter that's -- that's like Kovel letters written all  
20 over the District of Columbia.

21 This privilege doesn't just apply to Fusion GPS,  
22 or Perkins Coie, or the DNC, or the Hillary for America  
23 Campaign. These arrangements are conducted at law firms all  
24 over the District.

25 And for Alfa-Bank to try to penetrate that

1 privilege for information that frankly it could obtain much  
2 more easily from an internet service provider after already  
3 depositing Laura Seago for four hours, who couldn't have  
4 been more polite, it's not necessary. This is not what  
5 26(b) contemplates or requires. It requires the opposite.

6 It requires this Court to balance the equities  
7 when this subpoena implicates important legal rights.  
8 Attorney-client privilege, attorney-work product doctrine,  
9 these are important legal rights. Ms. Seago should not have  
10 to testify.

11 THE COURT: So let me just ask about the  
12 communications that I'm hearing that -- what she had, or the  
13 entity had with the press; is that my understanding?

14 MR. LEVY: She's had some communications with the  
15 press, yes, about material via open source. Yes.

16 THE COURT: So how do you distinguish -- you're,  
17 you're saying she didn't have permission to discuss what she  
18 discussed with the press?

19 MR. LEVY: So what she discussed with the press  
20 was in open source, and very often she and others at Fusion  
21 would talk to the press, and it was not at the direction of  
22 Perkins Coie. They would talk to the press. They have a  
23 library of open source material that they've gathered. The  
24 press talked to people at Fusion GPS about what they know so  
25 that reporters can better understand what they're reporting

1 on, and those communications happen from time to time.

2 MS. KRAWIEC: So, Your Honor, let me jump in there  
3 because one of the things that happened is that we were  
4 trying to understand how it was that Ms. Seago knew that  
5 this data had been published on the internet because it was  
6 published in an obscure place in the internet by this Tea  
7 Leaves that I told you about.

8 And then what Fusion did was -- so we asked about  
9 that. We said, "How did you know where to look for that  
10 data? Who told you?" Cut off, instruction not to answer,  
11 privileged. But guess what they did with those links of  
12 that data? They took that data that someone told them  
13 because no one would have known to find it where it was  
14 unless someone told you.

15 And they wouldn't tell us who told them or how  
16 they found it, but then they took all those links -- the  
17 supposed public source research -- and disseminated it to  
18 seven or eight media outlets saying you have to check this  
19 out. This is big stuff.

20 So they can pick and choose shielding how they got  
21 this information and then present it as if it was public  
22 source? It doesn't pass the smell test, Your Honor.

23 MR. LEVY: Your Honor, that --

24 MS. KRAWIEC: Your Honor, when, when Ms. -- when  
25 Ms. Seago was e-mailing with Mr. Joffe (phonetic), we said,

1 "So you exchanged e-mails with Joffe. What was the subject  
2 of these e-mails?" Mr. Levy, "I'm going to instruct the  
3 witness not to answer that question because the answer would  
4 implicate privilege."

5 So Your Honor asked about the Maryland order which  
6 says the word privilege. There were a number of times where  
7 Mr. Levy's objections conflated all of the privileges he was  
8 asserting to -- because the answers would implicate  
9 privileges.

10 Your Honor, there were so many times -- here's  
11 another one -- "Can you describe the data that Rodney Joffe  
12 had?" We're just asking for a description of the data. Mr.  
13 Levy, "Again, I'm going to instruct the witness not to  
14 answer the question because any communication she would have  
15 had with him in 2016 while working under the engagement  
16 would be covered by the privileges."

17 Here's another question, "What was your  
18 understanding that Mr. Joffe had access to nonpublic data  
19 and was using that data in regard to server allegations?"  
20 Mr. Levy, "I'm going to instruct the witness not to answer  
21 that question in as much as the answer might implicate the  
22 attorney-client privilege and the attorney-work product  
23 privilege."

24 Question, "Did you ever discuss the providence of  
25 the data with Mr. Joffe?" The providence of the data. Mr.

1 Levy, "I'm going to instruct the witness not to answer that  
2 question because the answer might implicate the  
3 attorney-client privilege and work product doctrine."

4 Question, "Where did you understand Mr. Joffe got  
5 his DNS data from?" Mr. Levy, "I'm going to instruct the  
6 witness -- first, I'm going to object to the question  
7 because it's -- it's -- well objection to form.

8 And I'm going to instruct the witness not to  
9 answer the question because the answer could -- I'm  
10 instructing the witness" -- question because the answer  
11 would implicate privileges.

12 MR. LEVY: Your Honor, may I address what  
13 Alfa-Bank's lawyer said.

14 THE COURT: Let me just ask this question: I'm  
15 still trying to understand your position, Mr. Levy on this  
16 particular client decision to speak to the media.

17 And your argument is she's speaking to the media,  
18 but it's not a waiver of her relationship -- her -- the work  
19 product, for example, and her relationship with the firm.  
20 So it's covered or it's not covered.

21 MR. LEVY: If you -- if you take the example that  
22 Alfa-Bank's lawyer just presented to the Court, the link  
23 that someone at Fusion had circulated to a reporter, that  
24 link is a link to the internet. It's a publicly available  
25 link, right?



1           The link -- it's, it's like sending a New York  
2 Times article to a reporter at the Washington Post. Have  
3 you -- have you seen this article? You should look at it.  
4 It's interesting. Here's a link. It happens to do with the  
5 subject matter which (indiscernible) is fascinated, but it's  
6 a publicly available link.

7           Ms. Seago may have had communications internally  
8 at Fusion about that link. Those are privileged  
9 communications, but the link itself is available online for  
10 the Court, for me, for Ms. Krawiec. It's public. There's,  
11 there's nothing confidential about that link. There's  
12 nothing privileged about that link.

13           So when people at Fusion or Ms. Seago herself  
14 would talk to a reporter about publicly available  
15 information, there is no waiver of anything that's  
16 privileged or confidential.

17           MS. KRAWIEC: Your Honor, I can tell you that  
18 where this link was when it was on the internet, you,  
19 myself, Mr. Levy, no one could have found that by doing a  
20 basic Google search. They were instructed where to find it  
21 in this obscure location.

22           And all we were trying to understand is who  
23 instructed them because the person who posted it was Tea  
24 Leaves, the anonymous computer scientist who had this  
25 computer data.

1           And if we could find out where Tea Leaves got the  
2 computer data, it would help us connect the dots to the John  
3 Does. So asking simply how they knew to look for this link  
4 on the open source -- the supposed right there do a Google  
5 search and look for it, it was the most obscure link. You  
6 would never know how to find it unless someone told you.

7           And the person that posted it was Tea Leaves. And  
8 then they produced e-mails which showed Ms. Seago reaching  
9 out to Tea Leaves. So when we posed questions asking about  
10 what Ms. Seago talked to Tea Leaves about and who pointed  
11 her to where Tea Leaves had posted the data, we were met  
12 with shut down, sorry, privileged, can't get at that.

13           And Your Honor, you're -- you know, not to sound  
14 annoying, but you're so right to focus on this waiver issue  
15 because they're picking and choosing when they can use  
16 privilege as a sword and a shield.

17           So when they want to be able to get information to  
18 the media, they say, yeah, we can put it out there. But  
19 when they don't want that same research that they were  
20 conducting -- this political opposition research -- and the  
21 implied waiver because part in parcel that was to get it  
22 disseminated out to the media, then they hide behind Kovel.  
23 They hide behind these privileges.

24           But then they otherwise say, but, yes, we could  
25 give it to the media because it was public source. Here's a

1 perfect example where something may have been posted  
2 somewhere on the internet, but it was posted by a mission  
3 critical actor, Tea Leaves, that no one otherwise would have  
4 found.

5 And they won't tell us how it is that they found  
6 that information, who told where it was. So it's  
7 disingenuous, Your Honor.

8 MR. LEVY: Your Honor, what's disingenuous is that  
9 Alfa has received a privilege log from, from our client, and  
10 it's received documents from our clients. And one of those  
11 documents is an e-mail from a Reuters reporter sending this  
12 very link to Fusion, a reporter.

13 This link was circulating in the open source, and  
14 Fusion received it from a reporter. How Ms. Seago got it is  
15 privileged, but how it came to Fusion was from a reporter,  
16 from Mark Hosenball at Reuters, I believe. So this is much  
17 ado about nothing.

18 And if Alfa-Bank's lawyer makes the statement that  
19 people like Fusion retained by counsel can't pick and choose  
20 what they share to the media, to the public, then no lawyer  
21 on behalf of a client can ever retain a PR person ever again  
22 under privilege.

23 And any time a litigant has a spokesperson who  
24 talks to the media that spokesperson's internal  
25 communications, privileged communications with the lawyers,

1 the law firm representing the client, can't be protected.  
2 Alfa-Bank uses these kinds of vendors all the time through  
3 counsel.

4 Surely, Alfa-Bank wants to protect the privilege  
5 of its internal communications with its PR vendors. And,  
6 and Alfa-Bank is not alone. This is part of litigation.  
7 This is what *In Re Grand Jury Subpoena* is talking about --  
8 the Southern District of New York case.

9 This is -- good or bad, it's part of litigation  
10 now for lawyers and law firms to have vendors, experts, more  
11 precisely in public relations that can advise clients about  
12 the legal risks of what's being said in public, and not  
13 always by them frankly.

14 Sometimes it's getting, getting advice about what  
15 other people are saying about the litigants to better  
16 understand their, their legal exposure -- their rights and  
17 their obligations.

18 MS. KRAWIEC: But, Your Honor, that *In Re Grand*  
19 *Jury Subpoena* case is not black and white like Mr. Levy  
20 suggests.

21 The Court specifically limited its holding to  
22 communications between the lawyers and the retained firm or  
23 between the retained firm and the client, though found  
24 e-mails directly with the client not privileged because they  
25 did not reflect legal advice. So you still have to have the

1 legal advice element.

2 And so if they have discussions about getting this  
3 to the media or doing this or that or reaching out to this  
4 third party, they can't shield that. It has to be tied to  
5 reflect legal advice.

6 So here, Fusion is suggesting to this Court that  
7 it's internal communications and communications with third  
8 parties are somehow privileged and that's not what the *In Re*  
9 *Grand Jury Subpoena* case -- Your Honor, it's 2265 F. Supp.  
10 2d 321 (S.D.N.Y 2003).

11 Again, there was a careful analysis to see whether  
12 or not the e-mails at issue reflected legal advice. And  
13 those e-mails that did not reflect legal advice, they were  
14 not privileged, not protected.

15 MR. LEVY: Your Honor, so long as a primary  
16 purpose of the work conducted by the expert is to help the  
17 lawyer and the law firm provide legal advice, the privilege  
18 is protected. That's the test in KBR.

19 THE COURT: Well, it sounds to me like you're  
20 talking about not a unique situation, but the unusual  
21 situation of having what I think may be considered -- just  
22 my thought about it at this juncture -- that there is a  
23 privilege between attorney and let's just say a -- an expert  
24 or somebody who had some expertise in the area --  
25 (indiscernible) communications.

1           We'll just use a broad -- or public relations.  
2 Who decides what they want to push out to the public and  
3 what should be maintained within the scope of the privilege?

4 It seems to me that -- I mean how does that privilege sort  
5 of get waived, if you will, in part and not in other part?

6           What type of -- you talked about -- there was a  
7 common interest agreements. There are agreements here. But  
8 I'm trying to determine if they -- an entity of that -- or  
9 an employee such as your client, Mr. Levy, decides, you  
10 know, I think that it would be important to push out this  
11 information to the public or contact the media, what have  
12 you, how, if at all, does that impact this claim of  
13 privilege?

14           I mean is it -- is there a blank -- is it blanket  
15 privilege? Is it a privilege that is the determination as  
16 to what to communicate in the -- I'm going to say in  
17 conjunction with or within the work that that entity is  
18 doing with the firm? Okay.

19           So in -- so in that capacity it's sort of a pick  
20 and choose. So you're asserting -- your, your client  
21 asserts a privilege for some information and not for others.  
22 Is that similar to a publication source privilege?

23           In other words, if I -- if, if a -- if there is a  
24 publication -- if an author -- a news -- let's say --  
25 reporter says this is the information I'm pushing to the

1 public, but I'm not telling you my source.

2 A lot of the questions here that I think Mr. Levy  
3 objected to, who -- whose client objected to, was objected,  
4 I think, to based upon that's -- sort of that -- I don't  
5 have to tell you my source.

6 My sources of information are mine. I'm  
7 conducting my business at the -- at the direction of the law  
8 firm based upon what their needs are of my expertise. And  
9 when I had the source, I'm not obligated to tell you who the  
10 source was.

11 Is that where we are because I think -- I'm trying  
12 to understand this more than anything. Is it -- its source  
13 information is it I want to know -- because so many of these  
14 questions are who did you discuss this with. Now, what if I  
15 were to say, this is what I discussed, but I'm not telling  
16 you with whom.

17 MR. LEVY: You --

18 THE COURT: Where does that take us? I mean maybe  
19 that takes us where we need to go.

20 MR. LEVY: Your Honor, if that question -- the  
21 answer to that question would reveal communications with the  
22 law firm, the lawyer, or people internally at the expert's  
23 company. And that work was all being conducted to help the  
24 lawyers and the law firm provide legal advice to the  
25 clients.

1           THE COURT: But wait a second, when you say legal  
2 advice, how is pushing -- I'm using the word pushing --  
3 we're not -- I don't mean to be derogatory about it, but how  
4 is pushing information to the public within -- I mean it --  
5 what is that -- that, that's the -- the, the scope of  
6 employment with the firm.

7           MR. LEVY: So there's research that the company  
8 conducts and analyzes. It talks about that research and  
9 analysis with the lawyers to help the lawyers and the law  
10 firm advice the clients on defamation risk.

11           If part of that information, particularly from the  
12 open source, is information that reporters than call Fusion  
13 and ask about and Fusion discusses the information it has,  
14 there is more than one purpose for that information, but a  
15 primary purpose of the research and the analysis and the  
16 discussions internally with the lawyers and the law firm is  
17 to -- or a primary purpose -- is to advise the clients on  
18 the law on their litigation risk.

19           There can be -- this is what we've been discussing  
20 all day which is that there could be multiple purposes. And  
21 so as long as the primary purpose is to use this research  
22 and analysis and discussion -- it's all privilege -- to help  
23 provide legal advice to the clients, it's protected by the  
24 privilege.

25           Now, Your Honor, we're talking about two



1 categories of waiver here. And one -- or two situations:  
2 one is where there's absolutely no waiver. There's a  
3 discussion among lawyers at the same law firm with people  
4 from Fusion like Ms. Seago and Rodney Joffe, a Perkins Coie  
5 client, where everybody had an understanding that, that  
6 meeting was privileged and confidential.

7 That's not the media. That's not -- that's --  
8 that's a very protected confidential in-person setting.  
9 This is nowhere near the example you're raising. It's very  
10 clear that everybody had an expectation that, that meeting  
11 was privileged and confidential, and there's no waiver.

12 The other scenario you're talking about is when  
13 people from Fusion discuss with the media overlapping  
14 subject matter areas that are also the subject of their  
15 confidential privileged research to help the lawyer and the  
16 law firm advise the clients of litigation risks -- is that  
17 waive of privilege.

18 And the answer is no for several reasons. One,  
19 there can be multiple purposes of the work. Two, the person  
20 making the disclosure to the media isn't the privilege  
21 holder and isn't authorized by the privilege holder. Third,  
22 the person making the disclosure isn't a litigant and isn't  
23 making that disclosure for an advantage in litigation.

24 They're just helping a reporter become educated about a  
25 matter of national security, which was Ms. Seago's

1 testimony. She was personally concerned about credible  
2 allegations that a Russian bank with ties to Vladimir Putin  
3 was speaking with the Trump organization during an election.

4 And that's what Peter Fritsch testified to as  
5 well. They were independently concerned about this. It was  
6 objectively alarming to people who knew about these credible  
7 allegations at the time.

8 And so when they decide to talk to members of the  
9 press about this information, much of which is online,  
10 getting chatter from reporters and -- that doesn't waive a  
11 privilege. The DNC and the Hillary campaign weren't  
12 authorizing Fusion to waive a privilege. *Alexander v. FBI*  
13 at 198 FRD 306, 315. It's the D.D.C. case from 2000.

14 And the quote, "It cannot be the law that a  
15 subsequent letter inspired by confidential communications  
16 but not revealing any confidential information would waive  
17 the privilege as it applies to a meeting with counsel."  
18 That is one of the scenarios, Your Honor, is discussing.

19 And I'm going to point the Court, if I may, to  
20 another case. This is *Nat'l Counselors v. CIA* at 969 F.3d  
21 406 at 411-412. This was a D.C. Circuit case from 2020.  
22 "Because it is axiomatic that the attorney-client privilege  
23 is held by the client, an attorney or agents' disclosure is  
24 not treated as a waiver or privilege."

25 THE COURT: Could you read that one more time,

1 please?

2 MR. LEVY: Sure. "Because it is" -- quote --  
3 "axiomatic that the attorney-client privilege is held by the  
4 client" end of quote. "An attorney or agents' disclosure" --  
5 -- quote -- "is not treated as a waiver of the privilege,"  
6 end of quote.

7 THE COURT: But this is different. This isn't the  
8 attorney speaking. This is the client speaking.

9 MR. LEVY: This is the vender --

10 MS. KRAWIEC: (Indiscernible) non attorney, Your  
11 Honor.

12 MR. LEVY: This is the attorney -- it's the  
13 attorney agent speaking.

14 THE COURT: Okay.

15 MS. KRAWIEC: But, but Your Honor, Kovel  
16 doesn't --

17 MR. LEVY: (Indiscernible.)

18 MS. KRAWIEC: Kovel does not (indiscernible) --

19 THE COURT: Wait --

20 MS. KRAWIEC: -- that way.

21 THE COURT: Wait one second. One second. Can --  
22 why don't you finish what you were saying, Mr. Levy.

23 MR. LEVY: Sure. It -- this is -- the whole  
24 purpose of a Kovel letter is to -- to create an agency  
25 relationship. The expert is the agent of the attorney.

1 MS. KRAWIEC: But Your Honor, their -- the Kovel  
2 letter -- if you look at the cases, it's supposed to be  
3 narrowly construed.

4 So then I'm going to point the Court to the *Calvin*  
5 *Klein Trademark Tr.* which said, "Nothing in the policy of  
6 the Kovel privilege suggests that attorneys simply by  
7 placing accountants, scientists, or investigators on their  
8 payrolls result in the attorney being able to protect all  
9 communications to such experts or communications among such  
10 experts," especially when such experts are operating, as the  
11 court put it quote "Under their own steam."

12 And then you have the *Clark Hill* case which says,  
13 "When the true objective is to obtain the retained firm's  
14 expertise and not the assistance of legal advice, the Kovel  
15 doctrine does not apply."

16 So you -- if you look at page three of our brief,  
17 we lay out that Fusion principal Glenn Simpson and  
18 representatives of the Hillary Clinton campaign including  
19 campaign chair John Podesta testified under oath on the Hill  
20 that Fusion's engagement with the Washington Free Beacon and  
21 Perkins Coie was to conduct political opposition research on  
22 Donald Trump.

23 And then Simpson also further testified and stated  
24 in his book that Fusion made their own decisions, followed  
25 their own leads, and dictated what information should be

1 pursued when conducting such opposition research. He said  
2 they were the architects of their own research.

3 So you have a scenario here where Mr. Levy and his  
4 client want to cloak any and all work that is being done for  
5 a nonlegal purpose, for opposition research purposes and  
6 dissemination to the media, simply because they were hired  
7 by a law firm.

8 And if you look at the case law related to the  
9 Kovel doctrine that's simply not the case. Your Honor,  
10 we -- we keep going back to that there is sort of the  
11 balancing under 26(b), but you need to first and foremost  
12 look at the threshold issue whether information is  
13 privileged in the first instance.

14 And what the case law says is that someone asserts  
15 a privilege. The burden is on that person asserting the  
16 privilege to establish that the privilege is appropriate.

17 And here, Ms. Seago has not shown that all of the  
18 privilege assertions that the -- the primary purpose was  
19 legal in nature -- to provide legal services to a client.  
20 It's the opposite, Your Honor.

21 MR. LEVY: Your Honor, under 26(b) it's the party  
22 taking discovery that has the burden to show that the  
23 discovery should be permitted. And here Alfa-Bank has  
24 failed to meet its burden.

25 It has failed to show why it has not served a

1 subpoena on an ISP or otherwise obtained information from an  
2 ISP to identify the people associated with the suspicious IP  
3 addresses, and why instead it is putting Ms. Seago through  
4 not one but two depositions where a law firm -- national law  
5 firm -- D.C. office and its clients have asserted a very  
6 clean privilege over the questions that were being asked.

7           And there's a Grand Jury privilege as well that's  
8 been asserted very cleanly that requires under the case law  
9 a compelling necessity, not just a necessity. It requires  
10 Alfa-Bank here to show a compelling necessity.

11           And we have a recent federal court decision from  
12 November 2021 -- this is the *Diamond Serv. Mgmt. Co.*  
13 decision that I quoted to Your Honor at the very beginning  
14 of this hearing discussing Rule 26(b) and saying cleanly  
15 "Where potentially important legal rights are implicated by  
16 a subpoena and alternative sources are more convenient or  
17 less burdensome, those alternatives should be explored  
18 first." Alfa-Bank --

19           THE COURT: Right. But here's the problem. I  
20 mean -- I'm, I'm hearing you, and I think you're both right  
21 in terms of the burden. You're, you're talking about two  
22 different things.

23           MS. KRAWIEC: Exactly.

24           THE COURT: (b) deals with -- deals with  
25 nonprivileged matter. That burden, I believe, is on the

1 Plaintiff. When, when you're asserting your privilege,  
2 whose burden is that?

3 MR. LEVY: We -- if there's a burden to be met, we  
4 have met it, Your Honor. The --

5 THE COURT: But I'm just saying, they're two  
6 different -- they're, they're burdens for two different  
7 purposes.

8 MR. LEVY: Understood.

9 THE COURT: So (d) -- so (b) -- 26(b), we, we  
10 can't get -- really get to 26(b) unless we deal with the  
11 privilege issue or the waiver issue, whatever you want to --  
12 however you want to comment. I am -- I make a distinction  
13 between privilege and the -- and the work product doctrine.

14 The issue for me is what I'm not really clear  
15 about is if you float -- if you're -- I think I'm unclear  
16 really about the purpose for the agency, the decision to  
17 hire your client's firm.

18 It sounds like the decision to hire your client's  
19 firm and the firm's mission is some quasi -- some  
20 combination of public relations and -- what -- an expertise  
21 in communications or --

22 MR. LEVY: No. Let me -- let me explain, Your  
23 Honor. The, the purpose of the engagement and the purpose  
24 of the work -- the primary -- primary purpose of the work  
25 was to conduct research on Mr. Trump and his associates, and

1 to advise the law firms of the -- law firm could provide  
2 legal advice to its clients on the risk of litigation for  
3 the DNC or the Hillary campaign or their surrogates to say  
4 something about Mr. Trump or people associated with him  
5 without the risk of this individual who had filed over  
6 thousand lawsuits getting sued or, or being successfully  
7 sued.

8 And of course this, this fear of litigation was  
9 real, and it's (indiscernible) by, by reality. It's not  
10 just Mr. Trump. It's people whom Fusion and, and Perkins  
11 Coie were researching. Lawsuits have been filed.

12 Your Honor noted earlier that Alfa-Bank has filed  
13 a lawsuit. Alfa-Bank's owners have filed lawsuits related  
14 to some of this research. Other Russian oligarchs have  
15 filed lawsuits related to some of this research. A Trump  
16 campaign aide has filed lawsuits regarding this research.

17 So the test under D.C. law is a prospective  
18 litigation. There was a prospect of this litigation  
19 environment. And, and that was real. And so they needed  
20 better research expertise than they had in house at Perkins  
21 Coie to help tell them what was factual.

22 What, what does -- what's in the public record  
23 that -- that is going to be supporting whatever the campaign  
24 is going to say or where is the risk here. Are we going to  
25 be out on a limb or are we not as a matter of law? That was



1 very important to the lawyers and that was a primary purpose  
2 of the engagement?

3 THE COURT: But in some ways its sort of this  
4 self-fulfilling prophecy because you again also have an  
5 entity that's pushing out information to the public. And  
6 then they're saying, look, we're exposing X, Y, and Z, which  
7 indicates how real this litigation could possibly be -- how  
8 horrible it could possibly -- how damaging it could possibly  
9 be.

10 So what hat are we talking about, and which hat  
11 are they wearing as an assertion of this work product  
12 doctrine or -- or the attorney client privilege that extends  
13 to this agent, for example.

14 MR. LEVY: So in addition to there being -- so in  
15 addition to the law allowing multiple purposes of the work  
16 while still allowing the privilege to be protected when a  
17 primary purpose is to provide legal advice -- and Your Honor  
18 that is what's happening here -- *Williams & Connolly v. SEC*  
19 -- this is a D.C. Circuit case from 2011 addresses the  
20 Court's apparent concern.

21 It says, "Disclosure" -- quote -- "of some work  
22 product does not necessarily destroy," end of quote,  
23 "protection for all work product" -- quote -- "of the same  
24 character," end of quote. And that citation is 662 F.3d  
25 1240 at 1244.

1           And so the Courts have wrestled with this issue,  
2 and they -- they have found that if you take a little bit of  
3 the work product and disclose it, it doesn't destroy the  
4 privilege.

5           And, and going back to Your Honor's question, a  
6 primary purpose of the work was to help the lawyers at  
7 Perkins Coie provide legal advice to their clients about  
8 defamation risk. If there were other purposes, so be it.  
9 The primary purpose of the engagement was to conduct this  
10 research for that purpose. And that's in the record.

11           THE COURT: So how do we distinguish -- you know,  
12 these questions -- I'm going back to where, where we are  
13 with this case, how do we distinguish what is within the  
14 scope of that agency and what is not within the scope of the  
15 agency?

16           Is there a specific list that defines -- I think  
17 this is maybe what we were talking about earlier -- that  
18 defines specifically what that -- what those  
19 responsibilities are because at least for me I'm --  
20 communicating -- so you communicated with Tea Leaves.

21           Was that done within the scope of the -- the  
22 employment for agency with your client or was that done -- I  
23 mean -- or there -- maybe there was more than one basis for  
24 that conversation. I don't know. But --

25           MS. KRAWIEC: Your Honor --

1 THE COURT: Yes.

2 MR. LEVY: In that -- in that respect, Your  
3 Honor --

4 MS. KRAWIEC: (Indiscernible) if you're reaching  
5 out to Tea Leaves --

6 MR. LEVY: Your Honor, if I may -- because it's my  
7 client that had the communication (indiscernible) --

8 MS. KRAWIEC: Yeah, and Your Honor -- your -- Your  
9 Honor, if you look at --

10 MR. LEVY: May I respond, Your Honor --

11 MS. KRAWIEC: -- exhibit 1 --

12 THE COURT: (Indiscernible) Mr. Levy. One second.  
13 Okay. I, I probably should have directed the question. But  
14 I was intending to direct it to you. It's your client. And  
15 I don't know what you have or have shared that helps to  
16 answer that question.

17 MR. LEVY: Sure, Your Honor, in that respect Ms.  
18 Seago communicating with this individual who is calling this  
19 individual Tea Leaves or herself, their-self, himself Tea  
20 Leaves, Ms. Seago was seeking information in furtherance of  
21 her work for Perkins Coie to help provide research to  
22 Perkins Coie as part of the engagement with Fusion, the  
23 primary purpose of which is to advise the clients on  
24 defamation risk.

25 She's gathering information. She's gathering

1 information for -- for, for at least that primary purpose.  
2 And what is difficult here, Your Honor, is I don't want to  
3 get into privileged communications in open Court here with  
4 Alfa-Bank.

5 And so I -- I can talk with the Court in camera  
6 about more of this, but the reality of the -- of the  
7 decisions like *KBR* and *Deloitte* that talk about a primary  
8 purpose is that when there are multiple purposes of the work  
9 when a primary purpose is to help the lawyers and the law  
10 firm provide legal advice, all of the work is protected by  
11 the privilege.

12 THE COURT: But what -- but what -- wait a second.  
13 That's one aspect. The other is from what I understand is  
14 I'm going to keep using this word -- pushes the information  
15 about the Tea Leaves -- the publication or the origin of a  
16 publication, if I'm understanding this communication, into  
17 the public.

18 So what I understood counsel to say -- opposing  
19 counsel to say is that -- what, what the origination of the  
20 -- the origination of some communication was Tea Leaves and  
21 that your client moved that into the public.

22 MR. LEVY: Our client didn't move that specific  
23 communication --

24 THE COURT: The link --

25 MR. LEVY: -- to the public.

1 THE COURT: The link --

2 MR. LEVY: The link -- the, the link -- the link  
3 was found online. There was a reporter who sent the link to  
4 our clients. And there's -- the, the link did -- the link  
5 is not part of any privileged communication. The, the link  
6 is like a New York Times article --

7 THE COURT: Right.

8 MR. LEVY: -- (indiscernible.) It may be harder  
9 to find, but it's online --

10 THE COURT: But --

11 MR. LEVY: And so a reporter got it. He sent it  
12 to Fusion. Fusion sent it to somebody else. None of that's  
13 privileged.

14 THE COURT: But why -- okay. So, so the question  
15 is if that's not privileged, then could your client be  
16 ordered to indicate -- so here's one -- why did she send it  
17 to somebody else and who else did she send it to?

18 MR. LEVY: Well, nothing -- nothing under a  
19 privileged engagement should preclude an agent of an  
20 attorney from sending something from the open source to  
21 somebody else.

22 What I mean by open source, I mean public record.  
23 If, if, if I have -- if I have an agent who has an article  
24 from New York times and sends it to somebody else who is  
25 outside that chain of privilege, no confidence has been

1 breached there. There is no --

2 THE COURT: Yeah, but -- okay, so what I'm  
3 suggesting is, is when you say confidence has been breached,  
4 my question is do you think it would be appropriate for your  
5 client to answer the question as to why she sent that  
6 specific link to a third party and who that third party was?

7 MR. LEVY: No.

8 THE COURT: Because --

9 MR. LEVY: Because --

10 THE COURT: -- how does that fall into the realm  
11 of talking to or, or -- not talking to -- advising the  
12 attorney --

13 MR. LEVY: It's akin to --

14 THE COURT: -- and then taking an action that  
15 isn't advising the attorney of anything. It's advising a  
16 third person of a -- of a, of a link.

17 MR. LEVY: Because in this context, she's trying  
18 to get information for -- this is what's hard, but  
19 hypothetically speaking, were she trying to learn something  
20 from this other person as part of her job, as part of her  
21 work for the law firm, that would be like an investigator  
22 interviewing a witness.

23 That, that interview would be privileged. And the  
24 contents of that interview would be privileged. And you  
25 don't have to disclose that. That's the *Clemmons* case.

1 THE COURT: The question is how do we know that.  
2 How do we know? Do you --

3 MR. LEVY: We can --

4 THE COURT: Did your -- did your -- did, did this  
5 firm specifically ask her to send a link to a third party?

6 MR. LEVY: Your Honor, I'd be more comfortable  
7 having these conversations in camera, ex parte, because I'm  
8 getting into communications between a law firm and my client  
9 that are privileged.

10 THE COURT: But don't you --

11 MR. LEVY: So --

12 THE COURT: I understand that, but that is the  
13 problem I'm having is what gets communicated -- I understand  
14 you don't answer the question, but I'm speaking out loud  
15 about what concerns me. What gets communicated to your  
16 client that she acts on, and I think as opposing counsel  
17 said, and what does she do?

18 Because she has the expertise, and she's -- has an  
19 agenda possibly. And she's pushing the agenda out. Is she  
20 pushing the agenda out because that's what she was hired to  
21 do? Like how many hats is she wearing?

22 Okay. That's, that's a -- okay, that's a question  
23 I have that may not get answered, but that's why I'm  
24 wrestling with this issue of what -- anything she does from  
25 8:00 in the morning to 10:00 at night could fall within this

1 tremendous umbrella.

2 And my question is how do I determine that I'm  
3 protecting work product or a privilege? And how do I  
4 determine that it doesn't fall -- it's not just a blanket --  
5 you know, everything I do when I live and breath and I'm --  
6 I'm working hours is privileged.

7 MR. LEVY: So we produced documents when people at  
8 Fusion have been speaking with members of the media. Ms.  
9 Seago discussed communications with the media. She did. I  
10 know Ms. Krawiec is shaking her head right now but --

11 MS. KRAWIEC: She said I don't recall. I don't  
12 recall --

13 MR. LEVY: She --

14 MS. KRAWIEC: -- about a million times.

15 MR. LEVY: She -- the hyperbole is not well taken.  
16 She volunteered recollections about communications with a  
17 number of different reporters including Dexter Felton  
18 (phonetic) and Frank Foer and Matthew Moss (phonetic). She  
19 was forthright. And she was honest. She was polite. Ms.  
20 Krawiec doesn't need to engage in hyperbole.

21 MS. KRAWIEC: Ms. Seago refused to say whether she  
22 spoke to computer scientists in advance of a meeting with  
23 Franklin Foer. Is that being transparent?

24 MR. LEVY: She told --

25 MS. KRAWIEC: We asked --



1 MR. LEVY: She told --

2 MS. KRAWIEC: -- did you speak to the computer  
3 scientist in advance of your meeting with Franklin Foer, and  
4 she refused to answer the question. Your Honor, here's  
5 what's happening here.

6 THE COURT: Wait, wait. Let me just hear a  
7 response to -- to what you just said.

8 MR. LEVY: She answered all questions that called  
9 for a non-privileged answer.

10 THE COURT: Well, do you think that was a  
11 privileged -- an answer -- a question that would call for  
12 privilege -- a privileged answer?

13 MR. LEVY: When she was speaking with a computer  
14 scientist as part of her privilege research to help Perkins  
15 Coie advise its clients on legal risk that's going to be  
16 privileged.

17 MS. KRAWIEC: Your Honor, I think we have to back  
18 up to the burden. I really think this will help in this  
19 discussion.

20 So as a threshold matter, Ms. Seago, as the  
21 individual claiming privilege, bears the burden of  
22 demonstrating the applicability of any asserted privileged.  
23 That's the Center for Public Integrity case. To meet this  
24 burden, the cases say that Ms. Seago must offer more than  
25 just conclusory statements, generalized assertions and

1 unsworn averments of her counsel.

2           So we have gotten more from Mr. Levy at this  
3 hearing about what they were doing, what Perkins Coie  
4 instructed than anything that happened at the deposition.  
5 And what -- what the cases say is that when the individual  
6 claiming the privilege fails to adduce sufficient facts to  
7 permit the Court to conclude with reasonably certainty that  
8 the privilege applies, its burden has not been met.

9           And Mr. Simpson wrote in his book -- this is in  
10 our motion. This is Exhibit 1 to our motion. It's a book  
11 that they wrote called Crime and Progress.

12           On page 31, here's what Mr. Simpson said -- he  
13 said that Fusion was hired to quote "Provide source material  
14 for the media and feed attack ads." So Mr. Levy keeps  
15 saying, well, we were worried about this defamation lawsuit  
16 and so Perkins Coie -- what were they doing? They were  
17 taking information, and then they were pushing it out to the  
18 media.

19           So there's all these e-mails that were produced  
20 showing, you know -- excuse my language, but there's one  
21 when the -- Mr. Fritsch is getting so frustrated that  
22 they're not running the server allegation story because it's  
23 so desperately needed to run the attack ads on Donald Trump  
24 in October before the election that he says, "Do the fucking  
25 story." He flat out says that. It's almost desperation on

1 the part of Fusion to get these stories out.

2 So you have a scenario where Mr. Levy is  
3 testifying to this Court essentially even though the case  
4 law says that Ms. Seago must offer than just conclusory  
5 statements, generalized assertions, and unsworn averments of  
6 her counsel.

7 And that this Court in order to be able to find  
8 the privilege to apply has to adduce sufficient facts to  
9 permit the Court to conclude with reasonable certainty that  
10 the privilege applies. Otherwise, the burden hasn't been  
11 met.

12 And we couldn't even get at the most limited  
13 information to determine the appropriate nature of the  
14 privilege. We were completely shut down. When Mr. Simpson  
15 by his own words says that he was hired to provide source  
16 material for the media and feed attack ads.

17 MR. LEVY: Your Honor, Alfa-Bank's counsel is  
18 conflating a statement that Mr. Simpson made with the  
19 mischaracterization of Mr. Fritsch's testimony.

20 Ms. Krawiec will know that Mr. Fritsch in his  
21 deposition said that he wanted to make that communication to  
22 the media about the Alfa server allegations because of its  
23 personal concern about the national security implications of  
24 a Russian bank with decades old ties to Vladimir Putin  
25 communicating with Trump.

1           And that, that communication -- this is what his  
2 testimony was -- he did that on his own. That was his own  
3 decision. He was personally concerned. He did not. And he  
4 testified I did not do that at the direction of Perkins  
5 Coie.

6           There was information in -- in the public that was  
7 online that -- for all to see that when the New York Times  
8 questioned Alfa-Bank about these server allegations, the  
9 Trump Organization shut down it's server in response.

10           And when Mr. Fritsch, who is no computer expert  
11 but is an educated person, saw that he was concerned. And,  
12 and, and that -- and what his testimony was, is when he saw  
13 that information in the public record, he was personally  
14 concerned.

15           And so just as a concerned citizen, he went to the  
16 newspapers -- not -- not with any desire to have a political  
17 gain out of it. Quite frankly, Your Honor, they all thought  
18 Hillary Clinton was going to win the election. That wasn't  
19 their concern. They were wrong about that, but that was  
20 their thought. They testified to that.

21           MS. KRAWIEC: Then why was John Podesta so upset  
22 when the server allegations failed?

23           MR. LEVY: I can't -- I can't explain -- I, I  
24 don't know what you're talking about. That's not in the  
25 record. I don't -- I don't -- I don't know where to begin

1 with these characterizations or mischaracterizations of  
2 testimony that aren't correct.

3 THE COURT: And so let me just ask this question,  
4 what does Mr. Podesta's testimony have to do with the  
5 attorney -- this privilege?

6 MR. LEVY: Absolutely nothing.

7 MS. KRAWIEC: Mr. Podesta is the campaign manager  
8 so he's essentially the client for the Clinton campaign.  
9 The Clinton campaign was Perkins Coie's client. So --

10 MR. LEVY: (Indiscernible.)

11 MS. KRAWIEC: -- hired by Perkins Coie --

12 THE COURT: I understand that, but the -- but the  
13 -- I understand that. But my understanding is that the  
14 assertion of the privilege is the privilege that this entity  
15 -- that -- where the defendant in this case is employed --  
16 I'm -- I'm going not call her a defendant. I mean she's  
17 a --

18 MS. KRAWIEC: (Indiscernible.)

19 THE COURT: She's a -- she's a deponent. Let's --

20 MR. LEVY: Right.

21 THE COURT: -- put it that way. She's a deponent.  
22 Where, where she is employed has its own relationship to the  
23 firm, right? So what you're saying is the firm is employed  
24 by Mr. -- by, by the DNC and the Hillary campaign. And the  
25 firm reaches out to a third party and says, now, we want to

1 employ you.

2 So we're talking about a different type of  
3 privilege as I understand it. The privilege to the -- that  
4 the attorney has with this particular contractor.

5 MS. KRAWIEC: Well, I think -- I think what  
6 they're saying under Kovel, Your Honor, is that the  
7 privilege that Perkins Coie would have with the Hillary  
8 Clinton campaign --

9 THE COURT: With their clients?

10 MS. KRAWIEC: Exactly, would then apply to -- to  
11 protect them. And what we're trying to, you know, sort of  
12 suggest is the case law says, no, you have to narrowly Kovel  
13 arrangements.

14 They -- again, I gave you the quotes, Your Honor,  
15 where sometimes you hire experts because they have the  
16 expertise as in here to do open source research and to  
17 run -- feed attack ads.

18 And so you can't -- what the courts are trying to  
19 do is police the broad sweeping privilege assertions in the  
20 Kovel arrangement because they're saying if you did that,  
21 then Kovel arrangements would be meaningless. That's why  
22 the Calvin Klein case said it doesn't matter that the  
23 attorneys simply hired these guys, especially when experts  
24 are operating as the Court put it under their own steam.

25 So here you have a situation where this opposition

1 research firm, which was hired before Perkins Coie. They  
2 were doing all this research for the Washington Free Beacon.

3 Perkins Coie sees that there's all this opposition  
4 research against Trump that could be helpful to the Hillary  
5 Clinton to run these attack ads, and so they hire Perkins  
6 Coie not to provide legal advice but to help with these  
7 opposition firms.

8 And so Mr. Levy keeps saying that the burden --  
9 that, that you -- that it has to be a primary purpose.  
10 Well, it's anything but a primary purpose.

11 And then the case law says that the burden is on  
12 the privilege holder to show clearly that the primary  
13 purpose is to provide the legal advice, to assist with the  
14 legal advice, otherwise the privilege doesn't stand. And  
15 they haven't done that. They haven't met their burden, Your  
16 Honor.

17 THE COURT: So what is it that would help me  
18 understand the -- the agreement that your client had or has  
19 with the firm?

20 MR. LEVY: We've offered in our papers, Your  
21 Honor, to submit the --

22 THE COURT: In camera.

23 MR. LEVY: Yes. Ex parte.

24 MS. KRAWIEC: Your Honor, could we propose that it  
25 be submitted -- if Your Honor goes in that direction, which

1 we believe there's been such undue delay, and we have this  
2 deadline with the Florida Court on March 3rd -- the service  
3 deadline -- so --

4 THE COURT: I -- I'm not sure I can help you with  
5 that because --

6 MS. KRAWIEC: But, but I --

7 THE COURT: But let me just explain because it is  
8 important. I absolutely understand that justice has been  
9 delayed. In just about every single case, it's been delayed  
10 somewhat for reasons beyond our Court's control.

11 I guarantee you though that we've been working  
12 every single day, sometimes on weekends, sometimes late into  
13 the evenings and early in the morning, and I know that you  
14 probably know that this is one of over 400 some odd cases on  
15 my docket.

16 And everybody is filing. Everybody wants their  
17 trials. And we're setting trials in 2023 just as a starting  
18 point. We hear non-jury trials at this point virtually.  
19 That may change hopefully soon -- hearings, you name it.  
20 We're functioning. We're -- we're trying to handle our  
21 motions.

22 Yes, I have to say that when motions are filed, I  
23 really attempt to give them a thorough review unless they're  
24 just sort of, you know, not substantive motions or they're  
25 administrative. That's a different story, but I also have



1 other cases that fall in the same category -- similar  
2 category so I will do the best I can.

3 But I, I can't -- I don't think I'm going to be  
4 able to turn this around as quickly as you want me to. What  
5 I would like to do is at least review in camera, and I could  
6 do that.

7 My issue is still going to be how I'm going to be  
8 -- what I'm reading and what it means to me. I mean I'm  
9 just saying maybe there's a way to -- a way to draft the  
10 questions that have less to do with source material and more  
11 to do with what I think you probably already know.

12 MS. KRAWIEC: But Your Honor, this -- the source  
13 material -- that's critical to connecting to the dots to  
14 getting to who generated the computer --

15 THE COURT: Right, but that's your -- your -- but,  
16 you know, there -- if there's a will, there's a way to  
17 connect dots.

18 MS. KRAWIEC: Sure. But --

19 THE COURT: This isn't the only -- this isn't the  
20 only way you have to connect the dots. Now, I'm not saying  
21 that -- you know, if there's isn't a legitimate privilege,  
22 and if the balancing -- you know, this -- the  
23 proportionality test is met -- I'm not saying -- I wouldn't  
24 rule accordingly -- but I'm looking at -- what is it -- 50  
25 questions, and again I do think that so many has -- have to

1 do with who did you speak with and what did they tell you  
2 and how did it impact you.

3 And I'm just trying to understand how it could be  
4 drafted in, in a -- in a -- maybe a more palatable question  
5 for Mr. Levy. I'm just trying to think about how that could  
6 work.

7 Now, Mr. Levy comes in and says we're maintaining  
8 that we have either privilege as attorney work product or  
9 both, how am I supposed to -- I'm sitting with this person  
10 when she goes to work every day.

11 I mean how -- I could make reasonable assumptions  
12 regarding what I'm hearing. I don't have the underlying  
13 case. I don't need to have the underlying case.

14 I have what you've been submitting to me in terms  
15 of some background, but I'm finding it very difficult  
16 because technically you can clump every single communication  
17 into this very broad brush approach to, you know, this  
18 relationship that -- that she has with this law firm.

19 But I think if you take that broad brush approach,  
20 it's -- it's so broad sweeping that it dilutes itself on  
21 some level.

22 And I want to make sure that if I am analyzing  
23 this properly, and you've cited a lot of case law -- we've  
24 got some of the case law, and -- but some of it is clear.  
25 What's not clear are the specific facts as to what this

1 employee is doing or this agent is doing for this firm.

2 MR. LEVY: If it's helpful, Your Honor, we can  
3 submit in camera ex parte affidavits to educate the Court.  
4 We are not authorized to waive the privilege. This is not  
5 my decision. This is a privilege holder's decision as it  
6 always is.

7 And so as -- as an attorney -- as a member of the  
8 D.C. Bar, I can't waive the privilege without the privilege  
9 holder's authorization, but with, with their approval I can  
10 say to the Court that we can provide additional evidence ex  
11 parte in camera for the Court to review if that would be  
12 helpful.

13 **CLOSING ARGUMENT - PLAINTIFF**

14 MS. KRAWIEC: Your Honor --

15 THE COURT: I mean --

16 MS. KRAWIEC: -- ex parte -- and, and I don't  
17 think the submission of the engagement cures this issue. So  
18 Your Honor, if you go to the case that I couldn't pronounce,  
19 the *Guo Wengui v. Clark Hill* case, the other side  
20 specifically provided the Court with an engagement letter to  
21 try and tip the scales to say that it was all papered to be  
22 privileged. And here's what the Court said.

23 The Court actually discounted the fact that the  
24 engagement letter -- letter stated that outside counsel was  
25 retaining the cybersecurity firm in anticipation of

1 litigation.

2           The Court said, "Although the client papered the  
3 arrangement using its attorneys, that approach appears to  
4 have been designed to help shield material from disclosure  
5 and is not sufficient in itself to provide work product  
6 protection."

7           And it said, "At a minimum it is the client's  
8 burden to demonstrate that a substantially similar  
9 document," which the cybersecurity firm was preparing a  
10 report, "would not have been produced in the absence of  
11 litigation, and it has fallen well short of doing so." This  
12 is D.C. law.

13           So here the argument we were trying to make to the  
14 Court, Your Honor, is that by the only admission -- by the  
15 own admission of Mr. Simpson, they were here using his words  
16 to provide source material for the media and feed media  
17 attacks.

18           So one of the tests when you look at work product  
19 is, was this done for the purposes of litigation or would  
20 this work have been done in any event. Because if it was  
21 done in any event, then it can't be shielded.

22           And so you go back to this argument that Mr. Levy  
23 made about the primary purpose, he -- his client has the  
24 burden and has not met the burden to show that the primary  
25 purpose -- in fact, it's a dual purpose.

1           And this letter which they want to submit ex  
2 parte. They want to submit affidavits ex parte so we can't  
3 see them. We can't weigh in on them.

4           Why? Because, Your Honor, what I hear from the  
5 Court is you've read the papers, you've questioned us for  
6 two and a half hours now, and where I think the Court is  
7 falling is that Seago has not provided the fact -- the, the  
8 sufficient facts to permit the Court to conclude with  
9 reasonably certainty that the privilege applies.

10           And therefore, the burden has not been met. And  
11 if the burden hasn't been met by the privilege holder, then  
12 the motion to compel should be granted.

13           THE COURT: Okay. I, I take that as your closing  
14 argument for, for the day. Thank you for that. Last word,  
15 Mr. Levy, and I will accept ex parte the documents that you  
16 already sent to me, understanding -- I'm just going to say  
17 this -- that I -- I am attempting to -- and I'm talking  
18 about the existing documents.

19           Affidavits I don't think are going to be able to  
20 help me. The question is how is this agreement written?  
21 And is there anything at all -- maybe you tell me. And I  
22 know we're -- we're overscheduled.

23           I mean Ms. Smith has given us at least 15 more  
24 minutes than she needed to, but you tell me. What questions  
25 do you think could be asked of your client under the

1 circumstances of what you're arguing regarding this  
2 agreement.

3           It sounds more like she was a public relations  
4 person. I'm just saying -- I'm not trying to be demeaning.  
5 I'm just saying -- I'm trying to understand -- and I -- and  
6 you've explained it. It may just be me, but I, I know there  
7 are some questions here that are just really obviously  
8 improper in my opinion.

9           They, they're, they're -- you ask them fine, but  
10 you have your answer. Did you ever communicate directly  
11 with an attorney related to the server allegations? Okay.  
12 So who have you discussed Alfa-Bank with at Fusion?

13           I mean some of these -- what did you discuss with  
14 Mr. Susman and Mr. Elias -- Elias -- who I understand are  
15 lawyers at Perkins. Where does that question come in? I  
16 mean some are obviously off -- I'll use the term off, but  
17 who put you in contact with any computer scientists?

18           If the nature of the work is computer science,  
19 then the contacts that she has would be within the scope of  
20 what her employment would be, which would fall within. So  
21 I'm just suggesting -- I know -- I agree. This is taking  
22 two and a half hours.

23           Maybe I'm being too thorough, but I'm not  
24 really -- I'm sitting on a fence quite frankly, and I don't  
25 think I'm convinced by either one of these arguments right

1 now or else I would rule.

2 I feel like I, I, I believe that I need a little  
3 bit more information, and I'd like to know if you do think  
4 there's any way of getting what you need, maybe it will help  
5 after the deposition that seems to be going forward in  
6 Maryland.

7 Maybe it would help you restructure some of your  
8 questions once that is -- I'm not trying to -- I, I hear --  
9 I don't have an opinion regarding the order at all, but it  
10 sounds like that deposition is imminent. So if that's the  
11 case, maybe some of the questions that you're asking here  
12 could be edited or refined, if you will.

13 And maybe Mr. Levy would have -- put in -- on --  
14 in hindsight on which questions could be answered according  
15 to him as counsel. Would you at least take a look and see?  
16 Maybe you could talk to one another about that? When is the  
17 deposition involving the other person?

18 MS. KRAWIEC: It's on Monday, Your Honor, provided  
19 that the Maryland Court of -- the Special Court of  
20 Appeals -- I'm going to screw that up -- in Maryland, the  
21 appellate court. Unless it provides relief on Friday, then  
22 the deposition is going forward Monday.

23 THE COURT: Okay. Just a thought, this is very  
24 time consuming, but I -- you know, I want to do the right  
25 thing -- at least what I think is the right thing. I'm sure

1 you'll let me -- I appreciate that you've indulged me. You  
2 actually put this all into play so I'm just responding to --

3 MS. KRAWIEC: Your Honor --

4 THE COURT: (Indiscernible.) I'm wasting your  
5 time.

6 MS. KRAWIEC: We've been nothing but  
7 (indiscernible) --

8 MR. LEVY: (Indiscernible) closing argument, and  
9 I'd like to respond if I may.

10 THE COURT: Okay.

11 MS. KRAWIEC: I'd just like to say we're very  
12 grateful that you invested the two and a half hours. I was  
13 trying to make the point that if you aren't convinced by the  
14 record, then what the case law says is you haven't -- they  
15 haven't met their burden. That's all, Your Honor.

16 THE COURT: Okay. Thank you. Mr. Levy, in a  
17 minute or so what --

18 **CLOSING ARGUMENT - RESPONDENT**

19 MR. LEVY: Thank you, Your Honor, and I'll be  
20 brief because I know we've been here for a while. We  
21 appreciate the time and careful consideration that you've  
22 dedicated to this important question.

23 One factual matter that's very important to  
24 clarify here, Ms. Seago testified about her role at the  
25 company and her role -- this relationship with Perkins Coie.



1 She did not talk about her role as somebody who was pushing  
2 information out to anyone.

3 She talked about her role as an analyst, as a  
4 researcher. She has a graduate background in the University  
5 of Michigan. She's a serious person. And she was asked to  
6 research a variety of matters during the summer of 2016 for  
7 Perkins Coie and for other clients.

8 Her work for Perkins Coie under Fusion GPS's  
9 engagement (indiscernible) was for the purpose of helping  
10 Perkins Coie advise its clients about the very real prospect  
11 of litigation with litigious people who wound up filing  
12 litigation.

13 And the fact that some disclosures were made later  
14 on do not as a matter of law waive the privilege. And, and  
15 so in the first instance, the engagement letter, which we  
16 will provide to the Court in camera ex parte, will help the  
17 Court understand what the intention of the parties was at  
18 the onset of the engagement.

19 And we will do what we can, Your Honor, to help  
20 educate the Court on the furtherance of that engagement.  
21 There was no waiver. There was no authorization of a  
22 waiver.

23 And while Alfa has done it's best to make this  
24 confusing, we have a Kovel letter and engagement to conduct  
25 research, investigations, and analysis that is like many

1 Kovel letters all throughout the District of Columbia that  
2 lawyers and law firms use.

3 And if this privilege is overturned here, it will  
4 have a wide impact for lawyers and law firms all over the  
5 District. This is not about Fusion. This is not about the  
6 privilege holders. It's about putting many more parties  
7 than just that.

8 THE COURT: Okay. Thank you.

9 MR. LEVY: We'll submit it. Thank you, Your  
10 Honor.

11 THE COURT: Okay. So when do you think you'll  
12 submit it, so we'll look for it?

13 MR. LEVY: How is Tuesday?

14 THE COURT: That's fine. And --

15 MS. KRAWIEC: Tuesday is fine with me. So Tuesday  
16 is -- where are we -- the 15th --

17 MR. LEVY: Yes.

18 MS. KRAWIEC: -- of February 2022.

19 THE COURT: Okay. So because I have what's called  
20 exceptions reports which means that if there's a case or a  
21 matter that's pending and it doesn't have a date, it kind of  
22 falls into the abyss, and then we get notices. It's a way  
23 that we keep track of our cases.

24 I'm going to set what I can call a status date  
25 which is more of a control date just in case we need it

1 knowing that the ball is in my Court at this juncture.  
2 Okay. If you need to communicate with me, then -- about  
3 anything, then please let me know through motion without --  
4 we'll do what we can, of course.

5 And -- and if -- and especially if it doesn't  
6 involve a hearing that might take everybody more time, but  
7 please communicate with me if there's something that, that,  
8 that changes especially after the next deposition that you  
9 have scheduled in Maryland.

10 Let me just see. So can we just set this out -- I  
11 know time is of the essence as it always is, but I start to  
12 pick up my trials, and then I'm in a courtroom all day. And  
13 that will happen as of April 11th.

14 So I'm thinking we have a -- you're going to have  
15 to give us a little bit of time. We haven't -- the status  
16 that we can set for the -- for the 7th of April.

17 And we can -- and I can vacate it if I -- if I  
18 issue -- if I can issue my decision before than which I'm  
19 intending to do. I just want to have a date up. So can we  
20 set this for status at -- at 11:00 or 2:30? You tell me  
21 just in case.

22 MR. LEVY: On the -- on the 7th of April, Your  
23 Honor?

24 THE COURT: Yes. It may be virtual. I'm assuming  
25 it will, but --

1 MS. KRAWIEC: So Your Honor that's two months out.

2 THE COURT: Right. That's my, that's my  
3 placeholder.

4 MR. LEVY: We can do 11:00 a.m., Your Honor.

5 THE COURT: Hopefully -- hopefully you won't be  
6 waiting that long.

7 MS. KRAWIEC: Understood, Your Honor.

8 THE COURT: Okay. So we have 11:00, April -- 7th  
9 of April 2022 as a status. Ms. Smith, can we set it as a  
10 control date, or do we have to set it as a status?

11 THE DEPUTY CLERK: Your Honor, it will just be set  
12 as a status hearing.

13 THE COURT: Okay. Dictated by the computer  
14 system. Okay. So we have a status for that date. And  
15 hopefully we won't -- I'm going to say this. Hopefully, we  
16 won't see you. All right. But thank you for your time. I  
17 appreciate it very much.

18 MR. LEVY: Thank you, Your Honor.

19 THE COURT: All right. Stay well --

20 MS. KRAWIEC: Thank you everybody.

21 THE COURT: -- everybody. Appreciate it. Thank  
22 you.

23 MR. LEVY: Bye.

24 THE COURT: Thank you.

25 MS. KRAWIEC: Thank you.

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(Thereupon, this concludes these proceedings.)

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CERTIFICATE OF TRANSCRIBERS

We, Lee Ann Tardieu and Isaac Lewandowski, do hereby certify that in our official capacity, we prepared from electronic recordings the proceedings had and testimony adduced in the matter of: AO ALFA-BANK v. JOHN DOE, et al., Docket Number: 2021 CA2 000683, in said Court on the 10th day of February 2022.

We further certify that the foregoing 105 pages were transcribed to the best of our ability from said recordings.

In witness whereof, we have subscribed our names this the 16th day of February 2022.

*Lee Ann Tardieu*

Lee Ann Tardieu

TRANSCRIBER

*Isaac Lewandowski*

Isaac Lewandowski

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