

1 MITCHELL - WITNESS

2 o'clock in the morning, 9:30 in the morning. I was
3 expected to put a (unintelligible, one word) of links
4 from around the Internet of interesting stories, so
5 that people would get up. They'd sign on. Nation
6 readers would go to the site and they'd say, oh,
7 there's Greg Mitchell's Daybook. The 10 great links,
8 I don't know about -- and then during the day I would
9 keep adding links to it. Um, so that was certainly
10 every day.

11 Then I started WikiLeaks. Which was seven days a
12 week, um, not just weekdays. Um, then when that
13 ended there may have been a period where it was three
14 times a week, four times a week. I would say, well,
15 if you don't have any particular day well, that's
16 okay. You're producing a lot of stuff. You know,
17 you're doing great stuff three or four times a week.
18 Enough to do it five times a week. And then Occupy
19 Wall Street, again it was seven days a week for six
20 months. Uh, then there was a period where, um, in
21 the final year I think before the final year, um,
22 Katrina and Richard Kim felt that, um, it would be
23 better -- maybe it would be better for the audience
24 or whatever that I would write one major piece a week
25 instead of four or five short pieces. Uh, I

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2 Q. Right. And you, uh, before you were -- did, uh, work
3 for The Nation magazine you were an editor and
4 publisher. Can you tell us what that job was?

5 A. I was the editor of Editor & Publisher magazine,
6 national magazine for, um, I was there for 10 years,
7 the last 8 years was as the editor.

8 ALJ DOMINIQUE: And I apologize. Not to
9 interrupt, Mr. Silverman. I am sorry for your loss.
10 I think, um, just trying to get through all these
11 hearings I kind of overlooked that. Okay. Um --

12 MR. SILVERMAN: I appreciate that.

13 ALJ DOMINIQUE: Okay.

14 Mr. Mitchell, you may go ahead.

15 BY MR. SILVERMAN

16 Q. And, um -- and how many years were you
17 (unintelligible, one second, 0:07:19)?

18 A. Um, four years and three months.

19 Q. During that period of time, um, did you perform work
20 for any other organizations?

21 A. Um, I wrote blog posts for Huffington Post off and
22 on. There was a period where I wrote quite a few and
23 a period (unintelligible, one second, 0:07:43)
24 encouraged to by Nation and a period where I didn't
25 write at all -- um, other organizations, if you mean,

1 MITCHELL - WITNESS

2 like media and you know, you're the perfect person
3 for it. Um, so, um, so what -- and it was, you
4 know -- that's, uh -- that's how I remember it.

5 Q. Was there a discussion about, um, payment?

6 A. Oh, sure. Sure.

7 Q. Please tell me about how those discussions went.

8 A. Well, the discussions were -- she said, what do you
9 think you'd need to do this and I said, in my memory,
10 um, about \$50,000. Um, you know, for what -- what
11 would be, um, um, cash, you know, I said. \$50,000.
12 Um, and she then and again we're getting into the
13 other hearing here, uh, she then worked
14 out -- somehow worked out -- it turned out that I got
15 a good share of that from The Nation Institute but
16 she was the one who always said, this is what you can
17 get. This is what we can offer you, um, I never
18 talked to The Nation Institute about money and
19 somehow it was always Katrina and she was like, okay,
20 here is your lump sum. You're going to get it from
21 two places but, you know, this is what you'll get.
22 So, you know, and I -- I mean I think I bargained her
23 up a couple thousand the first time when she
24 offered --

25 Q. Did you get around 50,000 --

1 KIM - WITNESS

2 supervision of the work.

3 ALJ DOMINIQUE: Okay.

4 MR. SILVERMAN: Mary van Valkenburg doesn't get
5 involved in the supervision. She's more in the
6 technical aspect of the relationship.

7 BY ALJ DOMINIQUE

8 Q. Okay. Well, do you know how Mr. Mitchell came to
9 work with, uh, The Nation?

10 A. Um, I don't -- I don't know the details. Um, I think
11 Greg was already worked -- writing for us when I came
12 onboard as --

13 Q. So -- (unintelligible, one second, 0:14:29) --

14 A. I think -- I think -- I think Greg was already
15 writing for us when I -- when I became editor of the
16 Web site, um --

17 Q. Um, do you know anything about the arrangements, um,
18 how -- who was it negotiated, what the arrangement
19 was?

20 A. There was a monthly retainer that was paid to him
21 from The Nation magazine.

22 MR. SILVERMAN: Perhaps, Your Honor, we could
23 just stipulate to the initial contract. I mean,
24 um -- I can show you a copy of the initial agreement
25 and Mr. Mitchell can look at it and we --

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2 Q. And the, um, Nation's share or --

3 A. No. The Nation -- I -- I don't know how much, you
4 know, overlapping with this morning. But, um, I -- I
5 received two contracts and two checks from The Nation
6 Magazine and The Nation Institute and, um, I believe
7 the first year about two thirds was The Nation
8 Magazine and the second year it flipped. It was
9 about two-thirds Nation Institute. And, um, by the
10 final year it was exactly the same. It was less
11 money and exactly the same. So it varied, you know,
12 the -- my contract varied every year.

13 Q. Did you --

14 A. But I think the high was probably about 32,000 and
15 the low was probably 15,000.

16 Q. When did you start working there?

17 A. Uh, about March of, uh, 2010.

18 Q. And when did you last work there?

19 A. Uh, well the -- the contract, uh, ran out in March of
20 2014 but it was I -- I -- I continued to get paid
21 without a contract, uh, until June 30th.

22 Q. And I know you said that you were a writer there for
23 a specific -- was it that you did --

24 A. Um, well, mainly I wrote, uh, this daily or nearly
25 daily blog. On, um, we basically, media and politics

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2 rejected exhibit file. So the case is appealed we
3 will have this report in the event that --

4 ALJ DOMINIQUE: We actually do not have, uh,
5 such a file in our administrative decisions.

6 MR. SILVERMAN: You just reject it --

7 ALJ DOMINIQUE: Uh, for retaining them, no.

8 MR. SILVERMAN: Um, uh, is --

9 BY MR. SILVERMAN

10 Q. Did you serve as editor of Nuclear Times from '82 to
11 '86?

12 A. Uh-huh.

13 Q. And you wrote various articles about World War II for
14 that? (Unintelligible, three words) World War
15 issues.

16 A. Yes. Uh-huh.

17 Q. And you wrote several books about (unintelligible,
18 one second, 0:12:14) campaign?

19 A. Uh, it's two different -- well, one book on that and
20 one book on another campaign, yes.

21 Q. And those you wrote to --

22 A. Well, in the 1980s, 1990s, correct.

23 Q. Uh-huh. And, um, recent books dealt with press and
24 government and, um, what other issues did you write
25 about while you were blogging for The Nation?

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2 A. Oh, I wrote, um -- I wrote -- I wrote a book about
3 WikiLeaks. I wrote a book about Bradley Manning who
4 was involved in WikiLeaks case. Uh, I actually
5 coauthored a book about that. I co-wrote a book
6 about, um, Beethoven and the influence in culture and
7 politics. Um, I did a brief digital book on, um, my
8 past interviews with (unintelligible, one second,
9 0:13:10). Um, I did research on --

10 Q. Are you working on a book now about your
11 Germany -- Tunnels of Germany?

12 A. Well, that's my next project.

13 Q. Your next project?

14 A. Yeah. Yeah.

15 Q. And so what does it involve in that.

16 MR. MEJIA: Objection. That is outside the
17 scope of the time frame of the determination.

18 MR. SILVERMAN: But it's in the time frame of
19 the determination. He's working on it coming
20 up -- he's working on it, now.

21 ALJ DOMINIQUE: Um --

22 MR. SILVERMAN: He was working on it while he
23 was blogging for The Nation. That's the question.

24 ALJ DOMINIQUE: Okay. You can ask that question.
25 Is that correct, Mr. Mitchell?

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The Nation.

33 IRVING PLACE, NEW YORK, NY 10003-2332 TEL: (212) 209-5400 FAX: (212) 982-9000 E-MAIL: KAT@THENATION.COM

KATRINA VANDEN HEUVEL
EDITOR & PUBLISHER

February 11, 2010

Greg Mitchell
7 Townsend Avenue
Nyack, NY 10960

Dear Greg,

I am excited we will be working together in these turbulent, challenging times. Let me lay out our arrangement:

* You will write/manage new blog, focused on the media, exclusively for thenation.com. It will launch March 2010, to run for one year -- with hope we renew then. (We will ensure blog launches in March even if CMS not yet fully in place.)

* We will provide you with freelance payment of \$46,800.

* We will also provide blog-related expenses, including trips to NYC for Nation business, of up to \$2500 during this one year period. (As agreed, we may well exceed this amount if travel for conferences/media requires it -- expenses to be approved by me.)

* You'd work at home; post items directly to the blog; and we'd assign you an ace intern who could fill in at times when needed-- even if just posting links.

* The blog -- we must rustle up a punchy name! -- will focus on the media, with *some* politics and culture, but heaviest on (all aspects of) media; it will be updated several times a day; it will consist of shortish items, with some analysis, videos, links, and images....I like idea of soliciting contributions from editors and others in Nation family/ as well as tips from readers. We could talk a bit more about tone/ but it should have informal and appealing quality without losing strong analytical edge. I'd also propose that you might, occasionally and as warranted, do longer posts/items.

* We'd like you consider doing a "cheat sheet"; I do think that could be very strong traffic generator for this. Of course, we need to talk more about this and format and frame but would like to think this works as part of blog.

HRG EX# _____ ER EX# 1
CLMT EX# _____ COL EX# _____
ALJ: _____
INITIALS SD DATE 3/10/2010

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* It would be welcome if you could be part of key Nation meetings, panels, events.

* Would ask that you identify/affiliate yourself as/with The Nation in your media appearances.

* And, of course, it will be important for the success of the blog for you to promote it via Twitter and your personal blog. Of course, we'd promote it too!

* I'd work with you to see what is possible regarding a book contract at Nation Institute/Nation Books/ which is, as you know, in deep transition. And if there are Nation print pieces, we'd work out a standard payment separate from this arrangement.

My ambitions for this blog are very high! I want to ensure it has real impact and a good and growing audience. I agree with you that media, for better or worse, is one of few UNITERs in these times. That's why I am excited about a prominent, active media blog and believe it can drive traffic (one of our strategic web priorities this year with CMS etc) and drive interest for the entire (new) site.

The contents of this agreement are to be kept *private and confidential*

Katrina vanden Heuvel

Katrina vanden Heuvel

Gregory C. Mitchell

Greg Mitchell

2/18/10

1 KIM - WITNESS

2 A. Um, it varies from time-to-time. I think, right now,
3 we have about 15.

4 BY ALJ DOMINIQUE

5 Q. Are they all freelance?

6 A. No. So they're a mixture of staff writers who are in
7 the union, who are paid employees. Um, and a
8 freelancers.

9 Q. And what's the distinction between the bloggers that
10 are freelance and those that work for the --

11 A. Right. So -- so -- so the staff writers we have, um,
12 and they editors, um, I can compel them to wrote
13 about certain subjects. I can compel them to cover
14 things. Um, we don't pay them additionally for their
15 writing either for print or for online. Um, uh,
16 I -- I assign them things to edit, when to file, how
17 to file.

18 Um, with freelance writers it's a negotiated
19 relationship. You, um -- they pitch things. Um, we
20 may take some ideas. We may suggest some ideas but
21 it's really their, um -- their call whether they
22 cover something or not and how they cover it in
23 particular.

24 BY MR. SILVERMAN

25 Q. And when you say you evaluated, um, the, uh, blogging

1 KIM - WITNESS

2 them. If you are merely a freelance writer you want
3 to get your foot in that door. You want to pitch
4 ideas that are -- are consistent with that magazine's
5 interests so, of course, I think all writers
6 would -- would listen to that, um, um, suggestion.

7 BY ALJ DOMINIQUE

8 Q. Was Mr. Mitchell free to say, for example, I disagree
9 with that and then go on his own?

10 A. Absolutely. Absolutely.

11 BY MR. MITCHELL

12 Q. But in your opinion if I disagreed, uh, again with
13 Katrina vanden Heuvel on ideas, um, strong urgings
14 that she made --

15 A. I --

16 Q. -- would I just be, oh, that's --

17 A. I think that if you're -- if your, um, interests were
18 extremely divergent from what the magazine produces
19 then like any writer, um, we would hesitate to
20 publish you, eventually.

21 Q. Uh-huh.

22 A. Um, within the broad scope of The Nation's interests,
23 um, I think we take it as a point of pride that we
24 actually allow our writers to have very diverged
25 opinions. If you actually read our pages, there are

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2 terms of -- of editing of it, copy editing. And just
3 general, um, editors looking at it and commenting,
4 you know, I -- I get e-mails from Katrina for example
5 saying, oh, that's a great column, maybe you should
6 add this link. Or have you seen this story, you
7 know, maybe you want to add this link or whatever so,
8 I certainly, uh, uh, I -- and they were not obsessed
9 with what I was writing but certainly I -- I had the
10 sense there was a lot of people paying attention and
11 I would get comments on what I posted.

12 Q. Did you have to send reports?

13 A. No. I don't think reports probably is not, um,
14 I -- I don't know. I guess not.

15 Q. And did you need any equipment to do your work?

16 A. Just my own, um -- my own laptop.

17 Q. How did you identify yourself to third parties?

18 A. Generally it was Nation writer.

19 Q. Did you have to provide notice that you needed,
20 um -- you were not available or needed some time off?

21 A. I certainly did to Katrina. You know, I said, I'm
22 going away for a week or, you know, I'm, um, um, our
23 power's off, uh, Hurricane Sandy has hit, and I'm,
24 you know, I'm in a hotel for two weeks, um, going on
25 a vacation for 10 days. Um --

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1 MITCHELL - WITNESS

2 free -- I -- I never thought I was free to write
3 anything. You know, there's -- this is your blog
4 but, um, I -- I certainly never felt that geez, I
5 could write anything. And I -- I have to stay more
6 or less within the agreed, um, you know, subject
7 matter for that time. You know, media and politics
8 or when I was only covering WikiLeaks for a few
9 months and then I was only covering Occupy Wall
10 Street.

11 Q. Who decided that it would only --

12 A. Pardon?

13 Q. Who decided that it would only be the Wall Street,
14 uh, uh, Occupy Wall Street during those periods?

15 A. Um, I think it was kind of collaborative in a way.
16 If I -- in both -- in both those cases I had started
17 writing about them because they were enormously
18 important for The Nation audience. Um, and I kept
19 writing about them which would have been expected for
20 a week or two and then they became in both cases the
21 most popular thing on the entire site, every single
22 day. Um, and that continued for months, really.
23 And so, you know, that was -- and I -- I liked that.
24 It was good to write something that was so popular
25 but The Nation also liked it because it was a real

A-19(a)

1 MITCHELL - WITNESS

2 someone to -- if that's your question. I could have
3 hired someone to do research for the blog that I
4 would then write an article based on this.

5 Q. Okay. Um, and you talked about -- when the Judge
6 asked you some questions about when Katrina asked you
7 to, um, certain topics, um, there were times where
8 you accepted those and times that you didn't --

9 A. Right.

10 Q. But I want to ask the other way, were there times
11 where you suggested topics to, um, Ms. vanden Heuvel?

12 A. Oh. That's the question. Um, specific topics on a
13 given day, um, I'm sure it happened. Um, it was not
14 that common. What was more common was we -- well, we
15 did have, um, disagreements at times when I wanted to
16 shift focus to a different subject, or a different,
17 going into, a whole different topic for a while or
18 for a change of focus for the blog. And she and
19 Richard Kim would talk about it and then say, no.
20 But in terms of any specific day where I would say, I
21 wouldn't have to generally get an okay from her,
22 like, you know, here's an idea, for something. Is it
23 okay? I -- I think it happened -- now that I think
24 of it, it happened sometimes, um, when there was a
25 lot of coverage for a specific subject. Like

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2 the day even into the -- into the wee hours of the
3 morning, sometimes. Um, I would be, you know, I
4 could say, what's interest me in this -- the broad
5 subject area that I was supposed to cover which was
6 media and politics.

7 Okay. So generally had to do -- had something to do
8 with media, intersection with politics generally.

9 And, um, so I would often have freedom to say, okay,
10 what interest me. Um, what would I like to write
11 about today. What seems most important.

12 What -- what's the best for my blog or for -- for The
13 Nation. Um, but there were many other times where I
14 would get a note, generally from Katrina, sometimes
15 from, um, um, someone else, generally, um, Ms. vanden
16 Heuvel, um, saying, why don't you cover this. Or you
17 really should cover this. Or -- or there's different
18 language. And again, I have 15 examples here which I
19 can submit.

20 Q. Yeah, but did -- think about the examples. But could
21 you said, no? I don't like -- I don't want to
22 discuss that.

23 A. Yeah. I -- I could. But remember, she was the
24 editor, the publisher, the co-owner and a board
25 member of The Nation, um, The Nation entity. Um, so

1 MITCHELL - WITNESS

2 yes, I could theoretically. I -- I might, um, be
3 able to say, no. I mean, occasionally I say, no.
4 Just -- just -- just didn't respond. I didn't say
5 I'm not going to do that. You know, sue me. You
6 know, I just didn't do it.

7 More often than not, I did then cover that the next
8 day or two days later or something like that because
9 I felt, you know, she's just the -- the -- in most
10 people's mind she is The Nation, you know, and I
11 didn't feel I had the, um, you know, I could risk
12 alienating her and just refusing time after time to
13 now do what she was urging.

14 Q. Okay. So the times you didn't outright say, no. But
15 you just let it go and you didn't --

16 A. Right.

17 Q. -- write about that.

18 A. There were times, yeah. Uh-huh.

19 Q. Did you hear anything about it afterwards?

20 A. I don't think so. I mean, I don't think she said
21 what -- whatever happened to that? Um, she might
22 have. I -- I'm not sure. Generally -- generally it
23 was, um, you know, I just didn't -- there were a lot
24 of things I was covering. A lot of interesting
25 things I was covering. But a lot of things were, you

A-20(b)

Vol 1

1 KIM - WITNESS

2 proceeded. Again, there was a lot of variation in
3 the -- in the -- in the relationship. So there were
4 times when, um, he didn't write at all and then there
5 were times when he wrote rather infrequently but I
6 would say the majority of the time it was a short
7 daily post that would grow a little bit throughout
8 the day.

9 Q. Did he know to write daily or was it his, um,
10 discretion whether he wrote on a daily basis?

11 A. Um, you know, I believe that's what he pitched to us,
12 a sort of daily aggregated blog.

13 Q. And then when, for example, he would create the post,
14 um, did he choose what he was, um --

15 A. The content -- the contents of the post and the topic
16 were really -- entirely his choice. The -- again,
17 there would be, as editors we would often make
18 suggestions. Um, and we would -- at the end of the
19 day, since it's my publication and I have to vouch
20 for everything that goes up, if something didn't meet
21 the standards of the publication we would -- we could
22 ask for corrections or we could ask to -- to take it
23 down and sometimes we would. But he was really -- it
24 was his choice as to which subjects he would
25 particularly cover that day. Um, the treatment he

A 21(a)

The Nation Co. Ltd

1 KIM - WITNESS

2 Q. To edit Mr. Mitchell?

3 A. Um, again, I -- I wouldn't call this editing. I

4 would say this is all just quality control. Um, it

5 was to make sure; again, the links were right. It

6 was properly entered into the blog back end, um,

7 there were -- it -- the images were sized correctly

8 all -- all that stuff. It wasn't editing on the

9 content level. Um, that's, you know, that's what I

10 would do with writers.

11 Q. Do you know how Mr. Mitchell was paid?

12 A. I believe it was in monthly installments.

13 Q. Was it direct deposit?

14 A. Um, I -- I don't know that. Um, Mary van Valkenburg

15 would know that.

16 Q. And did he have to submit anything to get payment?

17 A. Um, I don't know that. Mary van Valkenburg would

18 know that.

19 Q. Did he have to maintain any insurance, workers'

20 compensation?

21 A. I don't -- I would not know that.

22 Q. Did the claimant have any expenses related to doing

23 this, um, work?

24 A. Um, I believe the contract, um, um, puts out \$2,500

25 for expenses related. I don't know if those were

1 KIM - WITNESS

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18 important for The Nation audience. Um, and I kept
19 writing about them which would have been expected for
20 a week or two and then they became in both cases the
21 most popular thing on the entire site, every single
22 day. Um, and that continued for months, really.
23 And so, you know, that was -- and I -- I liked that.
24 It was good to write something that was so popular
25 but The Nation also liked it because it was a real

1 VANDEN HEUVEL - WITNESS

2 on my own change the overall focus of the blog?

3 Not -- not -- not one individual piece for that day
4 but if suddenly I started writing regularly about
5 something --

6 A. I mean, there was a broad -- again I -- there
7 was -- an interest in you because of your expertise
8 as someone who had shown, you know, in an independent
9 different way, the media -- the media criticism.
10 Media criticism can be stretched and thought through
11 and redefined and broadened.

12 Q. Uh-huh.

13 A. But that was the general mandate. But my memory is
14 you did go off in some other areas occasionally and I
15 don't recall saying, pull back or anyone doing at The
16 Nation.

17 Q. But do you recall me ever going off into another are
18 for, you know, weeks and then you --

19 A. Not weeks. But as I mentioned you -- you had your
20 own personal passions, you know, Upton St. Claire,
21 the Beethoven. You did that occasionally.

22 Q. Right. But -- well, let me -- do get a good example,
23 ask you about. Was I -- do you recall when I wanted
24 to quit the WikiLeaks focus after five months or
25 something, do you recall telling me I had to continue

1 MITCHELL - WITNESS

2 yes, I could theoretically. I -- I might, um, be
3 able to say, no. I mean, occasionally I say, no.
4 Just -- just -- just didn't respond. I didn't say
5 I'm not going to do that. You know, sue me. You
6 know, I just didn't do it.

7 More often than not, I did then cover that the next
8 day or two days later or something like that because
9 I felt, you know, she's just the -- the -- in most
10 people's mind she is The Nation, you know, and I
11 didn't feel I had the, um, you know, I could risk
12 alienating her and just refusing time after time to
13 now do what she was urging.

14 Q. Okay. So the times you didn't outright say, no. But
15 you just let it go and you didn't --

16 A. Right.

17 Q. -- write about that.

18 A. There were times, yeah. Uh-huh.

19 Q. Did you hear anything about it afterwards?

20 A. I don't think so. I mean, I don't think she said
21 what -- whatever happened to that? Um, she might
22 have. I -- I'm not sure. Generally -- generally it
23 was, um, you know, I just didn't -- there were a lot
24 of things I was covering. A lot of interesting
25 things I was covering. But a lot of things were, you

1 MITCHELL - WITNESS

2 the day even into the -- into the wee hours of the
3 morning, sometimes. Um, I would be, you know, I
4 could say, what's interest me in this -- the broad
5 subject area that I was supposed to cover which was
6 media and politics.

7 Okay. So generally had to do -- had something to do
8 with media, intersection with politics generally.

9 And, um, so I would often have freedom to say, okay,
10 what interest me. Um, what would I like to write
11 about today. What seems most important.

12 What -- what's the best for my blog or for -- for The
13 Nation. Um, but there were many other times where I
14 would get a note, generally from Katrina, sometimes
15 from, um, um, someone else, generally, um, Ms. vande
16 Heuvel, um, saying, why don't you cover this. Or you
17 really should cover this. Or -- or there's different
18 language. And again, I have 15 examples here which
19 can submit.

20 Q. Yeah, but did -- think about the examples. But could
21 you said, no? I don't like -- I don't want to
22 discuss that.

23 A. Yeah. I -- I could. But remember, she was the
24 editor, the publisher, the co-owner and a board
25 member of The Nation, um, The Nation entity. Um, so

A 23(b)

1 KIM - WITNESS

2 would give them, the angle, the opinions expressed

3 within. Um, where he would link to. That was all

4 determined by, um, Mr. Mitchell.

5 Q. Before it was published to the public, made available

6 to the public was there a due process for his work?

7 A. Um, so that -- the -- it varied throughout the course

8 of the relationship. At some points there was. It

9 just went up. Um, as we -- as my staff grew we

10 really needed to -- to maintain quality control over

11 everything that was published so there was a review

12 of it for, um, it's, um, um, you know, its adherence

13 to our standards, um, in terms of just grammar, copy

14 and editing, um, working links, images sized

15 correctly.

16 Q. And at what point and time -- so you said he worked

17 there February 2010 to June 2014?

18 A. Yes.

19 Q. And at what point and time did that review start?

20 A. Huh, you know, I don't -- I don't really -- I can't

21 remember correctly?

22 Q. Was it for a few months before his time ended, a

23 couple --

24 A. No.

25 Q. -- of years?

1 MITCHELL - WITNESS

2 Now, I -- I would be sitting at home. I would file
3 my story for that day via, um, The Nation sign
4 on -- I would sign onto The Nation site. Okay.
5 Press a button. My story would get posted or
6 would -- it would get posted. There might be a delay
7 in posting. But as soon as I submitted it I was
8 supposed to contact my intern who would then be the
9 first person to edit my -- my story. Uh, it might
10 take five minutes. It might take 30 -- 30 minutes.
11 I don't know. Uh, often another Nation editor would
12 then edit it. Um, I think in some cases they kind of
13 caught up with it later or whatever but, um, if there
14 was -- if the intern had made -- and -- and this
15 happened sometimes. The intern made some, you know,
16 silly mistake or introduced an error just because
17 they didn't know, you know, the subject or changed
18 some writing -- changed something -- writing I didn't
19 like, then I would contact the intern and sometimes
20 they would, you know, they'd have a good explanation
21 and be fine. Other times they'd say, oh, yeah.
22 That's a bad error. Let me go in and fix it.
23 Interns did not generally write -- they felt -- there
24 was one particular intern who did -- did -- did
25 writing for me on the blog. There were a couple

1 KIM - WITNESS

2 referred to as the style manual there. There is
3 maybe, um, you know, a sheet of information that was
4 a very basic, um, guide to Nation style. I wouldn't
5 call it a manual and it certainly is not the manual
6 that our copy editors use which is, um, you know, I
7 believe over 100 pages long. That is really just for
8 our staff to absorb and apply that style to our
9 content.

10 Q. Okay. So this is referring to the same thing. What
11 you're saying is sort of guidelines for them.

12 A. Just technical guidelines for entering things into
13 the computer system. That's really what the bloggers
14 received. So it's so that they can do that and
15 they're not, um, you know, coding errors or broken
16 links or, um, fields that are checked off improperly.
17 Um, you know, we really treat that as sort of the
18 delivery mechanism for content to come to our editors
19 who then bring it up to, you know, the quality
20 we -- we need to have it up to -- to post online.

21 Q. And it says -- and you touched on it. Uh, the
22 determination says that Mr. Mitchell could not work
23 for competitors if writing on the same subject?

24 A. You know, I -- I, no. That's not. It was -- it
25 really was, um, that the blog would be exclusive to

1 MITCHELL - WITNESS

2 Q. Um, and if you didn't accept that didn't affect your
3 writing for the blog. I mean you were still under
4 the same contract?

5 A. Yeah.

6 Q. Um, and -- the, um -- the magazine, um, didn't supply
7 you with a computer?

8 A. No.

9 Q. You had your own computer. Where did you work from?

10 A. I worked from home. Um, except for, you know, very
11 few number of visits to The Nation office. Uh, I
12 worked from home. I used my own Internet connection.

13 Q. But you could blog from anywhere, I suppose. You
14 could, um -- as long as you had your computer and --

15 A. Yeah. I had been -- in fact, during Hurricane Sandy
16 I, um, continued daily since I was in a daily blog
17 situation on that period I was covering the -- 20,
18 um, 2012 campaign every day. Constantly during the
19 day and weekends. And so when Hurricane Sandy came I
20 was stuck in a hotel and stuck out of my house, so I
21 had to go to places with Wi-Fi.

22 Q. So you could get online?

23 A. Yeah. To get onto Nation.

24 Q. You could actually, uh, continue to blog in Germany,
25 if you wanted, right?

1 MITCHELL - WITNESS

2 A. Yeah. But I -- yeah.

3 Q. You could. I'm not saying you did but --

4 A. No. I guess, yeah, I guess.

5 Q. Yeah. Once you had the computer and you had the

6 access to it --

7 A. Yeah.

8 Q. -- what The Nation cared about is getting the blog.

9 A. Well, that's because you used The Nation

10 architecture -- architecture.

11 Q. But the architecture provides that someone

12 can -- once they get on the system they can get on

13 the system from anyplace?

14 A. I believe that's true.

15 Q. Um, and, um, what hours did you work?

16 A. Well, it was -- it -- it varied because there were

17 different stages of this blog. You know, there was a

18 stage -- the first --

19 ALJ DOMINIQUE: The question was asked and

20 answered. Are you saying --

21 MR. SILVERMAN: What?

22 ALJ DOMINIQUE: That question was asked and

23 answered.

24 MR. SILVERMAN: What hours he worked?

25 ALJ DOMINIQUE: Correct.

1 MITCHELL - WITNESS

2 clear to me that they really would like the stories
3 posted by noon because it gave them, A, a chance to
4 edit them, B, a chance to decide what was -- they
5 were going to feature on the blog for that day. Um,
6 traffic as best in the middle of the day.
7 Um, public -- publicity get publicity for the rest of
8 the day, end up on TV or whatever.

9 So in my mind there certainly was, um, a -- a lot of
10 guidance to -- to work in the morning. I didn't -- I
11 certainly didn't feel I had the option of well, I'm
12 gonna take morning off, you know, come back at 3 p.m.
13 and start posting. Uh, never felt that.

14 Q. Where did you perform your work?

15 A. At home?

16 Q. Whose decision was it for you to work from home?

17 A. Well, it was mine. But as he said, they were -- they
18 didn't have office space. So I really didn't have
19 any, um, you know, choice.

20 Q. Were you given, um, deadlines?

21 A. Well, yes, again, as I said, um, on a -- if you had a
22 daily blog, you had to blog daily, and, um, um,
23 ideally in, you know, sometime morning.

24 Q. Was your work reviewed or required approval?

25 A. Uh, certainly it was heavily reviewed, um, both in

1 KIM - WITNESS

2 The Nation. That his content would be exclusive to
3 us.

4 Q. If there was content on the blog that Mr. Mitchell
5 say wanted to also write about for say, uh, for
6 Huffington Post, could he do that?

7 A. Um, in terms of the subject matter, yes. And
8 he -- he did, I believe. Um --

9 Q. So what was it that he could not do?

10 A. Um, he -- he, um -- that the content that he actually
11 wrote, the actual sentences had to be exclusive to
12 us. And this is standard in publishing. We, as the
13 magazine cannot have their articles be republished by
14 other places or place in different places. Uh, in
15 the journalism profession that would be considered
16 self-plagiarism on the part of the writer and on the
17 part of other outlets it would be considered
18 copyright infringement. So, um, everything that we
19 publish at The Nation, um, whether it's staff writers
20 or freelancers has to be exclusive to The Nation.

21 Q. The determination also says that he would sometimes
22 have Mr. Mitchell come into the -- office.

23 A. Um, you know, I -- I think during my time he was
24 there very rarely, maybe once a year at that.

25 Q. And was it -- would it be his decision to come in?

1 MITCHELL - WITNESS

2 to 2,500 for -- mainly for travel but I only went to
3 a couple of conferences. There was one conference in
4 Boston I spoke at. Um, but I rarely, if
5 ever -- except for that pace and maybe one other I
6 didn't really file a -- expense -- expenses with
7 them.

8 Q. Did you receive, um, compensation for expenses or did
9 you -- or -- did you have to do anything?

10 A. Receipts, yeah. Uh-huh. Sure.

11 Q. Did you receive any training or orientation?

12 A. Um, well, training in the sense of, um, you know,
13 as -- as he mentioned, um, um, Web site, um, um,
14 rules and Web site, what I would -- he -- he didn't
15 want to call it a style manual but there was
16 certainly style. You know, this is how you want
17 to -- submit things and this is, uh, you know, basic
18 rules you should follow. I mean it went beyond
19 just -- here's how you press the button to get this
20 thing posted, it was also general guidelines.

21 Q. Now, when you started working there, um, did you ever
22 receive any instructions from the -- any staff
23 members?

24 A. Not really. No. I, um, instructions. No,
25 I -- I -- I don't think so.

1 KIM - WITNESS

2 A. No.

3 Q. It says he had an established work schedule?

4 A. No. That's incorrect.

5 Q. And that he had to submit reports.

6 A. That is also incorrect.

7 Q. It says, uh, he was provided training --

8 A. Yes. On -- on the CMS. On how to enter content into

9 our content management system.

10 Q. What is CMS?

11 A. Uh, it -- it's short for content management system.

12 It's just the way words get into a Web site and

13 posted online.

14 Q. And, uh, the determination talks about Mr. Mitchell

15 not being able to refuse work assignments.

16 A. That's -- that's incorrect. And in fact, I -- you

17 know, there were oftentimes editors might send him

18 ideas, hey these things were happening in the world

19 and it was really totally his discretion whether or

20 not he would write about them. So there were

21 definitely suggestions made, that is the role of

22 editors with writers to, um, you know, help guide

23 their, uh, choices. To, um, frame things in a

24 certain manner but with writers it's their choice

25 whether to pursue that matter or not.

1 MITCHELL - WITNESS

2 Q. Were you ever -- did you ever receive any work
3 assignments?

4 A. Well, you know, you mean beyond the daily, um, thing?
5 Um, actually, I did -- I mean, he -- he mentioned,
6 um, some articles for print which was different. I
7 was paid separately. It was like, okay, you're a
8 freelance, would you do this for us and we'll pay you
9 extra money. Um, but I also had, um, several cases
10 where Katrina, um, vanden Heuvel asked me beyond the
11 scope of my blog, beyond the scope of what my
12 contract to review something she'd written, um, maybe
13 for The Nation or for the Washington Post or
14 something. To comment on it, um, um, give her
15 feedback on something she'd -- you know, she'd done.
16 Um, also there was a major, um, that they tried to do
17 their own WikiLeaks project, um, and I was sort of a
18 WikiLeaks expert and so they asked me to, um, consult
19 on this sort of major WikiLeaks project which is
20 again a -- beyond the scope of my contract and my
21 blog. Um, they also were, um, considering -- I don't
22 think they did called a Murdoch Watch, um, a whole
23 separate project about Rupert Murdoch and again I was
24 called on to consult and, um, you know, and advise
25 and put some time in again outside the scope of

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1 MITCHELL - WITNESS

2 Q. Right. So the nature of the job requires it so

3 obviously you would then (unintelligible, one second,

4 0:30:38) work daily?

5 A. Yeah.

6 Q. So --

7 A. Right. Not necessarily at 7 a.m.

8 Q. But I -- I mean, would it be if you obviously you

9 wanted to post it by 9 o'clock you would have to work

10 before 9 o'clock?

11 A. Yeah. Right.

12 Q. Okay. And how were you compensated for this other

13 work that you did other than the blog. Like articles

14 for publication.

15 A. I was paid, um, separately. It was not part of my

16 contract. It was not was expected to me. I was

17 always paid -- even when they took a little snippets

18 of something I had written online and put it in the

19 magazine; I'd get \$35 or something. Um, so I mean it

20 was understood anything for print was, um, definitely

21 get some extra money.

22 Q. Separate -- separate for --

23 A. Yes. Right.

24 Q. Um --

25 A. I never got paid anything --

1 MITCHELL - WITNESS

2 Q. Were you ever -- did you ever receive any work
3 assignments?

4 A. Well, you know, you mean beyond the daily, um, thing?
5 Um, actually, I did -- I mean, he -- he mentioned,
6 um, some articles for print which was different. I
7 was paid separately. It was like, okay, you're a
8 freelance, would you do this for us and we'll pay you
9 extra money. Um, but I also had, um, several cases
10 where Katrina, um, vanden Heuvel asked me beyond the
11 scope of my blog, beyond the scope of what my
12 contract to review something she'd written, um, maybe
13 for The Nation or for the Washington Post or
14 something. To comment on it, um, um, give her
15 feedback on something she'd -- you know, she'd done.
16 Um, also there was a major, um, that they tried to do
17 their own WikiLeaks project, um, and I was sort of a
18 WikiLeaks expert and so they asked me to, um, consult
19 on this sort of major WikiLeaks project which is
20 again a -- beyond the scope of my contract and my
21 blog. Um, they also were, um, considering -- I don't
22 think they did called a Murdoch Watch, um, a whole
23 separate project about Rupert Murdoch and again I was
24 called on to consult and, um, you know, and advise
25 and put some time in again outside the scope of

1 MITCHELL - WITNESS

2 terms of -- of editing of it, copy editing. And just
3 general, um, editors looking at it and commenting,
4 you know, I -- I get e-mails from Katrina for example
5 saying, oh, that's a great column, maybe you should
6 add this link. Or have you seen this story, you
7 know, maybe you want to add this link or whatever so,
8 I certainly, uh, uh, I -- and they were not obsessed
9 with what I was writing but certainly I -- I had the
10 sense there was a lot of people paying attention and
11 I would get comments on what I posted.

12 Q. Did you have to send reports?

13 A. No. I don't think reports probably is not, um,
14 I -- I don't know. I guess not.

15 Q. And did you need any equipment to do your work?

16 A. Just my own, um -- my own laptop.

17 Q. How did you identify yourself to third parties?

18 A. Generally it was Nation writer.

19 Q. Did you have to provide notice that you needed,
20 um -- you were not available or needed some time off?

21 A. I certainly did to Katrina. You know, I said, I'm
22 going away for a week or, you know, I'm, um, um, our
23 power's off, uh, Hurricane Sandy has hit, and I'm,
24 you know, I'm in a hotel for two weeks, um, going on
25 a vacation for 10 days. Um --

1 MITCHELL - WITNESS

2 want you to stick on WikiLeaks, so it kind of started
3 out -- I just -- it kind of happened accidentally, I
4 just started it and then it became this bit
5 phenomenon and, um -- and then they wanted me to
6 stick with it, even after I had sort of wanted to
7 move on so --

8 Q. What were your work hours?

9 A. Well, I -- it varied, uh, you know, I had, um, um,
10 you know, that first, um -- first months we talked
11 about I had to get up early and post this Daybook.
12 You know, and I might be done by 10 o'clock or 11
13 o'clock in the morning and then I'd have to update a
14 little bit during the day.

15 Um, the -- with the WikiLeaks and Occupy Wall Street
16 it was almost 24/7. I could be up to 2 in the
17 morning, um, covering something -- something that was
18 being covered online or, um -- or on a newspaper
19 site. Um, it really almost was 24 or at least 18/7.
20 Um, and, um, um, so there was that. There were days
21 when I wrote what you might more consider a column,
22 you know, get up and say, I'm just going to write on
23 one subject today and I know they -- they'd like me
24 to get it up by noon so I'm going to take morning,
25 and write on one subject a little longer and then

1 MITCHELL - WITNESS

2 I'll try to get up at noon. You know, they'd like
3 that and that would be it.

4 So there were days when I was done by noon or 1
5 o'clock. There were days I was -- was up half the
6 night.

7 Q. Did you, um, basically work, um, every day, Monday
8 through Fridays?

9 A. Yeah. Almost. I would say. There were days when
10 I -- when I didn't work if I -- if I had been, um,
11 doing a lot of stuff, uh, and, uh -- and Richard
12 mentioned there was a -- a rather brief period last
13 year where -- and again, this is another example of
14 how I was, um -- I didn't have the freedom to do
15 exactly what I wanted. I was told that -- okay, we
16 want you to start writing a weekly -- basically a
17 weekly column, um, and that's going to be a better
18 way for the blog to work and I said, I don't -- I
19 disagree I think, you know, posting every day or
20 three days a week or something is -- is much better
21 and, um, they said, no. We think, um, writing once a
22 week is going to be better, longer and so I went
23 along with it for a couple of months. It didn't work
24 out very well and then went back to the daily blog.

25 Q. Who was it that set your work hours?

1 MITCHELL - WITNESS

2 A. Pardon?

3 Q. Who set your work hours?

4 A. Um, well, it -- it -- it -- I mean, it -- I guess, I
5 did except within the demands of having to get the
6 work done by a certain time. Get a -- get a lot of
7 work done by whether it was 9:30 or noon or whatever,
8 um, and the demands, you know, the WikiLeaks and
9 Occupy blogs, they're sort of referred to as live
10 blogs. Um, meaning you're kind of expected to update
11 every, you know, as things happen which could be
12 every hour or every 20 minutes or every two hours.
13 So it was kind of out of my hands at that point. I
14 kind of had to keep up with it continually.

15 Q. What were those hours that you said that you had to
16 get work done?

17 A. Um, excuse me.

18 Q. Uh, you testified that you said your work hours were
19 set within those hours within you had to complete
20 your work.

21 A. Well, it -- it would vary, uh, I mean, it would vary
22 depending which of these phases I was in. Um, I
23 had -- as I mentioned earlier there was certainly a
24 sense, even in the days where there was not -- this
25 live blog going on all day, um, that The Nation made

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1 MITCHELL - WITNESS

2 clear to me that they really would like the stories
3 posted by noon because it gave them, A, a chance to
4 edit them, B, a chance to decide what was -- they
5 were going to feature on the blog for that day. Um,
6 traffic as best in the middle of the day.
7 Um, public -- publicity get publicity for the rest of
8 the day, end up on TV or whatever.
9 So in my mind there certainly was, um, a -- a lot of
10 guidance to -- to work in the morning. I didn't -- I
11 certainly didn't feel I had the option of well, I'm
12 gonna take morning off, you know, come back at 3 p.m.
13 and start posting. Uh, never felt that.

14 Q. Where did you perform your work?

15 A. At home?

16 Q. Whose decision was it for you to work from home?

17 A. Well, it was mine. But as he said, they were -- they
18 didn't have office space. So I really didn't have
19 any, um, you know, choice.

20 Q. Were you given, um, deadlines?

21 A. Well, yes, again, as I said, um, on a -- if you had a
22 daily blog, you had to blog daily, and, um, um,
23 ideally in, you know, sometime morning.

24 Q. Was your work reviewed or required approval?

25 A. Uh, certainly it was heavily reviewed, um, both in

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1 KIM - WITNESS
2 have a daily thing you have to do?
3 A. It's -- it's, um, deprecations that there would be a
4 post created in that window.
5 Q. Right.
6 A. Um, certainly we prefer business hours, certainly in
7 the morning.
8 Q. Okay.
9 A. Um, uh, you know, there were no consequences if you
10 didn't do it on any particular day.
11 Q. Right.
12 A. Before noon or 1 or 2 or --
13 Q. Right.
14 A. -- 3.
15 Q. Right. Right. But there would be --
16 BY ALJ DOMINIQUE
17 Q. So the, uh -- the, uh -- The Nation Magazine wanted
18 Mr. Mitchell to cr -- um, to publish the post between
19 10 and, uh, 6?
20 A. That -- again that's really just because that's when
21 we were staffed. We have people there that can read
22 it, put it up, put in in social media. Um, there are
23 many times when Mr. Mitchell created content outside
24 of that window, um, on his own volition.
25 BY MR. MITCHELL

1 VANDEN HEUVEL - WITNESS

2 and you were covering that. Did someone say you must
3 have it by midnight? I do not recall.

4 Q. Okay. But would you -- is it your, uh --

5 A. My memory if there were deadlines was that you would
6 e-mail because there was concerned that the, um,
7 inside staff was not posting your material in a way
8 you felt was timely. It was generated largely from
9 your end, the concern about deadlines or appearance
10 of blogs.

11 Q. But if someone -- is it your belief that if someone
12 has a daily, you know, for -- for -- has a daily
13 regular feature on the Web site. That does not
14 constitute a daily deadline, essentially?

15 A. It was your, um, decision to define what daily meant.
16 Because daily also meant filing through the day as I
17 recall you did on numerous occasions. So there was
18 no assignment as to defining daily. Or --

19 Q. How -- how else can you define daily except daily?

20 A. Daily was part of -- but you -- you chose when within
21 that 24-hour cycle to post. Whether it was early in
22 the morning or sometime in the afternoon. It was
23 your decision. Because you were given the -- the
24 priority and mandate to select topics you were
25 writing about. You could choose if a trial was

1 VANDEN HEUVEL - WITNESS

2 conducted at noon --

3 Q. So would it be correct to say that you -- your sort
4 of definition of daily means -- is attached to like
5 the hour of -- of time periods as opposed
6 to -- you're expected to do something every day so
7 it's a daily deadline?

8 A. My larger understanding is that it was within your
9 purview to decide when during the day you were going
10 to post. And, you know, generally, you weren't
11 posting on weekends. And there were times taken off
12 without, um -- it was your decision when to take off
13 to travel. Um, you checked with us but we were not
14 mandating, you must not go off then; you must go off
15 now.

16 Q. Okay. Um, is it accurate to say that you never did
17 anything -- I take that back. Um, would you agree to
18 the statement that there was no oversight whatsoever
19 of me in those four years?

20 A. I -- you know, there was no -- you're not onsite.
21 There was no oversight as to the hours you were
22 working. It was your decision to choose those hours.
23 Um, I do not recall, um, really ever turning to you
24 and saying why did you write this or how could you
25 write this or, um, it was a matter of you selecting