MITCHELL - WITNESS

to you?

A. Um, it means, um, that, um, let's say I wrote an article, um, a column for The Nation, um, that, um, I was free to then post it elsewhere, um, within 48 or after 48 hours, uh, if I, you know, gave The Nation some creditors that where it came from.

Q. Okay.

A. Um, and that this was done -- in fact encouraged to do this because it spread publicity for The Nation. You know, it was like publicity of The Nation.

ALJ ADDISON: Do you have any other questions on this document, sir?

MR. MEJIA: No, I don't.

ALJ ADDISON: Mr. Mejia, do you have comments or objections to making the agreement part of the record?

MR. MEJIA: I do not.

ALJ ADDISON: Mr. Mitchell, do you?

(Beeping sound)

I'm sorry. I can't make that be quiet.

Mr. Mitchell, do you have comments or objections to making the March 11, 2013 agreement part of the record?

MR. MITCHELL: Um, well, the only objection
MITCHELL - WITNESS

that. I didn't sit down interview --

Q. Uh-huh. Um, can you describe what the Huffington Post is?

A. It's a major, um, blog ethic -- all sorts of things -- but they're basically were a blog site -- I'm not sure what they call themselves in the -- (unintelligible, one second, 0:16:20), um, started around 2005 by Arianna Huffington and, um, at first it was really just featured hundreds of different bloggers and now, since then they do other respective -- they do original pieces and they do investigations and massively popular and, um, (unintelligible, one second, 0:16:44).

Q. Did you do any blogging for them when you were blogging for The Nation?

A. I did in a certain period. I -- I'd have to go back. I know, um, in my memory the first year I was at The Nation magazine. Katrina was encouraging me and others to -- to cross post for the Huffington Post. She did it herself. She was writing for The Nation and writing for the Washington Post. So she would show up frequently in Huffington Post, um, with pieces she had written elsewhere. She encouraged people. I think she felt that that was, um, you
MITCHELL - WITNESS

know, didn't gain that much and she stopped doing that and, um, I stopped doing that for quite a while and the dates aren't exactly.

Q. When you say she encouraged you. What did she say?
A. She encouraged, I think she -- it might even be in The Nation contract but it was, you know, you are not only free but if you want to -- it's a good idea to cross post at that stage, and we're talking four years ago. Um, and obviously I did my bio and it said Nation blogger and (unintelligible, one second, 0:17:52) something like that. So it was seen as -- and I often would link to things at The Nation and -- it was just seen as a good -- good eyeballs for The Nation since the Huffington Post is many, many times bigger.

Q. Uh-huh. So, uh, would you say -- say 2013 to what were you blogging for the, uh, Huffington Post by then for that period of time?
A. I -- I'd be surprised if I didn't do a few. I'd be very surprised if I didn't. I wrote dozens of posts. I often did things around this nuclear issue. Um --

Q. Um, would you say it would be once a week?
A. No.

Q. No? Did you write that often?
VANDEN HEUVEL - WITNESS

Q. Okay. Was the blog called Media Fix?
A. I don't remember.

Q. Was the blog required to be on The Nation Web site?

ALJ ADDISON: You got to stop there. If she says, she doesn't remember if there was a required blog. You can't go more into the required blog.

MR. MEJIA: Oh. No, she -- she testified that there was a blog. I -- I'm just --

ALJ ADDISON: Not a blog, a Twitter account.

MR. MEJIA: No. I'm not. I'm off the Twitter thing. I'm just asking her about the blog, now.

ALJ ADDISON: I'm sorry. I thought you were still on Twitter.

BY MR. MEJIA

A. The blog -- the blog was, um, The Nation blog but it was picked up by other places too as I recall. But it was -- I -- I don't remember the rubric because I said there was a rubric name assigned to it.

Q. What do you mean a rubric?
A. Like a title, like, you know, Media Matters. I don't remember the name of it. But I remember it -- it wasn't just Greg Mitchell. It was called -- title.

MR. MITCHELL: Is it totally improper for me to --

The Nation Co. Ltd. Partners - 05/27/15 88
MITCHELL - WITNESS

Q. Now, what about the content of each blog? Who -- was there an owner of that content or an -- publishing rights or copyrights?

A. Well, you're getting into copyright law which I'm very weak on. I --

Q. All right. Could you take your content and sell it to The New York Times?

A. Could -- could I?

Q. Yes.

A. Take the very same content?

Q. Yeah.

A. No. I presume not. Not at that point. I think after a few months or years or something you're free to, you know, it reverts to you. I -- I'm not -- I really don't know about the law that well.

Q. Okay.

A. But it was -- you know, it was written for The Nation -- it was written for The Nation and, um --

Q. Now, Mr. Kim described -- at the first hearing he described the -- the organization as democratic with a small D and progressive.

A. Right.

Q. Is that your understanding?

A. Um, I'm not exactly sure what that means but yes. I
MITCHELL - WITNESS

to you?

A. Um, it means, um, that, um, let's say I wrote an article, um, a column for The Nation, um, that, um, I was free to then post it elsewhere, um, within 48 or after 48 hours, uh, if I, you know, gave The Nation some creditors that where it came from.

Q. Okay.

A. Um, and that this was done -- in fact encouraged to do this because it spread publicity for The Nation. You know, it was like publicity of The Nation.

ALJ ADDISON: Do you have any other questions on this document, sir?

MR. MEJIA: No, I don't.

ALJ ADDISON: Mr. Mejia, do you have comments or objections to making the March 11, 2013 agreement part of the record?

MR. MEJIA: I do not.

ALJ ADDISON: Mr. Mitchell, do you?

(Beping sound)

I'm sorry. I can't make that be quiet.

Mr. Mitchell, do you have comments or objections to making the March 11, 2013 agreement part of the record?

MR. MITCHELL: Um, well, the only objection
KIM - WITNESS

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

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

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

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

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

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

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

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

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

Q. Did you have to send reports?
A. No. I don't think reports probably is not, um,
I -- I don't know. I guess not.

Q. And did you need any equipment to do your work?
A. Just my own, um -- my own laptop.

Q. How did you identify yourself to third parties?
A. Generally it was Nation writer.

Q. Did you have to provide notice that you needed,
um -- you were not available or needed some time off?
A. I certainly did to Katrina. You know, I said, I'm
going away for a week or, you know, I'm, um, um, our
power's off, uh, Hurricane Sandy has hit, and I'm,
you know, I'm in a hotel for two weeks, um, going on
a vacation for 10 days. Um --
MITCHELL - WITNESS

others that did but one particularly did. Really was on -- some weeks -- actually wrote items under his name for my blog and was credited on the blog and things like that. But that was not, um, normal.

Q. Did you ever interview people for the blog?
A. Oh, sure, yeah.

Q. How did you introduce yourself to them?
A. Um, as, um, a writer or blogger for The Nation.

Q. All right. So now, do -- I -- I had heard, um, Ms. vanden Heuvel's name throughout. I understand your connection with her. What contact during your work did you have with Ms. Valkenburg?
A. Only to periodically complain that a check was late or, you know, where's the check or, you know, very friendly but, you know, a check would be late or --

Q. Okay.
A. -- you know -- that -- that's it, really.

Q. And how were the checks made payable?
A. Um, I don't understand. I mean they were made out to me. They arrived --

Q. Did you -- did you have a company name or --
A. No.

Q. -- d/b/a?
A. No. No. I don't have a company name at all.
VANDEN HEUVEL - WITNESS

BY MR. MEJIA

Q. Okay. Um, Ms. vanden Heuvel, was -- did The Nation require Mr. Mitchell to identify himself as, affiliated with The Nation when he made media appearances?

A. In the document that was just entered I think the arrangement document that was a reference to if we ask that he would identify himself. My understanding and memory is that a number of media occasions he was identified as that but also identified as author for his books or previous editor of Editor & Publisher which was a long time, um, post he had.

Q. All right. I'm going to show you Exhibit C that was added to there. Um, why would -- why would The Nation require Mr. Mitchell to identify himself as affiliated with it if -- if you considered him to be an independent contractor?

A. Um, we have a number of independent contractors who, um, write for us and for other places who are also doing, um, books or other projects and we ask that if it relates to their writing for The Nation they identify themselves as such. Uh, in many instances, uh, Greg Mitchell would go on and talk about one of his blogs. If he went on to talk about Upton St.
KIM - WITNESS

himself -- himself to third parties?

A. Um, I believe it was a writer for The Nation or a
blogger for The Nation. I -- I believe, also, you
know, Mr. Mitchell wrote during that period for The
Huffington Post, wrote several books. So there was
lots of other writing he did and he may have
identified himself differently, you know, in other
outlets. Um --

Q. Um, if he needed time off, did he need to render
permission?

A. No.

Q. And the other issue, I think you touched on this, but
could he do the same work for competitors?

A. Yes. And I mean we -- there was I believe -- you
know, we wanted the blog focused on the media for The
Nation. You know, he couldn't publish that content
somewhere else because we -- we do need that
exclusively. But, um, he did write for the
Huffington Post frequently during the period and he
wrote several books, um, on subjects he also covered
for The Nation.

ALJ DOMINIQUE: Um, Mr. Silverman, I'm about to
show you the initial determination in this case. Um,
please review and let me know if you have any
MITCHELL - WITNESS

ALJ DOMINIQUE: Okay.

Mr. Silverman?

BY MR. SILVERMAN

Q. Um, what I was asking did you make any pitches to The Nation for articles or topics?

A. Well, as I said there were -- there were a few prints stories I made pitches to and -- and I ended up writing and there were a couple that I -- I didn't exactly, um, I mean I was writing daily, um, I -- I -- sometimes I would say I would like to do something online next week on this or, um, you know, like cover this, uh, I didn't really have to ask permission (unintelligible, one second, 0:25:24) but we had a lot of interplay with -- as I testified earlier, with Katrina. And usually the suggestions were coming from her. Um, she would be suggesting or urging strongly encouraging me to cover something so it's coming from her or me. So --

Q. That she suggested something that you didn't feel comfortable doing you felt, uh, you had the right to say, no -- in your area?

A. I'm certain had the right but I didn't -- I -- I thought I had to accept that as I testified earlier when I had to -- it would be in my interest to accept
MITCHELL - WITNESS

Q. How did the days --

A. They just varied.

Q. -- decide which is --

A. The constant updates they had to do with, um, when there was something --

(Computer beep)

ALJ ADDISON: Sorry.

BY ALJ ADDISON

A. Something of particular interest I was covering and the -- The Nation wanted me to cover on an ongoing basis. For example, WikiLeaks was a very important issue for The Nation. I covered it every single day for seven months.

Q. So who decided the ongoingness of -- of -- of this?

A. Well, it -- in both that case. There was another case, Occupy Wall Street. Uh, there was another case had to do with Rupert Murdoch. There was another case that had to do with the 2012 election, to give you four examples. In all those cases they were things that I, sort of, started. You know, I would start to cover every day for a while and then they would say, oh, it's good. It's going good or it's popular so, you know, keep going. So then I would keep going and, um, you know, in the case of
MITCHELL - WITNESS

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

Q. Who decided that it would only --

A. Pardon?

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

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

um, my AOL mailbox 492 results for her in over those four years and, um -- and then I have some examples of what she -- she -- suggestions she was making to me. Um, very frequent urgings, to check this out for tomorrow's blog. Um, you should cover Michael Hastings, um, ideal time to start a Murdoch Watch blog. Um, and, um, so it wasn't just that I had a lot of contact with her and you know, but that, um, um, the nature of it. Um, and, um, the attorney also then said, reporting -- reporting to the publisher rather than a -- than a supervisor seems more indicative of a lack of immediate supervision.

Well, in fact, you know, what -- what's -- the whole issue with The Nation is that Katrina vanden Heuvel is both editor and publisher and co-owner and board member and -- and all the rest. So, uh, clearly any reference to me working with the publisher also means I'm working with the editor and any time someone says you're working with the editor, it also means I'm working with the publisher and the co-owner and board member. So, um, the attorney's letter also states, I was quote unquote not interviewed before I was hired. And, uh, again plainly false and I, uh, you know, I do have the exhibit here, um, where she says it seems
MITCHELL - WITNESS

A. They're representative of the guidance -- frequent
guidance I got on --

Q. Well, frequency we can't tell because there's no
date. But you -- the representative of the substance
of the guidance?

A. Yeah. I'd say, you know, but that these were, um,
um, examples -- good examples of the type of, um, um,
guidance or suggestions or urgings that I got from
her.

Q. Okay.

ALJ DOMINIQUE: Any comments or objections, Mr.
Silverman?

MR. SILVERMAN: I do, Your Honor. I think it's
not a proper foundation. I think it's just tidbits
of -- based upon his own selective editing of various
e-mails which is not a representative sample
necessarily and it's not time specific. I don't
think it's adequate foundation.

MR. MITCHELL: Each of the -- each of the 15
examples have time and dates given -- even the time
of day on them. They're all form 2010 -- 2014.

ALJ DOMINIQUE: Mr. Silverman, I'm going to note
your comments for the record as marking as Claimant's
Exhibit 1.
thing -- also you had, you know, several demands which would have put a burden on the internal workings of the office and demanded more staff time so it was a decision that that didn't make sense.

Q. Okay. Um, now, you -- I --

A. But there was no --

Q. I'm sorry.

A. There was no, you must cover this. It was your, um, suggestion and what else --

Q. I think you testified or wrote that a few minutes ago that -- that, um -- I'm not sure of the language you used but it was a you -- occasionally you make a suggestion for something I might cover, remember?

A. Within the mandate and framework of your -- your criticism.

Q. And what would you -- how often did that happen?

A. I think I would fire off an e-mail in a very loose way, like what do you think? Take a look. Um, I tend to do that with freelance writers, uh, even writers who haven't started writing for us to see what's possible. So it is a broad range of correspondence I have with contacts, certainly with other bloggers, as well.

Q. And do you recall ever being more forceful and sort
KIM - WITNESS

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

Q. Did he know to write daily or was it his, um,
discretion whether he wrote on a daily basis?
A. Um, you know, I believe that's what he pitched to us,
a sort of daily aggregated blog.

Q. And then when, for example, he would create the post,
um, did he choose what he was, um --
A. The content -- the contents of the post and the topic
were really -- entirely his choice. The -- again,
there would be, as editors we would often make
suggestions. Um, and we would -- at the end of the
day, since it's my publication and I have to vouch
for everything that goes up, if something didn't meet
the standards of the publication we would -- we could
ask for corrections or we could ask to -- to take it
down and sometimes we would. But he was really -- it
was his choice as to which subjects he would
particularly cover that day. Um, the treatment he
MITCHELL - WITNESS

my -- so those were work -- work assignments. Um, I mean, again, it came from Katrina vanden Heuvel, um, directly, um, and so I, you know, felt I should -- should do them.

Q. Who made determinations about what you would write?

A. Well, it's, you know, it -- it -- it would, um, I mean of course the first determination is the general scope of the blog. What -- what's the subject of the blog. And that -- that changed somewhat. You know, initially it was very much focused on media. Um, he mentioned then that the six months strictly about WikiLeaks, um, uh, then there was another period about four months, strictly on Occupy Wall Street. Um, even though I wasn't able to do this campaign blog, um, I -- initially two years later I was able -- the focus kind of changed to campaign kind of thing.

Um, so, um, you know, that determined in a general sense was -- was, um, by, um, you know, by myself and the editors deciding what, um -- what the content should be and -- and as I mentioned, sometimes I wanted to go in a certain direction. I wasn't allowed. There were times I was happy to go along with what, um, you know, what they were suggesting.

The Nation Co. Ltd Partners - 03/10/15
MITCHELL - WITNESS

and, um --

Q. Generally, was it you saying, I'm interested in working this and I want to write about WikiLeaks or was it the employer saying we want you to write WikiLeaks.

A. Um, WikiLeaks started just -- I started --

Q. This just hypothetical.

A. I'm sorry.

Q. To get an idea of how the decision-making happened.

A. Um, it's hard to say. I -- I -- you know, um, um, it -- if I got -- if I got really interested in something and I started writing about it a lot then there might be a sense of wow, this is really popular, you know, and Richard was someone who would monitor the, you know, traffic and so there would be a certain sense of, wow, this is really working and -- and in the case of WikiLeaks, even though I had sort of started it, um, they then, you know, sort of cheered me on and, um, you know, it very quickly became the most popular feature on the entire site. Um, every day it was the most popular feature on the site. And, um, in fact, after about three months of that I requested, okay, I want to get off into something else and I was told by Katrina that, no, we
MITCHELL – WITNESS

most of them because she was my supervisor. She was my employer. She made the decision about renewing my contract each year and so I didn't feel I was free and -- especially since she was publisher, co-owner and board member.

Q. I understand about your feelings, and I apologize for going over this but I was not in the hearing before and this is separate --

A. No. I'm referring to last -- to the last -- I testified, three weeks ago --

Q. Oh, oh, the last time.

A. -- here.

Q. Oh. Okay. Um, so you felt that it was because she was the one that who was writing the checks that you had to assess an obligation to really listen to what she was saying?

A. Absolutely. Right. Absolutely.

Q. Absolutely. And then obviously her requests you took very seriously and generally try to accept --

A. Yeah. I tried to. Didn't always.

Q. Didn't always but --

A. Yeah.

Q. -- tried to accept?

A. Correct.
MITCHELL - WITNESS

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

A. Yeah.

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

A. No.

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

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

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

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

Q. So you could get online?

A. Yeah. To get onto Nation.

Q. You could actually, uh, continue to blog in Germany, if you wanted, right?
MITCHELL - WITNESS

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

Okay. So generally had to do -- had something to do with media, intersection with politics generally. And, um, so I would often have freedom to say, okay, what interest me. Um, what would I like to write about today. What seems most important.

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

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

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

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

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

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

A. Right.

Q. -- write about that.

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

Q. Did you hear anything about it afterwards?

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

Know, she'd say -- I suggest you do this. Or it
would be great if you did this. Or, you know, please
do this, you know, so I would kind of judge how
important it was, this to her. You know, if it was
really important I really thought I had to respond.
If it seemed a little more off the cuff then, maybe I
wouldn't.

Q. All right. Now, what about if you woke up one
morning and you just didn't feel well.
A. Uh-huh.

Q. Could you have asked your neighbor, your colleague to
write something up for them?
A. No. It wasn't anything like that. It was, um,
        um -- there were days like that. There were days
when, um, not much was happening. You know, the,
        um -- the blog went through different, um, periods.
You know, when it started and again, I've submitted
        things about this, um --

Q. Okay. But --
A. It was called Daybook. Okay.

Q. Could you have somebody else do it for you?
A. No. No. Not really, no. It was -- there were -- it
        was my blog under my name. Occasionally, an intern
        wrote something for it, but, um, it would -- no it
MITCHELL - WITNESS

ALJ DOMINIQUE: Okay.

Mr. Silverman?

BY MR. SILVERMAN

Q. Um, what I was asking did you make any pitches to The Nation for articles or topics?

A. Well, as I said there were -- there were a few prints stories I made pitches to and -- and I ended up writing and there were a couple that I -- I didn't exactly, um, I mean I was writing daily, um,

I -- I -- sometimes I would say I would like to do something online next week on this or, um, you know, like cover this, uh, I didn't really have to ask permission (unintelligible, one second, 0:25:24) but we had a lot of interplay with -- as I testified earlier, with Katrina. And usually the suggestions were coming from her. Um, she would be suggesting or urging strongly encouraging me to cover something so it's coming from her or me. So --

Q. That she suggested something that you didn't feel comfortable doing you felt, uh, you had the right to say, no -- in your area?

A. I'm certain had the right but I didn't -- I -- I thought I had to accept that as I testified earlier when I had to -- it would be in my interest to accept...
VANDEN HEUVEL - WITNESS

it for another, you know -- for a while longer?

A. I don't recall.

Q. Okay. And the same thing with Occupy?

BY ALJ ADDISON

Q. We did -- we did two questions in the first bit. Do you recall that --

A. I do not.

Q. -- that he wanted to quit?

A. I do not recall you wanting to quit and I do not recall saying you must not quit.

MR. MITCHELL: Okay.

ALJ ADDISON: Go ahead.

BY MR. MITCHELL

Q. Okay. Do you recall -- I believe you testified this so but I'll ask you to confirm. Do you -- do you recall along with Richard Kim, um, telling me I could not cover campaign 2012 when I wanted to shift to that --

A. My understanding --

Q. -- early in 2012?

A. My understanding is that because there had been disagreement you would cover the media that you were absolutely -- it was your right to cover it within the framework of the media but to go -- to do a whole
VANDEN HEUVEL - WITNESS

thing -- also you had, you know, several demands which would have put a burden on the internal workings of the office and demanded more staff time so it was a decision that that didn't make sense.

Q. Okay. Um, now, you -- I --
A. But there was no --
Q. I'm sorry.
A. There was no, you must cover this. It was your, um, suggestion and what else --
Q. I think you testified or wrote that a few minutes ago that -- that, um -- I'm not sure of the language you used but it was a you -- occasionally you make a suggestion for something I might cover, remember?
A. Within the mandate and framework of your -- your criticism.
Q. And what would you -- how often did that happen?
A. I think I would fire off an e-mail in a very loose way, like what do you think? Take a look. Um, I tend to do that with freelance writers, uh, even writers who haven't started writing for us to see what's possible. So it is a broad range of correspondence I have with contacts, certainly with other bloggers, as well.
Q. And do you recall ever being more forceful and sort
Case Duly Called

Mitchell was told that he had to open a separate Twitter account apart from his own to promote this blog for The Nation.

Um, the -- uh, one moment, please. Further, if you look at the contracts that were admitted into evidence you can see that Mr. Mitchell was, um, restricted to only writing on media. Um, there was testimony from both sides that he wanted to switch over at one point to campaign 2012 and Ms. vanden Heuvel said that you could switch over to campaign 2012 as long as you focus on the media. So he couldn't -- he didn't really have artistic freedom to -- to write about anything he wanted to. He had to be -- he was -- he was held within a certain scope in the media.

Um, I have nothing further.

ALJ ADDISON: Mr. Mitchell, do you have closing?

MR. MITCHELL: Okay. Well, what underlined my claim in the beginning was, um, that from what I knew, um, I might very well be covered under this based on term we keep hearing, close supervision, uh, daily, uh, work, uh, frequent exchanges with the editors along with my use of the site architecture and, uh -- and The Nation's, um -- The Nation's
MITCHELL - WITNESS

and, um --

Q. Generally, was it you saying, I'm interested in working this and I want to write about WikiLeaks or was it the employer saying we want you to write WikiLeaks.

A. Um, WikiLeaks started just -- I started --

Q. This just hypothetical.

A. I'm sorry.

Q. To get an idea of how the decision-making happened.

A. Um, it's hard to say. I -- I -- you know, um, um, it -- if I got -- if I got really interested in something and I started writing about it a lot then there might be a sense of wow, this is really popular, you know, and Richard was someone who would monitor the, you know, traffic and so there would be a certain sense of, wow, this is really working and -- and in the case of WikiLeaks, even though I had sort of started it, um, they then, you know, sort of cheered me on and, um, you know, it very quickly became the most popular feature on the entire site.

Um, every day it was the most popular feature on the site. And, um, in fact, after about three months of that I requested, okay, I want to get off into something else and I was told by Katrina that, no, we
MITCHELL - WITNESS

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

Q. What were your work hours?

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

Um, the -- with the WikiLeaks and Occupy Wall Street it was almost 24/7. I could be up to 2 in the morning, um, covering something -- something that was being covered online or, um -- or on a newspaper site. Um, it really almost was 24 or at least 18/7.

Um, and, um, um, so there was that. There were days when I wrote what you might more consider a column, you know, get up and say, I'm just going to write on one subject today and I know they -- they'd like me to get it up by noon so I'm going to take morning, and write on one subject a little longer and then
MITCHELL - WITNESS

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

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

A. Right.

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

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

WikiLeaks it went on every day on the same subject including weekends for seven months and Occupy Wall Street, I think was six months.

Q. All right.
A. Um --

Q. So when they say to keep going, did you think about saying, no, I'm sick of this?
A. Uh, I didn't -- I didn't, until they -- I -- and again I think I presented in exhibits or -- or I will today. I think it was in Exhibit 6, um, or certainly in my testimony, um, in the case -- both of them, particularly WikiLeaks, after I think five months, I wrote a letter which I have a copy of that I asked, I said, okay. I think has run its course, I'd like to stop and I was told by Ms. vanden Heuvel that I should stay on it for a while longer. And, um, so I stayed on it for another month or -- month or two.

Um, but that's not -- those aren't probably the best examples. I think when I was referring to, um, being urged to write, um -- write on certain subjects it was more in the day-to-day when I wasn't doing the -- I mean every day when I wasn't doing this kind of, um, what they call live blogging when you're covering one issue and updating it constantly during
MITCHELL - WITNESS

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

A. Yeah.

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

A. No.

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

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

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

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

Q. So you could get online?

A. Yeah. To get onto Nation.

Q. You could actually, uh, continue to blog in Germany, if you wanted, right?
MITCHELL - WITNESS

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

Q. Did you have to send reports?

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

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

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

Q. How did you identify yourself to third parties?

A. Generally it was Nation writer.

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

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

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

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

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

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

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

this. The use of their Web site system for entering stories from home.

A. Right.

Q. Were you referring to, um, the content management system, here?

A. Yes. Yes. Uh-huh.

Q. Okay. Now, who trained you on how to use the content management system?

MR. MEJIA: Actually, I'm gonna strike that.

BY MR. MEJIA

Q. Can you tell to everyone what the content management system is, first?

A. Um, well, it's a common thing, now evolved for years for all Web sites of this sort. Uh, where you -- excuse me. You have a password. Um, you, uh, have an address to -- where you go. You sign in, um, and then a form comes up where you might check off some boxes but then you can literally write, uh, your article or paste in the article if you're written it elsewhere. And then you go through some other steps and, uh, press, publish. Sometimes, some places or sometimes something will be published automatically and other times it basically goes to editors who will ultimately publish it.
MITCHELL - WITNESS

Q. And you can do this remotely. You can do it in the office. I mean, it's -- it's --

A. It can be done -- it can be done remotely, certainly.

Q. Could you have, um -- could you have done your work on the blog without using this system?

A. No. They -- I don't think they would have -- I mean, theoretically, I could have written a piece and attached it as an e-mail. And someone in the office would then have to go through the trouble of loading it on the site. But I -- I never did that and I don't think that would have been tolerated one bit. Because it's a -- Katrina just --

Q. Did someone from The Nation tell you that you had to use this system in order to upload?

A. Yes. Certainly.

Q. Okay. Who was that?

A. Who was that?

Q. Yeah.

A. Um, well, probably it was Emily Douglas who was then the Web editor and may still be. Certainly Katrina, Richard Kim. I -- I don't know. It was -- Emily Douglas -- it -- it was -- I mean, I've worked in magazines before with Web sites like this and I sort of knew what the deal is. But whether Emily Douglas...
KIM - WITNESS

BY ALJ DOMINIQUE

Q. Was it part of Mr. Mitchell's responsibilities to, um, mentor --
A. No.

Q. -- editors?
A. No.

BY MR. MITCHELL

Q. So he -- you would deny that I got an intern, uh, uh -- I would get a message from Emily Douglas saying, here's your intern. Please call them and talk about what their work is gonna be --
A. Because x --
Q. -- and what they can do for you.
A. -- you definitely got that e-mail.
Q. Yeah.
A. That was a necessary e-mail to set up that -- once you would post something that you would -- your intern --
Q. Right.
A. -- would clean that up. Um, I -- I happened to know that you were a really good mentor to the interns. Um, some writers are and some are not. It certainly not was, um, a part of your duties under this
MITCHELL - WITNESS

wasn't set up like that where someone else would do it.

Q. Now, the interns, could they -- did you look at any changes they made or they changed it and that was it?

A. No, they, um, the interns had two -- I mean they did a lot of things for the mag -- they're very important people at the magazine. And they -- but with -- with me they really had two functions. One was they -- I would be assigned a new intern every three months. Okay. Um, they would be, um -- and there would be my -- I would share this intern with two or three other people and then whatever. Um, they would be expected to send me, um, links or tips for my blog -- my media blog. So, um, depending on how industrious they were, um, they -- different ones would send me, oh, did you see this? Or here's a link to add to your blog. Or here's something you should write about, um --

Q. Well, once you wrote did they go back over it, the interns?

A. No. The -- they didn't. The second function they had was, um, starting the second year and going for the last three and a half years, the interns were the first people to copy edit every story I wrote.
VANDEN HEUVEL - WITNESS

Q. Um, would -- would you confirm that, um, I was assigned The Nation intern every -- every three or four months, um, during that whole period?

A. And so -- and so were other, um, freelancers. Those who write periodically.

Q. Right. Is it your understanding that The Nation intern -- interns besides, I think you said. I think, um, would -- could provide media tips or links or something like that. I think you said that today but --

A. No.

Q. -- did they also --

A. My understanding was you used that intern at your discretion --

Q. Right.

A. -- um, there was an instance where the intern, you know, was drafting some people -- that was your discretion.

Q. Right. Okay. But those were interns that worked in your -- out of your office?

A. They work, um, out of the office. There are a few offsite, though.

Q. Okay. And is it your understanding that they also did, um, extensive or sometimes first copy editing of The Nation Co. Ltd. Partners - 05/27/15
MITCHELL - WITNESS

but --

MR. SILVERMAN: I -- I now have the complete exhibit, but I do -- don't understand. Page 4, doesn't have anything on it. It just says, 4.

MR. MITCHELL: Right.

MR. SILVERMAN: This.

ALJ DOMINIQUE: That's -- all right.

BY MR. SILVERMAN

A. I mean, I -- if I could easily remedy that but obviously I can't do that today so that's your -- you're absolutely right. There's no -- Kevin Gosztola was an intern at The Nation. I worked very, very closely with, uh, for many months. He -- we actually even coauthored a book, um, so, um -- so --

Q. So some of the hits might have been regarding the book?

A. I was -- all inter -- all overlapping so, um, I mean it was -- it was -- he -- he worked on the book while he was still at The Nation so --

ALJ DOMINIQUE: Mr. Silverman, (unintelligible, two seconds, 2:07:39) of the document --

MR. SILVERMAN: Well, I'm not sure that they were having to do with The Nation if he talked about working with him on a book. It's true. He spoke to
MITCHELL - WITNESS

A. I was paid, um, basically a month to monthly check. I think the first year it was twice a month and then there were, you know, checks would get lost or come late so I said, look. Okay. Once a month. Um, but, um, yeah, it was by check.

Q. Did you have to submit anything to receive payment?
A. Uh, no.

Q. Did you receive a 1099?
A. Yes.

Q. Were you provided any benefits like vacation, holidays, sick time, (unintelligible, one second, 1:20:41)?
A. Uh, no.

Q. Did you (unintelligible, one second, 1:20:46) shares like (unintelligible, one second, 1:20:47) or workers compensation?
A. No, no.

Q. Uh, did you work out of a -- did you have any work-related expenses?
A. Work-related?

Q. Expenses?
A. Um, well, yeah. I -- I -- I -- I, uh, yeah, but the contract you see, they -- they -- they, um, would, um, I think each year they said I could spend 2,000
MITCHELL - WITNESS

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

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

Q. Did you receive any training or orientation?
A. Um, well, training in the sense of, um, you know,
as -- as he mentioned, um, um, Web site, um, um,
rules and Web site, what I would -- he -- he didn't
want to call it a style manual but there was
certainly style. You know, this is how you want
to -- submit things and this is, uh, you know, basic
rules you should follow. I mean it went beyond
just -- here's how you press the button to get this
thing posted, it was also general guidelines.

Q. Now, when you started working there, um, did you ever
receive any instructions from the -- any staff
members?
A. Not really. No. I, um, instructions. No,
I -- I -- I don't think so.