

1 MITCHELL - WITNESS

2 to you?

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

8 Q. Okay.

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

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

14 MR. MEJIA: No, I don't.

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

18 MR. MEJIA: I do not.

19 ALJ ADDISON: Mr. Mitchell, do you?

20 (Beeping sound)

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

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

25 MR. MITCHELL: Um, well, the only objection

1 MITCHELL - WITNESS

2 that. I didn't sit down interview --

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

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

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

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

1 MITCHELL - WITNESS

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

5 Q. When you say she encouraged you. What did she say?

6 A. She encouraged, I think she -- it might even be in
7 The Nation contract but it was, you know, you are not
8 only free but if you want to -- it's a good idea to
9 cross post at that stage, and we're talking four
10 years ago. Um, and obviously I did my bio and it
11 said Nation blogger and (unintelligible, one second,
12 0:17:52) something like that. So it was seen
13 as -- and I often would link to things at The Nation
14 and -- it was just seen as a good -- good eyeballs
15 for The Nation since the Huffington Post is many,
16 many times bigger.

17 Q. Uh-huh. So, uh, would you say -- say 2013 to what
18 were you blogging for the, uh, Huffington Post by
19 then for that period of time?

20 A. I -- I'd be surprised if I didn't do a few. I'd be
21 very surprised if I didn't. I wrote dozens of posts.
22 I often did things around this nuclear issue. Um --

23 Q. Um, would you say it would be once a week?

24 A. No.

25 Q. No? Did you write that often?

1 VANDEN HEUVEL - WITNESS

2 Q. Okay. Was the blog called Media Fix?

3 A. I don't remember.

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

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

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

10 ALJ ADDISON: Not a blog, a Twitter account.

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

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

15 BY MR. MEJIA

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

20 Q. What do you mean a rubric?

21 A. Like a title, like, you know, Media Matters. I don't
22 remember the name of it. But I remember it -- it
23 wasn't just Greg Mitchell. It was called -- title.

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

1 MITCHELL - WITNESS

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

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

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

9 A. Could -- could I?

10 Q. Yes.

11 A. Take the very same content?

12 Q. Yeah.

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

17 Q. Okay.

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

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

23 A. Right.

24 Q. Is that your understanding?

25 A. Um, I'm not exactly sure what that means but yes. I

1 MITCHELL - WITNESS

2 to you?

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

8 Q. Okay.

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10 do this because it spread publicity for The Nation.
11 You know, it was like publicity of The Nation.

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

14 MR. MEJIA: No, I don't.

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

18 MR. MEJIA: I do not.

19 ALJ ADDISON: Mr. Mitchell, do you?

20 (Beeping sound)

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

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

25 MR. MITCHELL: Um, well, the only objection

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

6 Q. Did you ever interview people for the blog?

7 A. Oh, sure, yeah.

8 Q. How did you introduce yourself to them?

9 A. Um, as, um, a writer or blogger for The Nation.

10 Q. All right. So now, do -- I -- I had heard, um, Ms.
11 vanden Heuvel's name throughout. I understand your
12 connection with her. What contact during your work
13 did you have with Ms. Valkenburg?

14 A. Only to periodically complain that a check was late
15 or, you know, where's the check or, you know, very
16 friendly but, you know, a check would be late or --

17 Q. Okay.

18 A. -- you know -- that -- that's it, really.

19 Q. And how were the checks made payable?

20 A. Um, I don't understand. I mean they were made out to
21 me. They arrived --

22 Q. Did you -- did you have a company name or --

23 A. No.

24 Q. -- d/b/a?

25 A. No. No. I don't have a company name at all.

1 VANDEN HEUVEL - WITNESS

2 BY MR. MEJIA

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

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

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

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

1 KIM - WITNESS

2 himself -- himself to third parties?

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

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

12 A. No.

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

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

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

1 MITCHELL - WITNESS

2 ALJ DOMINIQUE: Okay.

3 Mr. Silverman?

4 BY MR. SILVERMAN

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

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

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

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

1 MITCHELL - WITNESS

2 Q. How did the days --

3 A. They just varied.

4 Q. -- decide which is --

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

7 (Computer beep)

8 ALJ ADDISON: Sorry.

9 BY ALJ ADDISON

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

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

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

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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

1 MITCHELL - WITNESS

2 um, my AOL mailbox 492 results for her in over those
3 four years and, um -- and then I have some examples
4 of what she -- she -- suggestions she was making to
5 me. Um, very frequent urgings, to check this out for
6 tomorrow's blog. Um, you should cover Michael
7 Hastings, um, ideal time to start a Murdoch Watch
8 blog. Um, and, um, so it wasn't just that I had a
9 lot of contact with her and you know, but that, um,
10 um, the nature of it. Um, and, um, the attorney also
11 then said, reporting -- reporting to the publisher
12 rather than a -- than a supervisor seems more
13 indicative of a lack of immediate supervision.
14 Well, in fact, you know, what -- what's -- the whole
15 issue with The Nation is that Katrina vanden Heuvel
16 is both editor and publisher and co-owner and board
17 member and -- and all the rest. So, uh, clearly any
18 reference to me working with the publisher also means
19 I'm working with the editor and any time someone says
20 you're working with the editor, it also means I'm
21 working with the publisher and the co-owner and board
22 member. So, um, the attorney's letter also states, I
23 was quote unquote not interviewed before I was hired.
24 And, uh, again plainly false and I, uh, you know, I
25 do have the exhibit here, um, where she says it seems

1 MITCHELL - WITNESS

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

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

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

11 Q. Okay.

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

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

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

23 ALJ DOMINIQUE: Mr. Silverman, I'm going to note
24 your comments for the record as marking as Claimant's
25 Exhibit 1.

1 VANDEN HEUVEL - WITNESS

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

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

7 A. But there was no --

8 Q. I'm sorry.

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

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

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

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

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

25 Q. And do you recall ever being more forceful and sort

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

1 MITCHELL - WITNESS

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

6 Q. Who made determinations about what you would write?

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

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

1 MITCHELL - WITNESS

2 and, um --

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

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

8 Q. This just hypothetical.

9 A. I'm sorry.

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

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

1 MITCHELL - WITNESS

2 most of them because she was my supervisor. She was

3 my employer. She made the decision about renewing my

4 contract each year and so I didn't feel I was free

5 and -- especially since she was publisher, co-owner

6 and board member.

7 Q. I understand about your feelings, and I apologize for

8 going over this but I was not in the hearing before

9 and this is separate --

10 A. No. I'm referring to last -- to the last -- I

11 testified, three weeks ago --

12 Q. Oh, oh, the last time.

13 A. -- here.

14 Q. Oh. Okay. Um, so you felt that it was because she

15 was the one that who was writing the checks that you

16 had to assess an obligation to really listen to what

17 she was saying?

18 A. Absolutely. Right. Absolutely.

19 Q. Absolutely. And then obviously her requests you took

20 very seriously and generally try to accept --

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

22 Q. Didn't always but --

23 A. Yeah.

24 Q. -- tried to accept?

25 A. Correct.

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 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

1 MITCHELL - WITNESS

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

9 Q. All right. Now, what about if you woke up one
10 morning and you just didn't feel well.

11 A. Uh-huh.

12 Q. Could you have asked your neighbor, your colleague to
13 write something up for them?

14 A. No. It wasn't anything like that. It was, um,
15 um -- there were days like that. There were days
16 when, um, not much was happening. You know, the,
17 um -- the blog went through different, um, periods.
18 You know, when it started and again, I've submitted
19 things about this, um --

20 Q. Okay. But --

21 A. It was called Daybook. Okay.

22 Q. Could you have somebody else do it for you?

23 A. No. No. Not really, no. It was -- there were -- it
24 was my blog under my name. Occasionally, an intern
25 wrote something for it, but, um, it would -- no it

1 MITCHELL - WITNESS

2 ALJ DOMINIQUE: Okay.

3 Mr. Silverman?

4 BY MR. SILVERMAN

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

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

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

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

1 VANDEN HEUVEL - WITNESS

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

3 A. I don't recall.

4 Q. Okay. And the same thing with Occupy?

5 BY ALJ ADDISON

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

8 A. I do not.

9 Q. -- that he wanted to quit?

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

12 MR. MITCHELL: Okay.

13 ALJ ADDISON: Go ahead.

14 BY MR. MITCHELL

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

20 A. My understanding --

21 Q. -- early in 2012?

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

1 VANDEN HEUVEL - WITNESS

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

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

7 A. But there was no --

8 Q. I'm sorry.

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

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

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

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

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

25 Q. And do you recall ever being more forceful and sort

1 Case Duly Called

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

5 Um, the -- uh, one moment, please. Further, if
6 you look at the contracts that were admitted into
7 evidence you can see that Mr. Mitchell was, um,
8 restricted to only writing on media. Um, there was
9 testimony from both sides that he wanted to switch
10 over at one point to campaign 2012 and Ms. vanden
11 Heuvel said that you could switch over to campaign
12 2012 as long as you focus on the media. So he
13 couldn't -- he didn't really have artistic freedom
14 to -- to write about anything he wanted to. He had
15 to be -- he was -- he was held within a certain scope
16 in the media.

17 Um, I have nothing further.

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

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

1 MITCHELL - WITNESS

2 and, um --

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

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

8 Q. This just hypothetical.

9 A. I'm sorry.

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

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

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 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

1 MITCHELL - WITNESS

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

5 Q. All right.

6 A. Um --

7 Q. So when they say to keep going, did you think about
8 saying, no, I'm sick of this?

9 A. Uh, I didn't -- I didn't, until they -- I -- and
10 again I think I presented in exhibits or -- or I will
11 today. I think it was in Exhibit 6, um, or certainly
12 in my testimony, um, in the case -- both of them,
13 particularly WikiLeaks, after I think five months, I
14 wrote a letter which I have a copy of that I asked, I
15 said, okay. I think has run its course, I'd like to
16 stop and I was told by Ms. vanden Heuvel that I
17 should stay on it for a while longer. And, um, so I
18 stayed on it for another month or -- month or two.
19 Um, but that's not -- those aren't probably the best
20 examples. I think when I was referring to, um, being
21 urged to write, um -- write on certain subjects it
22 was more in the day-to-day when I wasn't doing
23 the -- I mean every day when I wasn't doing this kind
24 of, um, what they call live blogging when you're
25 covering one issue and updating it constantly during

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

4 A. Right.

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

7 A. Yes. Yes. Uh-huh.

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

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

11 BY MR. MEJIA

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

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

1 MITCHELL - WITNESS

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

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

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

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

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

16 A. Yes. Certainly.

17 Q. Okay. Who was that?

18 A. Who was that?

19 Q. Yeah.

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

1 KIM - WITNESS

2 A. Um, again --

3 BY ALJ DOMINIQUE

4 Q. Was it part of Mr. Mitchell's responsibilities to,
5 um, mentor --

6 A. No.

7 Q. -- editors?

8 A. No.

9 BY MR. MITCHELL

10 Q. So he -- you would deny that I got an intern, uh,
11 uh -- I would get a message from Emily Douglas
12 saying, here's your intern. Please call them and
13 talk about what their work is gonna be --

14 A. Because x --

15 Q. -- and what they can do for you.

16 A. -- you definitely got that e-mail.

17 Q. Yeah.

18 A. That was a necessary e-mail to set up that -- once
19 you would post something that you would -- your
20 intern --

21 Q. Right.

22 A. -- would clean that up. Um, I -- I happened to know
23 that you were a really good mentor to the interns.
24 Um, some writers are and some are not. It certainly
25 not was, um, a part of your duties under this

1 MITCHELL - WITNESS

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

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

6 A. No, they, um, the interns had two -- I mean they did
7 a lot of things for the mag -- they're very important
8 people at the magazine. And they -- but with -- with
9 me they really had two functions. One was they -- I
10 would be assigned a new intern every three months.
11 Okay. Um, they would be, um -- and there would be
12 my -- I would share this intern with two or three
13 other people and then whatever. Um, they would be
14 expected to send me, um, links or tips for my
15 blog -- my media blog.

16 So, um, depending on how industrious they were, um,
17 they -- different ones would send me, oh, did you see
18 this? Or here's a link to add to your blog. Or
19 here's something you should write about, um --

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

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

1 VANDEN HEUVEL - WITNESS

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

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

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

12 A. No.

13 Q. -- did they also --

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

16 Q. Right.

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

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

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

24 Q. Okay. And is it your understanding that they also
25 did, um, extensive or sometimes first copy editing of

1 MITCHELL - WITNESS

2 but --

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

6 MR. MITCHELL: Right.

7 MR. SILVERMAN: This.

8 ALJ DOMINIQUE: That's -- all right.

9 BY MR. SILVERMAN

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

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

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

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

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

1 MITCHELL - WITNESS

2 A. I was paid, um, basically a month to monthly check.

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

7 Q. Did you have to submit anything to receive payment?

8 A. Uh, no.

9 Q. Did you receive a 1099?

10 A. Yes.

11 Q. Were you provided any benefits like vacation,
12 holidays, sick time, (unintelligible, one second,
13 1:20:41)?

14 A. Uh, no.

15 Q. Did you (unintelligible, one second, 1:20:46) shares
16 like (unintelligible, one second, 1:20:47) or workers
17 compensation?

18 A. No, no.

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

21 A. Work-related?

22 Q. Expenses?

23 A. Um, well, yeah. I -- I -- I -- I, uh, yeah, but the
24 contract you see, they -- they -- they, um, would,
25 um, I think each year they said I could spend 2,000

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.