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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CRIMINAL ACTION2:11-cr-470-SDW

UNITED STATES OF AMERICA, : TRANSCRIPT OF PROCEEDINGS
:
: TRIAL
-vs- :
:
ANDREW AUERNHEIMER, : Pages 1 - 85
:
Defendant. :
- - - - -

Newark, New Jersey
November 15, 2012

B E F O R E: HONORABLE SUSAN D. WIGENTON,
UNITED STATES DISTRICT JUDGE
and a Jury

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Pursuant to Section 753 Title 28 United States Code, the
following transcript is certified to be an accurate record as
taken stenographically in the above entitled proceedings.

S/Carmen Liloia
CARMEN LILOIA
Official Court Reporter
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I N D E X

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Witnesses	Direct	Cross	Redirect	Recross
For the Defense				
ANDREW AUERNHEIMER	3	28	61	

1 ANDREW AUERNHEIMER, Sworn.

2 DIRECT EXAMINATION BY DEFENSE2:

3 THE COURT: Very well. Good morning, Mr. Auernheimer.

4 You can proceed, Mr. Ekeland

5 MR. EKELAND: Thank you, your Honor.

6 Q Mr. Auernheimer, how old are you?

7 A Twenty-seven.

8 Q Mr. Auernheimer, are you currently employed?

9 A I do disaster response part-time.

10 Q And could you describe your educational background for us.

11 A I dropped out of high school. I went to college briefly to
12 study anthropology and mathematics.

13 Q Mr. Auernheimer, have you ever heard of an organization
14 called Goatse Security?

15 A Yes. It was a roughly 9-person security research team that
16 I was part of starting February-ish, 2010.

17 Q And what exactly did you do with Goatse Security?

18 A I sort of had a PR role in that people would come to me and
19 I would do press relations for various things that were
20 discovered. In addition, I helped developed a Safari exploit
21 in I think March -- February or March of 2010.

22 Q Did you ever make any money from Goatse Security?

23 A No.

24 Q Let's talk about the Safari exploit thing. I'm going to
25 show you what is in evidence as Government's -- Government's

1 Exhibit 1003. Can you see that?

2 A Not on my monitor. This thing doesn't work.

3 THE COURT: His is a blank screen.

4 A There it goes.

5 Q You got it? Okay.

6 Do you recognize this?

7 A I do.

8 Q What is it?

9 A It is the website, the first version of the website for
10 Goatse Security.

11 Q Do you know who wrote this?

12 A Me and Samuel Hocesvar, a doctoral student in Japan --
13 France, rather, not Japan.

14 Q And directing your attention to the top of the exhibit
15 where it says, right under the heading "Goatse Security
16 Advisories". And underneath that you see the "114,000 iPad
17 owners exposed"; correct?

18 A That's correct.

19 Q And underneath that you see "Safari XPS attack"?

20 A That's correct.

21 Q Was that the Safari exploit that you were just talking
22 about?

23 A That's correct.

24 Q And can you tell us what that Safari exploit was?

25 A It does something called interprotocol exploitation. It

1 was a proof of concept, which means we used only our own
2 systems and it does something that allows a web browser to
3 speak another protocol. In this case, e-mail. We also did a
4 voice over IP, SIP, the protocol that drives voice over IP
5 services. We had it speak, like telling those protocols.

6 Q Did you publish any -- did you publish this exploit?

7 A Yes. Yes, it was published on Bug Track, which is the
8 industry standard sort of mailing list for security
9 vulnerabilities.

10 Q And what is Safari, by the way?

11 A Safari is the web browser that's used on Apple products.
12 Apple has this reputation of -- they sell themselves on
13 security and I was examining Safari because I do not believe
14 that Apple products are any more secure than Microsoft windows
15 or Linux. It's all about relatively the same.

16 Q And do you know if anyone at Apple saw what you published
17 on Safari exploit?

18 A They undoubtedly did because they patched it in the desk
19 top version of Safari about a week after it was released.

20 Q And the information you published on the Safari exploit, it
21 was publicly available on the Internet?

22 A That's correct.

23 Q And directing your attention to the third bullet point
24 under the top heading on what's in evidence as Government
25 Exhibit 1003, do you see where it says "Firefox XPS Javascript

1 Proof of Concept"?

2 A Yes.

3 Q What was that?

4 A That was a short Javascript payload that would allow a web
5 browser to speak the IRC protocol.

6 Q And did you publish that exploit?

7 A It was already in wide circulation when I posted it to a
8 website, yes.

9 Q And do you know if Firefox ever saw what you published
10 about the exploit?

11 A They did. And they said that it was expected behavior and
12 not a security vulnerability at all.

13 Q Now, turning your attention to early June, 2010. Did you
14 have occasion to hear about an account slurper script?

15 A Yes. My co-defendant, JacksonBrown, he comes to an IRC
16 channel and he tells people that he has a new project of --
17 he's found this thing in the iPad registration ap that would
18 allow the e-mail address to be published, open on the Internet.

19 Q And when you said IRC, could you remind us what an IRC is
20 again.

21 A It's the earliest chat room protocol of the Internet. It's
22 been around since the early nineties and it's in widespread
23 use.

24 Q And you said that you learned about this account slurper on
25 the IRC?

1 A That's relatively correct. I'm not sure. I don't remember
2 where I first heard about it.

3 Q I'm going to show you what has been marked I believe for
4 identification as Defendant's Exhibit 601. This is actually
5 what's been in evidence as Defendant's Exhibit 601, pardon me.

6 THE COURT: Alright.

7 Q Can you see that document?

8 A Yes.

9 Q Do you recognize it?

10 A I do.

11 Q Well, is that you speaking in there?

12 A I can't recall. It's been two years, and I couldn't pick
13 out any line of thousands of lines of chat and authenticate it,
14 but it could be.

15 Q Well, did you use a handle in the IRC logs?

16 A Yes.

17 Q And what was the handle you used?

18 A Weev, W-E-E-V.

19 Q So why do you think that that might not be you speaking?

20 A Because my IRC client was one of 12 shared in a
21 screen-sharing software. So it -- I delegated and I let other
22 people use my IRC clients. So it could be somebody else
23 knocking, I wouldn't recall.

24 Q But this could be you speaking?

25 A Yeah.

1 Q But you're not sure?

2 A Yeah. It's two years.

3 Q I'm sorry, could you just take a look at this for a second
4 and tell me what you think is going on here.

5 A This is JacksonBrown seemingly announcing his projects.
6 He's harvesting ICC-ID e-mail combinations and he's looking for
7 more of them.

8 Q You see the date there, it says June 5th on the top?

9 A Yes.

10 Q And do you know if you heard about Mr. Spitler's account
11 slurper before June 5th?

12 A No, I don't -- I mean, I couldn't put it to a specific date
13 but, I mean, this is relatively the time I learned about it.

14 Q Okay.

15 Now, I just want to direct your attention to the
16 middle of the exhibit.

17 A Yeah.

18 Q Where -- can you see that?

19 A Yes.

20 Q The mark June 5th, at 13:03:33. You say -- you see the
21 line that says -- well, 13:03:30 it says: "Weev: Now this is
22 big media news".

23 A Yes.

24 Q What do you take that to mean?

25 A There's a common sort of practice of non-disclosure in the

1 security community. Many security firms, mainstream ones, keep
2 exploits secret if they find software bugs and they sell them
3 to entities, domestic and foreign. They don't patch them. So
4 it's become not as common place for somebody to come out and
5 inform people that there's a problem in software bug -- a piece
6 of software. And so it's -- the iPad specifically is -- IOS in
7 general, these exploits are sold for quarter of a million
8 dollars and upwards; 100-, \$250,000. So most people would sell
9 it and keep it secret. And if you inform people, it's a big
10 story.

11 Q And do you agree with this policy of non-disclosure?

12 A I don't think that people should keep software
13 vulnerabilities secret. I think the consumer has a right to be
14 informed when they're put at risk by a company. And we have
15 not only a right as Americans to analyze things that
16 corporations publish and make publicly accessible, but perhaps
17 even a moral obligation to tell people.

18 Q Now, I want to direct your attention to the second page of
19 this exhibit. And can you see that?

20 A Yes.

21 Q Now, well, let's start with what is essentially the first
22 time -- date stamp line of June 5th, 3:09:12, where it says:
23 "Weev: JacksonBrown, this could be like a future massive
24 phishing operation."

25 What do you take that to mean?

1 A That's a true statement. It could be -- could have been a
2 future massive phishing operation. Somebody could have stolen
3 this data and, you know, not stolen, I mean, it's published.
4 It's published. It's out there. But somebody could have used
5 this that noticed it before us to send e-mails to iPad
6 subscribers trying to get their account information. I mean,
7 that's a serious concern. That's the reason why you should be
8 informed that a company has put you at risk. Like, that's --
9 somebody could use this for malicious, truly malicious means.

10 Q And you mentioned data. What data are you talking about?

11 A The publication of iPad ICC-ID e-mail combinations.

12 Q Did you ever possess this data?

13 A I possessed the e-mails that were sent to media companies,
14 the employees of media companies. But, I mean, I gave a link
15 to a journalist, but I never downloaded the data from the link
16 myself.

17 Q And what journalist did you give to it?

18 A Ryan Tate at Gawker.

19 Q Did you give -- did you give a link to any other
20 journalist?

21 A No, it was not necessary to give more than one journalist
22 the dataset. Ryan Tate verified the data by finding a reporter
23 he knew on the list and asking that other reporter at some
24 other media company to help him verify the story. But
25 there's -- that only needs to be done once.

1 Q And why -- is there any particular reason you contacted
2 Ryan Tate at Gawker?

3 A There was a thing, I can't remember the date. It was well
4 before 2010, but Gawker posted an incorrect article that they
5 got something very factually off. And Owen Thomas, who is the
6 valleywag at the time, sort of the tech person there, he posted
7 a whole new story, like a whole new blog post with him in a
8 dunce cap apologizing. And it left an impression on me that
9 they have a lot of integrity as, you know, if they're willing
10 to --

11 MR. INTRATER: Objection, your Honor, this is --

12 A This is --

13 THE COURT: Hey, wait. When he objects, you don't
14 have a conversation with him. Let me rule, okay?

15 THE WITNESS: Alright.

16 MR. INTRATER: I move to strike that last answer, it's
17 all been hearsay.

18 THE COURT: Sustained.

19 A Alright, Gawker, I personally --

20 THE COURT: Wait. Once he objects and I sustain, you
21 have to wait for Mr. Ekeland to ask you another question.

22 THE WITNESS: Alright.

23 Q Mr. Auernheimer, do you know if Gawker ever published the
24 data?

25 A They published red acted like a couple e-mail address

1 ICC-ID combinations, but they never published the whole list.
2 If I thought they were going to, I wouldn't have brought it to
3 them.

4 Q Did you -- did I hear you testify that you actually
5 contacted other people in the press about this?

6 A Yes, that's correct.

7 Q I want to show you what is in evidence as Government's
8 Exhibit 5052. Excuse me, let me put it up. That is the
9 unredacted version, your Honor. Can you see that?

10 A Yes.

11 Q Is that one of your e-mails that you sent to the press?

12 A That's correct.

13 Q Okay.

14 Now, directing your attention to the bottom of this
15 e-mail, the last line right before you say, "have a good
16 evening".

17 A Yeah.

18 Q I'm referring to lines, "if a journalist in your
19 organization would like to discuss this particular issue, I
20 would be absolutely happy to describe the method of theft in
21 more detail."

22 What do you mean by method of theft?

23 A Well, that's rhetoric and hyperbole. I don't believe in
24 using, and Sherry Ramsey used the word "published" and she was
25 right on this. This information was available on any iPad, you

1 know. You could have very slowly manually stepped through on
2 an iPad or a group of people using iPads and you didn't need to
3 write a program to access this data, you just needed to use the
4 Safari web browser on the iPad. And this data was accessible
5 to the entire Internet. Once somebody publishes something,
6 they don't get to -- if you publish something in a book, you
7 can't say it's wrong to check out that book from the library or
8 go buy a copy of that book. They made this data publicly
9 accessible and I used it to issue comment and criticism on
10 that. And I'm a PR person. I'm doing marketing here. And it
11 sensationalizes the story to have an opener like this. It
12 does. And that's -- it's my role in this community to spin it
13 as big as possible.

14 Q So you went to the press with this. Did you go to anybody
15 else with this?

16 A No.

17 Q Did you -- so you didn't disclose this to AT&T?

18 A I expected a journalist to contact AT&T one of these
19 initial, in a few e-mails. There wasn't really enough in any
20 of these e-mails to write a story, so I figured I would either
21 be contacted by AT&T or they would say the ICC-I-D, or ICC-ID,
22 however you pronounce it, and AT&T would very quickly be able
23 to figure out where in their code the issue was. If they don't
24 want to have a direct dialogue with me. I don't want to come
25 to them. They can have everything transparent in the press or

1 we cannot have a dialogue.

2 Q But do you know if anyone disagreed with you with not going
3 to AT&T first with the information in question here?

4 A Perhaps a lot of people did. But that might have resulted
5 in the public not being informed. I remember, you know, people
6 might get hit with extortion charges or get an injunction and
7 not be able to tell people about, you know, what was available
8 publicly and perhaps with a cavalier disregard for consumer
9 safety.

10 Q Okay.

11 I want to circle back to the IRC logs for a moment.
12 I'm going to show you what is in evidence as Defendant's
13 Exhibit 600. Can you see that?

14 A Yeah.

15 Q Take a look at it and tell me what you think is going on
16 with that.

17 A I was describing -- I was describing a perception after
18 reading some papers on GSM underlying cryptographic functions
19 that I thought that it would be possible to clone a SIM card.
20 It's definitely not an attack that could be done by anybody
21 with less resources than a nation state. But there are some
22 questions there. I personally do not have these resources and
23 I don't think anybody less than an informed Government would
24 have them. But it's a potential for risk.

25 MR. INTRATER: Your Honor, objection. The defendant

1 is testifying as an expert and he hasn't been qualified as an
2 expert.

3 A I was saying my belief.

4 THE COURT: It's tough to get used to. Alright,
5 sustained.

6 MR. INTRATER: Thank you, your Honor.

7 THE COURT: Alright. Now, Mr. Ekeland can ask you a
8 question.

9 MR. INTRATER: I move to strike that last answer.

10 THE COURT: It is stricken. You are to disregard the
11 last answer, ladies and gentlemen.

12 You can proceed, Mr. Ekeland.

13 Q Mr. Auernheimer, just directing your attention to the first
14 line of this exhibit where it's June 6th, 19:19:22.

15 "Jacksonbrown: I wish the ICC-ID wasn't so useless."

16 Do you know why he's saying that?

17 A There's not really anything that any of us -- anybody with
18 not a lot of resources could do with it. It's questionable
19 now. I do not believe that it is possible to clone a SIM card
20 via ICC-ID. I was clearly incorrect on that statement. But
21 there's not a security research team in the world that does not
22 consider routes of attack --

23 MR. INTRATER: Your Honor, object at this point.

24 THE COURT: Sustained. You can't testify as an
25 expert, Mr. Auernheimer. You can only testify as to your

1 involvement and what you do.

2 You can proceed, Mr. Ekeland

3 MR. EKELAND: Your Honor, Defendant's Exhibit 600
4 hasn't actually been moved into evidence. At this time the
5 defense would like to move it into evidence.

6 THE COURT: Any objection?

7 MR. INTRATER: No objection, your Honor.

8 THE COURT: Alright, 600 will be in evidence.

9 (Exhibit marked in evidence)

10 Q I'm showing you, Mr. Auernheimer, what's in evidence as
11 Government's Exhibit 6001. Could you take a look at that for
12 me real quick. Can you see it?

13 A Yes, I can see it.

14 Q Could you tell me just what's going on there.

15 A JacksonBrown is looking for more ICC-IDs.

16 Q Do you recall if this is -- whether or not this is you
17 speaking here?

18 A I couldn't recall anything that happened two years ago. I
19 mean, it could be.

20 Q Okay.

21 And moving on to what's in evidence as Defendant's
22 Exhibit 6 -- sorry, Government's Exhibit 6002. Can you just
23 take a look at that.

24 A Yeah.

25 Q And tell me what you think is going on there.

1 A There's a discussion on the nature of ICC-IDs.

2 Q And can you recall if that's you speaking there?

3 A I mean, that doesn't look like speech. There's bullet
4 points in it, lacks of spaces, capitalization, punctuation. It
5 doesn't look like an IRC conversation.

6 Q I'm sorry, it doesn't look like an IRC conversation?

7 A I can't -- I can't recognize that line as part of any
8 flowing conversation. It's definitely not my words. It's
9 capitalized and punctuated correctly.

10 Q Moving to item 6003, what's in evidence as Government's
11 Exhibit 6003. Do you see that?

12 A That's correct, yeah, I see that.

13 Q Can you tell me what you think is going on there.

14 A I'm -- there's a discussion about valleywag. But I've
15 never been to a Gawker party or -- I didn't know -- I had never
16 met anybody from Gawker media.

17 Q Have you ever met Ryan Tate?

18 A I never met Ryan Tate.

19 Q But you did testify earlier that you did contact him about
20 this --

21 A Yes, I think that was probably the first conversation I
22 ever had with him.

23 Q Okay.

24 Now, moving on to what's in evidence as Government's
25 Exhibit 6004. You take a look at that. Can you see that?

1 A Yes.

2 Q Can you tell me what you think is going on there.

3 A I'm asking for e-mails from JacksonBrown's dataset that
4 belonged to figures in the press so that I may report the
5 story.

6 Q And did you ever take those e-mail addresses and e-mail
7 people in the press?

8 A I did.

9 Q Moving on to what is in evidence as Government's Exhibit
10 6006. Do you see that?

11 A Yes.

12 Q Can you tell me what's going on there?

13 A JacksonBrown has pasted an e-mail address for Arthur
14 Siskind at News Corporation and I'd begun -- I began writing a
15 letter.

16 Q And do you recall if you sent that letter or your e-mail to
17 Mr. Siskind?

18 A I did, yes.

19 Q Moving on to what's in evidence as Government's Exhibit
20 6008. Do you see that?

21 A Yes.

22 Q Is that you speaking?

23 A It could be, yeah.

24 Q Can you tell me what's going on there.

25 A I am -- I appear to be pasting a list of domains from

1 the -- that belonged to press organizations. I see the
2 Associated Press, Baltimore Sun, Asahi, the Japanese newspaper,
3 and I'm giving him this list so he may search his dataset for
4 those domains and give me the e-mail addresses for contact
5 points in the media.

6 Q And moving on to what's in evidence as Government's Exhibit
7 6010. Can you see -- hold on a second. How's that? Can you
8 see that?

9 A I can see that, yes.

10 Q Can you tell me what's going on there.

11 A JacksonBrown is pasting various -- various results from the
12 list that I -- of domains that I gave him. He's pasting a
13 number of reporters' e-mails.

14 Q Moving on to what's in evidence as Government's Exhibit
15 6011. Do you see that?

16 A Yes.

17 Q Do you recognize that?

18 A I do. I mean, from this trial.

19 Q Well, can you tell me what's going on there.

20 A I appear to be stating that I'm going to aggressively
21 e-mail the media.

22 Q And did you aggressively e-mail the media?

23 A Yes. Yes, I did.

24 Q Okay. Moving on to what's in evidence as Government's
25 Exhibit 6014. Can you see that?

1 A Yeah.

2 Q Do you recognize that?

3 A Yes.

4 Q And can you tell me what's going on there?

5 A JacksonBrown is stating, you know, that AT&T has patched
6 the hole and, you know, that there are no more e-mail addresses
7 that could be harvested.

8 Q Okay.

9 Now, moving on to what's in evidence as Government's
10 Exhibit 6015. Can you tell me what you think is going on
11 there?

12 A I tell JacksonBrown to DCC me the list, but that doesn't
13 work.

14 Q What is DCC?

15 A It is -- I don't remember what it stands for, but it is how
16 people send things on IRC. So I believe JacksonBrown at that
17 point either -- I think he might have uploaded it to a shared
18 shell server or a paste bin, or something, and from there it
19 was relayed, the link was relayed to Ryan Tate at Gawker.

20 Q Okay.

21 Moving on to what's in evidence as Government's
22 Exhibit 6017. Can you see that?

23 A Yes.

24 Q And can you tell me what you think is going on there?

25 A I'm telling JacksonBrown that we're going to -- valleywag

1 is -- wants to publish this story.

2 Q And who is valleywag again?

3 A Valleywag is a subsidiary or website of Gawker.

4 Q And moving on to what's in evidence as Government's Exhibit
5 6019. Can you see that?

6 A Yeah.

7 Q Can you tell me what you think is going on there?

8 A Ryan Tate at Gawker is letting me know that he's got the
9 data.

10 Q Was Ryan Tate on the IRC?

11 A No, that was a conversation on another medium.

12 Q So then -- but this is an IRC log; right?

13 A Yes.

14 Q Do you know how it ended up on the IRC log?

15 A It must have been pasted there.

16 Q And moving on to what's in evidence as Government's Exhibit
17 6026. Can you see that?

18 A Yeah.

19 Q Can you tell me what you think is going on there?

20 A I'm telling JacksonBrown that I was dissatisfied with
21 AT&T's notification to their customers. I felt it wasn't
22 completely honest. And I think that we should respond with a
23 letter to AT&T's customers of our own.

24 Q And directing your attention to the bottom of the exhibit
25 where -- right there, you see where that red dot is?

1 A Yeah.

2 Q Where it says -- JacksonBrown says: "Um". And after that
3 it says: "I thought you didn't have the list any more?" You
4 say: "Um, I may have, uh, incidentally stored it somewhere."

5 Is that accurate?

6 A That's not accurate. I do not -- I did not retain any data
7 and I did not possess the fullest of data.

8 Q Why are you telling him that then?

9 A It may have been a facetious comment, I'm not sure. It may
10 have been a joke. I don't recall saying it. But I don't
11 currently possess any data from AT&T and I -- I mean, the
12 Government has all my computers, I think they could verify
13 that.

14 Q Did you ever do a mass e-mail to any AT&T customers?

15 A No. I looked at the canned spam legislation and it seems a
16 tad odious compliance requirements.

17 Q Okay.

18 Now, through this entire period of all the IRC logs I
19 just showed you, throughout all of that, did you at any point
20 think that you were doing something illegal?

21 A I was -- I felt I was free to use rhetoric and hyperbole
22 like theft because the underlying act of accessing public
23 information, it boggles my mind that it could be considered a
24 crime.

25 Q Why does it boggle your mind?

1 A Because there, you know -- one second. Let me state this
2 correctly. If you put something on the Internet. Let's say
3 you send nude photographs of yourself to somebody and, you
4 know, let's say you're, you know, an important person, a
5 representative, and later that person discloses them and
6 embarrasses you. You don't get to -- you don't get to cry and
7 kill the messenger that you were criticized. It's sad that
8 AT&T's customers had to be, you know, had to be notified that
9 their company put them at risk. But it's better than not
10 knowing. And you should be able, in our -- with our common law
11 heritage, you should be able to comment and criticize. These
12 are things the DMCA, the Digital Millennium Copyright Act, it
13 has exemptions for security research. We have fair use,
14 specifically for comment and criticism. There's so many -- in
15 my understanding of our system, that when you're commenting and
16 criticizing somebody, you can transform public data and it is
17 public. It was published. You can transform public data and
18 it shouldn't be -- it was not my comprehension that it was a
19 crime to give publicly accessible data to a journalist. That
20 seemed ludicrous to me. The very idea of it shocks me to my
21 core.

22 Q I just want to circle back to that point. Why do you think
23 the data was publicly accessible?

24 A I think that AT&T published it largely as an oversight,
25 and. There are really good people there and, I mean, I've been

1 told great things about their team. And if the best people in
2 the world can't stay on top of it all the time, then it's up
3 to, you know, third parties to examine it and bring to it light
4 when there's a problem.

5 Q You said AT&T published the data. What do you mean by
6 that?

7 A It's a universal understanding. You don't ask -- you
8 don't -- I don't think anybody in this room has written a
9 letter to Google or, you know, or Yahoo before they visit the
10 website. When you put something on the Internet -- http, to my
11 understanding, is a publishing system. And when you put
12 something on the open Internet and you didn't protect it with a
13 password or a firewall, you've made it a part of the public
14 record. And Sherry Ramsey did use correctly the word
15 "publish". And when you publish something, you can't sit there
16 and say, you know, when somebody uses it to embarrass you, you
17 can't kill the messenger and say: Well, I didn't want you to
18 have that. Well, you shouldn't have made it available if
19 that's true.

20 Q Turning your attention back to the account slurper script.

21 A Yeah.

22 Q Did you write any of the account slurper?

23 A No, it was complete -- I don't write in PHP, I find it a
24 despicable language. And it was complete by the time that
25 was -- JacksonBrown first introduced me to it. You know,

1 there's -- apparently, I don't fully remember, but from what
2 that log shows, he introduced it to me by, you know, "hey, I've
3 got this new project. I'm looking for ICC-IDs. There should
4 be many more."

5 Q Did you ever run the script?

6 A No. I mean, I sort of poked at it, looked at one of the
7 URL to verify it was a public web server, but I never ran the
8 script.

9 Q Did you make any money off the incident in question here?

10 A No. No, I did not attempt to monetize off of this.

11 Q Did anyone ever offer you money for the list of the e-mail
12 paired with ICC-ID?

13 A Yes. There were a number of offers that came in via
14 e-mail.

15 Q I'm going to show you what has been marked for
16 identification as Government's Exhibit 5137. Can you see that?

17 A Yeah.

18 Q Can you tell me what it is?

19 A Someone is e-mailing me asking to buy the data. And I am
20 saying that it has been destroyed and we're not going to
21 violate principles for money. And none of our people have a
22 copy of the data at all.

23 Q So that's an e-mail you received and replied to?

24 A That's correct. The bottom half is the person e-mailing --

25 MR. EKELAND: I'm sorry. Your Honor, the defense

1 would like to move what's been marked as Government's Exhibit
2 5137 into evidence.

3 MR. INTRATER: No objection, your Honor.

4 THE COURT: Alright, 5137 will be in evidence.

5 (Exhibit marked in evidence)

6 Q Okay. I just want to -- well, could you read for me the
7 e-mail that was sent to you, starting on --

8 A "Hello. How much could I buy for the whole database or
9 half? Tell me please. Or if any way possible, to chat and
10 discuss. If you sell, please contact me ASAP. Any price is
11 okay. Thanks."

12 Q And could you read your reply?

13 A "We destroyed the data as a matter of policy. It served no
14 more purpose to us and we are uninterested in violating our
15 principles for money. No members of Goatse Security have a
16 copy of the data left."

17 Q And could you read for me the date of this e-mail?

18 A It is June 10th, 2010, at 8:31 p.m.

19 Q Do you have any reason to doubt that date?

20 A No, that looks accurate.

21 Q I just want to show you one more of the Government's
22 Exhibits. Can you see that?

23 A Yes.

24 Q What is it?

25 A Someone is saying to me: "Hello guys. Would it be

1 possible to share with me the iPad users e-mailing list,
2 please? Many thanks for your response. Best regards, Reda."
3 And I am replying: "No, not under any circumstances."

4 Q And that's an e-mail you received and that you replied to?

5 A That's correct

6 MR. EKELAND: Your Honor, the defense would like to
7 move what's been marked as Exhibit 5143 into evidence.

8 THE COURT: Any objection?

9 MR. INTRATER: No objection, your Honor.

10 THE COURT: Alright, 5143 will be in evidence.

11 (Exhibit marked in evidence)

12 Q And can you read me the date on that, Mr. Auernheimer.

13 A That is June 11th, 2010, at 1:12 a.m.

14 Q And do you have any reason to doubt --

15 A No, that's an e-mail that I sent.

16 Q Did you know who -- the name of signature blocked out Reda
17 El Ourouba. Do you know that person?

18 A You know, I know a lot of people, Arab people. I'm not --
19 I couldn't -- I have trouble remembering their names, though.
20 I couldn't say one way or another.

21 Q In the month of June, 2010, do you recall where you were?

22 A I was in my home at Fayetteville, Arkansas, which is where I
23 was born. Not in that house.

24 Q In June, 2010, or any of the events in question, were you
25 ever in New Jersey?

1 A I had never been to New Jersey prior to this. I was
2 dragged here in leg irons for the first time

3 MR. EKELAND: No further questions, your Honor.

4 THE COURT: Alright.

5 Cross.

6 MR. INTRATER: Yes, your Honor, thank you.

7 CROSS EXAMINATION BY MR. INTRATER:

8 Q Good morning, Mr. Auernheimer.

9 A Good morning, Zach.

10 Q On direct examination, you said that the information that
11 was taken from AT&T servers was publicly accessible?

12 A That's correct. You could have accessed it by typing in
13 URL to the address bar of any iPad.

14 Q So that's what you said on direct, it was publicly
15 accessible. Right?

16 A That is, to the best of my knowledge, that is correct.

17 Q So we know what you said on direct today.

18 I want to talk to you about what you said and wrote in
19 June of 2010.

20 A Okay.

21 Q In June of 2010, you weren't under indictment for a federal
22 crime; is that right?

23 A That's correct.

24 Q And in June of 2010, you weren't in the middle of a trial
25 which you're the only defendant facing two criminal counts. Is

1 that correct?

2 A That's correct.

3 Q In June of 2010, you weren't on the witness stand in front
4 of a jury of your peers?

5 A That's correct.

6 Q Trying to persuade them that you didn't commit a crime. Is
7 that right?

8 A That's correct.

9 Q So we know what you said today. Now, let's go back to June
10 of 2010.

11 A Alright.

12 Q And see what you said and you did at that point.

13 A Okay.

14 Q I want to show you what's in evidence first as Government
15 Exhibit 5049. And you were shown several e-mails from the
16 gluttony@gmail.com e-mail account while you were on direct
17 examination. You recall that?

18 A Yes.

19 Q You said that those e-mails --

20 A Yeah, these are accurate. This e-mail is accurate. I
21 recognize this letter.

22 Q Could you show this to the jury? Okay. So you don't
23 dispute that you sent this e-mail?

24 A That's correct.

25 Q Okay. You don't dispute that e-mails that come from G

1 mail --

2 A Yes.

3 Q Gluttony@gmail.com are yours?

4 A Yes, that's my e-mail.

5 Q Okay.

6 The subject of this e-mail, you just tell me if I'm
7 reading this correctly. "AT&T privacy leak. Your iPad can be
8 hijacked, frank".

9 A Yes.

10 Q I read that, right?

11 A Yes.

12 Q And this is being sent to somebody at the San Francisco
13 Chronicle; right?

14 A Yes.

15 Q And in this e-mail you tell Mr. Vega, who you address it
16 to, I think. Right?

17 A Yes.

18 Q You tell Mr. Vega what his ICC-ID is. You put it right
19 there in the e-mail; correct?

20 A Correct.

21 Q And you write that the ICC-ID is a shared secret.

22 A Yes.

23 Q That should indicate physical proximity to the iPad.

24 A I wrote that, yes.

25 Q And you wrote: "I would be absolutely happy to describe

1 the method of theft in more detail." Right? That's what you
2 wrote?

3 A I was trying to sensationalize the story.

4 Q Wait --

5 A I'm a PR person, yes, that's absolutely --

6 Q Those were your words in June of 2010; right?

7 A It's hyperbole.

8 Q But that's what you wrote?

9 A That's absolutely what I wrote. But that's not an accurate
10 assessment of what happened here. I'm trying to get a
11 reporter's attention.

12 Q So you describe the ICC-ID as a secret. And you call what
13 you and Goatse Security did a theft; right?

14 A It's hyperbole, yes.

15 Q You describe it a shared secret and you called what you did
16 a theft. Right?

17 A Now, if I say: Hey, bro, can I steel that cigarette? And
18 I grab one, it's not really theft, you know, it's --

19 Q Look, I didn't write the e-mail.

20 MR. EKELAND: Objection.

21 Q You wrote the e-mail.

22 THE COURT: Alright. The question is a yes or no
23 question. The objection is overruled. It's a yes or no
24 question. So to the extent that you can say yes or no, Mr.
25 Auernheimer, try to limit your answers to that.

1 THE WITNESS: Alright.

2 THE COURT: Mr. Ekeland can certainly come back on
3 redirect and ask any further questions.

4 THE WITNESS: Yes.

5 Q Yes. But this e-mail, 5049 to Mr. Vega, that's not the
6 only time then, not now, then --

7 A Yes.

8 Q In June of 2010.

9 A Correct.

10 Q That you refer what you and Goatse Security did as a theft?

11 A Absolutely

12 Q I want to show you Government Exhibit 5050. And, again,
13 this is a gluttony@gmail.com account e-mail. You wrote this
14 e-mail. Right?

15 A Correct.

16 Q Okay. This is to somebody at News Corp, right, Mr. Siskind
17 at News Corp.?

18 A Absolutely

19 Q Subject, you tell me if I'm reading this right, okay.

20 "AT&T privacy leak. Your iPad's identifier stolen." You go on
21 to say that -- you give him his ICC-ID. You write: "It's a
22 shared secret that should indicate physical proximity to the
23 iPad." Right?

24 A Yes.

25 Q And you wrote: "I'd be absolutely happy to describe the

1 method of theft in more detail." Your iPad identifier stolen
2 and you would be happy to discuss the method of theft in more
3 detail. Right?

4 A That's what I said.

5 Q Those are your words; right?

6 A My words.

7 Q In June of 2010?

8 A Yes.

9 Q Not under indictment. Right?

10 A Yes.

11 Q Not facing criminal charges. Right?

12 A Yes.

13 Q Not sitting here on the witness stand trying to get this
14 jury to believe your version of events now. Right?

15 A I also said when I wasn't under indictment that it was
16 public information.

17 Q This is what you said then.

18 A This what I said then. But I also said it was public
19 information then at other times.

20 Q Let's go to 5052. I don't want to belabor the point,
21 gluttony@gmail.com account. You wrote the e-mail?

22 A I sent many e-mails to press, yes.

23 Q "Veronica. AT&T leaked your iPad SIM ID and violated your
24 privacy".

25 A That's an accurate statement.

1 Q You told Miss Dillon from the Washington Post what her
2 ICC-ID was. Right?

3 A Yes.

4 Q And you wrote: "The ICC-ID is a shared secret. Should
5 indicate physical proximity to the iPad".

6 A Yes.

7 Q Again, "I'd be absolutely happy to discuss the method of
8 theft in more detail". Your words; right?

9 A Absolutely.

10 Q June, 2010. Right?

11 A Yes.

12 Q Let's go to 5054. This e-mail is to a bunch of posts at
13 Thomson Reuters, right? "Hello, Reuters. Your iPad 3G
14 customer information can be compromised. Shared secret".

15 A Yeah, absolutely

16 Q "I'd be absolutely happy" -- absolutely.

17 A Correct.

18 Q Absolutely is what you said?

19 A Absolutely happy, for sure.

20 Q "Method of theft"?

21 A That's what I said.

22 Q Now, you were here for the opening statements in this case.
23 Right?

24 A Yeah, I was.

25 Q And you heard your attorney, Mr. Ekeland, "say that all Mr.

1 Spitler did", it was Mr. Spitler not you who wrote that script,
2 "all Mr. Spitler did was copy the e-mail addresses and
3 ICC-IDs". Right, you heard him say that?

4 A Yeah.

5 Q Who chose the word "theft", Mr. Auernheimer, was it you?

6 A Yes, it was.

7 Q Who chose the word "stole", Mr. Auernheimer, was it you?

8 A That was me.

9 Q It's not once, it's not twice, it's not three times, it's
10 four times. You showed the victims their stolen e-mails and
11 there ICC-IDs and you call it a theft.

12 A I don't think those people were victimized, but that's what
13 I said.

14 Q But you didn't just tell these iPad users that their e-mail
15 addresses and ICC-IDs were stolen. It's the same way that you
16 referred to what you did when you were talking to other Goatse
17 Security members back in June of 2010. Right?

18 A IRC is a very aggressive rhetorical place. Everything is
19 hyperbolized to the extreme, yes.

20 Q Everything is hyperbolized to the extreme; right?

21 A Yes.

22 Q But not here, not today; right?

23 A I mean, no, not today, this is not the time or the place
24 for hyperbole.

25 Q You wouldn't hyperbolize today; right?

1 A That's correct.

2 Q Because you're under indictment today, right? You're
3 trying to convince the jury.

4 A It's not about convincing, it's about telling the truth.

5 Q It's one or the other?

6 A No, it's not one or the other, it's about telling the
7 truth.

8 Q It is about telling the truth.

9 Let me show you Government Exhibit 6005. This is in
10 your private channel in IRC. It's in the Pound Dominion. This
11 is the channel that Goatse Security uses; right?

12 A Yes.

13 Q June 6, 17:58:15. This is not to the media; right?

14 A Well, that's me saying what I'm going to say to the media,
15 so that is actually what I said to the media. So it's a
16 reasonable representation.

17 Q Is this the media or is this to other Goatse Security
18 members?

19 A I'm saying the best way to have a lead on it to the press
20 is to say: "Hi, I stole your e-mail from AT&T". That's a
21 representation of what I'm going to say to the press, yes.

22 Q But nobody from the media, as far as you know, is in Pound
23 Dominion channel; right?

24 A But I'm describing what I'm going to say to the press.

25 Q No one from the media is in the Pound Dominion channel?

1 A Yes. I'm going to describe what I'm going to say to the
2 press in that document.

3 Q No one from the media is in the Pound Dominion channel.
4 Right?

5 A Yes.

6 Q This is what you're saying to your fellow Goatse Security
7 members, not to the media?

8 A Yes, describing what I'm going to say to the press.

9 Q "I stole your e-mail, want to know how"; right?

10 A Yes. I'm describing what I'm going to say to the press.

11 Q Your words?

12 A My words.

13 Q So you came here today, you told this jury that what you
14 did was not a theft, it was not a crime. Right?

15 A That's correct, it is not theft to take information from a
16 public web server.

17 Q That's now?

18 A That's then, that's period.

19 Q Well, then you call it a theft. Then you say: "I stole
20 your e-mail."

21 A Yes, I'm trying to get the attention of an agent in the
22 media. That's exactly what I'm -- you know, that's a
23 reasonable representation short of what I did for -- what I did
24 send to members of the press.

25 Q By the way, this is, what you said, this chat, is this you?

1 A I couldn't recall, you know. But it is what I said to the
2 press.

3 Q You can't recall whether or not this is you; right?

4 A It's been two years and I've probably seen millions of
5 lines of IRC in my life. It would be hard to say what is or is
6 not. I cannot authenticate anything.

7 Q So you can't tell the jury whether or not this was you.
8 Right?

9 A It's been two years. I couldn't --

10 Q Let's compare and contrast a couple things. I want to show
11 you Government Exhibit 6004. And we've also talked about IRC.
12 You were here for the testimony of Mr. Spitler, right, where we
13 went over, on the left side of IRC chats is date, timestamp.
14 Right?

15 A Yes.

16 Q I think you said that to Mr. Ekeland too, date and
17 timestamp, and that's the date and timestamp for each message;
18 right?

19 A Yeah.

20 Q Okay.

21 So June 6th, 17:59:03. JacksonBrown sends an ICC-ID
22 to this sfchronicle.com e-mail address. You see that?

23 A Yes.

24 Q June 6, 17:59:31. Somebody with the handle weev writes:
25 "E-mailing him now". You see that? You see that?

1 A Yeah.

2 Q Okay.

3 Let's go back to 5050, 17:59:31. "E-mailing him now".

4 A Looks good.

5 Q No, no, I'm sorry, 5052. Is that 5052? I got the number
6 wrong. I need 5049. Here you go. Great. Gluttony@gmail.com,
7 that's you; right?

8 A Yes.

9 Q 6/6/2010. Same day as that chat; right?

10 A Yes.

11 Q 6:45 p.m. Right?

12 A That's correct.

13 Q E-mail is sent to Mr. Vega?

14 A Yes.

15 Q At sfchronicle.com?

16 A Yes.

17 Q Right? Okay. Let's go back to 6006 for a second, 645 p.m.
18 That's when the e-mail was sent. Let's go back to 6006 for a
19 second. Sorry, 6004. Okay, 15:59:31. Somebody -- somebody
20 named weev says: "E-mailing him now".

21 A I think it's a reasonable representation. I'm not -- I
22 just don't recall this conversation.

23 Q Well, is it a reasonable representation or is it you?

24 A I'm going to say reasonable representation. I don't
25 know -- I don't understand the process that these logs were

1 acquired. I don't know what the integrity of them are. I'm
2 going to say what is shown so far is a reasonable
3 representation of events that have occurred.

4 Q I'm sorry, that was a long answer. Is that you or is that
5 not you writing them?

6 A I told you, it's been two years, I don't recall any of
7 these conversations.

8 Q But a few minutes later on the same day you, from
9 gluttony@gmail.com, e-mailed the guy, whose e-mail address and
10 ICC-ID was just provided to you, provided to somebody named
11 weev in the IRC channel for Goatse Security, your organization,
12 a few minutes earlier.

13 A I fully admit sending e-mails to the press about this,
14 absolutely.

15 Q Do you fully admit participating in these IRC chats?

16 A I believe they are, what has been shown so far in snippets,
17 is a reasonable representation. I do not remember these
18 conversations. It's been a long time.

19 Q I'm sorry, I'm having trouble. I just don't understand
20 whether you're telling me that --

21 A I don't -- I'm telling you --

22 Q This is you or it's not you?

23 A I don't recognize these snippets of conversations. They
24 seem so far to be a reasonable representation of what has
25 occurred, period.

1 Q Okay. Let's just do one more.

2 Could we look at 6006? And I promise I'll have the
3 right number. Six thousand six for a second. Alright.

4 18:02:16, June 6. JacksonBrown sends ICC-ID e-mail address to
5 asiskind@newscorp.com?

6 A Yes, I wrote Arthur Siskind at News Corporation.

7 Q Somebody named weev also said --

8 A So for --

9 Q "Let me write a fuckin letter, that is going to be so
10 good."

11 A This seems like a reasonable representation, yes. I do not
12 recall this conversation, but I'm not disputing it. I just
13 don't remember this particular part of the log. I can't
14 remember, you know, one of thousands, millions of lines of IRC
15 that I've seen from two years ago. That's just -- that's crazy
16 talk.

17 Q Someone named weev writes: "Let me write a fuckin letter,
18 that is going to be so good." 18:02:41. Can we look at 5052
19 for one minute?

20 A I think so far these logs are a reasonable representation.

21 Q I'm actually wrong again, could we do 5050?

22 A I did in fact send mailings to the media that corresponds
23 to those times.

24 Q 6/6/2010 6:50 p.m. You send an e-mail?

25 A That's correct.

1 Q Same e-mail address that was just received by weev,
2 somebody named weev in the IRC channel of Goatse Security, your
3 organization?

4 A That's, you know --

5 Q I'll let it go.

6 A That's -- I agree I sent an e-mail that corresponds --

7 Q But you don't agree you wrote these IRCs?

8 A I'm not saying that. I'm saying I don't remember. I only
9 seen snippets of IRC. It's a reasonable representation of what
10 happened. I don't -- I can't authenticate these logs
11 completely. I'm saying what I've been shown so far in snippets
12 seems, you know, relatively accurate.

13 Q Okay.

14 On direct you said an ICC-ID -- well, you were shown a
15 chat. "ICC-ID, I wish it wasn't so useless," which is what
16 somebody named JacksonBrown said.

17 A Yes.

18 Q That is Daniel Spitler, JacksonBrown?

19 A Yes.

20 Q "I wish it wasn't so useless." And, again, you were here
21 when Mr. Ekeland gave his opening argument?

22 A Yeah.

23 Q Mr. Ekeland said ICC-ID numbers are not significant,
24 important information. They're just inventory tracking numbers
25 on microchips. This is much ado about nothing." He said:

1 "You're going to learn you really can't do anything with an
2 ICC-ID e-mail address, period". That's what Mr. Ekeland said?

3 A Correct.

4 Q You agree with what Mr. Ekeland --

5 A Yes, that was technically accurate. I was wrong to
6 represent otherwise.

7 Q So you agree with what Mr. Ekeland said now?

8 A Yes.

9 Q And you were wrong to represent otherwise before?

10 A That's correct. I was technically inaccurate. I'm not an
11 expert on GSM technology.

12 Q Okay.

13 Let's go back to June of 2010. And not to beat a dead
14 horse, but June, 2010, you're not indicted?

15 A Yes, that's correct.

16 Q June, 2010, you're not sitting in the witness stand.
17 Right?

18 A Yes, that's correct.

19 Q I want to show you what your lawyer marked yesterday as
20 Defense Exhibit 601. You find out about this June 5th, 13:03.
21 And this again is when you first found out about this?

22 A Yes.

23 Q 13:03, you say, "big media news"; right?

24 A Yes, that's correct.

25 Q Let's go to the second page of this exhibit. 13:09:15:

1 somebody named weev says: "Seriously, this is valuable data".

2 A It could potentially be valuable data. I generated no
3 value from it, but it was bad for it to be published on the
4 open Internet. And I believe that people should be informed of
5 that.

6 Q So you were just shown a couple of e-mails on direct by
7 your attorney.

8 A Yes.

9 Q Gluttony@gmail.com. And that's something you don't deny.
10 That's something you admit that is you?

11 A Yes, that is, absolutely

12 Q So you're shown a couple of e-mails. And I'd like to, if I
13 could, show you those e-mails. So the first one is 5137.

14 A That's correct.

15 Q "How much could I buy the whole database," DB, database; is
16 that right?

17 A Yes.

18 Q "How much could I buy the whole DB or half?"

19 And then you were shown another one, 5143, I believe,
20 but I want to show you 5145, which is not in evidence. I want
21 to show you and see if you recognize it. You recognize 5145?

22 A There is -- so he sends that initial e-mail, I reply no --

23 THE COURT: Just say yes.

24 Q Just, do you recognize that?

25 A Yes.

1 Q Do you recognize it?

2 A Yes.

3 Q What is it?

4 A He asks how much again and I say, "there is no price on our
5 principles".

6 Q This is an e-mail between you and somebody else?

7 A Yeah.

8 Q Okay. I just need to know because I want to get it into
9 evidence.

10 A Alright.

11 MR. INTRATER: Your Honor, the Government offers
12 Government Exhibit 5145.

13 THE COURT: Any objection?

14 MR. EKELAND: No objection.

15 THE COURT: Alright, 5145 will be in evidence.

16 (Exhibit marked in evidence)

17 Q I want to get it in evidence because I want to show it to
18 the jury. And I want to see -- I want the jury to see that
19 after Reda El Ourouba says: "Is it possible to share with me
20 the iPad user e-mailing list?" That person makes clear what he
21 means by "share"; right? Because Friday, June 11th, 4:55 a.m.,
22 he clarifies: "How much" --

23 MR. JAFFEE: Objection, your Honor. The attorney is
24 testifying as to what a non-declarant, not here, means by a
25 statement.

1 THE COURT: Alright, rephrase. Sustained.

2 Q On Friday, June 11th, at 4:55 a.m., could you please read
3 for the jury what Reda El Ourouba writes?

4 A "How much?"

5 Q What did you understand that to mean?

6 A He wanted to buy the data.

7 Q And you replied: "Not under any circumstances, no price on
8 our principles." Right?

9 A That's correct.

10 Q That's a different person than the person that offered to
11 buy the list from you on 5137? You want to see 5137 real
12 quick?

13 A Yes.

14 Q Can we see 5137 real quick?

15 A Yes, this a different person.

16 Q So two different people?

17 A Yes.

18 Q This e-mail is on 6/10, 5145 is on 6/11; right?

19 A Yes.

20 Q And the vulnerability, all the data, is published. That
21 Gawker article comes out right around June 9th; right?

22 A Yes.

23 Q So June 10th somebody offers to buy it from you, and June
24 11th somebody offers to buy it from you; right?

25 A That's correct.

1 Q So, Mr. Auernheimer, let me ask you this. If this
2 information is freely available on publicly accessible web
3 servers, how come these two different people offered to buy it
4 from you?

5 A Well, it is no more freely available at that point. It was
6 not freely accessible any longer.

7 Q You said on direct that your motivation was to protect the
8 public. Right?

9 A My motivation is to comment and criticize, that's my
10 primary motivation.

11 Q You said on direct --

12 A The public benefit is a side effect, but --

13 Q -- that the consumer has a right to be informed when put at
14 risk.

15 A That's correct.

16 Q You characterized that perhaps even a moral obligation to
17 tell people?

18 A That's correct, yes.

19 Q That's your motivation?

20 A I didn't say that was my motivation, I'm saying that's --
21 there's perhaps a moral obligation. My motivation is to
22 comment and criticize large companies.

23 Q You said the consumer has a right to be informed, right?

24 A That's correct.

25 Q Who's going to inform the consumer?

1 A Somebody needs to.

2 Q Who? Who did it here?

3 A I informed the consumer, that's correct.

4 Q Your motivation in going to the press was to fulfill that
5 moral obligation?

6 A No, my motivation was to criticize AT&T. That was a side
7 effect.

8 Q You even got an award for what you did; right?

9 A Yes, we were awarded a crunchy.

10 Q A crunchy award. That's from Tech Crunch?

11 A Yes.

12 Q You get a statue?

13 A I did not get the statue, I think they're holding one more
14 me.

15 Q Alright.

16 So let's go back to March of 2010. Alright?

17 A Yeah.

18 Q It's three months before the intrusion into AT&T. And,
19 again, March, 2010, you're not under indictment?

20 A Yes.

21 Q In March, 2010, you're not a defendant in a criminal case.
22 Right? March, 2010, you're not facing two federal charges?

23 A That's correct.

24 Q I want to show you what's in evidence as Government Exhibit
25 5036. And you testified earlier that gluttony -- you're not

1 sure about the IRCs, whoever weev was, it could be you?

2 A This e-mail was sent by me.

3 Q This e-mail?

4 A You can skip to the bottom and we'll talk about it.

5 Q This e-mail was sent by you?

6 A That's correct.

7 Q And you wrote this e-mail to girlvinyl?

8 A That's correct.

9 Q You talk about Goatse Security, which on direct you
10 admitted you were a part of; right?

11 A That's correct, yes.

12 Q You were a security organization?

13 A Yes.

14 Q And you write, at the bottom of this e-mail. And I just
15 want to pull it up so the jury can read along with us. You
16 write: "At Goatse Security, we don't really care about
17 fighting cyberterrorism, or cyber crime, or whatever".

18 A Yes.

19 Q "We are pioneering new classes of exploits, new methods of
20 evading IDS, and new ways to use computers as tools to make
21 shit happen. Our minds won't be owned by some liar's system of
22 ethics, but they are for rent to any God or Government or
23 corporation or criminal organization that will write a check of
24 sufficient size. We invite you to stop pretending you care
25 about making things more secure and just admit that you're too

1 unskilled to be a real mercenary."

2 A That was for publication on a satire website. There's
3 cultural complex connotation --

4 Q Your method is to comment and criticize?

5 A That's correct, absolutely.

6 Q That's what you're saying?

7 A That's always been my motive.

8 Q That's what you want this jury to believe today?

9 A No, that's --

10 Q When you're under indictment today --

11 MR. EKELAND: Objection, your Honor.

12 THE COURT: One has to speak one at a time. Okay?
13 Sustained.

14 Q That's what you want the jury to believe today that your
15 motive is comment and criticism. Right?

16 A Are you disagreeing that Encyclopedia Dramatica is a satire
17 website?

18 Q I can't answer the question, that's not how it goes.

19 A On the top of the e-mail --

20 Q Today you said your motive was commenting and criticism.
21 Right?

22 A That's correct.

23 Q That's what you said today?

24 A At the top of the e-mail is a link to Encyclopedia
25 Dramatica that promoted itself as a satire website, there's --

1 Q I want to show you in evidence --

2 A If you want me to explain --

3 Q No, I don't. I just want to ask you what you said today.

4 A Okay.

5 Q When you're under indictment on the witness stand, what
6 your motive was. I want to show you Government Exhibit 5150 --
7 54. Thank you, Miss Santos.

8 Again, gluttony@gmail.com, that's you?

9 A Yeah.

10 Q You get an e-mail on Thursday, June 10th, at 8:34 p.m. from
11 somebody name Suraj Viswanathan?

12 A That's correct.

13 Q A day after the Gawker article is published?

14 A Yes.

15 Q And a small business owner. He says: "I need your help".

16 A Yes.

17 Q "Since you made headlines, I thought you could do something
18 good for us."

19 Now, I'd like to show you the message that's up above
20 this one.

21 A I was talking about using a court order --

22 THE COURT: Just one second. Wait for him.

23 Q Why didn't you reply to Mr. Viswanathan and say: "Listen
24 I'm just commenting and criticizing. I'm commenting and
25 criticizing"?

1 MR. JAFFEE: Objection to this question, your Honor.

2 THE COURT: Rephrase. Sustained.

3 Q Did you reply to Mr. Viswanathan: "I'm just commenting and
4 criticizing"?

5 A This is unrelated. Just because I engage in comment and
6 criticism, doesn't mean I don't do other things. Comment and
7 criticism doesn't pay bills.

8 Q Did you reply to Mr. Viswanathan: "Mr. Viswanathan, I'm
9 sorry, but my motive is comment and criticism"? It's yes or
10 no.

11 A No, I did not.

12 Q Okay. Instead, you wrote an e-mail to
13 gOspykluz@gmail.com. And that's other member of Goatse
14 Security; correct?

15 A That's right. He's a lawyer, and I was asking about
16 getting a court order.

17 Q He's another member of Goatse Security. He's your lawyer
18 at Goatse Security?

19 A He is a lawyer, yes.

20 Q And you write: "What can we do for this guy? Can we
21 leverage a default judgment into some sort of court order to
22 hijack the domain or make bgp announcements the for IPL? What
23 should I quote him on retainer for our time? What's a
24 retainer?

25 A It's advanced payment for future hours.

1 Q So I just want to clarify. You didn't respond: "I'm sorry
2 I'm a commentor, I'm a criticizer?"

3 A That's correct.

4 Q Instead, you wrote to your lawyer asking how much you can
5 charge him for your service; correct?

6 A Correct.

7 Q Now, you're here on Tuesday, you hear your lawyer's opening
8 arguments, right?

9 A That's correct.

10 Q And I want to read one more thing your lawyer said. He
11 said: "Mr. Auernheimer has been open the entire time about
12 this. You'll see that he always spoke openly and honestly
13 about what happened here because he didn't believe a crime had
14 occurred." You remember him saying that?

15 A That's correct.

16 Q And you agree with that, right, you agree with your
17 lawyer's representation?

18 A Yes.

19 Q FBI came to your house on June 15th, 2010. Right?

20 A Yes, they did.

21 Q It was early in the morning. Right?

22 A Yes.

23 Q You remember about what time?

24 A I couldn't recall.

25 Q About 7 o'clock, does that sound right?

1 A I don't recall.

2 Q We've gone over the structure of IRC chats maybe too much.
3 But, again, IRC chats have time date on the left; right?

4 A Yes.

5 Q The time each message is written. And so you can see what
6 time someone is sending these messages?

7 A That's correct.

8 Q I want to show you what's been marked for identification as
9 Government Exhibit 6027.

10 A Yes.

11 Q This an IRC chat?

12 A That's correct.

13 MR. INTRATER: Your Honor, I would offer Exhibit 6027
14 in evidence.

15 THE COURT: Any objection?

16 MR. EKELAND: No objection.

17 THE COURT: It's not on my log, Mr. Intrater, 6027.

18 MR. INTRATER: I'm sorry, your Honor. I have a copy
19 for you.

20 THE COURT: Mine stops at 2026. Thank you.

21 (Exhibit marked in evidence)

22 Q Miss Santos, could you put that up on the screen, please.

23 And June 19th is the date the FBI comes to your house
24 in the morning; right?

25 A Yes.

1 Q It was light out?

2 A I think so, yeah.

3 Q About 7 o'clock in the morning, that sound about right?

4 A I didn't see a clock.

5 Q But it wasn't 3 o'clock in the morning?

6 A No.

7 Q It wasn't?

8 A No, it wasn't.

9 Q June 15th, 03:03:07. "Weev: Well, we have won in the
10 court of public opinion. Now we will find out if we win in
11 actual court." "JacksonBrown: Lol. Free Weev." "Weev: I
12 have a really solid leg to stand on here. I didn't write the
13 script." JacksonBrown interjects. "Weev: I didn't collect
14 the data." JacksonBrown interjects: "Weev's gonna snitch."
15 "A journalist almost. No, I'm not gonna snitch. I'm going to
16 say I'm a fucking journalist, a blogger journalist."
17 "JacksonBrown: Looool." "And I get to protect my source."

18 A Yes. I believe that people who brings things to public
19 light should have journalistic privileges extended to them. I
20 think that's reasonable. Bloggers should have it.

21 Q Several hours later the FBI is in your home?

22 A Yes.

23 Q And what are you doing? How are you protecting your
24 source? You're trying to enter commands to delete your hard
25 drive; right?

1 A I don't remember any of that. I don't recall. It's been
2 two years.

3 Q Are you telling the jury that you didn't enter commands?

4 A No, I'm saying I don't really recall. It's not what I said
5 at all.

6 Q So the FBI, how many times has the FBI searched your
7 apartment or house?

8 A Once.

9 Q Okay. I understand you saying -- well, you say I've done
10 so much IRC, I've done millions of lines of IRC chats, I just
11 can't tell you. I mean, I'll tell you it's a reasonable
12 representation, but I just can't tell you whether this IRC is
13 accurate or not because I've done so many lines

14 MR. EKELAND: Objection, your Honor.

15 THE COURT: Overruled.

16 Q But the FBI has only been in your house once; right?

17 A I've had lots of unique experiences happen to me. I don't
18 recall the details of all events. But you can continue.

19 Q Thank you.

20 The FBI served exactly one search warrant on your
21 house; right?

22 A Yes.

23 Q But it didn't really make an impression on you, it didn't
24 create --

25 A Right.

1 Q -- any memories for you?

2 A I remember being, you know, shocked. It's been two years.
3 It's sort of a hazy event when somebody kicks in, you know,
4 comes to your house and points guns at you. It's a lot of
5 adrenalin flowing, you know. I don't remember.

6 Q At lot of adrenalin flowing and it's a possibility that
7 you're entering commands into a shell server?

8 A I don't recall. There's lots of unique events that happened
9 in my life.

10 Q You just don't remember one way or another?

11 A I don't recall.

12 Q Do you deny that you entered a command into your hard
13 drive?

14 A I say I don't recall.

15 Q Do you deny it?

16 A I don't --

17 MR. JAFFEE: Objection

18 MR. EKELAND: Asked and answered.

19 MR. INTRATER: No, it's not asked and answered.

20 THE COURT: Right. Overruled.

21 A I don't remember.

22 Q But that's a different question -- that's a different
23 answer then you either deny it or you don't deny it.

24 A I do not remember.

25 MR. INTRATER: Your Honor, could I get an answer?

1 THE COURT: Yes. You deny doing it, or you don't
2 remember doing it, or not doing it?

3 THE WITNESS: I don't remember at all.

4 THE COURT: Okay. Alright.

5 Q Do you remember Special Agent Frigm's testimony?

6 A Yes.

7 Q Do you remember him testifying about why -- about asking
8 you why those commands were entered into your computer?

9 A I remember him, but I didn't even recognize him when he was
10 on the stand. I don't remember.

11 Q He testified that you acknowledged entering those commands
12 into your computer.

13 MR. JAFFEE: Objection.

14 THE COURT: Sustained. Rephrase.

15 Q Okay.

16 A I saw him testify --

17 THE COURT: Wait, he didn't ask the question yet. Let
18 him ask.

19 A Continue.

20 Q It's a transcript from Tuesday. Special Agent Frigm said
21 that he spoke to you about why those commands were entered.
22 And that you replied, you didn't want anything on your computer
23 implicate yourself or others. Do you deny that that happened?

24 A I don't recall.

25 MR. EKELAND: Excuse me, you Honor.

1 A I did not recognize --

2 THE COURT: Wait, your attorney.

3 MR. EKELAND: It's 60?

4 MR. INTRATER: It's 60.

5 A I did not recognize Phillip Frigm on the stand. I don't
6 remember speaking to him.

7 Q Special Agent Frigm was asked: "Did you ask him," meaning
8 you, "what were you likely to find on your computer?" Special
9 Agent said that he did ask you. You deny that he asked you
10 what would be found on your computer?

11 A I do not recall the events up to -- I did not recognize
12 Phillip Frigm.

13 Q Do you deny you talked to the FBI at all?

14 A I think I might have.

15 Q Can I ask you one more question? Your lawyer said that you
16 were open and honest with the FBI in his opening; right? He
17 said you were open and honest with the FBI.

18 A Reasonably open, yes.

19 Q Reasonably open?

20 A Yes, I believe --

21 Q Open and honest, or no?

22 A I believe that I was reasonably open and honest. I don't
23 recall the events of that morning. I volunteered, I offered to
24 speak at a grand jury.

25 Q How could you be open and honest? How could your lawyer

1 say you were open and honest with the FBI if now you don't
2 recall what you said at all? How could you know whether you
3 were honest or dishonest?

4 A Because I volunteered to be at a grand jury to get my
5 statements on record, and I was not brought to a grand jury, so
6 I don't --

7 Q Were you open and honest with the FBI when they were in
8 your house on June 15th, 2010?

9 A I barely recall talking to the FBI. It was a long time
10 ago.

11 Q Were you open and honest with the FBI when they were in
12 your house or not?

13 A I don't recall talking to the FBI. I don't recall what was
14 said. But I volunteered to be at a grand jury so that you
15 people could get my statements on record. Like that was -- I
16 don't understand, you know, how I can be more -- I don't trust
17 what's on a form 302, you know. I don't know what's real or
18 what's not. But I think that that's a reasonable statement.

19 Q What's a reasonable statement, that you were open and
20 honest?

21 A I think it is.

22 Q You were open and honest with the FBI. Special Agent Frigm
23 testified that when he asked you what he was likely to find on
24 your computer, you said that the FBI probably wouldn't find
25 anything. "He had in fact actually deleted his hard drive and

1 shredded it the night before."

2 A I feel that it's reasonable, given the -- what my
3 perception of the FBI, to protect people unrelated to this case
4 from harassment by federal authorities.

5 Q And that's how you're protecting your source? That's how
6 you're protecting your source?

7 A I don't recall the events of that morning.

8 Q That's what weev said to JacksonBrown, "I'm going to
9 protect my source. I'm a journalist." That was going to be
10 your story; right?

11 A I don't --

12 Q That's the story that you're telling here today, right, you
13 were a journalist?

14 A I'm --

15 Q A journalist who shredded his hard drive the day before the
16 FBI comes; right?

17 A I don't recall.

18 MR. INTRATER: I have nothing further, your Honor.

19 THE COURT: Any redirect?

20 MR. EKELAND: I have a brief redirect, your Honor.

21 REDIRECT EXAMINATION BY MR. EKELAND:

22 MR. EKELAND: May I proceed, your Honor.

23 THE COURT: You may.

24 Q Mr. Auernheimer, you were just shown a bunch of exhibits
25 that are in evidence which were e-mails of you talking to the

1 press. Right?

2 A Yes, that's correct.

3 Q And not to beat a dead horse, but in all those e-mails you
4 were using language like: I stole your ID; the manner of
5 theft; and what not. Why were you talking like that?

6 A To sensationalize and spin the story. It's rhetoric and
7 hyperbole.

8 Q And did you send any other e-mails like that to anyone
9 outside of the press --

10 A Yes, nobody outside of the press.

11 Q Okay.

12 And I want to just real briefly turn to what's in
13 evidence as Government's Exhibit 5036. Okay? Apparently this
14 isn't working. I'll switch this to the overhead. This is not
15 working, your Honor. I just need a second. I'll just show him
16 an exhibit that's already in evidence. Is that okay?

17 MR. EKELAND: What was that?

18 THE COURT: Okay. Miss Santos is going to help you.

19 MR. EKELAND: Oh, okay.

20 A I've had trouble in that case, iPad trouble --

21 THE COURT: No question. No question.

22 Q There we go.

23 A Alright.

24 MR. EKELAND: May I proceed, your Honor?

25 THE COURT: You may.

1 Q Thank you.

2 This is what's in evidence as Government's Exhibit
3 5036. And I just want to get clear on what's going on here.
4 Can you tell us who girlvinyl is?

5 A She's the owner and Encyclopedia Dramatica, which bills
6 itself as a satirical website.

7 Q What are you guys talking about here?

8 A I'm pasting her the advisory that I wrote that covered the,
9 what I'll call scripting. It was a semantic image or overflow.
10 It's difficult to explain in a short period of time why this is
11 notable. But, as you can see, where I credit my cat, like this
12 is not completely serious. In fact, it's being posted on a
13 satire website. It is not meant to be taken quite seriously.

14 Q And looking at the date at the top of this e-mail, do you
15 see that? It says March 20th, 2010? Do you have any reason to
16 believe that's not accurate?

17 A I believe that's accurate.

18 Q And at this point in time you didn't know anything about
19 Daniel Spitler's account slurper script?

20 A I don't think he knew about it then.

21 Q And I want to just quickly turn to what's in evidence as
22 Government's Exhibit 5150. Can you tell me what's going on
23 here.

24 A That is Gregg Keizer, a journalist with Computer World.

25 Q What are you guys talking about?

1 A It looks like he's asking me some questions. Has the FBI
2 contacted me? What's your take on the liability? Any other
3 comments.

4 Q Okay. I wanted to withdraw that exhibit because that's the
5 wrong exhibit.

6 I just want to turn real quickly to the June 15th, FBI
7 raid when you were sleeping. What do you recall from that?

8 A I remember somebody, you know --, I remember -- like I
9 remember screaming: No, get on the floor. Get on the floor.
10 Somebody has a gun. Like it was a crazy day. It's like -- I
11 don't remember a lot from it. It was stressful and, you know,
12 I still, you know -- it's -- it definitely has a long-term
13 impact, somebody busting in your house with a gun. It's a
14 frightening thing and I just -- you know, I don't remember much
15 that day.

16 MR. EKELAND: No further questions, your Honor.

17 THE COURT: Any recross?

18 MR. INTRATER: Nothing, your Honor. Thank you.

19 THE COURT: Alright. Very well. You can step down,
20 Mr. Auernheimer. Watch your step.

21 THE WITNESS: Thank you, your Honor.

22 (Witness excused)

23

24

25

