

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CV No. 17-2511
	)	
	)	Washington, D.C.
vs.	)	April 9, 2018
	)	10:45 a.m.
AT&T, INC., ET AL.,	)	
	)	Morning Session
Defendants.	)	
<hr/>		Day 10

TRANSCRIPT OF BENCH TRIAL PROCEEDINGS  
BEFORE THE HONORABLE RICHARD J. LEON  
UNITED STATES SENIOR DISTRICT JUDGE

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- - -  
WITNESS INDEX  
- - -

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
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GOVERNMENT'S:

DEVIN MERRILL	1798	1824	1830	
DEVIN MERRILL		1837		
JOHN HARRAN	1840	1866	1870	

- - -  
INDEX OF EXHIBITS  
- - -

GOVERNMENT'S	IDENTIFIED	ADMITTED
PX164		1804
PX247		1819
PX544		1823
PX546		1836
PX197		1843
PX36		1851
PX217		1857

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

2 DEPUTY CLERK: All rise. The United States  
3 District Court for the District of Columbia is now in  
4 session, the Honorable Richard J. Leon presiding. God save  
5 the United States and this Honorable Court. Please be  
6 seated and come to order.

7 Good morning, Your Honor. This morning we have  
8 Civil Action No. 17-2511, the United States of America v.  
9 AT&T, Inc., et al.

10 Counsel for the parties, please approach the  
11 lectern and identify yourself for the record and the party  
12 or parties you represent, please.

13 MR. SCHWINGLER: Good morning, Your Honor.  
14 Peter Schwingler for the United States.

15 THE COURT: Welcome back.

16 MS. SALLSTROM: Good morning, Your Honor.  
17 Anna Sallstrom for the United States.

18 THE COURT: Welcome.

19 MR. WELSH: Good morning, Your Honor. Eric Welsh  
20 for the United States.

21 THE COURT: Welcome back.

22 MR. CONRATH: Good morning, Your Honor.  
23 Craig Conrath for the United States.

24 THE COURT: Welcome back.

25 MR. CONRATH: Thank you.

1 MR. KEMPF: Good morning, Your Honor. Don Kempf  
2 for the United States.

3 THE COURT: Welcome back.

4 MR. JONES: Good morning, Your Honor.  
5 Matthew Jones for the United States.

6 THE COURT: Welcome.

7 MR. PETROCELLI: Good morning, Your Honor.  
8 Daniel Petrocelli for defendants.

9 THE COURT: Welcome back.

10 MS. ROBSON: Good morning, Your Honor.  
11 Katrina Robson for defendants.

12 THE COURT: Welcome back.

13 MR. OPPENHEIMER: Good morning, Your Honor.  
14 Randy Oppenheimer for the defendants.

15 THE COURT: Welcome back.

16 MR. WALTERS: Good morning, Your Honor.  
17 Rob Walters here for AT&T and DirectTV.

18 THE COURT: Welcome back.

19 MR. BARBUR: Good morning, Your Honor.  
20 Peter Barbur representing Time Warner.

21 THE COURT: Welcome back.

22 MR. ORSINI: Good morning, Your Honor.  
23 Kevin Orsini for Time Warner.

24 THE COURT: Welcome back.

25 MR. RAIFF: Good morning, Your Honor. Mike Raiff

1 for AT&T and DirecTV.

2 THE COURT: Welcome back.

3 All right. The next witness is Merrill, right,  
4 Mr. Merrill.

5 MR. SCHWINGLER: Peter Schwingler for the  
6 United States. Your Honor, we call Devin Merrill, an  
7 adverse party witness.

8 THE COURT: All right.

9 MR. PETROCELLI: Your Honor, Ms. Robson will be  
10 handling this witness.

11 THE COURT: All right. That's fine.

12 DEPUTY CLERK: Please raise your right hand.

13 (Witness is placed under oath.)

14 DEPUTY CLERK: Please be seated.

15 DEVIN MERRILL, ADVERSE WITNESS FOR THE GOVERNMENT, HAVING  
16 BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

17 MR. SCHWINGLER: May I proceed?

18 THE COURT: Proceed when you're ready.

19 DIRECT EXAMINATION

20 BY MR. SCHWINGLER:

21 Q Good morning, Mr. Merrill. Please state your name  
22 for the record.

23 A Devin Merrill.

24 Q And today, you're the vice president of digital  
25 strategy, experience, and execution for AT&T; is that right?

1 A That is correct.

2 Q And in your current job, you run the AT&T and  
3 DirecTV Websites; is that right?

4 A Yes, it is.

5 Q Before you took your current job, you helped to  
6 develop and launch the DirecTV Now product, correct?

7 A I was responsible for developing it, launching it,  
8 and then managing it post launch.

9 Q And you became -- you were responsible for the  
10 general management of DirecTV Now starting in spring of  
11 2016, correct?

12 A I officially joined the team, I think, in early to  
13 mid-April of 2016.

14 Q And then you were responsible for the general  
15 management of that project and how DirecTV Now launched in  
16 late November of 2016, correct?

17 A Yes, I did support it through launch.

18 Q And then I think, as you said, you then continued  
19 to be the general manager of the DirecTV Now product for a  
20 period of time after the launch, I believe, till July of  
21 2017; is that right?

22 A Yes, that's correct.

23 Q And you were referred to as the general manager of  
24 the project, correct?

25 A Yes. That was one aspect of the role,



1 particularly after launch.

2 Q And you were also referred to as the program  
3 owner. Does that sound right?

4 A Yes. I was responsible for coordinating a  
5 cross-functional effort to launch the program.

6 Q As the general manager and program owner for  
7 DirecTV Now, it was important for you to understand AT&T's  
8 strategic objectives for that product, wasn't it?

9 A It was, yes.

10 MR. SCHWINGLER: Your Honor, I have a binder with  
11 some exhibits for the witness. May I hand them up?

12 THE COURT: Sure.

13 MR. SCHWINGLER: May I approach the witness,  
14 Your Honor?

15 THE COURT: You may.

16 BY MR. SCHWINGLER:

17 Q Mr. Merrill, I'll direct your attention to PX0046  
18 in your binder.

19 MR. SCHWINGLER: Your Honor, PX46 has been marked  
20 for identification and provided to opposing counsel.

21 May I proceed?

22 THE COURT: You may.

23 BY MR. SCHWINGLER:

24 Q Mr. Merrill, PX46 is an email that you wrote to  
25 Aaron Tell and Kelly Zeigler on April 28th, 2016, correct?

1 A That is correct.

2 Q And Mr. Tell and Ms. Zeigler were both part of the  
3 research team that was supporting the DirecTV Now project?

4 A That's correct.

5 Q And the email that you wrote to them relates to  
6 the features and the benefits of that DirecTV Now product,  
7 correct?

8 A Yes. This was the first month of the project, and  
9 we were trying to determine the features and benefits.

10 MR. SCHWINGLER: Your Honor, United States offers  
11 PX46 into evidence.

12 MS. ROBSON: No objection, Your Honor.

13 THE COURT: All right. It will be admitted.

14 BY MR. SCHWINGLER:

15 Q Mr. Merrill, the subject line of your email is  
16 "Cannibalization, DBS versus OTT Differentiation."

17 Do you see that?

18 A I do, yes.

19 Q In DBS, in this context, refers to the DirecTV  
20 satellite product, correct?

21 A It does, yes.

22 Q And OTT, in this context, refers to the  
23 DirecTV Now product that you were in the process of  
24 developing, right?

25 A It does, yes.

1 Q And in this email, you requested research on where  
2 to draw the line on features/benefits for OTT, such that we  
3 don't aggressively cannibalize DBS.

4 Do you see that?

5 A I do see that, yes.

6 Q You in the wrote, "We want to make OTT as strong  
7 as possible, without killing the golden goose."

8 Do you see that?

9 A I do see that, yes.

10 Q And in then in parentheses, you wrote, "E.g. will  
11 two or three streams cut into DBS?"

12 Do you see that?

13 A I do, yes.

14 Q And by, sir, by "golden goose," you were referring  
15 to the DirecTV satellite product, correct?

16 A Yes. I'm referring to the premium satellite  
17 product.

18 Q And you were aware at that time, sir, that the  
19 margins for the Internet product you were developing would  
20 be significantly lower than the margins for the satellite  
21 product.

22 A Yes. It was an entrepreneurial new product.

23 Q But specifically, sir, you were aware that the  
24 margins for the Internet product would be significantly  
25 lower than the margins on satellite?

1           A     Yes, sir.

2           Q     And the reason you asked for the research in this  
3 email is because you wanted to avoid aggressively  
4 cannibalizing sales of that higher margin product, correct?

5           A     We had a great premium product.  And what we  
6 wanted to do was also build a great -- build and lunch  
7 launch a great OTT product as well that was different.

8           Q     But, specifically, you didn't want this new OTT  
9 product to harm the sales of the higher margin satellite  
10 product, didn't you?

11          A     That was not a specific objective.

12          Q     If you could, I'll direct your attention to PX164  
13 in your binder.

14                     Your Honor, PX164 has been marked for  
15 identification and shared with opposing counsel.

16                     May I proceed?

17                     THE COURT:  You may.

18 BY MR. SCHWINGLER:

19          Q     Mr. Merrill, PX164 is an email exchange related to  
20 DirecTV Now from November of 2016; is that right?

21          A     It is, yes.

22          Q     And if you look at the bottom of the second page  
23 of the exhibit, carrying over to the third page, you can see  
24 that you personally wrote the first email in that exchange;  
25 is that right?

1 A I did, yes.

2 Q And then you also wrote the last email on the  
3 exchange, sending it to Mr. Bentley; is that right?

4 A I did yes.

5 Q Mr. Bentley is Brad Bentley, and he was your boss  
6 at that time, correct?

7 A He was, yes.

8 Q And attached to this email exchange is a sample  
9 migrations report for the DirecTV Now product, correct?

10 A Yes. They did mock up a report.

11 MR. SCHWINGLER: Your Honor, United States offers  
12 PX164 into evidence under seal.

13 MS. ROBSON: No objection, Your Honor.

14 THE COURT: It will be admitted under seal.

15 (Government's Exhibit PX164  
16 received into evidence under seal.)

16 BY MR. SCHWINGLER:

17 Q Mr. Merrill, I'd like to talk to you about the  
18 first email in the exchange, the one that starts at the  
19 bottom of the second page and carries over to the third  
20 page.

21 And this is an email that you wrote on November  
22 12th of 2016, right?

23 A Yes, it is.

24 Q And at that point, the company was just a few  
25 weeks away from launching the DirecTV Now product to

1 consumers?

2 A Yes, we were.

3 I would consider this to be on the eve of the  
4 launch.

5 Q Yes. And the subject of your email was, NOW, in  
6 all caps, cannibalization/migration analysis.

7 Do you see that?

8 A I do, yes.

9 Q And then when it says "NOW" in all caps, that's a  
10 reference to the DirecTV Now product?

11 A It is, yes.

12 Q And migration, that refers to a customer moving  
13 from the satellite product on to the Internet-based  
14 DirecTV Now product, fair?

15 A Yes. I consider that a synonym for  
16 cannibalization.

17 Q And what you told this group -- and all of the  
18 people that you wrote this email to were AT&T employees,  
19 correct?

20 A Yes, they're all internal employees.

21 Q And what you wrote on November 12th, 2016, was,  
22 "I think we all know cannibalization and migration is going  
23 to be a white-hot topic/question with the launch of Now."

24 Do you see that?

25 A I do see that.

1           Q     And, in fact, the entire purpose of this email  
2 exchange was to get a team prepared to measure and analyze  
3 the extent of any migrations that would occur upon lunch?

4           A     Yes.

5                     It was critical that what we had what I would call  
6 a robust and multifaceted view of the dynamics across these  
7 products.

8           Q     And specifically, you wanted to measure the extent  
9 to which the new Internet product cannibalized sales from  
10 the higher-margin satellite market, correct?

11          A     That was part of it.

12          Q     And you wanted to be prepared to answer any  
13 questions that you, as the general manager of DirecTV Now,  
14 might get from other parts of the company on that topic?

15          A     That's right.

16                     I think the most important thing here that I was  
17 wondering at the time would be, can we measure the types of  
18 customers that we're bringing on to this new product? And  
19 are we doing a good job meeting their needs?

20          Q     And after the product launched, you would, from  
21 time to time, report up the chain information about this  
22 topic of cannibalization and migration, correct?

23          A     Yes. It was included in various updates.

24          Q     And, in fact, your team prepared information to be  
25 presented to Randall Stephenson, the chairman and CEO of

1 AT&T, on that topic?

2 A We did prepare some analysis on the migration  
3 dynamics, yes.

4 Q Mr. Merrill, I'll direct your attention to PX178  
5 in your binder.

6 MR. SCHWINGLER: Your Honor, PX178 has been marked  
7 for identification and provided to opposing counsel.

8 May I proceed?

9 BY MR. SCHWINGLER:

10 Q Mr. Merrill, PX178 is an e-mail that you wrote to  
11 Kevin Gonzalgo on July 23rd, 2016, correct?

12 A It is, yes.

13 Q And attached to your email is the final version of  
14 a presentation that had recently been made to John Stankey,  
15 correct?

16 A Yes.

17 This is a deck that had been prepared for  
18 John Stankey, but not all of these slides were presented to  
19 Mr. Stankey.

20 Q And the purpose of the meeting where these slides  
21 were presented was to keep Mr. Stankey apprised of how the  
22 project was developing, correct?

23 A Yes. We provided regular updates.

24 Q And you helped to consolidate the slides from  
25 various teams before this went to Mr. Stankey, correct?



1           A     Yes.

2           MR. SCHWINGLER:  Your Honor, United States offers  
3 PX178 into evidence.

4           MS. ROBSON:  No objection, Your Honor.

5           THE COURT:  Now, hold on.

6           Is it your testimony that all of the slides in  
7 this deck were given to Mr. Stankey?

8           THE WITNESS:  No, it is not.

9           THE COURT:  It is not.

10          Which ones were not?

11          THE WITNESS:  There is an appendix after the --

12          THE COURT:  Whereabouts?  Show me.

13          THE WITNESS:  Let me see if I can find it for you.  
14 It's after the large globe.

15          THE COURT:  There's a lot of globes in this thing.

16          THE WITNESS:  I know.

17          THE COURT:  There's a lot of large globes in these  
18 things.

19          THE WITNESS:  A lot of slides too.

20          the4 co:  So are you talking about 39, that globe?

21          Look at page 039 at the bottom.  Is that the globe  
22 you're referring to?

23          THE WITNESS:  Yes, sir.  Yes, Your Honor.

24          THE COURT:  Okay.

25          So you're telling me what, now, that page like 40,

1 41, none of those were given to Mr. Stankey?

2 THE WITNESS: Yes. The team would have prepared  
3 slides for the appendix for our backup purposes should a  
4 question come up. But we would have not shared the  
5 appendices with Mr. Stankey.

6 THE COURT: I'm confused still.

7 So let's start with basics.

8 040 to 0 -- well, to 103, okay, those slides,  
9 okay, that's the remainder of the slides. Do I understand  
10 you correctly that none of those were given to Mr. Stankey?

11 THE WITNESS: That is correct.

12 THE COURT: You can approach.

13 Step down.

14 (Sealed bench conference)

15 THE COURT:

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17 MR. SCHWINGLER:

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21 THE COURT:

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23 MS. ROBSON:

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25 MR. SCHWINGLER:

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THE COURT :

MR. SCHWINGLER :

MS. ROBSON :

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MS. ROBSON:

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MR. SCHWINGLER:

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THE COURT:

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MR. SCHWINGLER:

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(Open court)

14

THE COURT: All right. We've got some

15

clarifications to do here. So listen carefully to counsel,

16

and then I think this will sort it out.

17

THE WITNESS: Thank you.

18

BY MR. SCHWINGLER:

19

Q Mr. Merrill, if you look at the first 40 pages or

20

so of Exhibit 178, do you see the pages that are labeled

21

"speaker notes" that are interspersed throughout?

22

A I do see those, yes.

23

Q And do you recall whether those pages were shared

24

with Mr. Stankey?

25

A They would not have been.

1 MR. SCHWINGLER: Your Honor, United States offers  
2 PX178 without the speaker notes.

3 THE COURT: That's not the clarification that  
4 you're supposed to be doing.

5 MR. SCHWINGLER: I apologize, Your Honor.

6 THE COURT: You can do that as well, but we have  
7 pages here that have to be removed.

8 MR. SCHWINGLER: Understood.

9 THE COURT: He needs to help you clarify which  
10 pages need to be removed.

11 BY MR. SCHWINGLER:

12 Q And I'll direct your attention, Mr. Merrill, to  
13 the page ending in -039, so PX178-039.

14 A Yes.

15 Q And then my question for you, sir, is, are the  
16 pages following that, starting on 040, are those the  
17 appendix that you referred to?

18 A Yes, they are.

19 Q And that would run until, I think -- if you could  
20 look to page 058, that's the last page of the  
21 black-and-white version of the appendix, correct?

22 A That is correct.

23 THE COURT: 058.

24 MR. SCHWINGLER: Through 058, that's the appendix.

25 THE COURT: 0035 through 058 needs to be removed,

1 correct?

2 MR. SCHWINGLER: Correct.

3 THE COURT: Removed.

4 Now what?

5 MR. SCHWINGLER: And is it my understanding that 1  
6 through 39 are in evidence, absent the slides?

7 THE COURT: Yes.

8 Absent the speaker notes --

9 MR. SCHWINGLER: Thank you.

10 THE COURT: -- which would be excised, will be  
11 admitted, if modified.

12 MR. SCHWINGLER: Understood.

13 THE COURT: Okay. Go ahead.

14 BY MR. SCHWINGLER:

15 Q Mr. Merrill, I'll direct your attention to the  
16 page ending in -027.

17 And the title of that slide is "Channel Strategy";  
18 is that correct?

19 A I do see that, yes.

20 Q And this slide depicts how DirecTV Now would be  
21 sold across AT&T's various sales channels; is that right?

22 A This was the working recommendation of the channel  
23 enablement team at the time of this presentation.

24 Q And just so we have a clear record, "the channel"  
25 refers to a sales channel, right?



1           A     Yes.  It would be our call-in sales centers, call  
2 centers.  It would also be our retail stores.

3                     This does not include the largest sales channel;  
4 that would be our digital sales channel, selling the product  
5 over the Internet.

6           Q     And if you look on the left side of the slide, it  
7 says for the sales strategy, "Lead with DBS."

8                     Do you see that?

9           A     I do see that, yes.

10          Q     And, again, on this context, DBS a reference to  
11 the DirecTV satellite product, correct?

12          A     It is, yes.

13          Q     And then it says, next to, there's the No. 3,  
14 "Fallback OTT discussion," correct?

15          A     I do see that, yes.

16          Q     And this strategy of leading with the satellite  
17 products and then only falling back to the Internet product,  
18 that would help prevent this cannibalization of the  
19 higher-margin satellite product, fair?

20          A     That is not a fair characterization.

21          Q     All right.  You understood, though --

22                     THE COURT:  Whoa, whoa.  You said that is or is  
23 not?

24                     THE WITNESS:  That is not a fair characterization,  
25 Your Honor.

1 THE COURT: All right.

2 BY MR. SCHWINGLER:

3 Q And you understood, though, that there was a  
4 concern with within AT&T to avoid cannibalizing the  
5 higher-margin satellite product?

6 A At a high level, there may be some folks who had  
7 question, but I can tell you that the leadership, myself  
8 included and above, were very clear and resolute in that not  
9 being a strategic driver.

10 Q And you said -- I don't want to put words in your  
11 mouth, but was this a working draft or a preliminary sales  
12 strategy?

13 A Yeah.

14 At this time, I was still debating with the sales  
15 channel team the best way to articulate our sales strategy  
16 of how to integrate this new product. And we landed on a  
17 strategy called needs-based selling, which has a facet of  
18 leading with DirecTV satellite in some cases. It's just  
19 that this slide doesn't reflect the mature and evolved  
20 strategy.

21 Q And Glenn Lurie, he is an AT&T executive at the  
22 time, correct?

23 A He was. He's no longer with the company.

24 Q And he was the CEO of the mobility business and  
25 the sales organization, correct?

1           A     I know he was responsible for leading all of the  
2 sales channels.

3           Q     And you were involved in discussions with him  
4 about how to sell DirecTV Now, correct?

5           A     Yes. We were working through options of how to  
6 provision it.

7           Q     I'll direct your attention to tab 247, PX247 in  
8 your binder.

9                   MR. SCHWINGLER: Your Honor, PX247 has been marked  
10 for identification and shared with opposing counsel.

11                   May I proceed?

12                   THE COURT: You may.

13 BY MR. SCHWINGLER:

14           Q     Mr. Merrill, PX247 is an e-mail exchange about the  
15 DirecTV Now sales strategy from January of 2017; is that  
16 right?

17           A     That's correct. This is a month or two after  
18 launch.

19           Q     And the first email on the bottom half of the  
20 exhibit, you wrote that email to Mr. Lurie and a few other  
21 executives on January 22nd, correct?

22           A     Yes. I was summarizing a discussion.

23           Q     And then you forwarded your summary to your own  
24 direct reports, correct?

25           A     Yes. There were numerous action items around

1 provisioning the product that I sent to my team.

2 MR. SCHWINGLER: Your Honor, United States offers  
3 PX247 into evidence.

4 MS. ROBSON: No objection, Your Honor.

5 THE COURT: It will be admitted.

6 (Government's Exhibit PX247  
7 received into evidence.)

8 BY MR. SCHWINGLER:

9 Q So, Mr. Merrill, I'll direct your attention to the  
10 first email, the one you wrote to Mr. Lurie and the others.  
11 And that, you would agree, summarizes an alignment among the  
12 executives about the sales strategy for DirecTV Now?

13 A It does for the call centers and the retail store  
14 organization, but not for the digital organization.

15 Q And then you passed that strategy on to your team  
16 so they could execute on it, correct?

17 A Yes.

18 There were four or five action items, all of which  
19 would result in increased sales momentum across the sales  
20 channels.

21 Q And in your first e-mail to Mr. Lurie, there's a  
22 bullet in bold that says "strategy alignment."

23 Do you see that?

24 A I do see that, yes.

25 Q And the second bullet underneath that says "needs  
based selling approach."

1           And then in parentheses says, "Lead with DBS, fall  
2 back to now."

3           Do you see that?

4           A     I do see that, yes.

5           Q     And you were instructed, coming out of this  
6 meeting, to follow that strategy and also to avoid harming  
7 sales of the premium satellite product, weren't you?

8           A     I was never instructed to do the latter.

9           Q     You were not --

10          THE COURT: Approach, please.

11          (Sealed bench conference)

12          THE COURT:

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14          MR. SCHWINGLER:

15          THE COURT:

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17          MR. SCHWINGLER:

18          THE COURT:

19          MR. SCHWINGLER:

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MR. SCHWINGLER:

(Open court)

THE COURT: You may proceed, according to the discussion at the bench.

MR. SCHWINGLER: Your Honor, we've marked PX544 for identification.

May I approach?

THE COURT: You may.

BY MR. SCHWINGLER:

Q Mr. Merrill, PX544 is an email from Mr. Lurie to you, responding to the email that you wrote in PX247.

THE COURT: To whom?

How many people?

MR. SCHWINGLER: Oh.

BY MR. SCHWINGLER:

Q Mr. Merrill, PX554 is an email from Mr. Lurie to you, Vicki Jones, David Christopher, Brian Shay, Jamie Barton, Mark Collins, and Brad Bentley. And he sent that in response to the e-mail you wrote in PX247; is that correct?

A Yes, that is his response to my e-mail.

Q And he wrote to you on -- well --

MR. SCHWINGLER: Your Honor, we offer PX544 into evidence.

1 MS. ROBSON: No objection, Your Honor.

2 THE COURT: It will be admitted.

3 (Government's Exhibit PX544  
4 received into evidence.)

5 BY MR. SCHWINGLER:

6 Q And, Mr. Merrill, Glenn Lurie, when we wrote this  
7 email, was the President and CEO of AT&T mobility and  
8 consumer operations, correct?

9 A I don't know technically if that's his total, but  
10 he had a very big job.

11 Q And you understood that he was responsible for the  
12 sales channels, these retail stores that were at issue here,  
13 correct?

14 A Yes. He had ultimate responsibility.

15 Q And so it was ultimately his stores and his part  
16 of the company that would be executing on this strategy; is  
17 that right?

18 A That's right.

19 But I did not report to Glenn Lurie.

20 Q And he wrote in this email to you, "I do agree  
21 with the actions but stress we must stick to strategy and  
22 make sure we do not hurt premium sales."

23 Do you see that?

24 A I do see what he wrote there, yes.

25 Q Did you construe Mr. Lurie's email as an  
instruction about how to execute on this sales strategy?



1           A       Candidly, I took it with a grain of salt in that  
2 the real instruction around what we did with this product  
3 would come from Brad Bentley and also Mr. Stankey, who would  
4 have been Glenn Lurie's boss.

5           THE COURT: So this was not a directive, in your  
6 opinion, at the time?

7           THE WITNESS: Yes, Your Honor. It was not a  
8 directive.

9           THE COURT: He wasn't your direct boss?

10          THE WITNESS: He was not.

11          THE COURT: Thank you.

12          Move on.

13          MR. SCHWINGLER: We have no further questions for  
14 the witness, Your Honor.

15          THE COURT: Cross.

16          MS. ROBSON: Thank you, sir.

17          THE COURT: When you're ready.

18                   CROSS-EXAMINATION

19 BY MS. ROBSON:

20           Q       Good afternoon, Mr. Merrill -- or good morning,  
21 actually.

22           A       Good morning.

23           Q       You launched DirecTV Now in November of 2016?

24           A       I did, yes.

25           Q       What was the launch offer?

1           A     It was \$35 for 100 channels.  It included the  
2 option for a free Apple TV if a customer prepaid for three  
3 months.

4                     And we also offered HBO and Cinemax for \$5.

5           Q     And what was your -- how would you characterize  
6 that particular launch offer?

7           A     That was an exceptionally compelling and even -- I  
8 would say somewhat surprising offer.

9           Q     In what way?

10          A     In that we weren't originally contemplating  
11 launching with something quite so bold and compelling.

12          Q     And what was your understanding of where the  
13 direction came to offer such a bold and compelling product  
14 in the market?

15          A     Again, not long before launch -- and I don't  
16 exactly know when -- but it became clear that  
17 Randall Stephenson was leaning in and had an idea to launch  
18 boldly and weighed in on the price point for the number of  
19 channels.  So it was really Randall's direction that led to  
20 that offer.

21          Q     And you mentioned that the offer was for \$35 for  
22 100 channels.  How many consumers took that offer?

23          A     I think 98 or 99 percent of all takers took that  
24 offer during the offer window.

25          Q     And you mentioned that there was a free Apple TV

1 offered as well. How many consumers took that offer?

2 A I think close to 70 percent of takers took  
3 advantage of that offer.

4 Q And how many stores were empowered to sell this  
5 product?

6 A All 5,200-something of our retail stores were  
7 prepared, and we did marketing in those stores to help sell  
8 DirecTV Now.

9 Q And could you turn back to PX178. It was one of  
10 the documents the government showed you.

11 And they asked you to look at page 26. It's  
12 actually PX178-027.

13 A Yes.

14 Q And you remember this was the channel strategy.

15 And you explained what the channel strategy  
16 ultimately became. What was the channel strategy when you  
17 launched?

18 A The channel strategy was needs-based selling,  
19 which meant different things depending on the channel.

20 So in our digital channel, which was 60 or  
21 70 percent of our volume at the time, it was lead with  
22 DirecTV Now.

23 If a customer types in DirecTV Now.com, we know  
24 that's what they want.

25 In some channels like 1-800-DirecTV, which would

1 be the call center number, if someone calls us looking for  
2 1-800-DirecTV, we know that that's what they want, so you'd  
3 lead with DirecTV. And then you would fall back and pivot  
4 to DirecTV Now.

5 In some cases, retail was a bit more fuzzy. Many  
6 customers, most customers were probably seeking DirecTV, so  
7 it made sense to start there.

8 But the ultimate strategy was to listen to the  
9 customer, triage their needs, and fit them into the right  
10 product.

11 Q So if you could turn just one page in this  
12 presentation, could you explain what we're looking at on the  
13 very next page.

14 A Well, it's a little hard to see in black and  
15 white, but that looks like, and that is, mockups of our  
16 in-store merchandising our in-store advertising that we were  
17 looking to do around this product.

18 Q And could you describe a little bit what a  
19 consumer might see if they came into a retail store during  
20 this launch period?

21 A Yes. We had -- I was pleased with the execution.  
22 We had an entire wall, called it the DirecTV Now wall. We  
23 had a television with a looping reel that demoed the  
24 product.

25 There were window clings.

1           And then the retail store reps were wearing  
2 DirectTV Now T-shirts.

3           MS. ROBSON: And just for the record, that page  
4 that we were looking at was PX0178-028.

5 BY MS. ROBSON:

6           Q       Now, why did you ask your team to track migration  
7 of customers from the satellite product to the DirectTV Now  
8 product?

9           A       Ultimately -- well, we had two products in play  
10 here. So as good business stewards, it was important to  
11 understand the dynamics.

12                   Ultimately, for me, understanding the profile of a  
13 customer who would want this new product was critical. We  
14 were trying to serve a need that was unmet by pay TV, and we  
15 needed to know what those customers looked like who might be  
16 migrating from our core premium service but be unsatisfied  
17 in a way and then more satisfied with this product. So we  
18 were measuring the dynamics of what that migration looked  
19 like.

20           Q       Okay. And how many customers migrated from your  
21 premium satellite product and your U-verse product to the  
22 DirectTV Now product?

23           A       Well, I looked at it from the perspective of  
24 incoming DirectTV Now sales. So of 100 DirectTV Now sales,  
25 about 15 of those DirectTV Now sales customers also had

1 U-verse or DirecTV.

2 So 15 percent of our sales.

3 Q And what percentage of DirecTV Now subscribers  
4 were coming from just the general pay-TV universe?

5 A The inflow of our product had about half of the  
6 customers who were effectively what I would characterize as  
7 sort of -- pay TV was not meeting their needs. They were  
8 dissatisfied in some way because of the price point or the  
9 hurdles or the price value, et cetera.

10 And then the other half was customers who are not  
11 in the pay-TV ecosystem.

12 So cord-nevers, cord-cutters, maybe, et cetera.

13 Q And after you saw these metrics, what changes, if  
14 any, did you make to your DirecTV Now strategy?

15 A Zero.

16 We continued accelerating.

17 Q Okay. And, in fact, did you make some -- did you  
18 increase some of the strategies being used to sell  
19 DirecTV Now?

20 A Yes.

21 The email pointed out from January, that exchange  
22 with Glenn Lurie, that was really about doing a better job  
23 getting the call centers and our retail reps enabled to  
24 sell.

25 Be changed some processes to make it better for

1 the customer. We added sales targets to ensure they were  
2 accountable for selling the product.

3 And we just changed general processes and  
4 guidelines to better facilitate the sale in our traditional  
5 channels.

6 Q Would you characterize the launch of DirecTV Now  
7 as successful?

8 A I would consider it a big success.

9 Q How many subscribers are currently on the  
10 DirecTV Now platform?

11 A There are over a million subscribers on the  
12 platform.

13 MS. ROBSON: Thank you very much.

14 No further questions, Your Honor.

15 THE COURT: All right.

16 Redirect.

17 REDIRECT EXAMINATION

18 BY MR. SCHWINGLER:

19 Q Mr. Merrill, you mentioned the \$35 introductory  
20 price point for DirecTV Now; is that correct?

21 A Yes.

22 Q And that, you mentioned, had roughly 100 channels;  
23 is that right?

24 A That was the introductory offer, yes.

25 Q And now, today, for \$35, that would be a smaller

1 package, correct?

2 A Today, it's \$35 for 60 channels.

3 Q And you mentioned that there's different sales  
4 channels within AT&T, correct?

5 A That's correct.

6 Q And that you use different strategies for selling  
7 DirecTV Now, depending on the channel; is that right?

8 A Not necessarily.

9 It was needs-based selling across the board, but  
10 some channels over-indexed on customer intentions coming in.

11 Q And would you agree that there was still a  
12 preference in the retail store sales channel to lead with  
13 the satellite product and fall back to DirecTV Now if the  
14 customer was not a good fit?

15 A I wouldn't characterize it as a reference. I  
16 would say that we did a lot of advertising of DirecTV, plus  
17 our wireless business. So most of the inbound traffic, the  
18 foot traffic to the stores, that customers were seeking out  
19 the premium product.

20 Q Do you recall whether you used the phrase, "lead  
21 with DBS or DirecTV and fall back to now" in sales materials  
22 for the retail channel?

23 A It's possible.

24 I tried to minimize it wherever I could because I  
25 feel like it clouded the needs-based selling message.



1 Q So I just want to make sure I understand. You  
2 don't recall whether you did?

3 A It's very possible. I personally tried to avoid  
4 use of that phrase.

5 Q Perhaps a document might help refresh.

6 MR. SCHWINGLER: Your Honor, we've marked PX545  
7 for identification.

8 May I approach?

9 THE COURT: You may.

10 BY MR. SCHWINGLER:

11 Q Mr. Merrill, I've handed you PX545 for  
12 identification. Could you review that to yourself and let  
13 me know when you're ready to proceed.

14 And I'll actually direct your attention to the  
15 third slide in the attachment.

16 THE COURT: Not yet.

17 (Sealed bench conference)

18 THE COURT:

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20 MR. SCHWINGLER:

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22 THE COURT:

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24 MR. SCHWINGLER:

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MR. SCHWINGLER:

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(Open court)

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BY MR. SCHWINGLER:

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Q Mr. Merrill, I'll direct your attention to the third slide in the attachment. And if you could read that to yourself and let me know when you're ready to proceed.

24

A Yes, I see the slide.

25

Q And having read -- you can set that aside, sir.

1           Having read that, is it the case that you did  
2 present information to retail sales channel personnel about  
3 leading with the satellite product before falling back to  
4 the Internet product?

5           A     If you look at this slide, there's two headers.  
6 One says "Sell direct to be to every customer," and  
7 underneath, which it does say, "Lead with DBS. Fall back to  
8 Now."

9                     And on the right, it says, "Needs-based selling,  
10 fit the customer."

11                    And then it talks about fitting customers under  
12 different scenarios.

13           Q     And you presented both of those concepts in this  
14 presentation, correct?

15           A     Well, I personally didn't present this.  
16 Dan Ferguson presented this slide.

17           Q     You can set that aside.

18                    You were asked a few questions about where some of  
19 the customers came from for DirecTV Now, including from the  
20 satellite product.

21                    Did I hear you correctly?

22           A     That is correct.

23           Q     And we talked on your direct examination about  
24 Mr. Lurie, correct?

25           A     We did talk about Mr. Lurie, yes.

1 Q And shortly before you left your role and took  
2 your new position, you -- do you recall presenting Mr. Lurie  
3 information about the impact of the DirecTV Now push or  
4 marketing on the sales of the satellite product?

5 A I do recall that -- I don't know if it was Glenn  
6 or someone else, but I do recall a discussion around or some  
7 sort of analysis done around the impact to retail run rates  
8 on the different video products.

9 MR. SCHWINGLER: Your Honor, we've marked PX546  
10 for identification and I would like to get this admitted  
11 into evidence or at least to attempt to.

12 Could I approach?

13 THE COURT: You may.

14 BY MR. SCHWINGLER:

15 Q Mr. Merrill, you've been handed PX546.

16 And this is -- this is an e-mail from you to Devin  
17 director's team on June 16th of 2017, correct?

18 A It is, yes.

19 Q You were forwarding an email that you wrote to  
20 Mr. Lurie, copying several others, earlier that day,  
21 correct?

22 A Yes, I do see that.

23 Q And the subject of your e-mail to Mr. Lurie was  
24 the impact of DirecTV Now's recent growth on the satellite  
25 product; is that right?

1           A     I'm sorry.  Could you repeat the question.

2           Q     The subject of this email was the impact of  
3 DirectTV Now's recent growth on sales of the satellite  
4 product; is that fair?

5           A     That was a piece of what was discussed here, yes.

6           Q     And attached to that email is a slide that has  
7 some information on that topic, correct?

8           A     That's right.

9                   MR. SCHWINGLER:  Your Honor, United States offers  
10 PX546 into evidence.

11                   MS. ROBSON:  If we can put it under seal,  
12 Your Honor, no objection.

13                   THE COURT:  It will be admitted under seal.

14   (Government's Exhibit PX546  
15   received into evidence under seal.)

15 BY MR. SCHWINGLER:

16           Q     So Mr. Merrill, this PX546, this was sent in the  
17 middle of June of 2017, correct?

18           A     That's correct.

19                   Not long before I left the team.

20           Q     And you had mentioned in your cross-examination  
21 that you had actually increased some of the sales strategies  
22 for DirectTV Now, correct?

23           A     We did.

24                   I think from launch until now, we've seen  
25 continued growth of the retail channel.

1 Q And the email you wrote to Mr. Lurie on June 16th  
2 of 2017 was, in the second paragraph says, "The punch line  
3 is, no material impact on DBS (overall or in retail)."

4 Do you see that?

5 A I do, yes.

6 MR. SCHWINGLER: We have no more questions,  
7 Your Honor.

8 THE COURT: All right.

9 Recross, limited to redirect.

10 MS. ROBSON: Yes, Your Honor, just a few  
11 questions.

12 RECCROSS-EXAMINATION

13 BY MS. ROBSON:

14 Q Mr. Merrill, are you familiar with the packages,  
15 the DTV Now packages that are being offered in the market?

16 A I am, yes.

17 Q And we mentioned the \$35 for 60 channels?

18 A That's correct.

19 Q Could you list the other offers and channels  
20 being -- excuse me, the other channel and price points in  
21 the DirectTV Now offers?

22 A The current non-promotional?

23 Q Yes, please.

24 A It's \$35 for Live a Little.

25 It's \$50 for, I think, Gotta Have It. Then -- or

1 just, I'm sorry.

2 Just Right is \$50.

3 And then it's \$60 for Go Big, which was the  
4 100-channel package.

5 And then it was \$70 for Gotta Have It.

6 Q And the Gotta Have It had 120 channels?

7 A That sounds right.

8 Q Okay. And could you explain again for the Court  
9 what the needs-based selling approach is.

10 A Yes. Needs-based selling involves listening to  
11 our customers and getting them into the right product.

12 Q Would this last email indicate that you were  
13 listening to your customers and getting them into the right  
14 product?

15 A I remember writing this email. To me, this  
16 embodies the success of the product.

17 What it tells me here -- and this is an important  
18 point -- is that we are reaching an entirely new set of  
19 customers; that people want our premium product or continue  
20 to want and value that product, but then there's a whole new  
21 tranche of customers where it was either too expensive or  
22 they couldn't get it or they couldn't afford it; and all of  
23 a sudden, they're coming in droves to take this conduct.

24 Now, we did see some migration because there were  
25 customers dissatisfied with our premium product. And we

1 were happy to have them on DirecTV Now, which would have  
2 been a better fit for them now that we had a second product.

3 Q What was the consistent guidance you got from  
4 your -- from the individuals that you reported to,  
5 Mr. Stankey and Mr. Bentley, regarding DirecTV Now and the  
6 strategy and the approach you were to take?

7 A My job with launching DirecTV Now was lot of fun  
8 because there was crystal-clear clarity about what the  
9 objective was.

10 Brad Bentley, John Stankey -- and I never talked  
11 to Randall, but through those leaders, I got the direction,  
12 they were committed, unwavering, and resolute in us bringing  
13 this product to market to serve these customers in a bold  
14 and compelling way. It was my job to grow this product.

15 MS. ROBSON: Thank you, Your Honor.

16 No further questions.

17 THE COURT: You may step down.

18 Call your next witness.

19 MR. PETROCELLI: Mr. Orsini will be handle this  
20 witness, Your Honor.

21 THE COURT: Okay.

22 MR. CONRATH: Your Honor, the United States calls  
23 John Harran, H-a-r-r-a-n.

24 THE COURT: All right.

25 DEPUTY CLERK: Sir, please raise your right hand.



1 (Witness is placed under oath.)

2 DEPUTY CLERK: Take a seat.

3 JOHN HARRAN, ADVERSE WITNESS FOR THE GOVERNMENT, HAVING BEEN  
4 DULY SWORN, TESTIFIED AS FOLLOWS:

5 MR. CONRATH: May I proceed.

6 THE COURT: When you're ready.

7 MR. CONRATH: All right.

8 DIRECT EXAMINATION

9 BY MR. CONRATH:

10 Q Mr. Harran, please state your name for the record.

11 A John Harran.

12 Q And you are the senior vice president of digital  
13 distribution, business development, and strategy  
14 partnerships at Turner?

15 A I am.

16 Q And you're part of the Turner content distribution  
17 group; is that correct?

18 A Yes.

19 Q Until June of 2017, that group was run by Coleman  
20 Breland?

21 A That's right.

22 Q And, today, it is run by Richard Warren?

23 A Yes.

24 Q You have been working at Turner since around 2003  
25 or 2004?

1           A     That's correct.

2           Q     And you've been in business development since you  
3 started at Turner; is that right?

4           A     Yes.

5           Q     You're involved with digital content negotiations;  
6 isn't that right?

7           A     Yes.

8           Q     And in some cases, you yourself are responsible  
9 for some of the negotiation with digital partners?

10          A     In some cases, yes.

11          Q     And that includes digital partners like, for  
12 example, YouTube or Snapchat?

13          A     Correct.

14          Q     Would you characterize yourself as a digital  
15 strategy leader at Turner?

16          A     I'd like to think of myself that way, yes.

17          Q     You believe that Turner had the opportunity to  
18 influence the direction of new over-the-top entrants;  
19 isn't that right?

20          A     I don't know if that's fair.

21                MR. CONRATH: I have some documents. May I  
22 present them?

23                THE COURT: Sure.

24                MR. CONRATH: May I approach?

25                May I approach the witness, Your Honor?

1 THE COURT: You may.

2 MR. CONRATH: May I proceed?

3 THE COURT: You may.

4 BY MR. CONRATH:

5 Q Mr. Harran, if you look in the binder that I put  
6 in front of you, would you look at the tab marked PX0197.

7 A Yes.

8 Q Do you have that in front of you?

9 A I do.

10 MR. CONRATH: Your Honor, PX0197, marked for  
11 identification.

12 BY MR. CONRATH:

13 Q Mr. Harran, this is an email with an attachment  
14 from you, Mr. Harran, to Mr. Coleman Breland and  
15 Ms. Jennifer Mirgorod; is that right?

16 A Yes, that's correct.

17 Q And at that time, Mr. Breland was head of Turner  
18 content distribution?

19 A He was.

20 Q And Ms. Mirgorod is your boss; is that right?

21 A That's correct.

22 Q She reported to Mr. Breland?

23 A That's correct.

24 Q And this email relates to your business  
25 development responsibility at Turner, correct?

1 A Let me read it really quickly.

2 Q Sure.

3 A Yeah. This looks like I was summarizing some of  
4 the market intel that I had learned in the marketplace.  
5 That's the way I would characterize this.

6 Q Right. And you prepared the attachment as well;  
7 is that correct?

8 A I did, yes.

9 MR. CONRATH: Your Honor, I offer PX197 into  
10 evidence.

11 MR. ORSINI: No objection, Your Honor, as long as  
12 it goes in under seal. There are a couple of confidential  
13 things in the attachment.

14 THE COURT: Is that agreeable to the government?

15 MR. CONRATH: Yes, it is, Your Honor.

16 THE COURT: It will be admitted under seal.

17 (Government's Exhibit PX197  
18 received into evidence under seal.)

18 BY MR. CONRATH:

19 Q Mr. Harran, you said here you're summarizing some  
20 of the market intelligence, correct?

21 A That's correct.

22 Q And the subject of what you're summarizing is  
23 about a number of possible over-the-top entrants, correct?

24 A That's correct.

25 Q And in the last paragraph on the email, you write,

1 "It's hard to handicap how many of these services will  
2 launch over the next 9 to 12 months," right?

3 A Correct.

4 Q And the date of this email is March 14th, 2016,  
5 correct?

6 A Correct.

7 Q And, in fact, as of the time that this had been  
8 written, in the attachment, the only one of those who's  
9 mentioned who had launch at that point was Sony Vue; was  
10 that correct?

11 A I believe that's true, yes.

12 Q And the rest of them were potentially going to  
13 enter; is that right?

14 A That looks right, yes.

15 Q And it was your strong opinion at the time that  
16 Turner should participate in every one of those services as  
17 launched; is that right?

18 A It was, yes.

19 Q You thought it was in Turner's interest to be in  
20 all the services that launch, right?

21 A I did.

22 Q Now, in your email to Mr. Breland and to  
23 Ms. Mirgorod, you wrote that Turner's decisions could ignite  
24 or diminish the desires of new entrants to enter.

25 Do you see that in the last paragraph there?

1           A     Yes.

2           Q     And you also wrote that Turner had an opportunity  
3 to influence the direction of these new over-the-top  
4 services, correct?

5           A     Let me read.

6                     I think what I meant there was TCD, our division,  
7 had the opportunity to influence our internal approach, not  
8 Turner itself.

9           Q     Your division had the opportunity to influence the  
10 direction that the OTT entrants followed; is that what  
11 you're saying?

12          A     No.

13                     I think it's fair to say that these were a bunch  
14 of new entrants, all who had very uneven and nonstandard  
15 terms they were bringing to the table.

16                     We are a fairly siloed company, and we really  
17 didn't have policy decisions around many of these things,  
18 such as rates and packaging and ad rights.

19                     And so I think what I recall my thought there was,  
20 we, TCD, have an opportunity to influence how we manage  
21 those policy decisions within the company.

22          Q     And those, the policy decisions that Turner had,  
23 could ignite or diminish the desires of the potential  
24 entrants. That's what you write here, isn't it?

25          A     Yeah.

1           I mean, it would be up to the distributors to  
2 choose whether they wanted to carry our services or not  
3 based on those policy decisions; that's correct.

4           Q     So Turner could establish policies and then stick  
5 to them?

6           A     Well, I guess what I'm saying is, many of these  
7 new entrants had non-conforming, nonstandard terms that they  
8 were presenting to us, and so we needed to come up with a  
9 point of view on what implication those terms would have on  
10 our multi-distributed business. And we had not done that,  
11 and so that's the point.

12          Q     And you were proposing that Turner come up with a  
13 standard policy to apply to all of them?

14          A     I was proposing that TCD, the distribution  
15 division, put forward a strong opinion on some of these  
16 policies, because we were closest to the business.

17          Q     Could I ask you to turn to PX38 in the binder.

18          A     38?

19          Q     Yes.

20                   Do you have that?

21          A     I do.

22          Q     And the bottom email of this chain was sent from  
23 your boss, Jennifer Mirgorod; is that right?

24          A     Yes.

25          Q     And you're one of the recipients?

1 A Yes.

2 Q And it links an article about YouTube TV?

3 A Yes, looks that way.

4 Q And you sent a reply to a number of people at  
5 Turner?

6 A Yes.

7 Q And the topic of your discussion is YouTube TV?

8 A Yes.

9 Q And the date of this is October 31st, 2017?

10 A Yes.

11 MR. CONRATH: Your Honor, I offer PX38 into  
12 evidence.

13 MR. ORSINI: No objection.

14 THE COURT: It will be admitted.

15 MR. CONRATH: Thank you, Your Honor.

16 BY MR. CONRATH:

17 Q At this point in time, October 2017, YouTube TV  
18 did not include Turner content; is that correct?

19 A I believe that's the case, yes.

20 Q And you yourself had previously been involved in  
21 the negotiation about whether to put Turner content on  
22 YouTube TV; isn't that right?

23 A Yes; in the beginning stages, I was.

24 Q So back in this email, your email to a large group  
25 of people makes a number of observations about YouTube TV,



1 right?

2 A Correct.

3 Q And you're observing that YouTube TV wasn't  
4 anything new; is that right?

5 A I think I was commenting on the fact that they  
6 were a service offering networks through an application  
7 wasn't anything new. I believe that's the first  
8 observation.

9 Q And a subsequent observation in the  
10 next-to-the-last paragraph there is that YT TV -- that's  
11 YouTube TV, right?

12 A Correct.

13 Q -- is betting on price point, broadcasters, and  
14 sports, along with YouTube integration of other YouTube  
15 services, right?

16 A Correct.

17 Q You forwarded this email on to another member of  
18 the Turner content distribution team, Scott Miller, correct?

19 A I did, yes.

20 Q And Scott Miller was, at that time, then, involved  
21 in the negotiations with YouTube TV about putting Turner  
22 content on YouTube TV, correct?

23 A I don't recall whether we were back at the  
24 negotiating table with them or not at this point.

25 Q But Mr. Miller had responsibility for that,

1 correct?

2 A He does, yes.

3 Q And you wrote to Mr. Miller, "FYI, we have the  
4 leverage."

5 Correct?

6 A I did, yes.

7 Q And that line was sent only to Mr. Miller, not the  
8 broader distribution of the other email?

9 A It was, yes.

10 Q And Mr. Miller was, at least at that point, or was  
11 about to be involved, responsible for the YouTube  
12 negotiations?

13 A I believe that's the case, yes.

14 Q And, in fact, YouTube -- Turner content is now on  
15 YouTube TV, is it not?

16 A It is, yes.

17 Q Let's talk about another virtual MVPD. Hulu  
18 launched a virtual MVPD in 2017, correct?

19 A I believe that was the date, yes.

20 Q And you believed that Hulu would be at risk if  
21 Turner did not participate in their virtual MVPD bundle; is  
22 that right?

23 A I don't recall thinking that, no.

24 Q Would you look at PX36 in your binder, please.

25 A I'm sorry, 36.

1 Q 36, correct.

2 MR. CONRATH: Your Honor, PX36 for identification  
3 is an email from John Harran, March 22nd, 2016.

4 BY MR. CONRATH:

5 Q Do you see that?

6 A I do, yes.

7 Q And it was sent to Douglas Shapiro?

8 A Correct.

9 Q And you reported to Mr. Shapiro at that time;  
10 is that right?

11 A At this time, I think I did have a dotted line to  
12 Doug.

13 Q You sent this email at Mr. Shapiro's request?

14 A I don't know that I sent it at his request.

15 Q Let me ask you to look at the lower email on the  
16 first page of PX36. Do you see there where, in the second  
17 paragraph, it says, "Do you mind sending me the Coleman  
18 spreadsheet?"

19 A Oh, yes. I'm sorry. That's -- yeah.

20 Q So you were responding to a request from your  
21 boss?

22 A I was, yes.

23 MR. CONRATH: Your Honor, I move PX36 into  
24 evidence.

25 MR. ORSINI: No objection under seal.

1 THE COURT: All right. Admitted under seal.

2 (Government's Exhibit PX36  
3 received into evidence under seal.)

4 BY MR. CONRATH:

5 Q At this time in March 2016, Hulu was negotiating  
6 for content to include in their virtual MVPD; is that right?

7 A I believe that was the case. I don't know if we  
8 started at that point, but shortly after for sure.

9 Q In this email to Mr. Shapiro, you say that we --  
10 that's Turner -- "We have a better shot to be in all the  
11 skinny bundles."

12 Do you see that?

13 A I do.

14 Q And Turner wanted to be in all the skinny bundles;  
15 is that right?

16 A That's correct.

17 Q In this email to Mr. Shapiro, you express that  
18 Hulu faced the risk of Turner not participating in their  
19 virtual MVPD, is that right?

20 A Yes.

21 Q And you also expressed the idea that NBC might --  
22 NBCU might pull out after their Consent Decree expires,  
23 right?

24 A That's correct.

25 Q And you wrote that if Hulu doesn't have Turner  
content and doesn't have NBCU content, this would be, quote,

1 a recipe for Hulu failure; isn't that right?

2 A I see that, yes.

3 Q Would you look at PX --

4 THE COURT: Would this be a good time to take the  
5 morning recess?

6 MR. CONRATH: I'm sorry, Your Honor?

7 THE COURT: Repeat.

8 MR. CONRATH: Certainly, Your Honor.

9 THE COURT: We're going to take a 15-minute  
10 recess, Mr. Harran.

11 THE WITNESS: Okay. Yes, Your Honor.

12 THE COURT: You're a witness under oath in the  
13 case. What that means is you are not at liberty to discuss  
14 your testimony so far or what it might be when you return  
15 with anyone, including your own lawyers.

16 THE WITNESS: Okay.

17 THE COURT: You have to stay independent of  
18 everyone else.

19 Be back in 15 minutes, and we'll continue your  
20 exam.

21 THE WITNESS: Okay.

22 THE COURT: You can step down.

23 THE WITNESS: Leave this book here?

24 THE COURT: You can step down. That's fine.

25 All right. Counsel, we'll be back in 15 minutes

1 for the morning recess.

2 MR. CONRATH: Thank you, Your Honor.

3 DEPUTY CLERK: All rise.

4 This Honorable Court will now take a brief recess.

5 (Recess from 11:54 a.m. to 12:16 p.m.)

6 DEPUTY CLERK: The United States District Court  
7 for the District of Columbia is again in session, the  
8 Honorable Richard J. Leon presiding. God save the United  
9 States and this Honorable Court. Please be seated and come  
10 to order.

11 THE COURT: The witness remains under oath.

12 DEPUTY CLERK: Your Honor, re-calling Civil Action  
13 No. 17-2511, the United States of America v. AT&T, Inc.,  
14 et al.

15 THE COURT: Mr. Conrath, you may proceed when  
16 you're ready correct me if I am wrong.

17 MR. CONRATH: Thank you, Your Honor.

18 BY MR. CONRATH:

19 Q Mr. Harran, would you please look in your binder  
20 at PX217.

21 What's been marked as PX217 for identification,  
22 Mr. Harran, that is an email from you?

23 A Yes.

24 Q And it's dated May 8th, 2015?

25 A Yes.

1 Q And it's to Ronald Lamprecht at NBC Universal?

2 A Yes.

3 Q And also to Matt Murphy at Disney ESPN;

4 is that right?

5 A Yes.

6 Q And it has an attachment that is about SVODs?

7 A Yes.

8 Q It's an article about SVODs, right?

9 A Yes, I see that.

10 Q And the subject of the email is managing windows?

11 A Yes.

12 Q And in this context, "windows" means a period of  
13 time when content is licensed to an SVOD?

14 A Yeah.

15 I think library seasons primarily, yes.

16 MR. CONRATH: Your Honor, I offer PX217 into  
17 evidence.

18 MR. ORSINI: Your Honor, we do have an objection.  
19 May I approach?

20 THE COURT: You may.

21 Step down, sir.

22 (Sealed bench conference)

23 MR. ORSINI:

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THE COURT:

MR. ORSINI:

MR. CONRATH:

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MR. CONRATH:

MR. ORSINI:



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MR. CONRATH:

THE COURT:

1 MR. CONRATH:

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8 THE COURT:

9 MR. CONRATH:

10 (Open court)

11 THE COURT: You may proceed, consistent with the  
12 discussion at the bench.

13 It will be admitted.

14 MR. CONRATH: Thank you, Your Honor.

15 (Government's Exhibit PX217  
16 received into evidence.)

17 THE COURT: Do you understand the attachment is  
18 not for the truth of the matter asserted?

19 MR. CONRATH: Correct, Your Honor. The attachment  
20 is not for the truth.

21 BY MR. CONRATH:

22 Q Now, Mr. Harran, you attached this analyst report  
23 to your email, right?

24 A I did.

25 Q And you wrote in your message to Mr. Lamprecht and  
Mr. Murphy -- the second sentence there says, "Our message

1 is beginning to get support from others who are not in the  
2 pool with us day over day."

3 Do you see that?

4 A I do see that, yes.

5 Q And that's what you wrote to the two of them,  
6 right?

7 A Yes.

8 Q And then the bolded text at the bottom of your  
9 email, that's an excerpt from the report, the analyst  
10 report, right?

11 A That's true, yes.

12 Q And this text asks readers to imagine if the  
13 big-content companies had not licensed content to Hulu Plus  
14 and put it on a cable or satellite video on demand instead,  
15 right?

16 A Yes, that's what the quote says.

17 Q Are you trying to say there that this -- the text  
18 you copied is related to our message that you refer to in  
19 your first line?

20 A My recollection of this was that we were all in  
21 the business for a long time, and we were very frustrated  
22 with the fact that we didn't have a competitive product.  
23 And we were -- I was happy that people outside of the  
24 industry were now recognizing that we had an inferior  
25 product, is my recollection of that reference.

1           Q     So our message is, when you say, "Our message is  
2 beginning to get support," the "our" there is you,  
3 Mr. Lamprecht, Mr. Murphy, right?

4           A     Anyone who has been in this business for a long  
5 time, this issue of managing windows was widely reported in  
6 the press, talked about on panels at various forums. And so  
7 anyone who has been in the business for a long time, that's  
8 what I was referencing.

9                     Bernstein is not in the business, so my  
10 recollection is that's what I was referring to there.

11          Q     And Hulu Plus is the Hulu SVOD service;  
12 is that right?

13          A     Hulu -- I'm sorry. The question again?

14          Q     Yes.

15                     Hulu Plus is the Hulu SVOD service, right?

16          A     I believe that's the case. I'm not that familiar  
17 with their different, varied product titles.

18          Q     So when you copied this text, you were saying that  
19 someone outside you, our message was getting to others  
20 outside?

21          A     Someone outside the industry was finally  
22 recognizing there was a way to improve the product and  
23 compete better with others.

24          Q     And whether to license to SVODs or to the cable  
25 satellite VOD instead was a question that you'd been

1 discussing with Mr. Lamprecht and Mr. Murphy previously?

2 A I don't think that's fair.

3 I think we generally discuss our frustration, as  
4 many people do in the industry, around this topic of  
5 windows. But I don't remember talking specifically about  
6 this particular initiative.

7 Q Well, you wrote "our message." "Our message"  
8 meant you and Mr. Lamprecht and Mr. Murphy?

9 A Again, my recollection was, I was referencing  
10 anyone who is in the industry, of which certainly Ron and  
11 Matt and myself are. We've been in for a long time. But my  
12 recollection was anyone who's been in for a long time. They  
13 just happen to be friends of mine.

14 Q Mr. Lamprecht of NBCU is someone that you speak  
15 with or communicate with quite often; isn't that right?

16 A I do, yeah. He's a good friend.

17 Q And he's your peer at NBCU, right?

18 A I don't think any longer. At the time, he may  
19 have been.

20 Q At the time.

21 And you said that -- you told us that  
22 Mr. Lamprecht works at NBCU on similar things to those what  
23 you work on at Turner, is that right?

24 A He does in some things, yes.

25 Q Could you turn to PX214 for identification,

1 please.

2 MR. ORSINI: Your Honor, may we approach?

3 (Sealed bench conference)

4 MR. ORSINI:

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7 THE COURT:

8 MR. ORSINI:

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MR. CONRATH:

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MR. CONRATH:

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MR. CONRATH:

THE COURT:

MR. CONRATH:

MR. ORSINI:

1 THE COURT:

2 MR. CONRATH:

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4 (Open court)

5 BY MR. CONRATH:

6 Q Mr. Harran, you were in regular communication with  
7 Mr. Lamprecht at NBCU; is that right?

8 A I talk to Ron often, sure.

9 Q Right. And you email him often also?

10 A I email him on occasion, sure.

11 Q And sometimes you talk about personal things?

12 A Sure.

13 Q And sometimes you talk about business things?

14 A Sometimes, yes.

15 Q And you see him at panels sometimes?

16 A On occasion, yes.

17 Q And he's somebody with whom you share some  
18 perspectives?

19 A Yeah, he and others, sure.

20 Q Let's talk about another digital partner,  
21 Snapchat?

22 A Okay.

23 Q You had a leadership role in negotiating an  
24 agreement with Snapchat; is that right?

25 A I did.



1 Q And Snapchat is a social media company?

2 A They are.

3 Q And Turner reached an agreement with Snapchat?

4 A We did, yes.

5 Q And that was a little over a year ago?

6 A That sounds right.

7 Q And one part of that agreement is that a Turner  
8 property called Bleacher Report provides content for a  
9 publisher channel on Snapchat; is that right?

10 A That's correct, yes.

11 Q And another part of the agreement with Snapchat  
12 relates to something called Snapchat shows?

13 A Yes, that's true, yes.

14 Q And that's where Turner provides short-form video  
15 to be included on Snapchat shows?

16 A That was the plan, yes.

17 Q And that would be a show made specifically for  
18 mobile?

19 A That's correct.

20 Q And those would generally be three to five minutes  
21 in length?

22 A That sounds right.

23 Q And another part of Turner's relationship with  
24 Snapchat is something called live stories at March Madness?

25 A That's true, yep.

1 Q And that's enabling people who were at the event  
2 with cell phones to share video of their experience over  
3 Snapchat?

4 A That's fair.

5 Q And then live stories from March Madness is  
6 something that's been going on for a couple of years?

7 A That's true.

8 Q And, again, you were involved in negotiating  
9 agreements with Snapchat?

10 A I was involved, yes.

11 Q And how long did it take you to negotiate that  
12 most recent agreement with Snapchat?

13 A Well, there was lot of earlier agreements that  
14 were already in place.

15 Q Okay.

16 A So pulling them together and then adding -- I  
17 would say over a year or a year.

18 Q And you were able to negotiate an agreement that  
19 was good enough for Turner that Turner was able to sign it?

20 A Yeah.

21 We didn't know if it was going to be good or bad.  
22 It was more of, I would call some of these platforms a bit  
23 of R&D for us. But, yes, we were hopeful it was going to be  
24 good for Turner.

25 Q And Snapchat obviously signed it as well?

1 A Yes.

2 Q And obviously, just to be clear, Snapchat is an  
3 independent company. It's not part of Time Warner?

4 A That's correct. That's right.

5 Q And were you involved in the Time Warner deal with  
6 Snapchat that was announced last summer of 2017 that  
7 includes HBO and Warner Brothers as well?

8 A Are you referring to the marketing deal?

9 Q Yes.

10 A I was not.

11 Q You were not. Okay.

12 MR. CONRATH: No further questions, Your Honor.

13 THE COURT: All right. Cross.

14 MR. ORSINI: Very briefly Your Honor.

15 CROSS-EXAMINATION

16 BY MR. ORSINI:

17 Q Mr. Harran, just a few follow-up questions.

18 I want to make clear to the Court what your  
19 responsible are and what they aren't.

20 A Okay.

21 Q Let's start with traditional MVPDs, the cable  
22 camps, satellites, TelCos. Do you have any responsibility  
23 for negotiating linear carriage with traditional MVPDs?

24 A I do not.

25 Q Do you have any responsibility for setting Turner

1 strategy with respect to its linear deals with the  
2 traditional MVPDs?

3 A I do not.

4 Q Did you have any responsibilities at all  
5 concerning traditional MVPDs?

6 A In some cases, yes.

7 Q And what are those?

8 A I many times participate as part of a broader deal  
9 team on topics that are leaning more towards the digital  
10 side of the spectrum, VOD, TV Everywhere, ad rights, certain  
11 things in the digital space.

12 Q How many people report to you, sir?

13 A Six.

14 Q And you report currently to whom?

15 A To Jennifer Mirgorod.

16 Q And she reports to Rich Warren, correct?

17 A That's correct, yep.

18 Q And you mentioned earlier that you had had a  
19 dotted line to Mr. Shapiro. What is a dotted-line reporting  
20 relationship?

21 A I never quite understood the difference between a  
22 dotted line and a solid line. He was just another direct  
23 report of mine. I think it's more of an HR term.

24 Q Now, Mr. Conrath also asked you a number of  
25 questions about digital distribution.

1 A Yep.

2 Q Do you have responsibilities within Turner --  
3 do you have the authority within Turner to set strategy  
4 concerning how Turner engages with virtual MVPDs?

5 A I do not.

6 Q Do you have authority within Turner to negotiate  
7 virtual MVPD linear agreements?

8 A I do not.

9 Q There was a discussion about YouTube earlier.  
10 Were you involved in any of the negotiations in what I think  
11 you referred to as the second round that led to YouTube  
12 carrying Turner networks?

13 A Not in the second round, no.

14 Q You mentioned, in response to some questions from  
15 Mr. Conrath, this issue of library rights, which is, as  
16 I understand it, back-season content; is that fair?

17 A That's right.

18 Q What authority do you have within Turner to  
19 determine what rights Turner will license from studios?

20 A I do not have that authority.

21 Q And what authority do you have within Turner to  
22 decide what rights Turner will license to distributors,  
23 whether they be virtual MVPDs or traditional MVPDs?

24 A I do not have that authority either.

25 Q If you could please take a look at, in your

1 binder, Mr. Harran, PX36.

2 MR. ORSINI: Your Honor, this document is in  
3 evidence. Mr. Conrath offered it.

4 THE COURT: All right.

5 THE WITNESS: Let me get to it. Hold on.

6 Okay.

7 BY MR. ORSINI:

8 Q Mr. Conrath pointed you to the last two sentences  
9 of the email on top, which reference, among other things,  
10 the possibility, the recipe for Hulu failure.

11 Do you see that, sir?

12 A Yes, I do.

13 Q Can you describe for the Court what you actually  
14 meant by that.

15 A Yeah. I think many of us understood their  
16 strategy to be one of a replicate strategy. They wanted to  
17 carry as many networks as the more traditional MVPDs.

18 And my recollection around that failure was that  
19 by not carrying Turner or NBC, they certainly would fail on  
20 that strategy, which I thought, you know, my recollection is  
21 what I was thinking at the time.

22 Q Were you suggesting in that language that if Hulu  
23 did not carry Turner or NBC, that it would fail as a virtual  
24 MVPD?

25 A I was not, no.

1 Q And was that your view at the time?

2 A No. There are many other factors that could play  
3 into their failure, I certainly wasn't commenting on that.

4 MR. ORSINI: I have no further questions,  
5 Your Honor.

6 THE COURT: All right.

7 Redirect.

8 REDIRECT EXAMINATION

9 BY MR. CONRATH:

10 Q Mr. Harran, you told us earlier that your job is  
11 to develop strategic partnerships and business development;  
12 is that right?

13 A That's part of it, yes.

14 Q And you have a -- you work horizontally across the  
15 different various vertical parts of Turner, correct?

16 A I do, yes.

17 Q And so like the example you gave us earlier when  
18 we were talking about virtual MVPDs, your suggestion was to  
19 try to get the different silos to work together to come up  
20 with an approach, right?

21 A Yeah, I think that was part of the intention, yes.

22 Q And you were asked some questions about -- and you  
23 were involved, actually, in the YouTube TV negotiations,  
24 correct?

25 A In the very initial stages, I was involved with

1 them.

2 Q And you were involved in the Snapchat  
3 negotiations, correct?

4 A I was, yes.

5 Q And you are an advisor on the team for a variety  
6 of other negotiations; isn't that correct?

7 A Yes. I have an opinion on those, yes.

8 Q And you were asked some questions about the recipe  
9 for Hulu failure.

10 Do you remember that?

11 A I do, yes.

12 Q And what you said, to be clear, is that your view  
13 was that Hulu would fail on the strategy that Hulu had  
14 chosen if they didn't include Turner and NBCU. That's what  
15 you said, right?

16 A That's right; they would fail against their  
17 strategy.

18 MR. CONRATH: No further questions, Your Honor.

19 THE COURT: All right. You can step down, sir.

20 THE WITNESS: Leave this here?

21 THE COURT: Yes.

22 Call your next witness.

23 MR. CONRATH: Your Honor, can we approach to talk  
24 about the schedule?

25 THE COURT: Yes.



1 (Sealed bench conference)

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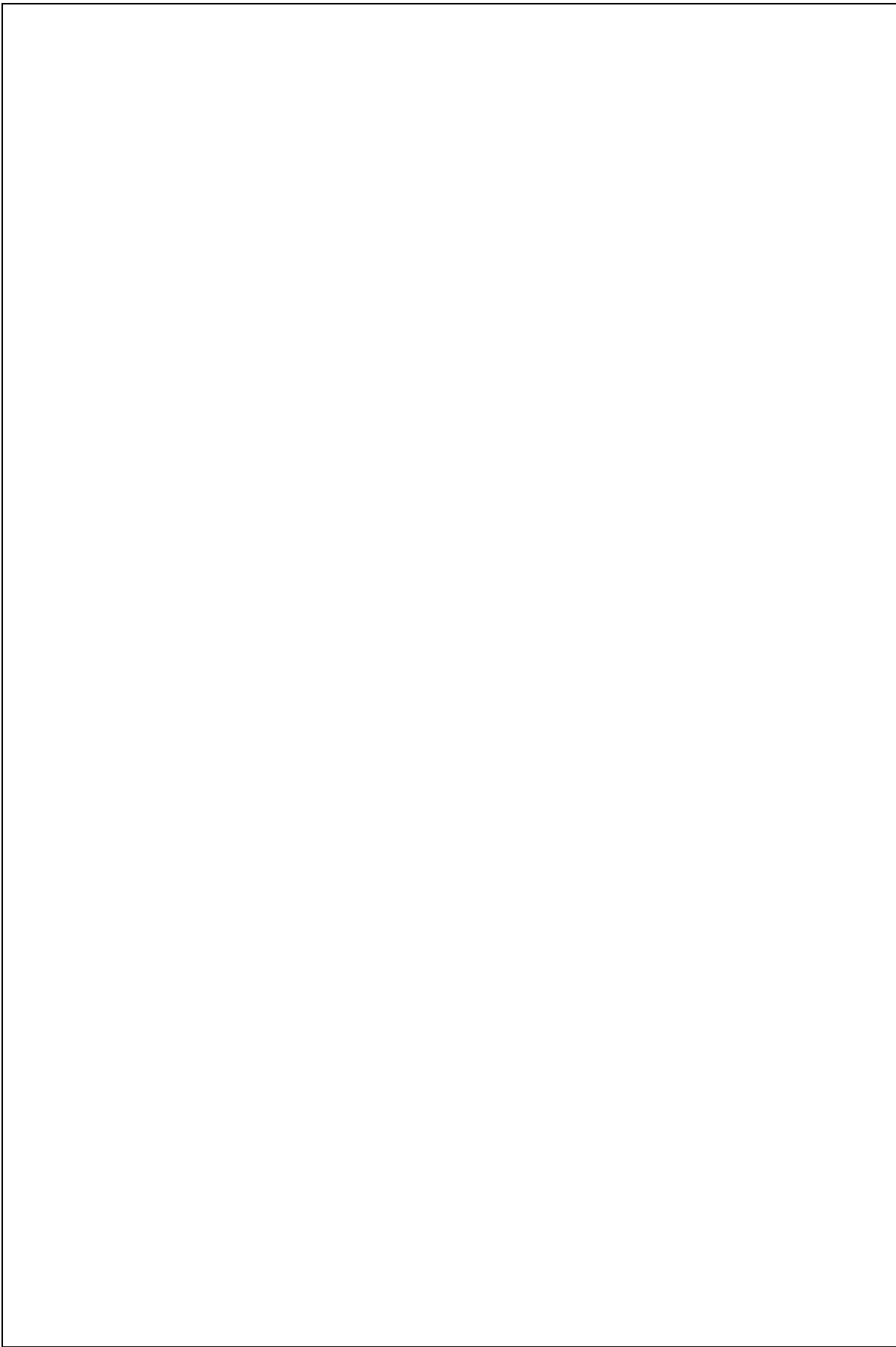
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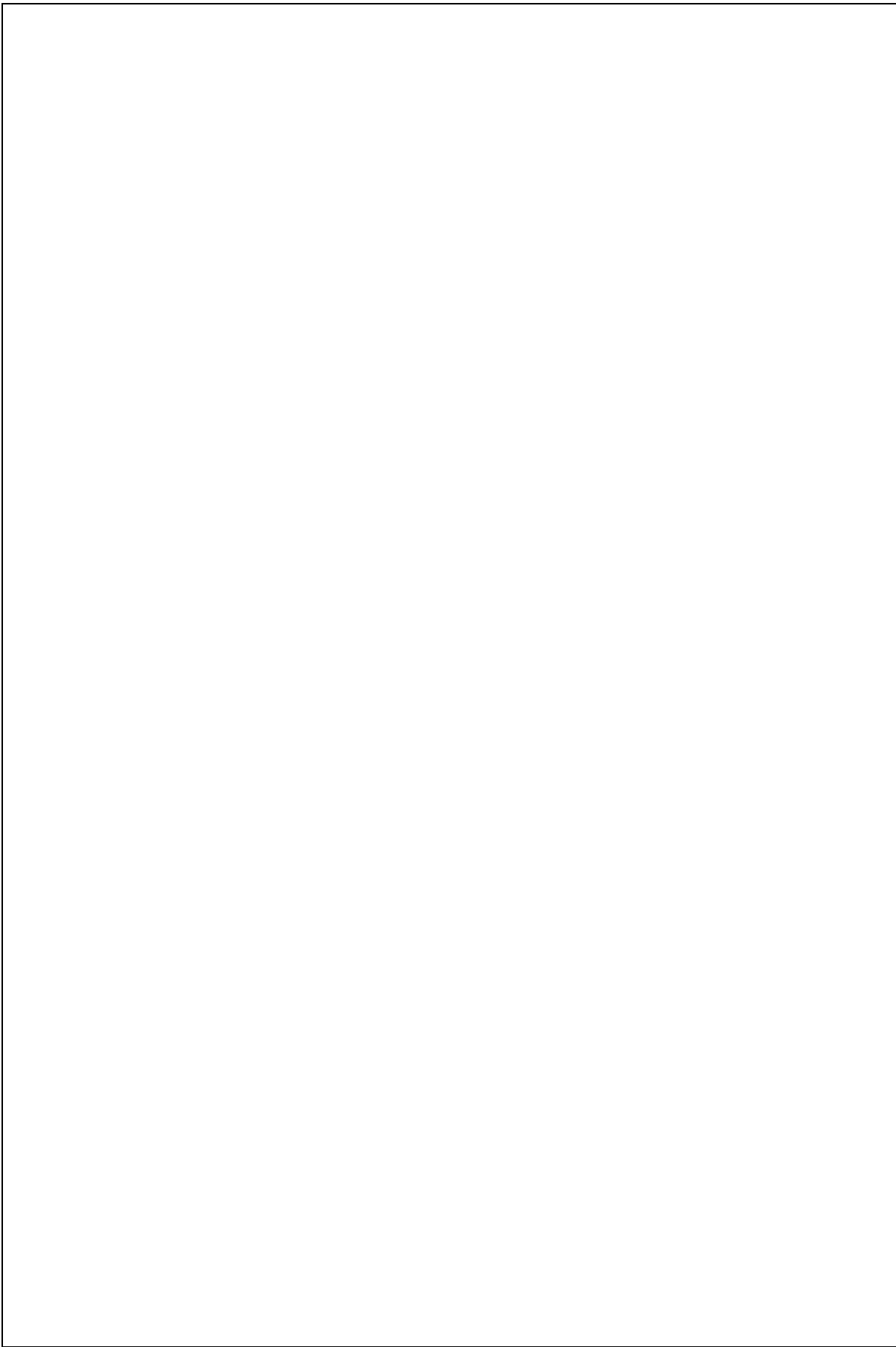
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(Open court)

THE COURT: All right. As may be obvious to those

1 of you sitting in the audience, there are a number of legal  
2 questions that need to be resolved in the case that we can't  
3 discuss in open forum because of the confidential nature of  
4 the issues. We're going to use this afternoon for that  
5 purpose.

6 So there will not be any open session of court  
7 this afternoon. The only people allowed in the courtroom  
8 will be people who have authorization to have access to the  
9 confidential information that we'll be discussing and the  
10 issues we'll be discussing.

11 So we're completed with witnesses for today.  
12 There will be witnesses tomorrow, at least two, maybe  
13 three -- well, excuse me, at least -- yeah, I'd say at least  
14 one, maybe two.

15 Well -- yeah, that's right. At least one, maybe  
16 two tomorrow.

17 There's one that's kind of maybe deposition  
18 entries will be read. So that's a separate question.

19 So anyway, this brings to a close the public  
20 portion of today's proceedings. There will be no other  
21 witnesses called this afternoon for testimony in open court.

22 So for those of you in the audience, we'll see you  
23 10:30 tomorrow morning.

24 DEPUTY CLERK: All rise.

25 This Honorable Court will stand in recess until

1 the return of court.

2 (Proceedings concluded at 1:11 p.m.)

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## C E R T I F I C A T E

I, William P. Zaremba, RMR, CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-titled matter.

Date: April 9, 2018                      /S/ William P. Zaremba

William P. Zaremba, RMR, CRR