

Silicon Valley's Shocking Collusion: Inside One of the Largest Wage Theft Trials in U.S. History

Mark Ames, the journalist who pushed the story into national attention, discloses some lurid details about the case.

By [Jan Frel](#) / [AlterNet](#)

One of the largest wage theft cases in American history was settled last Thursday, with the [terms of the agreement kept secret](#). The companies involved include some of America's largest tech titans, including Apple, Intel, Adobe and Google. For years, in essence, the companies had agreed not to recruit employees from one another as a way of keeping labor costs down: Less recruitment equals less a less competitive job market and depressed wages.

The agreement affected the wages of hundreds of thousands of tech workers, amounting to an estimated \$9 billion in the later half of the 2000s. The documents that came out in the discovery process of the [class-action lawsuit](#) are loaded with smoking guns; in one damning email thread after another, emails from big CEOs like Steve Jobs and Eric Schmidt make it clear that they were consciously engaged in keeping down Silicon Valley labor costs. Court documents describe it as an "overarching conspiracy," violating the Sherman Antitrust Act and the Clayton Antitrust Act.

What the documents reveal is nothing like the "free market," innovation-based dogma we've heard from Silicon Valley for decades now, but the same old industrial patterns: power players running the companies colluding with each other to protect their profit margins, with the *price of labor* the paramount focus.

Mark Ames, who is my longtime friend and collaborator, was the first to recognize the importance of the case, and wrote a number of stories about the emails for Pando Daily, where he is the senior investigative reporter. The stories are filled with lurid details, from Eric Schmidt conveying to his team at Google that eBay CEO Meg Whitman had been complaining about Google's recruiting efforts, to revelations that Google begged Steve Jobs for permission to hire one of his trusted talents, only to be rejected by Jobs. As Ames wrote, "For all of the high-minded talk of post-industrial technotopia and Silicon Valley as worker's paradise, what we see here in stark ugly detail is how the same old world scams and rules are still operative." [[Read the archive of Ames' wage-theft cartel coverage here.](#)]

The trial didn't get very much coverage from the publications, print and online, that cover the tech industry, like *Wired*, TechCrunch or Valleywag. But in the weeks leading up to the settlement, larger national outlets like the [New York Times](#), [Wall St. Journal](#) and [Bloomberg News](#) picked up on Ames' reporting and grappled with the consequences. I reached out to Ames in New York for a short interview about some of the takeaways from this case.

Jan Frel: The details of the settlement are secret, but do you have any ideas about what the workers will get, and do you have any sense of what the lawyers handling the case will get in fees?

Mark Ames: The damages—i.e. the stolen wages— have been estimated at \$3 billion total. In a successful antitrust suit using the Sherman Antitrust Act such as this, damages are tripled, so the Big Tech firms—Apple, Google, Intel, Adobe—have been looking at potentially paying out \$9 billion. Rumors since Friday—and they look credible as far as I can tell—say the final amount was much lower, more like \$300 million or so. Whatever the sum, the plaintiffs' lawyers seemed satisfied. The most important thing here for the rest of us is that there is now a precedent set for successfully using antitrust law to bust up a wage-theft cartel. That is new and that is a tough hurdle to overcome.

I don't know what the fee structure is in this for the lawyers on either side. What I can say is that both sides have top-notch legal teams. The plaintiffs' side is represented by Lieff Cabraser which has a rather stellar reputation in class-action suits.

Another thing to keep in mind is that the three-decade-long right-wing/corporate-driven ideological war on class-action liability, or "tort reform" as they call it, has made it increasingly difficult to wage a class-action suit of any kind, let alone this lawsuit, which is so unique in that it's an antitrust suit aimed at a secret cartel illegally fixing workers' wages. Almost always antitrust suits are aimed at prices for goods or services—a monopoly or oligopoly cornering a particular market and fixing the prices that consumers or other businesses have to pay.

The hurdles a law firm has to overcome to get class action against the wealthiest, most powerful tech firms in the world are not easy; I would imagine Lieff Cabraser has spent millions already in the past three years pursuing this case, all before ever going to trial. Obviously it's in the defendants' interests to make the pre-trial process as difficult as possible, and string it out as long as possible, make it as expensive and difficult as possible on the workers suing them.

JF: Can we expect any kind of safeguards installed to prevent this kind of wage theft collusion?

MA: The Department of Justice, which initiated this antitrust suit in 2010, enjoined the top executives at the seven firms they investigated to abide by antitrust law, and to prove they're abiding by it through regular inspections and "tests" under threat of criminal prosecution. That might prevent these exact companies from engaging in this exact sort of wage theft collusion, but the problem is much bigger. The problem is political: Big Tech companies are so big and powerful now, and have so much power over our lives and fates, that ultimately I doubt we can do much to prevent more unfair practices and fixing of markets and political space without breaking up some of these firms, and democratizing some of the chokepoints that they monopolize and control.

Google would be a good place to start if we were going to break up a Big Tech octopus. Consider what Google's power has done to destroy and capture media, journalism, publishing, knowledge—and then there's the fact that Google runs the world's largest private surveillance apparatus going, perhaps more comprehensive than anything in the state sphere. Look as well at Apple's ability to extract rent from publishing and music and film.

JF: Your articles reveal that the price of labor is an issue tech moguls are willing to go to war with each other over, one of their top priorities. Can you bring into context some of the other related agendas going on to keep wages down, e.g. outsourcing labor abroad, H1-B visas and seasteading?

MA: Yes, this story is so important because it reminds us that the "New Economy" still consists of people, whatever PR is thrown around about clouds and virtual this or that. Labor costs are always a huge expense, often the largest expense, of any business. So naturally as these companies move from Silicon Valley's strange hybrid idealism—a sort of libertarian-utopianism combined with liberal/left-utopianism, two incompatible ideologies when put to the test—what you have are companies facing the same issues and problems that companies always face, and their interests—profits, earnings, market dominance—lead them to very familiar old-fashioned capitalist class politics: how to keep workers' wages as low as the market will allow.

When you're powerful enough to fix the market in wages, you'll fix the market in wages, or fix the entire labor market so that no one even knows it's being fixed, as happened here for five years from 2005-'10. You bring up a hot potato issue that a lot of people in the labor reporting world immediately asked me about when I first started reporting this story in January: immigration, H1-B visas and Big Tech labor costs. It's dangerous territory because of the history of anti-immigrant racism both in the labor movement and in the rest of society.

It helps to remember that young Cesar Chavez saw the angle on Big Ag bosses shipping in a constant stream of undocumented migrant workers from Mexico, to keep labor costs down and to make it impossible to unionize, so Chavez was very anti-"illegal immigration." He changed later, but that's another story. I think more and more people are starting to understand that Silicon Valley's big pushers of large-scale immigration for tech jobs, and all the BS about America not producing enough qualified engineers, is really about keeping their costs down.

The question is—will white-collar tech workers ever get a sort of class consciousness of the sort their bosses clearly have, unionize the way their bosses unionize in their board rooms, and empower themselves? We'll see. Outsourcing is a huge booming part of the labor equation in Big Tech, one that's largely overlooked so far. As I've been digging more into this story, I'm learning more about just how much effort Big Tech and Big Tech-funded NGOs in the developing world are busy creating cheap pools of labor talent, with help from USAID and other state "aid" agencies. Seasteading seems to me like it has all sorts of very dark, ugly possibilities that few have considered, from a way of avoiding labor laws and tax laws and worker protection laws, to god knows what.

JF: Mark Zuckerberg is no angel, so before we heap praise on Facebook for standing outside of the wage-theft cartel (Facebook is the only big Silicon Valley company that didn't play ball), is there any evidence we can point to that he doesn't have a halo over his head when it comes to salaries?

MA: Why does he have to be an angel for not participating in the wage theft cartel? It wasn't in Facebook's interest, period. That's why they didn't do it. It also happens to be the right thing, but that's not why Facebook stayed out. Facebook has quickly morphed into another Google, a giant with a dominant market position, and it's increasingly extracting rent by exploiting that dominance.

JF: The rest of the tech press, from *San Jose Mercury News* to sites like *Wired* and *TechCrunch* or *Valleywag* have been scooped now, not just by you, but by the *New York Times* and others in at least offering readers a rundown of the trial and the emails you've publicized. Is this laziness, fear of pissing off power, or just a gaping hole in a media culture?

I think other tech media are not used to skeptical or politicized journalism about Silicon Valley; and many of them are ass-kissers and cozy. There's a lot of money sloshing around there. And for the most part, since Silicon Valley has stayed largely away from the old establishment institutions in the East Coast, it's been insulated from that sort of journalism and political viciousness.

I think also, let's face it, Silicon Valley and tech are the one part of the U.S. economy that have boomed over the past couple of decades, and so there's not much incentive to question it—unlike the finance industry, which has wreaked havoc on this country and offered nothing tangible in return, or other beleaguered industries, which we have an old tradition of skeptical business journalism in.

So I'd say "gaping hole" and that's changing now, must change. For one thing, Big Tech is taking over older East Coast institutions of power media, with Bezos buying the *Washington Post*, Chris Hughes buying the *New Republic*, eBay founder Pierre Omidyar buying up the cream of independent journalism's crop plus the Snowden docs—and now we're learning about Big Tech's involvement in DC politics and lobbying and astroturfing. We can't ignore it anymore: the power of Big Tech is taking over and changing the country and the world to conform to its own needs, and its needs are profit and market power.

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