

27178-2
Vancouver Registry

In the Supreme Court of British Columbia
(BEFORE THE HONOURABLE MADAM JUSTICE HOLMES AND JURY)

Vancouver, B.C.
June 12, 2017

REGINA

v.

PATRICK HENRY FOX

PROCEEDINGS AT TRIAL

COPY

BAN ON PUBLICATION – INHERENT JURISDICTION
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Crown Counsel:

M. Myhre

Appearing on his own behalf:

P. Fox

Defence Counsel:

**A.J. Lagemaat
M. Chatha, A/S**

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1
(Jury Out)
Proceedings

BAN ON PUBLICATION - INHERENT JURISDICTION

1 Vancouver, B.C.
2 June 12, 2017
3
4 (JURY OUT)
5
6 THE CLERK: In the Supreme Court of British Columbia,
7 at Vancouver, this 12th day of June, 2017.
8 Calling the matter of Her Majesty the Queen
9 against Patrick Henry Fox, My Lady.
10 MR. MYHRE: My Lady, Mark Myhre appearing for the
11 Crown.
12 MR. LAGEMAAT: My Lady, my name is Lagemaat, L-a-g-e-m-
13 a-a-t, first initial T., and as you're aware, I've
14 been appointed under 486.3(2) to cross-examine the
15 complainant, and with leave of the court I ask
16 that an articling student can be up here to assist
17 with note-tasking, and her name -- last name is
18 Chatha.
19 THE COURT: Just hold on for a moment, please. My
20 computer is frozen.
21 MR. LAGEMAAT: Sorry.
22 THE COURT: Yes. Thank you.
23 MR. LAGEMAAT: And her last name is Chatha, spelled
24 C-h-a-t-h-a, first initial M., articling student.
25 THE COURT: All right. Thank you. No objection?
26 MR. MYHRE: Thanks, My Lady.
27 THE COURT: And, Mr. Fox, generally in the trial you
28 are representing yourself, I understand?
29 THE ACCUSED: Yes.
30 MR. MYHRE: My Lady, there are a couple of things we
31 should address at the outset before the jury comes
32 in.
33 THE COURT: Well, I've got a couple of things, as well,
34 but go ahead.
35 MR. MYHRE: The first is the publication ban. There is
36 a publication ban existing from the Provincial
37 Court proceedings under s. 486.5 of any
38 information that could identify the complainant.
39 I've discussed this with the complainant. She
40 does not want a publication ban. And, so, in my
41 submission, that can be rescinded.
42 THE COURT: I thought I made such an order, or perhaps
43 I just asked whether there was such an order in
44 place and I was told that there was last time we
45 were in court. I just want to make sure that if
46 the ban is to be rescinded that it's rescinded,
47 all versions of the ban are rescinded. All right.

2
(Jury Out)
Proceedings

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1 And that's definitely her wish?
2 MR. MYHRE: Yes.
3 THE COURT: All right. Any submissions on that, Mr.
4 Fox? Now, who do I ask, Mr. Lagemaat?
5 MR. LAGEMAAT: I'm going to just ask you a couple of
6 questions once we get through this about your
7 intended role of me here in this trial. But it's
8 my understanding I'm here merely to cross-examine
9 the complainant.
10 THE COURT: All right. Mr. Fox, any difficulty with
11 that?
12 THE ACCUSED: No, no. In fact, I fully support that.
13 THE COURT: All right. So, the ban that was previously
14 made under s. 486 point, help me here, Mr. Myhre,
15 I've got it --
16 MR. MYHRE: Point 5.
17 THE COURT: Point 5 of the *Criminal Code*, that
18 restricted the publication of any information
19 identifying Ms. Capuano is rescinded. There is
20 nonetheless a ban that remains in place, a
21 standard ban that applies as a matter of law, that
22 anything that takes place in the courtroom in the
23 absence of the jury, the subject of anything that
24 takes place in the absence of the jury, may not be
25 published in any way until the jury, the *Criminal*
26 *Code* says, has retired to consider its verdict.
27 All right.
28 MR. MYHRE: The next matter, I'd like to deal with a
29 couple of evidentiary issues of things that I
30 don't understand to be disputed by Mr. Fox. And
31 the first one is, you may recall at the pretrial
32 conference Mr. Fox --
33 THE COURT: Can this be done after we've dealt with the
34 jury, and remember, we have two alternates here
35 who may or may not be needed.
36 MR. MYHRE: Yes.
37 THE COURT: All right.
38 MR. MYHRE: Just, then, on the subject of the jury, I
39 understand that Your Ladyship would like me just
40 to canvass the witness list again at some point
41 with them?
42 THE COURT: At some point, yes, but not yet.
43 MR. MYHRE: And the last thing about the jury, in my
44 submission, there should be a caution about going
45 online and doing their own research.
46 THE COURT: There will be.
47 MR. MYHRE: Then that's all for the moment, My Lady.

3
(Jury Out)
Proceedings

BAN ON PUBLICATION - INHERENT JURISDICTION

1 THE COURT: I understand there was such a caution at
2 the jury selection, and that the jury was advised
3 in fairly strong terms about that after they were
4 selected.

5 Two issues concerning jurors that I need to
6 discuss with you. One of them relates to juror
7 11, and I'm using the number as selected. So, of
8 the 12, juror 11. And there's a note from a
9 medical doctor indicating that the juror, for
10 medical reasons, is considered unfit to start jury
11 duty.

12 Now, Mr. Fox, you're entitled to see this
13 note if you wish to do so. I can assure you that
14 the medical reasons are such that it would not be
15 appropriate for the juror to serve. Do you wish
16 to see this note?

17 THE ACCUSED: No. No, I don't think that's necessary.

18 THE COURT: All right. Mr. Myhre?

19 MR. MYHRE: No, My Lady.

20 THE COURT: So, I will excuse juror 11 and we'll need
21 to draw on one of the alternates. Madam
22 Registrar, this note should be marked as an
23 exhibit for identification, but sealed, please.

24 THE CLERK: That's Exhibit A for identification.

25 THE COURT: Please.

26

27 **MARKED A FOR IDENTIFICATION: Work Absence**
28 **Certificate for Juror 11 dated June 2, 2017**

29

30 THE COURT: The next juror issue relates to juror 12,
31 and I'm going to give you copies of the letter
32 that I've received, Mr. Fox and Mr. Myhre. I've
33 blanked out the name of the juror. Madam
34 Registrar, this -- this could be the original
35 without the name blanked out. It can be Exhibit
36 B.

37 THE CLERK: That's Exhibit B for I.D., My Lady.

38 THE COURT: And should also be sealed, please.

39

40 **MARKED B FOR IDENTIFICATION: Letter from**
41 **employer re Juror 12 dated June 9, 2017**

42

43 THE COURT: The issue as I see it with this request is
44 that it comes from an employer, and clearly it's
45 the employer's interests that are put forward as
46 the reason to excuse the juror and not anything
47 emanating from the juror.

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1 The only thing that relates directly to the
2 juror is that the employer seems to assume that if
3 the juror is serving on the jury he will
4 nonetheless continue to work on evenings and
5 weekends in order to keep the workload above water
6 during the trial. That's not a desirable
7 situation because, as we all know, jury duty can
8 be much more demanding than people expect it to
9 be. I would not like to see a situation where a
10 person is essentially keeping their fairly
11 demanding job going while also serving as a juror,
12 and I would imagine it would be open to the court,
13 although I'd appreciate submissions on this, to
14 direct that the juror not do that.

15 Nonetheless, we have a request from the
16 employer saying that because this juror is a
17 valuable employer -- employee, the employer
18 requests that the juror be released.

19 Do you have submissions on this, Mr. Myhre,
20 Mr. Fox? I'd appreciate your submissions.

21 THE ACCUSED: I have no objection.

22 THE COURT: No objection to?

23 THE ACCUSED: To excluding the juror.

24 THE COURT: All right.

25 MR. MYHRE: I don't, either, My Lady. It seems like a
26 very difficult position to put this person in. I
27 would only say that if Your Ladyship does decide
28 to keep this juror on that, I'm not sure about a
29 direction, as in a court order, but Your Ladyship
30 might phrase something to him that he can then
31 take back to his employer if he needs to. But
32 ultimately, I think it would have to be up to him,
33 whether he or she tries to fulfil their
34 obligations at work.

35 THE COURT: All right. I think I'm inclined to ask the
36 juror some questions and get the juror's own view
37 as to whether he wishes to serve or not, and what
38 he contemplates taking place. So, perhaps what
39 we'll do, first I will ask the other juror, 11, to
40 come in briefly, and I will excuse him.

41 Good morning, sir. I've received a note
42 written by your physician. I have described it
43 only very, very general terms, no details, to
44 counsel and to Mr. Fox. I'm of the view that you
45 should be discharged from jury duty, if that is
46 what you wish?

47 A JUROR: Yes, it is.

5
(Jury Out)
Proceedings

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1 THE COURT: And there's no objection to that. And, so,
2 I thank you for coming this morning. I discharge
3 you from jury duty and wish you well.
4 A JUROR: Thank you, My Lady.
5 THE COURT: Thank you. And juror 12, please. Sir,
6 thank you. I have a letter from your employer
7 asking that you be released from jury duty. I've
8 read the letter. I've discussed it with counsel
9 and Mr. Fox. It looks to me as though the
10 employer is considering the interests of the
11 company rather than your interests, or your duty
12 to serve as juror, as all citizens are required to
13 do from time to time.
14 The request that you be released from jury
15 duty, is that your request or is that your
16 employer's request?
17 A JUROR: Well, I think both, because I didn't know
18 [indiscernible/not at microphone].
19 THE COURT: I'm sorry, I'm having trouble hearing.
20 A JUROR: Okay. Because originally I thought it would
21 be two weeks, the trial [indiscernible/not at
22 microphone] for the last week I have to take care
23 of my [indiscernible].
24 THE COURT: If you were serving as a juror, would you
25 expect to also be working for your employer?
26 A JUROR: Yes, because the contract we just signed is a
27 really big contract [indiscernible/not at
28 microphone]. That's why I told my [indiscernible]
29 and try to get the project [indiscernible].
30 THE COURT: That's not really a very viable situation.
31 Serving as a juror, the hours are not particularly
32 long, as you know, but it -- experience tells that
33 it's much more tiring than people expect. We
34 certainly hear that from jurors after a trial.
35 They find it very, very surprising how tiring the
36 process is. So, it's not really reasonable or
37 viable to expect to be able to carry a job as well
38 as doing jury duty.
39 Do you have any additional submissions, Mr.
40 Myhre?
41 MR. MYHRE: No, My Lady.
42 THE COURT: Mr. Fox?
43 THE ACCUSED: I do not.
44 THE COURT: All right. I'm going to discharge you as a
45 juror. To be quite candid, I'm not pleased about
46 doing so because I do detect that your employer is
47 putting the interests of the company far ahead of

6
(Jury Out)
Proceedings

BAN ON PUBLICATION - INHERENT JURISDICTION

1 your duty to the country to serve as a juror from
2 time to time.
3 And, nonetheless, I'm concerned that your
4 employer would be putting you in a difficult
5 position if you were to serve as a juror. And
6 with the additional difficulty with childcare,
7 although that's one that might well be able to be
8 sorted out. But taking everything into account,
9 and given that we do have alternate jurors here, I
10 am going to discharge you. So, you're free to
11 leave. Thank you.
12 MR. MYHRE: My Lady, did this get marked?
13 THE COURT: I think it did, as Exhibit B, sealed. So
14 the copies should, I think, come back, please.
15 Thank you.
16 All right. Is there anything else we should
17 deal with before we begin with the jury, and we
18 need to substitute the alternates in.
19 MR. MYHRE: There were the two evidentiary things that
20 I wanted to deal with, but we could do that now or
21 after the charge.
22 THE COURT: After the preliminary instructions. How
23 long do you think it will take to deal with them?
24 MR. MYHRE: Less than five minutes.
25 THE COURT: All right. I think we'll go ahead now,
26 deal with the preliminary instructions and, Mr.
27 Myhre, you were going to read a list of witnesses.
28 MR. MYHRE: Yes.
29 THE COURT: All right. So, at what point do we do
30 that? I think what we might do is bring the jury
31 and the alternates in, substitute in the
32 alternates, do the arraignment, I'll make the
33 preliminary instructions, and in the course of
34 those I'll ask you to read out the list of
35 witnesses, and then we'll take a break, and that
36 will give an opportunity for any jurors to raise a
37 concern arising from the list of witnesses, if
38 there is such a concern. Does that sound
39 reasonable?
40 MR. MYHRE: Yes. My Lady, could I just poke my head
41 outside and tell the complainant that she won't be
42 needed for at least 45 minutes from now?
43 THE COURT: Certainly. It will be about an hour.
44 MR. MYHRE: Thank you.
45 THE COURT: All right. Ready?
46 MR. MYHRE: Yes.
47 THE COURT: Could we have the jury with the alternates,

Proceedings**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 please?

2

3

4

(JURY IN)

5

THE SHERIFF: The jury, My Lady. It will just be a moment, My Lady.

6

7

THE COURT: All right. Good morning, members of the jury. Please have a seat. My name is Madam Justice Heather Holmes. Thank you for coming this morning. I understand two of you are the alternate jurors who were selected at the jury selection. I did not preside at the jury selection, a different judge did.

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THE CLERK: Members of the jury, the accused stands charged by the name of Patrick Henry Fox.

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Patrick Henry Fox stands charge that,

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47

Count 1: Between January 11, 2015 and May 27, 2016, inclusive, at or near Burnaby and Surrey, in the Province of British Columbia, did without lawful authority and knowing that another person was harassed or being reckless as to whether the other person was harassed, engage in conduct that caused the other person, Desiree Capuano, to reasonably fear for her safety or the safety of anyone known to her, contrary to Section 264 of the *Criminal Code*.

Count 2: Between May 18, 2016 and June 3, 2016, inclusive, at or near Burnaby, in the Province of British Columbia, being the holder of an authorization or a licence under which he may possess a prohibited firearm, restricted firearm or non-restricted firearm, prohibited weapon, prohibited device, or prohibited ammunition, did possess firearms,

Proceedings**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 at a place indicated on the authorization or
2 licence as being a place where he may not
3 possess it, or at a place other than that
4 indicated on the authorization or licence as
5 being a place where he may possess it, or at
6 a place other than that where it may be
7 possessed under the *Firearms Act*, contrary to
8 Section 93(1) of the *Criminal Code*.
9

10 And upon these charges he has been arraigned, and
11 upon his arraignment has pleaded not guilty to
12 each charge, and for his trial has put himself on
13 his country, which country you are.

14 You are charged, therefore, as to inquire
15 whether he is guilty of the offences, or either of
16 them, whereof he stands charged, or not guilty,
17 and to harken to the evidence.

18 THE COURT: Members of the jury, I'm going to make some
19 preliminary remarks to give you an idea of what to
20 expect in the trial as far as the procedure that
21 we'll follow. My remarks are reproduced in
22 writing. I'm going to give you copies of the
23 written version of them, but you can follow along
24 with if you wish. What I say to you is the
25 official version, not what you see in the written
26 version, but some people find it easier to take
27 things in if they have a written version, as well.
28 I will ask that you not read ahead of me as I go
29 through these.

30 Mr. Sheriff, there are 12 copies there. I
31 have copies here for Mr. Myhre, Mr. Fox. One
32 should be marked as the next exhibit for
33 identification, and Mr. Lagemaat can have one if
34 he wishes.

35 THE CLERK: That would be Exhibit C, My Lady.

36 THE COURT: Thank you.
37

38 **MARKED C FOR IDENTIFICATION: Document titled**
39 **"Opening Instructions to the Jury"**
40

41 **OPENING REMARKS TO JURY BY COURT:**
42

43 THE COURT: Members of the jury, you've been chosen to
44 decide this case. The oath or affirmation you've
45 taken requires you to listen closely to the
46 evidence that will be presented, and to decide the
47 case solely on that evidence and the instructions

Opening Remarks to Jury by Court**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 that I will give you.

2 I'll now describe your duties as jurors and
3 the procedure that we'll follow during the trial.
4 I will also explain to you some of the rules of
5 law that apply in this case.

6 During and at the end of the trial I will
7 give you specific and detailed instructions about
8 the rules of law that apply to this case. You
9 must listen carefully to all of these
10 instructions.

11 As to your duties, you are the sole judges of
12 the facts. You must decide this case solely on
13 the evidence presented to you in this courtroom.
14 And I'm going to come back to that because it's
15 extremely important, as are all the other
16 instructions I give you.

17 I am the sole judge of the law, and it is
18 your duty to accept the law as I explain it to
19 you. You must choose your own ideas about what
20 the law is or should be, and you must not rely on
21 information about the law from any other source.

22 So, what is evidence? To decide what the
23 facts are in this case you must consider only the
24 evidence presented in the courtroom. Evidence is
25 the testimony of witnesses who will be testifying
26 from the witness box here, and things that are
27 entered as exhibits, and from time to time we'll
28 do that. We'll give them an exhibit number, and
29 at the end of the trial you'll have them with you
30 in the jury room.

31 The evidence may also consist of admissions.
32 The evidence includes, and I'm speaking here of
33 testimony given by witnesses, it includes what
34 each witness says in response to questions asked.
35 The questions are not evidence unless the witness
36 agrees that what is asked is correct. Only the
37 answers are evidence.

38 The Crown and the defence may agree about
39 certain facts. When that happens no evidence is
40 required. Whatever they agree about is a fact in
41 this case. That is called an admission.

42 There are also some things that are not
43 evidence. You must not consider or rely upon them
44 to decide this case. If I instruct you to
45 disregard any evidence it is your duty to do so.
46 In particular, the charge in the indictment,
47 actually, two charges in the indictment that you

Opening Remarks to Jury by Court**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 have heard read out is not evidence.
2 What the lawyers or Mr. Fox say when we speak
3 to you during the trial is not evidence. What
4 people outside this courtroom say or have said
5 about this case is not evidence. And that
6 includes what may be said in radio, television,
7 newspaper, internet reports about the case, or
8 what you may have heard about the case from other
9 people. That is not evidence. You must ignore it
10 completely. You must avoid all media coverage of
11 this case. You must consider only the evidence
12 presented to you in this courtroom.

13 Now, sometimes evidence can be presented only
14 for a specific purpose and not for other purposes,
15 and if that happens in this trial I will tell you
16 about how you may use the particular evidence in
17 deciding this case, and how you may not use it in
18 deciding the case. You must consider the evidence
19 only for the purpose I describe. You must not use
20 it for any other purpose.

21 I'm going to talk now about direct and the
22 circumstantial evidence. Suppose the question is
23 whether it was raining outside. A witness
24 testifies that he or she saw it raining outside.
25 That is direct evidence of the fact that it was
26 raining.

27 Contrast that with a witness who testifies
28 that he or she saw someone enter the courthouse
29 wearing a raincoat, carrying an umbrella, both the
30 raincoat and the umbrella dripping wet. You might
31 infer from that testimony that it was raining
32 outside. That is circumstantial evidence of the
33 fact that it was raining outside.

34 Exhibits may also provide direct or
35 circumstantial evidence. In making your decision
36 you can take both kinds of evidence into account.
37 Your job is to decide what conclusions you will
38 reach based upon the evidence as a whole, direct
39 and circumstantial.

40 Keep an open mind as the evidence is being
41 presented. Do not be influenced by sympathy for
42 or prejudice against anyone. During the trial you
43 may discuss the case amongst yourselves, but only
44 when all of you are together in the jury room.
45 You must not, however, come to any conclusions
46 about the case until you've heard all of the
47 evidence, and listen to the closing addresses for

Opening Remarks to Jury by Court**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 both sides, and receive my instructions about the
2 law. Keep an open mind.

3 Some of your family, friends, fellow workers,
4 or others, may ask you about jury duty. You must
5 not talk to them about the case, nor should you
6 discuss the case with anyone involved in it,
7 whether Mr. Fox, Ms. Capuano, who is the
8 complainant in this case, friends or family of
9 either of them, or with any of the witnesses, or
10 the investigating officers, or the lawyers, or any
11 of the friends or families of any of those people.

12 Now, if you see any of those people around
13 the courthouse you may give a very short, polite
14 greeting, a nod hello, but do not talk about the
15 case to anyone except your fellow jurors. Best
16 advice is keep your greetings very short and say
17 nothing more to anyone with any involvement in the
18 case.

19 If anyone approaches you to discuss any part
20 of the case please tell that person that you
21 cannot discuss it. You can say the judge has told
22 you that you must not. If the person doesn't
23 stop, please tell me about it and I'll deal with
24 it.

25 When you arrive at the courthouse each
26 morning and return after lunch, please go straight
27 to the jury room. Likewise, when you leave at
28 lunchtime or at the end of the day, please leave
29 directly from the jury room. Do not linger around
30 the halls or other places before or after the
31 court sittings.

32 Finally, remember your role is as jurors, not
33 lawyers, or researchers, or investigators. You
34 must not investigate or seek out any information
35 or do any research about the case, or about the
36 people involved in the case, or about the law that
37 applies to the case. Do not consult other people
38 or other sources of information, whether printed
39 or electronic.

40 Now, you will hear that this case involves a
41 website, and emails, and blog postings. Do not,
42 and I say this as firmly as I can, do not seek out
43 any information about that website. Do not go on
44 the internet looking about it. You are to decide
45 this case based on the evidence presented in this
46 courtroom.

47 Do not use the internet or electronic device

Opening Remarks to Jury by Court**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 in connection with this case in any way, and that
2 includes chat rooms, Facebook, Myspace, Twitter,
3 apps, any electronic social network. I'm sure
4 that list is out of date by now. It covers --
5 it's meant to cover everything.

6 Do not read or post anything about this
7 trial. Do not engage in tweeting or texting about
8 this trial. Do not discuss or read anything about
9 this trial on a blog. Do not discuss this case by
10 email. You must decide this case solely on the
11 evidence you hear in the courtroom. What you may
12 see or hear in the media, or from any other source
13 outside the courtroom, is not evidence and you
14 must ignore it. We count on you to follow this
15 advice, these instructions, so that the trial is a
16 fair one.

17 I'll talk to you now briefly about the
18 procedure we'll follow in the trial. Crown
19 counsel is Mr. Mark Myhre. The Crown prosecutes
20 the case. Mr. Fox is on trial in this case. He
21 will be conducting his own defence in the trial,
22 except that Mr. Tony Lagemaat will be conducting
23 on Mr. Fox's behalf the cross-examination of the
24 Crown's first witness. And Mr. Lagemaat has,
25 assisting him here today, an articling -- his
26 articling student, and I'm pronouncing this
27 correctly, Ms. Chatha?

28 MS. CHATHA: Chatha.

29 THE COURT: Chat?

30 MS. CHATHA: Ms. Chatha.

31 THE COURT: Can you spell it for me again?

32 MS. CHATHA: Sure. C-h-a-t-h-a.

33 THE COURT: Ah, that's where I went wrong. Thank you.

34 CHATHA: You're welcome.

35 THE COURT: And my apologies.

36 The Crown will present its evidence first
37 because it has the burden of proving the charge.
38 Before presenting evidence the Crown may make an
39 opening address to you about the case.

40 After the opening address the Crown will call
41 witnesses to the witness box. Various things may
42 also be filed in evidence as exhibits. Facts that
43 are admitted by the defence may also be part of
44 the Crown's evidence.

45 All persons charged with an offence are
46 presumed to be innocent under our law. This means
47 that they do not have to prove their innocence.

Opening Remarks to Jury by Court**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 They do not have to testify or present evidence.
2 The law requires the Crown to prove the charge
3 beyond a reasonable doubt.

4 If the defence does choose to present
5 evidence it may also make an opening address. In
6 making their opening addresses the Crown and the
7 defence may summarize the evidence they intend to
8 present and refer to some principles of law. But
9 remember that what they say about the evidence is
10 not itself evidence for you to consider in
11 deciding the case. What they say about the law is
12 only meant to help you understand the issues to
13 which the evidence may relate. I will explain to
14 you which principles of law apply to your
15 decision, and it is your duty to follow my
16 instructions.

17 When the Crown or the defence ask questions
18 of witnesses they have to follow certain rules.
19 One set of rules applies when they question
20 witnesses they have called, they have called, and
21 these questions are called examination in chief or
22 direct examination.

23 Another set of rules applies when they
24 question witnesses that the other side has called,
25 and these questions are called cross-examination.
26 Examination in chief or direct examination always
27 comes first, then the other side has an
28 opportunity to cross-examine the same witnesses,
29 the same witness, I should say.

30 After a witness has been cross-examined the
31 side who first called that witness may be
32 permitted to ask additional questions to clarify
33 or explain matters that have come up in cross-
34 examination, and this is called re-examination.

35 Now, notetaking. We depend on the memory and
36 judgment of all jurors to decide the case. If you
37 want to take notes during the trial to help you
38 remember what a witness said you are free to do
39 so, but remember that you may find it difficult to
40 take detailed, accurate notes, and at the same
41 time pay close attention to what witnesses are
42 saying and how they are saying it.

43 If you take notes do not be distracted from
44 your duty to observe the witnesses. You may
45 always ask to hear a recording of a witness'
46 testimony, or have some evidence read back to you,
47 but you will only have one chance to observe the

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1 appearance and behaviour of the witnesses when
2 they testify.

3 To protect the secrecy of your work you must
4 not take your notes with you at the end of our
5 sittings each day. We will make arrangements to
6 keep the notes in a secure place and return them
7 to you when we resume sitting the following day.
8 If you decide not to take notes you must still
9 listen carefully to the evidence.

10 Now, from time to time during the trial you
11 may be asked to go to the jury room while counsel
12 and Mr. Fox and I discuss legal issues. There was
13 an issue this morning that I needed to discuss,
14 and that's why we began a little late this
15 morning. It's normal, and it should not concern
16 you. We will do our best to minimize those
17 occasions, but they do arise. I ask you simply to
18 be patient if and when this happens, and I assure
19 that if at any time you are excluded from the
20 courtroom it's because it's necessary for that to
21 take place.

22 When all of the evidence has been presented
23 the Crown and the defence will each address you in
24 a final address. They will tell you their
25 positions and they'll refer to some of the
26 evidence that they say you should rely on to reach
27 the conclusion they suggest. They may also refer
28 to some of the rules of law to help you understand
29 their positions better, but again, it's for me as
30 the trial judge to tell you what rules of law
31 apply and what they mean. You must follow my
32 instructions on the law. If there is difference
33 between what I say and what Mr. Myhre or Mr. Fox
34 says about the law you must follow my
35 instructions.

36 And after that will come my summing up or
37 final instructions which will include a review of
38 some of the evidence given during the trial. But
39 you should always remember that it is only your
40 memory and understanding of the evidence that
41 counts in this case, not mine, and not that of
42 counsel. You are the judges of the facts.

43 Next I want to speak to you about assessing a
44 witness' testimony. It will be up to you to
45 decide how much or little of the testimony of any
46 witness you will believe or rely on. You may
47 believe some, none or all of the evidence given by

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1 a witness. You must ask yourself whether the
2 witness is truthful, and whether the witness is
3 reliable, and I'll give you a few questions to
4 consider during your discussions. These are not
5 all the factors but are some of them. Did the
6 witness have a good opportunity to observe the
7 event that he or she described? How long was the
8 witness watching or listening? Did anything
9 interfere with the witness' ability to observe?
10 Was there anything else happening at the same time
11 that might have distracted the witness? Did the
12 witness have a good memory?

13 Keep in mind the length of time that has
14 passed since the date of the alleged offence. Was
15 there something specific that helped the witness
16 remember the details of the event that he or she
17 described? Was there something unusual or
18 memorable about the event so that you would expect
19 the witness to remember the details? Or was the
20 event relatively unimportant at the time so that
21 the witness might easily have forgotten or be
22 mistaken about some of the details? Was any
23 inability or difficulty that the witness had in
24 remembering events genuine, or was the witness'
25 memory selective in order to avoid answering
26 questions?

27 Was the witness able to communicate clearly
28 and accurately? What was the witness' manner when
29 he or she testified? But do not jump to
30 conclusions, however, based entirely on the
31 witness' manner. Looks can be deceiving. Giving
32 evidence in a trial is not a common experience for
33 many witnesses. People react and appear
34 differently.

35 Witnesses come from different backgrounds.
36 They have different intellects, abilities, values
37 and life experiences. There are simply too many
38 variables to make the manner in which a witness
39 testifies the only or the most important factor in
40 your decision.

41 Was the witness forthright and responsive to
42 questions, or was the witness evasive, hesitant or
43 argumentative? Did the witness give his or her
44 testimony fairly, or was it tainted by self-
45 interest or bias? Does the evidence disclose any
46 reason why the witness might tend to favour the
47 Crown or Mr. Fox?

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1 Was the witness' testimony consistent with
2 the testimony of other witnesses? As you know,
3 people hear and see things differently. This
4 means we should not be surprised to find
5 discrepancies in their testimony. Minor
6 discrepancies are often unimportant, but you may
7 attach greater importance to more significant
8 discrepancies.

9 Are there any inconsistencies in the witness'
10 own testimony? If so, do these inconsistencies
11 make the testimony more or less believable and
12 reliable? Are the inconsistencies about something
13 important or minor details? Could they be honest
14 mistakes? Could they be deliberate lies? Are
15 there explanations for them? Do the explanations
16 make sense?

17 You must not decide an issue by simply
18 counting which side has more witnesses. You may
19 decide that the testimony of fewer witnesses is
20 more reliable than the evidence of a larger
21 number. It is the force of the evidence that
22 counts, not the number of witnesses.

23 Consider these questions in the context of
24 the whole of the evidence, use your common-sense
25 to decide how much weight or importance you wish
26 to give to the testimony of the witnesses.

27 I'll turn now to the fundamental principles
28 that apply. The first and most important
29 principle of law applicable to every criminal case
30 is the presumption of innocence. Mr. Fox enters
31 the proceedings presumed to be innocent, and the
32 presumption of innocence remains throughout the
33 case, unless the Crown on the evidence put before
34 you satisfies you beyond a reasonable doubt that
35 he is guilty.

36 Two rules flow from the presumption of
37 innocence. One is that the Crown bears the burden
38 of proving guilt. The other is that guilt must be
39 proven beyond a reasonable doubt. These rules are
40 inextricably linked with the presumption of
41 innocence to ensure that no innocent person is
42 convicted.

43 The burden of proof rests with the Crown and
44 never shifts. There's no burden on Mr. Fox to
45 prove that he is innocent. Mr. Fox does not have
46 to prove anything. There may be minor
47 circumstances arising in this case that -- I'll

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1 back up and correct that.

2 There may be subsidiary issues arising in
3 this case in which there is a different burden of
4 proof, and if that arises I will give you a
5 specific instruction about it at the time.

6 Now, what does the expression "beyond a
7 reasonable doubt" mean? A reasonable doubt is not
8 an imaginary or frivolous doubt. It is not based
9 on sympathy for or prejudice against anyone
10 involved in the proceedings. Rather, it is based
11 on reason and common-sense. It is a doubt that
12 arises logically from the evidence or from an
13 absence of evidence.

14 It is virtually impossible to prove anything
15 to an absolute certainty, and the Crown is not
16 required to do so. Such a standard would be
17 impossibly high. However, the standard of proof
18 beyond a reasonable doubt falls much closer to
19 absolute certainty than it does to probable guilt.
20 You must not find Mr. Fox guilty unless you are
21 sure he is guilty. Even if you believe that Mr.
22 Fox is probably guilty or likely guilty, that is
23 not sufficient. In those circumstances you must
24 give the benefit of the doubt to Mr. Fox and find
25 him not guilty because the Crown has failed to
26 satisfy you of his guilt beyond a reasonable
27 doubt.

28 I will explain to you later in the trial the
29 essential elements that the Crown must prove
30 beyond a reasonable doubt to establish Mr. Fox's
31 guilt. Those are essential elements of the
32 offences that are charged.

33 For the moment, the important point for you
34 to understand is that the requirement of proof
35 beyond a reasonable doubt applies to each of those
36 essential elements, but it does not apply to
37 individual items of evidence. You must decide,
38 looking at the evidence as a whole whether the
39 Crown has proven Mr. Fox's guilt beyond a
40 reasonable doubt.

41 If you have a doubt -- I'll back up and
42 correct that. If you have a reasonable doubt
43 about Mr. Fox's guilt arising from the evidence,
44 the absence of evidence, or the credibility, or
45 the reliability of one or more of the witnesses,
46 then you must find Mr. Fox not guilty.

47 So, in short, the presumption of innocence

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1 applies at the beginning and continues throughout
2 the trial, unless you're satisfied after
3 considering the whole of the evidence that the
4 Crown has displaced the presumption of innocence
5 by proof of guilt beyond a reasonable doubt.

6 If, based upon the evidence, you are sure
7 that Mr. Fox is guilty of the offence with which
8 he's charged you must convict him of that offence
9 since that demonstrates that you are satisfied of
10 his guilt beyond a reasonable doubt. If you have
11 a reasonable doubt whether Mr. Fox is guilty of
12 the offence with which he's charged you must give
13 him the benefit of that doubt and find him not
14 guilty.

15 Now, you've heard the indictment read. Mr.
16 Fox is charged with two offences. I'll be telling
17 you more about the charges later in the trial, and
18 about the elements of the offences, or what Crown
19 must prove beyond a reasonable doubt in order to
20 prove the offences charged.

21 For present purposes I'll give you only a
22 very brief summary. Count 1 is a charge of
23 criminal harassment. It alleges that Mr. Fox
24 engaged in conduct that caused Desiree Capuano to
25 reasonably fear for her safety or the safety of
26 someone known to her. Ms. Capuano is Mr. Fox's
27 former spouse or partner. Mr. Fox is alleged to
28 have used emails and a website between January
29 2015 and May 2016 to incite fear on her part.

30 Count 2 is a charge of possessing firearms at
31 a place other than where authorized to do so. It
32 is alleged in this charge that Mr. Fox was
33 licensed to possess certain firearms, but that
34 between May 18 and June 3rd, 2016 he had the
35 firearms at a place that was not one where he was
36 authorized to have them.

37 After all of the evidence has been presented
38 I will give you complete instructions on the law
39 that applies to the essential elements of the
40 offences charged, and to any other issues that you
41 must consider. You will -- I'm going to ask you
42 to strike out the next few lines which shouldn't
43 be there. As I said, you have to follow what I'm
44 saying, not what I've said -- not what's in the
45 written document.

46 Later I will ask you to choose one juror to
47 act as your foreperson. The foreperson will lead

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1 your discussions and will announce your verdict in
2 the courtroom at the end of the case. You do not
3 have to choose that person immediately. As the
4 trial continues, however, please think about which
5 one of you would be best suited to perform that
6 role. Get to know each other a little before you
7 choose your foreperson.

8 Secrecy. All juror discussions are secret,
9 except for telling me about any problems you must
10 not tell anyone anything about your discussions,
11 unless that information was disclosed in open
12 court. To do so would be a criminal offence. You
13 should feel confident that what happens in the
14 jury room will always be private. This is to
15 encourage full and frank discussion with your
16 fellow jurors. In other words, you need not worry
17 that something you say in the jury room will be
18 repeated anywhere else.

19 If something happens during the course of the
20 trial that may affect your ability to do your duty
21 as a juror please write it down, put it in a
22 sealed envelope and deliver it to Mr. Sheriff who
23 will give it to me.

24 If at any time you have trouble seeing or
25 hearing any part of the proceedings please let me
26 know. Just put up your hand, make sure you get
27 noticed and tell me.

28 We will be starting each day at ten o'clock,
29 sitting through until lunch at 12:30. We'll have
30 a 15-minute break usually around ten past 11:00.
31 We're going to have one a little bit later today.
32 The precise time will vary a bit from day-to-day
33 by a few minutes. In the afternoon we'll start at
34 two o'clock, we'll continue until 4:00, again with
35 a 15-minute break usually around three o'clock.

36 There may be occasions when we'll need to go
37 a little longer, perhaps a little earlier,
38 depending on the witness schedule. Sometimes we
39 will -- it's difficult to know precisely how long
40 a witness will be in their evidence, and we
41 obviously want to accommodate witnesses within
42 reason.

43 The Crown and the defence will do their best
44 to make sure that each day is filled. Sometimes
45 it doesn't work out that way for reasons that we
46 simply can't foresee.

47 From time to time it may be necessary for you

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1 to go somewhere, do something during the hours
2 when we would normally be sitting. If it's
3 important we will do our best to help you out.
4 But please remember that we have to try this case
5 within a reasonable time and in an organized way,
6 and a fair way. So if something of this nature
7 does come up, please let me know as soon as
8 possible in a written note given to Mr. Sheriff
9 and he'll give it to me.

10 Finally, in conclusion, it's your duty to
11 watch and listen to all of the proceedings,
12 including the addresses, the evidence, and my
13 instructions. You must listen to and observe
14 these proceedings without prejudice, or bias, or
15 sympathy.

16 At the end of each day you're free to go
17 until the next day. You do not have to stay
18 together. But when all of the evidence has been
19 presented and Crown counsel and Mr. Fox have
20 addressed you, and I've told you about the legal
21 principles that apply in my final instructions to
22 you, then you go to the jury room together to
23 decide the case, and at that point you are
24 sequestered, which means you must stay together
25 until you've reached our verdict. Meals and
26 overnight accommodation will be arranged for you
27 if necessary.

28 I will do my best to give you advanced notice
29 as this trial goes along of when that stage --
30 when we will likely reach that stage so that you
31 will not -- it will not come as a surprise to you
32 without notice.

33 One more thing before we break. I'm going to
34 ask Crown counsel to read aloud the names of the
35 witnesses who will be called for the Crown. I
36 know this was done at the jury selection, but I
37 understand there may have been some witnesses left
38 off the list.

39 MR. MYHRE: Yes. Thank you, My Lady. So, the
40 witnesses that I expect you will hear from at this
41 trial are Desiree Capuano, Corporal Brent Wilcott,
42 Constable Jason Potts, Constable Jean-Philippe
43 Dupont, Manvir Mangat, and U.S. Agent Frank
44 Spizuoco.

45 THE COURT: Thank you, Mr. Myhre. Thank you, members
46 of the jury, for your attention to my opening
47 remarks. We'll take the morning break now and

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1 we'll resume -- maybe a little longer of a break
2 than usual because there is a matter that I need
3 to discuss with -- with counsel and Mr. Fox.
4 Thank you.

5
6 (JURY OUT)

7
8 THE COURT: Mr. Myhre, do you wish to raise the
9 evidentiary issues now just in --

10 MR. MYHRE: We could do it now or after the break,
11 whatever Your Ladyship prefers.

12 THE COURT: Well, when do you need a determination on
13 them?

14 MR. MYHRE: Before the opening address.

15 THE COURT: Then I think now is better if it can be
16 done briefly.

17 MR. MYHRE: It's fairly straightforward. I'm just
18 thinking of streamlining things a little bit. I
19 understand from the last pretrial conference that
20 Mr. Fox doesn't have any issue with the accuracy
21 of the website content that we've put in the book
22 of documents.

23 And, so, I wonder if we could simply, if it's
24 admitted that that's accurate, if that could be
25 marked as an exhibit?

26 THE COURT: Accurate in what sense? I think that's
27 important to specify. Accurate in representing
28 documents taken from the website and representing
29 emails sent and received?

30 MR. MYHRE: Simply that they are accurate excerpts from
31 the website.

32 THE COURT: That's ambiguous. Accurate as to their
33 content, accurate as to what they -- what they
34 are? Do you mean authentic?

35 MR. MYHRE: Simply that -- I'm not sure how to express
36 it, I guess. If you went to the website it would
37 look as it appears in these books.

38 THE COURT: Accurate representations of what appears --
39 appeared on the website as of a particular date?

40 MR. MYHRE: Yes, I suppose as of the dates that are
41 given on the various documents that are here.

42 THE COURT: Well, is that clear on each document?

43 MR. MYHRE: Or perhaps we could say accurate as of May
44 26th, 2016.

45 THE ACCUSED: I would agree that the content, the
46 specific content that Mr. Myhre is referring to
47 would be accurate, yes. I do have a concern,

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1 though, that he's being very selective in the
2 content that he's choosing to put before the jury.
3 So I don't believe that it's -- that it gives an
4 accurate depiction of the website or of the gist
5 of the website.
6 THE COURT: Can we say accurate representations of some
7 of the material that appeared on the website?
8 THE ACCUSED: Yes.
9 THE COURT: But I think we do need an as of date.
10 THE ACCUSED: What Mr. Myhre proposed, I believe, May
11 26th, 2016. The website content has not changed
12 since I've been in custody, and that was May 27th,
13 2016. So, from that date up to today there should
14 be no changes on the website.
15 THE COURT: I see. Is that an acceptable way of
16 expressing it?
17 MR. MYHRE: I believe so, My Lady.
18 THE COURT: Is that going to be presented as an
19 admission, a formal admission?
20 MR. MYHRE: I'm in Your Ladyship's hands on that. I
21 could put something in writing.
22 THE COURT: It doesn't have to be in writing. And
23 also, presumably it doesn't apply to the emails?
24 MR. MYHRE: These emails are excerpts from the website,
25 and so they are -- the admission would cover that
26 the emails as presented in these excerpts are
27 accurate depictions of what appeared on the
28 website as of May 27th, 2016, which would not
29 necessarily include that the content is what
30 actually was exchanged between the parties at
31 whatever date, simply that, well, no more than the
32 admission is, that it accurately depicts what was
33 on the website as of May 27th.
34 THE COURT: All right. Anything additional, Mr.
35 Lagemaat?
36 MR. LAGEMAAT: Yes, My Lady, before you make a decision
37 on this I do have a brief submission and I do
38 believe it concerns me. The *Criminal Code*
39 specifies I'm here to cross-examine the
40 complainant, and I would like direction from the
41 court the role you would like me to take in the
42 direct examination, if any? And if you do want me
43 to take an active role in objecting if there's
44 something I determine not admissible in direct
45 evidence, then I would have a submission on the
46 admission of the book as a whole, whether I see
47 certain things that may be more prejudicial in the

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1 book.
2 And if you do not wish me to take any role in
3 the direct examination, then Mr. Fox, I'm not sure
4 if he has submissions on that, or if he wants the
5 book admitted as a whole. I mean, the wording of
6 the *Criminal Code*, s. 486, says "appoint counsel
7 to conduct the cross-examination." I expect there
8 will be some issues in direct examination where,
9 if I was counsel, I would oppose. If I was
10 counsel for the accused, I mean.
11 THE COURT: Is it appropriate for me to ask Mr. Fox for
12 his views on --
13 MR. LAGEMAAT: Yes, I -- I would expect -- I would
14 expect that, My Lady.
15 THE COURT: -- on this? Do you understand the issue
16 Mr. Lagemaat is raising?
17 THE ACCUSED: I do, yes. I would ask -- what I would
18 like is, before making any submissions on this
19 topic, the opportunity to confer briefly with Mr.
20 Lagemaat.
21 THE COURT: All right. That seems reasonable.
22 THE ACCUSED: Unfortunately, given my circumstances,
23 being in the jail, we haven't had a lot of time to
24 confer prior to this. I just need a couple of --
25 a couple of minutes.
26 THE COURT: All right. Does that seem appropriate, Mr.
27 Myhre?
28 MR. MYHRE: Yes, My Lady. Thank you.
29 THE COURT: All right. So we'll come back to that.
30 Was there another issue?
31 MR. MYHRE: There is another issue. So, an issue, as
32 Your Ladyship knows, that arises with the screen
33 is the issue of identity. I don't understand
34 there to be any dispute. Maybe we could canvass
35 this with Mr. Fox at some point after Ms. Capuano
36 has actually testified that the person who's
37 sitting here is the person that she'll be
38 referring to as Richard Riess or Patrick Fox. So,
39 the Crown would seek that admission, that Mr. Fox
40 is the person being referred to as Richard Riess
41 or Patrick Fox by Desiree Capuano.
42 THE COURT: All right. Is that something that might
43 usefully be discussed, Mr. Lagemaat, Mr. Fox,
44 while we're stood down?
45 MR. LAGEMAAT: I'd like to be a little bit careful, My
46 Lady, as I don't see it as my role to give advice
47 on a proper trial issue such as identity.

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1 THE COURT: Well, presumably it relates to the direct
2 examination of Ms. Capuano.
3 MR. LAGEMAAT: Okay. I will have that discussion, My
4 Lady.
5 THE COURT: All right. Mr. Fox, were you about to say
6 something else?
7 THE ACCUSED: No, no, I agree with that. That's fine.
8 THE COURT: All right. Anything else before we stand
9 down? No?
10 MR. LAGEMAAT: No, thank you.
11 THE COURT: All right. Thank you.
12 MR. LAGEMAAT: Yes, perhaps we should take a little bit
13 longer than the standard 15 minutes? I understand
14 I can meet with Mr. Fox right behind the door
15 there, but --
16 THE COURT: I'm wondering whether we should -- we're
17 taking a little longer. That takes us to noon.
18 Then there are going to be submissions, and I'll
19 need to make a decision on a couple of these
20 things. I'm wondering whether we should send the
21 jury for an early lunch.
22 MR. LAGEMAAT: There's more issue I need to -- I need
23 to bring up, My Lady, is that when I took this
24 appointment, I have a matter on Wednesday morning
25 that I could not get anyone in my firm, or a
26 student, to speak to. I have to be there. So I'm
27 going to ask My Lady to stand this down for
28 Wednesday morning. I do not expect to be as long
29 in cross-examination as Mr. Fox had estimated.
30 I'm hoping that's not going to be a problem.
31 THE COURT: You're hoping that Wednesday morning is not
32 going to be a problem?
33 MR. LAGEMAAT: Yes. I have -- I could potentially be
34 here by 11:00. I don't expect to lose the whole
35 morning, but I -- I can -- it's a matter in
36 Surrey, it won't be long, in Provincial Court, and
37 I could tell the court that I need to be called
38 first because I'm in the middle of this trial.
39 But it's a matter I cannot get anyone else to
40 appear in.
41 THE COURT: Is it a matter that could be adjourned?
42 MR. LAGEMAAT: It -- it's -- it's a matter that's taken
43 a long time to get into court, and there's been
44 two missed appearances already. It's a civil
45 matter to do with service and I fear adjourning it
46 would create problems down the road. But if My
47 Lady wants me to look into it I can see.

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1 THE COURT: Is there some way that we can find a way to
2 fill that time with something that doesn't involve
3 Mr. Lagemaat?
4 MR. MYHRE: I could look into the possibility, My Lady,
5 certainly.
6 THE COURT: If that could be done by agreement, and if
7 it wouldn't disturb the jury's ability to follow
8 the flow of the evidence by interrupting it with
9 something else. It may be that it's not going to
10 be a fruitful idea, but I just raise it.
11 All right, we will -- ah, where were we? I
12 was wondering whether I should ask the jury to
13 come back, say, at 1:30 and we'll start in the
14 afternoon, or is there a reasonable prospect of us
15 getting to the Crown opening this morning?
16 MR. LAGEMAAT: I don't need a break, My Lady. So I
17 think 15 minutes would be enough for me to go
18 behind the door and meet with Mr. Fox.
19 THE COURT: All right. We'll take the normal break.
20
21 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)
22 (PROCEEDINGS RECONVENED)
23
24 (JURY OUT)
25
26 THE COURT: Where are we on these issues?
27 MR. LAGEMAAT: I think we're left with -- there's a few
28 things that can't be decided until I know my role
29 in the direct examination.
30 THE COURT: Have you discussed your concerns with Mr.
31 Myhre?
32 MR. LAGEMAAT: Yes, I have. We've discussed it
33 previous to today, too. It's my position, My
34 Lady, that the wording of the *Criminal Code* is
35 that I am here purely to cross-examine the
36 complainant. And if I'm to take part in the
37 direct examination there will be other issues
38 arising that I'm not -- don't want to have to deal
39 with. I would prefer to just remain as -- to
40 cross-examine. That's my position on that issue,
41 My Lady.
42 And -- and I've discussed with Mr. Fox, he's
43 prepared to be active in the direct examination
44 if -- if required.
45 THE COURT: All right. Mr. Myhre, do you have a
46 submission? Mr. Lagemaat, you're really -- I'm
47 trying to situate this. You're really seeking

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1 direction as to how you wish --
2 MR. LAGEMAAT: Exactly, My Lady.
3 THE COURT: -- how the court wishes you to proceed?
4 MR. LAGEMAAT: Exactly.
5 THE COURT: And there's no particular issue you're
6 raising now, but you were saying that you expect
7 that if you were appearing as defence counsel, or
8 in a role akin to that, you would have some issues
9 that you'd raise during the direct examination?
10 MR. LAGEMAAT: That's -- that's correct, My Lady.
11 And -- and a difficulty might be where issues I
12 might have as defence counsel might have to do
13 with other matters than the cross-examination of
14 the complainant. They might come up in my mind to
15 do with other issues that don't concern me in the
16 cross-examination. So, it might be, at times,
17 difficult to draw that line.
18 THE COURT: All right. Thank you. Mr. Myhre?
19 MR. MYHRE: My Lady, it seems to me that we could
20 proceed on the basis that if Mr. Fox sees fit to
21 object he could make an objection on the
22 understanding that then we would have to stand
23 down and deal with it. And if that becomes a
24 problem, because you could see how there would be
25 the potential for somebody to really disrupt the
26 trial with spurious objections, then we could
27 revisit this issue.
28 But, as we've seen Mr. Fox's behaviour in
29 court, he's been very polite and has not been
30 disruptive of the court proceedings.
31 THE COURT: I think the issue is a bit more
32 fundamental, which is for Mr. Lagemaat, how is he
33 to participate? Is he to participate as though he
34 were defence counsel, or in a more limited role,
35 simply conducting the cross-examination, which
36 obviously requires him to pay attention to the
37 direct examination and to understand the case, but
38 not to play -- do you have a submission on that?
39 MR. MYHRE: It seems to me ambiguous, My Lady. I don't
40 know -- I don't know the answer to that one. I
41 mean, we have -- the only case that we have that I
42 have seen that relates to defence counsel's role,
43 or, sorry, appointed counsel's role is that case
44 that we saw in the 486.3 application from Justice
45 Cote where he talks for a few paragraphs, and
46 essentially likens the appointed counsel's role to
47 defence counsel's role. But I don't think Justice

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1 Cote in that judgment actually addressed whether
2 there was any scope for how that affected the
3 direct examination of the complainant.

4 THE COURT: All right. Thank you. Mr. Lagemaat, you
5 indicated that you view your role as more limited,
6 and as defence counsel, and in the absence of any
7 different submissions that's how I view it, too.
8 It's the language of the *Criminal Code*.

9 The place in which it appears in the *Criminal*
10 *Code*, or the provision that empowers a court to
11 appoint counsel to conduct a cross-examination,
12 indicates that it's a measure intended to -- as a
13 form of protection for certain witnesses. The
14 appointment is not as defence counsel, it's not as
15 *amicus curiae*. While it may be helpful to Mr. Fox
16 to have you as a source of information from time
17 to time if you're willing to assist him, I don't
18 see that form of assistance as intrinsic to your
19 role as appoint -- as counsel appointed to cross-
20 examine. Is that sufficiently --

21 MR. MYHRE: Yes, I understand, My Lady, and I can say
22 some of the issues I would have raised in the
23 evidence Mr. Fox does not take issue with, so --

24 THE COURT: Now, what about the other issue of -- of
25 the identity?

26 MR. MYHRE: I understand that Mr. Fox doesn't admit
27 that he is the person Ms. Capuano refers to as
28 Richard Riess or Patrick Fox, and so the Crown
29 will be considering how to deal with that.

30 THE COURT: All right.

31 MR. MYHRE: Your Ladyship, I think it might be worth
32 addressing one of the issues that my friend sees
33 so that it's all out on the record.

34 In these excerpts Mr. Fox details how certain
35 events unfolded where Ms. Capuano took custody of
36 their son, Gabriel, while he was incarcerated, and
37 I think my friend had some concerns about that
38 fact being before the jury. It seems to me that
39 that is part of the narrative here and the jury
40 can get an instruction about the lack of
41 significance of that fact.

42 And I also expect Mr. Fox, as -- as I believe
43 we've canvassed at a previous pretrial conference,
44 does have a criminal record related to that, and
45 the Crown will be putting it to him if he
46 testifies, and he has always indicated his
47 intention to testify.

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1 And, so, for those reasons the Crown doesn't
2 have any concerns about the prejudicial nature of
3 that fact. So I think we should canvass with Mr.
4 Fox if he has a view on that.
5 THE COURT: Could you say it again, the evidence about?
6 MR. MYHRE: The fact that he was incarcerated in --
7 between 2009 and 2011.
8 THE COURT: And the reason for the -- that
9 incarceration?
10 MR. MYHRE: My understanding is that there was an
11 eventual conviction for perjury. That fact, I
12 don't think, comes into the evidence, and I don't
13 think it's in the website, and it wouldn't be
14 before the jury unless Mr. Fox testified.
15 THE COURT: So, I need more of an understanding about
16 why that's part of the narrative, a necessary part
17 of the narrative?
18 MR. MYHRE: First of all, it's part of the website
19 excerpts. Mr. Fox, as you know, has a background
20 section, roughly 20 pages long, where he details
21 the whole history from his perspective of this
22 custody battle over Gabriel and his interactions
23 with Ms. Capuano.
24 Where that becomes relevant is that when Ms.
25 Capuano eventually took custody of Gabriel it was
26 in part due to the fact that Mr. Fox was in
27 custody, and so she was able to do that.
28 Essentially, she went to the home of a family
29 friend who she learned was looking after Gabriel
30 and took custody of him. And, so, if that fact
31 wasn't before the jury they might wonder, well,
32 where was Mr. Fox? In addition, it's already in
33 the website.
34 THE COURT: All right. Mr. Fox, what's your view on
35 whether that should be before the jury or not?
36 THE ACCUSED: Generally, I would be of the opinion that
37 the period of time that I was in custody in the
38 U.S., which was actually 2007 to 2011, would be
39 prejudicial. But I do -- realistically, I have a
40 bit of a -- not a concern, but realistically, I
41 believe that most of the jurors are probably going
42 to be somewhat aware of that because it is going
43 to be out there, even though I realize they were
44 admonished not to do that research.
45 And I would have a bit of a concern that --
46 THE COURT: I think -- stop, Mr. Fox.
47 THE ACCUSED: Sorry.

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1 THE COURT: Please make your submissions on the basis
2 that the jurors will follow the instructions --
3 THE ACCUSED: Okay.
4 THE COURT: -- they're given. So, make it on the basis
5 -- what we're trying to do here, and remembering
6 that the jurors have been told they're to judge
7 this case on the evidence presented in the
8 courtroom. And what we're trying to do now is
9 discuss what evidence should appropriately be
10 presented in the courtroom.
11 THE ACCUSED: Well, given that, I think that putting
12 the fact that I was in custody in the U.S. I think
13 would be prejudicial. And as Mr. Myhre had
14 mentioned, Ms. Capuano did take custody of our son
15 three weeks prior to me being released from
16 Homeland Security custody, not on criminal
17 matters, but I was purely in [indiscernible]
18 custody. Part of the reason she did so, and this
19 will come up in her testimony, was because she
20 knew that I was going to be released, and Family
21 Court at that time, three months later, ordered
22 her to return Gabriel to my custody.
23 I mean, I think she's -- I think if the jury
24 is going to be aware of that time that I was in
25 custody, it's going to bring up a lot of other
26 questions which then might cause us to get off-
27 track.
28 So, I would be of the opinion that that
29 information probably should not be important at
30 this time.
31 THE COURT: Do you have a suggestion, Mr. Myhre?
32 MR. MYHRE: Yes, I'll just rip the first few pages out
33 of the background in this book of excerpts. I
34 have no problem with that. And then I'll be --
35 I'll be fairly leading when I'm questioning Ms.
36 Capuano about that and I'll just let her know this
37 is not something we're going to bring up with the
38 jury. I have no issue with the jury not being
39 presented with that if Mr. Fox is opposed.
40 THE COURT: All right.
41 THE ACCUSED: I would like to recommend or suggest
42 possibly maybe redacting this specific information
43 rather than removing the first few pages because
44 there is other information in those first few
45 pages which I believe is relevant. For example,
46 the circumstances under which Ms. Capuano and I
47 separated and I had custody, et cetera, because

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1 there is that dispute, her story versus my story.
2 THE COURT: Is that doable over the lunch hour? No?
3 MR. MYHRE: So, My Lady, and my response to that is
4 that Mr. Fox, if he chooses to testify, will have
5 that opportunity.
6 THE COURT: All right. So, over the lunch hour you're
7 going to revise the books that will be given to
8 the jury, Mr. Myhre. The parties will be -- is
9 there something you need to discuss? If there
10 is --
11 THE ACCUSED: No, I don't think --
12 THE COURT: No. I don't want to force you ahead if
13 there's something that needs to be discussed about
14 this.
15 MR. MYHRE: Pardon me, My Lady. I just suggested to
16 Mr. Fox that I'd just rip out a single page that I
17 think deals with that period of time. So then the
18 jury sees some of the background, maybe a missing
19 page.
20 THE COURT: Very well.
21 THE ACCUSED: I don't oppose that.
22 THE COURT: I'm sorry, I didn't hear?
23 THE ACCUSED: I don't oppose that. Sorry, My Lady.
24 THE COURT: All right. Can you tell me which page that
25 is, or perhaps when you come back and if you're
26 confident that's what you're doing.
27 Now, what about references to the children by
28 name in this trial, is that an issue?
29 THE ACCUSED: I have an objection to that.
30 MR. MYHRE: I should canvass that with Ms. Capuano.
31 THE COURT: All right.
32 MR. MYHRE: It seems to me that that information is
33 already widely disseminated both through this
34 website and the news reporting, but I should
35 double check that.
36 THE COURT: Very well. Mr. Myhre, Mr. Fox is trying to
37 get your attention on that point, I think.
38 MR. MYHRE: Mr. Fox just asked me to canvass it with
39 Gabriel, as well. So I'll try to do that.
40 THE COURT: Is there anything else we need to deal with
41 before I ask the jury to come in, and Mr. Myhre,
42 you'll make your opening address, I take it.
43 Anything else?
44 THE ACCUSED: No.
45 THE COURT: Mr. Lagemaat?
46 MR. LAGEMAAT: No.
47 THE COURT: Everything fine from your --

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1 MR. MYHRE: Nothing else, My Lady.
2 THE COURT: All right.
3 MR. MYHRE: My Lady, I will be -- as you can see, I've
4 set up the podium right there. I'm slightly
5 concerned that it may block that juror's view.
6 But if that is the case, then we could maybe
7 rectify that over the lunch hour. I sat in that
8 chair and it seemed to me if I leaned slightly to
9 the right I could see the witness box, but I won't
10 know for sure until that person actually sits
11 there and I'm standing in front of him.
12 THE COURT: I would think you'd need to move it more
13 to -- toward the bench. Is that what you meant by
14 the right?
15 MR. MYHRE: Well, yeah, but the problem is there is a
16 step there.
17 THE COURT: Ah. Well, you'll need to do a test run
18 over the lunch hour. All right. Ready?
19 MR. MYHRE: Yes.
20 THE COURT: Please.

21
22 (JURY IN)

23
24 THE SHERIFF: The jury, My Lady.
25 THE COURT: Thank you, members of the jury. Mr. Myhre
26 is now going to make the Crown's opening address
27 to you.
28

29 **OPENING REMARKS TO JURY BY CROWN:**

30
31 MR. MYHRE: Ladies and gentlemen, as you know, I am
32 presenting the case to you against Patrick Fox,
33 and in the next five minutes here I'm going to
34 give you a fairly brief overview of the witnesses
35 I expect you're going to hear from, and the
36 purpose is to give you context, so that when you
37 actually hear them you'll have some idea of how it
38 fits in. What I say to you in the next few
39 minutes is not the evidence. The evidence is what
40 you hear from those witnesses.
41 The first witness, and the central witness in
42 this matter, of course, is Desiree Capuano. She's
43 a 36-year-old mother of two. She works in the IT
44 field. She lives in Arizona.
45 You're going to hear that in the year 2000,
46 when she was 19, she met Mr. Fox, who was then 26
47 years old. They soon became pregnant, they got

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1 married, and in September of 2000 they had a child
2 whose name is Gabriel.

3 And you're going to hear over the course of
4 this trial, I expect, two different versions of
5 the events that took place between then and 2011,
6 and you're going to hear that in 2011 to 2014
7 there was a bitter custody dispute. Ms. Capuano
8 will tell you her version of events, and you'll
9 also be presented with excerpts from a website
10 that contain Mr. Fox's version of events.

11 At the end of the custody battle Ms. Capuano
12 had custody of Gabriel, and Mr. Fox stated that it
13 was his goal to do everything in his power to make
14 her life as miserable as possible, hopefully so
15 miserable she would commit suicide. He did this
16 in two ways; through the tone and content of his
17 email communications with her, and through a
18 website that he created, www.desireecapuano.com.
19 And you're going to be spending most of her
20 testimony the rest of today and into tomorrow
21 going through some of the emails and some of the
22 website. As we go through them Ms. Capuano is
23 going to tell you how these emails and the website
24 affected her, and what she tried to do to get them
25 to stop.

26 The remaining witnesses in the Crown case are
27 fairly brief. You'll hear from RCMP Constable
28 Jean-Philippe Dupont about a warning that Mr. Fox
29 was given in the summer of 2015.

30 In relevance to the s. 93 charge you'll hear
31 from Manvir Mangat, the owner of a business called
32 "The Packaging Depot" about boxes Mr. Fox shipped
33 between March and May of 2016 to an address in
34 California.

35 You'll hear from U.S. ATF Agent Frank
36 Spizuoco, that he attended that residence and
37 found four handguns registered to Mr. Fox,
38 concealed inside a desktop computer. And you will
39 also listen to an audio-recording of Mr. Fox's
40 interrogation by the RCMP on June 16th, 2016 in
41 which he admitted shipping his firearms to the
42 United States, admitted to being the author of the
43 website, and admitted that his intention was to
44 ruin Ms. Capuano's life.

45 A brief word of caution, you're going to hear
46 a lot about the interactions between these two
47 people. What you hear about your history is meant

Opening Remarks to Jury by Crown**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 to give you context for what followed, and there's
2 a potential to be sidetracked about who really did
3 what to who in 2001, 2005, 2012.

4 At the end of the day the issues that you'll
5 have to decide, of course, are whether it's proven
6 beyond a reasonable doubt that Mr. Fox -- that his
7 actions between January the 11th, 2015 and May the
8 27th, 2016, that is the website that he created,
9 the emails that he sent, caused her to have, that
10 is Ms. Capuano, legitimate fear for her safety,
11 and fear for safety encompasses a person's bodily
12 and mental wellbeing.

13 You'll have to decide whether in May of 2016
14 he possessed his firearms in a place that he
15 wasn't authorized to. So, as we go through email
16 after email, and through the website in some
17 detail, don't lose sight of those fine questions.

18 So, without further delay, then, the Crown's
19 first witness is Desiree Capuano. My Lady, I
20 wonder if I could just have a brief word with her
21 outside?
22

23 (JURY IN)
24

25 THE CLERK: If you could stand, please?
26

27 **DESIREE CAPUANO**
28 a witness called for the
29 Crown, affirmed.
30

31 A Yes, ma'am.

32 THE CLERK: Please state your full name and spell your
33 last name for the record.

34 A Desiree Capuano, C-a-p-u-a-n-o.

35 THE CLERK: Thank you. You may be seated.

36 THE COURT: Now, before you start, Mr. Myhre, I would
37 just like to say a couple of things to the jury
38 about some of the procedures we're following.

39 You're going to have to move out of my way,
40 please. Thank you.

41 Members of the jury, you may have noticed
42 that Ms. Capuano, who is the next witness, is
43 testifying behind a screen that has been placed
44 next to her, but in a fashion that allows you to
45 see her, and also has with her a support person.

46 MR. MYHRE: Ms. Michelle Vickers.

47 THE COURT: All right. Thank you. Who is someone Ms.

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1 Capuano knows and who will play absolutely no part
2 in Ms. Capuano's testimony.

3 These procedures, using the screen and having
4 a support person with Ms. Capuano are used simply
5 to give her, as a witness, a comfortable situation
6 in which to testify. The fact that we're using
7 these procedures has nothing to do with the guilt
8 or innocence of Mr. Fox. These procedures are not
9 evidence of anything. The fact that the
10 procedures are used must not affect your
11 assessment of the evidence in any way. Thank you.

12 Ms. Capuano's just shifted over a little bit
13 in the witness box. All right.

14 Now, with Mr. Myhre standing where he's now
15 standing, does that obscure anybody's view?

16 MR. MYHRE: You can see around me? Okay.

17 THE COURT: Thank you.

18

19 **EXAMINATION IN CHIEF BY MR. MYHRE:**

20

21 Q Ms. Capuano, you are 36 years old?

22 A Yes.

23 Q You were born in Florida, you grew up in Alaska
24 and then Washington?

25 A Yes.

26 Q And you currently live in Arizona?

27 A Yes.

28 Q Generally speaking, you work in the IT field?

29 A Yes.

30 Q You live, right now, with your partner, James
31 Pendleton?

32 A Yes.

33 Q You've been dating -- or you started dating him in
34 July of 2014?

35 A Yes.

36 Q And you moved in together in the summer of 2015?

37 A Yes.

38 Q You have two sons, Sage and Gabriel?

39 A Yes.

40 Q Gabriel's 16?

41 A Yes.

42 Q Sage is 13?

43 A Yes.

44 Q And I understand that in January of 2000, you met
45 a person named Richard Riess at a bar in Phoenix?

46 A Yes.

47 Q You were 19?

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1 A Yes.
2 Q And how old was Richard?
3 A Twenty-five. 24, 25.
4 Q At some point, Richard Riess stopped using the
5 name Richard Riess?
6 A Yes.
7 Q Roughly, when was that?
8 A The summer of 2014.
9 Q And what name did he start using?
10 A Patrick Fox.
11 Q In March of 2000, you became pregnant with
12 Richard's child?
13 A Yes.
14 Q The two of you got married in Las Vegas in August
15 of 2000?
16 A Yes.
17 Q And Gabriel was born somewhat prematurely in
18 September of 2000?
19 A Very prematurely.
20 Q You separated from Mr. Fox, or Mr. Riess, in 2001?
21 A Yes.
22 Q Or the two of you separated. There was a custody
23 battle over Gabriel at that point in time?
24 A Yes.
25 Q There were court hearings involved?
26 A Yes.
27 Q And at the end of it, I understand there was a
28 joint custody order where Gabriel was to go back
29 and forth between your home in Florida, and
30 Richard's home in California?
31 A Yes.
32 Q What was your belief about your marital status
33 with Richard at the end of the court proceedings?
34 A I was under the impression that the divorce
35 proceedings were included with the custody so that
36 had been taken care of. I was young and naive,
37 but --
38 Q You were 21 when the custody --
39 A Yes.
40 Q -- was resolved? I understand that very shortly,
41 within about a month, or so, you did not have the
42 funds to fly Gabriel back from California?
43 A Correct.
44 Q And that Richard ended up with custody by default?
45 A Yes.
46 Q And not long after that, Richard stopped
47 communicating with you?

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1 A Yes.
2 Q And you were unable to reach Gabriel?
3 A Yes.
4 Q In 2002, you married a man named Michael Capuano?
5 A Yes.
6 Q You had your son Sage with him in 2003?
7 A Yes.
8 Q I understand the next time you had contact with
9 Gabriel was in 2005?
10 A Yes.
11 Q And that Richard had brought Gabriel to see your
12 mother?
13 A Yes.
14 Q They had a series of visits, your mother and
15 Gabriel did?
16 A Yes.
17 Q But they didn't leave any contact information?
18 A No.
19 Q Did you want to have contact with Gabriel?
20 A Yes.
21 Q Were you doing anything to try to get in contact
22 with him?
23 A After 2005, when the phone number didn't work, I
24 did reach out to various sources, legal sources,
25 but never made any progress with finding him.
26 Q When you say various sources, who are you
27 referring to?
28 A Lawyers, I spoke with attorneys, I spoke with
29 police in various states, Missing Persons, CPS.
30 Q That's Child Protection Services?
31 A Correct, sorry, Child Protection Services, yes. I
32 left my information with Child Protective Services
33 in Arizona and California every six months.
34 Q So in 2005, did you have any interaction with
35 Gabriel?
36 A After the phone call, no. I spoke with him on the
37 phone once in 2005 while he was at my mother's
38 house.
39 Q I understand that you spoke to him on the phone
40 again in 2007?
41 A Correct.
42 Q The circumstances of that were that Richard had
43 contacted your mom?
44 A Yes.
45 Q Asking for your contact information so Gabriel
46 could contact you?
47 A Correct.

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1 Q And then Gabriel did phone you?
2 A Correct.
3 Q In 2009, you separated from Michael Capuano?
4 A Yes.
5 Q And then I understand that in 2011, Richard sent
6 you a letter, inviting you to re-establish some
7 contact with Gabriel --
8 A Correct.
9 Q -- and apologizing for withholding him from you?
10 A Yes.
11 Q There were a few letters back and forth and then
12 eventually he gave you Gabriel's contact
13 information?
14 A Correct.
15 Q And it was then that you learned that Gabriel was
16 actually living with a friend of Richard's named
17 Liz Munoz, in the Los Angeles area?
18 A Correct.
19 Q And then you drove to California and you actually
20 met with Gabriel in June of 2011?
21 A Yes.
22 Q That was the first time you'd seen him since 2001?
23 A Yes.
24 Q And I understand that initially it was going well,
25 but then very short in -- in July of 2011, Liz
26 told you that she was concerned that you were
27 going to take Gabriel, and she told you that she
28 was going to, essentially, hide him from you?
29 A Yes.
30 Q I understand that after that, you got some legal
31 advice?
32 A Yes.
33 Q You then drove to California and with the
34 assistance of police, took custody of Gabriel?
35 A Yes.
36 Q Then in October 2011, Richard filed for custody of
37 Gabriel in California?
38 A Yes.
39 Q In November, without having heard from you, I
40 understand that the judge in California ordered
41 that Gabriel should be immediately returned to
42 California?
43 A Yes.
44 Q There was a court hearing where you were heard
45 then?
46 A Yes.
47 Q In November 2011, and at the end of that, the

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1 order was for joint custody with Richard having
2 primary physical custody and a visitation plan
3 where Gabriel would visit you on school breaks?
4 A Correct.
5 Q And how did you feel about that arrangement?
6 A I was okay with that arrangement. That was what
7 Gabriel said he wanted so --
8 Q And you flew Gabriel to Arizona for winter
9 break --
10 A Yes.
11 Q -- over the winter 2012 into January 2013?
12 A Yes. Multiple visits throughout 2012, but, yes,
13 also for that one.
14 Q And so then again in the summer of 2012 --
15 A Yes.
16 Q -- he flew to Arizona --
17 A Yes.
18 Q -- and stayed with you for a period of time?
19 A Yes.
20 Q In October -- on October 2nd, 2012, your then-
21 partner, Chris Lochner [phonetic] got into some
22 trouble with police?
23 A Yes.
24 Q They found a gun that he had stolen and put into
25 your attic?
26 A Yes.
27 Q And he was arrested?
28 A Yes.
29 Q And I understand you separated from Mr. Lochner on
30 that day?
31 A Absolutely.
32 Q And I understand that soon after that, Child
33 Protective Services came to your home?
34 A Yes.
35 Q You later learned from Richard that that was at
36 Richard's instigation?
37 A Yes.
38 Q They actually did a drug test on your hair, I
39 think, they took a sample?
40 A Yes. Yes, they did.
41 Q And eventually Child Protection Services didn't
42 intervene in your home?
43 A No.
44 MR. MYHRE: My Lady, I think this is probably an
45 opportune time for a break.
46 THE COURT: Members of the jury, we'll take the lunch
47 break at this point, and I'll ask you to come

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1 back, please, at two o'clock. Thank you.

2
3 (JURY OUT)

4
5 THE COURT: Anything we need to deal with?

6 MR. MYHRE: No, My Lady.

7 THE COURT: Okay. Thank you. We'll resume at 2:00.

8 A Thank you.

9
10 (WITNESS STOOD DOWN)

11
12 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

13 (PROCEEDINGS RECONVENED)

14
15 MR. MYHRE: Pardon me, My Lady. I just wanted to
16 confirm with Mr. Fox before I ripped a bunch of
17 pages out, so we did that and we've just completed
18 it.

19 THE COURT: All right. Good. Now, I've had a note
20 from one of the jurors saying that they are having
21 trouble hearing Mr. Myhre in your questioning.

22 MR. MYHRE: Right.

23 THE COURT: And the ask -- the request is that you
24 speak up, not looking down at your paper, or that
25 you use a microphone. So, there is a microphone
26 there. I don't know whether that's an amplifying
27 one.

28 THE CLERK: It doesn't amplify, My Lady, it just
29 records.

30 THE COURT: Are there any amplifying ones around?

31 MR. MYHRE: My Lady, just a suggestion, but I could
32 move this podium to right here so I don't
33 completely have my back to the jury when I'm
34 speaking.

35 THE COURT: I don't want you in a position where you're
36 able to see notes that the jurors might be making.
37 That might make them uncomfortable.

38 MR. MYHRE: Okay. Well, I can try to speak up,
39 certainly.

40 THE COURT: Can you perhaps turn a little bit at an
41 angle so that you can -- that might help a little
42 bit. Madam Registrar, the note should be the next
43 exhibit for identification, please.

44 THE CLERK: It's Exhibit D for I.D., My Lady.

45 THE COURT: Thank you.

46
47 **MARKED D FOR IDENTIFICATION: Note from juror**

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1 **re being unable to hear**
2

3 MR. MYHRE: Your Honour, the Crown would like to
4 request a publication ban as it relates to Sage
5 and Gabriel Capuano.

6 THE COURT: Can you give me the section number?

7 MR. MYHRE: 486.5, My Lady.

8 THE COURT: Does that apply only to witnesses?

9 MR. MYHRE: In respect of a victim or a witness. (2)
10 allows for a justice system participant.
11 Certainly, on a common-sense point of view, at
12 least on the Crown theory, Sage and Gabriel are
13 victims, but I don't think they are in the
14 technical not named complainants in the
15 indictment, obviously.

16 THE COURT: Mr. Fox, do you have any submission to
17 make?

18 THE ACCUSED: I have no opposition to such a
19 publication ban on the children's names. I
20 personally would never publish their name. Well,
21 I've never published Gabriel's name. I can't say
22 that about Sage. But, no, I support the ban in
23 matters relating to these proceedings, I guess.

24 THE COURT: Yes. All right. I'm going to make the
25 order, subject to it -- subject to any application
26 by anyone for the ban to be lifted, and that
27 application can be made at any time, any
28 appropriate time on notice.

29 Although it may not be expressly provided for
30 in the *Criminal Code* the court has an inherent
31 jurisdiction, particularly in relation to the
32 interests of children, and these young people
33 will -- would be considered children.

34 Given the nature of some of the evidence that
35 may relate to them, in my view, it would be my
36 view based on what has been brought to my
37 attention thus far, it will -- would not be in
38 their interests for their names to be published.

39 So, there will be a ban on the publication of
40 any information identifying the -- well, it can't
41 be put in those terms, the same terms Mr. Myhre's
42 s. 486.5 operates, otherwise it wouldn't be
43 possible to publish the -- Mr. Fox's name or Ms.
44 Capuano's name. They're the only two children
45 they have. Or the only two children of Ms.
46 Capuano.

47 So, how do you propose that it be framed?

41
(Jury Out)
Proceedings

BAN ON PUBLICATION - INHERENT JURISDICTION

1 MR. MYHRE: I would be content if it just was that
2 their names not be published.
3 THE COURT: All right. The names of Ms. Capuano's to
4 children, one of those also being Mr. Fox's child,
5 are not to be published in connection with any
6 publication relating to these proceedings.
7 Any submissions about that form of order, Mr.
8 Myhre?
9 MR. MYHRE: No.
10 THE COURT: Mr. Fox?
11 THE ACCUSED: No, My Lady.
12 THE COURT: All right. Are we ready for the jury?
13 MR. MYHRE: I just want to mention this book. So, this
14 is going to be gone through with -- with Ms.
15 Capuano in the next portion of her evidence. Can
16 Your Ladyship -- or do we need to tell the jury
17 that it's admitted that this is an accurate copy
18 of the website as it existed on May 27th, 2016?
19 THE COURT: That is admitted?
20 MR. MYHRE: I thought that was the end of the
21 discussions we had this morning?
22 THE COURT: There's been nothing further since this
23 morning, is -- is that correct?
24 MR. MYHRE: There's been nothing further since this
25 morning.
26 THE COURT: All right. Then I'll say something about
27 that to the jury at the time you hand the books
28 out.
29 MR. MYHRE: Now, My Lady, I don't have an extra copy
30 for you because you have that copy, but I should
31 alert you to the pages to take out.
32 THE COURT: Please.
33 MR. MYHRE: It just occurred to me, I had intended for
34 the exhibit copy to be the copy Ms. Capuano has,
35 so I'll have to do the same thing with her.
36 THE COURT: All right.
37 MR. MYHRE: It also occurred to me that Ms. Capuano has
38 probably done some highlighting in her book. I
39 don't see that as being an issue, but I want to
40 let Your Ladyship know that.
41 THE COURT: In the orig -- what you're proposing be the
42 original exhibit?
43 MR. MYHRE: Be the exhibit.
44 THE COURT: Well, that would be the copy that the jury
45 will end up with in the jury room. Is that your
46 intention?
47 MR. MYHRE: Yes. Realistically, it's hard to imagine

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1 (JURY IN)

2
3 THE COURT: Thank you. Members of the jury, I
4 understand there has been some difficulty hearing,
5 in particular Mr. Myhre's questions, and we turned
6 the lectern a little bit, hoping that his voice
7 will project out, and Mr. Myhre has agreed to
8 speak more loudly than he did before.

9 MR. MYHRE: If there's any difficulty, please alert the
10 judge and I'll address it, but thank you.

11
12 **DESIREE CAPUANO, recalled.**

13
14 **EXAMINATION IN CHIEF BY MR. MYHRE, CONTINUING:**

15
16 Q Ms. Capuano, when we left off before the lunch
17 break, we had sort of come through a very brief
18 summary of the history involving Gabriel and
19 yourself and Richard Riess up to 2012?

20 A Yes.

21 Q I'm going to skip ahead from 2012 for a moment,
22 and then we're going to end up going back to 2013,
23 but in March of 2014, you became aware of the
24 existence of a website, www.desireecapuano.com?

25 A Yes.

26 Q You've been to that website?

27 A I have. I have seen it.

28 Q You haven't gone through every last bit of it?

29 A No.

30 Q You're generally aware of some of what's on it?

31 A Yes.

32 Q In preparation for this trial, I showed you a book
33 that I see you have on your lap?

34 A Yes.

35 Q It's titled, "Excerpts from
36 www.desireecapuano.com"?

37 A Yes.

38 Q You reviewed the book?

39 A I have.

40 Q And based on what you've seen of the website, as
41 well as what you know of your own email
42 correspondence with Richard, are what is -- is
43 what's shown in this book accurate? Does it
44 accurately depict the website and your emails?

45 A There have been some modifications to the emails,
46 but for the content, it -- it seems fairly
47 accurate.

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1 Q So we'll get to that in a second.
2 MR. MYHRE: My Lady, at this stage, I'd like to tender
3 this book as an exhibit. I have a fresh copy that
4 I'll give to Ms. Capuano.
5 THE COURT: All right. Can copies go to members of the
6 jury at this point?
7 MR. MYHRE: Yes.
8 THE COURT: Members of the jury, Mr. Sheriff is going
9 to distribute copies to you. We're short one copy
10 and so I'm going to ask that two of you share for
11 now, and there will be another copy made
12 available, probably by tomorrow. And then I'm
13 going to say something to you about this book of
14 documents.
15 THE COURT: And this is an admission. You remember I
16 spoke to you about things that are agreed as
17 between the Crown and the defence and you can
18 treat them as fact. It is agreed that the
19 material in this book is an accurate
20 representation of some of the material that
21 appeared on the website that you've heard about as
22 of May 26th, 2016. So I'll say that again. It's
23 agreed that the material in the book you have just
24 been given is an accurate representation of some
25 of the material that appeared on the website as of
26 May 26th, 2016.
27 MR. MYHRE: Thank you, My Lady, and can we mark this as
28 an exhibit before I forget?
29 THE COURT: All right. So that's going to be
30 Exhibit 1, I take it?
31 THE CLERK: Exhibit 1 on the trial proper, My Lady.
32
33 **EXHIBIT 1: Brief titled "Excerpts from**
34 **www.desireecapuano.com"**
35
36 THE COURT: Members of the jury, the copies you've been
37 given are for your reference. The version that
38 Ms. Capuano has just been given will be the
39 official exhibit and it will go with you at the
40 end of the trial into the jury room, but you've
41 got those copies to follow along with now during
42 the trial.
43
44 MR. MYHRE:
45 Q Ms. Capuano, could I take you to Tab 8, please?
46 A Yes.
47 Q This is a list of emails, mostly purporting to be

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1 between yourself and Patrick. In terms of the
2 number and the dates of these emails, we can see
3 they start at the top. The most recent would be
4 May 20th, 2016, and then on the last page, the
5 last one listed is October the 10th, 2011?
6 A Yes.
7 Q As far as you've been able to tell, is that an --
8 accurate in terms of the number of emails that
9 went back and forth between you and Richard?
10 A Yes. Yeah.
11 Q Do you think there are any emails, or email chains
12 missing from this list?
13 A There -- there might be. I -- I haven't looked,
14 compared.
15 Q And then as far as the dates that are on these
16 emails and the dates of the other emails in this
17 book that you've reviewed, do the dates appear to
18 be accurate, as far as you can tell?
19 A Yes.
20 Q Okay. Now, I'd like you to go to the very end,
21 the last page of Tab 8, and I'm going to suggest
22 that if you flip forward from -- forward in time
23 from that point of view or that point, there are,
24 roughly, 13 pages on a list of emails before you
25 get to October 2012 --
26 A Yes.
27 Q -- about 13 pages. And there are about 35 emails
28 a page --
29 A Yes.
30 Q -- and so that's, roughly, 450 emails between
31 October 2011 and October 2012?
32 A Yes.
33 Q Does that sound, roughly, accurate in terms of the
34 number of communications that were going back and
35 forth between yourself and Richard at that time?
36 A Yes.
37 Q In a couple of sentences, could you characterize
38 the tone of these email communications between
39 yourself and Richard during that timespan?
40 A Between 2011 and 2012?
41 Q Yes.
42 A Many of the emails from Richard were demanding,
43 ordering, threatening to take me back to court,
44 telling me that -- in -- insulting. They were
45 mean and -- and -- and hostile, and aggressive in
46 nature.
47 Q Okay. We're going to go back to some of the high-

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1 level events that took place for a minute. I
2 understand that in October of 2012, Richard told
3 you that he had a job offer from a company in
4 Vancouver and he wanted your permission to take
5 Gabriel to Vancouver with him?
6 A Yes.
7 Q You didn't want that?
8 A Correct.
9 Q Why?
10 A I was scared that if he took my son to Canada, I
11 would not see him again.
12 Q And in October 2012, Richard filed a motion with
13 the court in California seeking permission to take
14 Gabriel to Canada and suspend all visitation with
15 you?
16 A Yes.
17 Q At that time, your understanding of Richard's
18 legal status in the country was that he wasn't
19 legally allowed to be there?
20 A Correct.
21 Q And I understand that in November, you called an
22 FBI tip line and told them that you believed
23 Richard was in the country illegally?
24 A Yes.
25 Q And why did you call the tip line and tell them
26 that?
27 A With the intent that he would be deported.
28 Q And you told them that if they didn't do anything
29 about it, you would contact the media?
30 A Yes.
31 Q In early January of 2013, Gabriel was staying with
32 you for his winter break?
33 A Yes.
34 Q And you got a call from Liz Munoz, who told you
35 that Richard had been arrested and detained by the
36 immigration authorities?
37 A Yes.
38 Q And it was your belief at that time that Richard
39 had been deported?
40 A Yes.
41 Q Richard then filed a motion with the court in
42 California that was to be heard on March the 20th,
43 or was that already a scheduled hearing?
44 A That was already a scheduled hearing.
45 Q So there was a hearing scheduled for March 20th,
46 2013 to discuss the issue of custody?
47 A Yes.

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1 Q And did that -- was that to be a mediation?
2 A Yes.
3 Q And did it go ahead?
4 A No, it was taken off the calendar.
5 Q Why?
6 A He was removed from the country.
7 Q And I understand that on March the 20th, you got a
8 call from the mediator at the court --
9 A Yes.
10 Q -- who told you that Richard was actually present
11 at the court for the mediation?
12 A Yes.
13 Q And you then called the FBI?
14 A Yes.
15 Q And you later learned that Richard was deported
16 again on that date?
17 A Yes.
18 Q And so then I understand that from that point on,
19 Gabriel lived with you?
20 A Yes.
21 Q Okay. We're going to go back to the book now and
22 go through some of the chronology of what happened
23 from there while also looking at some of the email
24 correspondence between yourself and Richard.
25 Could we go to Tab 9, please? And Ms. Capuano,
26 could you go to the second page, the email that
27 the subject line is, "Last attempt at an amicable
28 resolution"?
29 A Yes.
30 Q So I want to ask you a couple general questions
31 about this email and all the emails that are in
32 this book. First of all, were you using the
33 web -- or, sorry, the email address,
34 desiree.capuano@gmail.com?
35 A Yes.
36 Q And was Richard using the address,
37 patrick@desireecapuano.com?
38 A No.
39 Q What email address was he using?
40 A Richardriess@gmail.com.
41 Q And if we just look down to the second line of the
42 content of the email, it says [as read in]:
43
44 On Sunday, July 21st, 2013, Patrick wrote,
45 "Desiree" . . .
46
47 Et cetera. Did the word "Patrick" appear in this

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1 email when you received it in 2013?
2 A No.
3 Q What did it say there?
4 A "Richard."
5 Q Other than those differences, the emails that you
6 reviewed in here, do they appear to be accurate
7 copies of the actual correspondence between
8 yourself and Richard?
9 A Most of them had my son also included when he sent
10 them to me.
11 Q And by included, what do you mean?
12 A CC'd on the emails.
13 Q And are you referring to Gabriel?
14 A Yes.
15 Q And then just as far as the dates that are listed,
16 do those appear to be accurate to you?
17 A Yes, the dates do.
18 MR. MYHRE: Okay. At this point, I'd like to invite
19 the jury to review the email, "Last attempt at an
20 amicable resolution." And the way that I intend
21 to proceed by reviewing these emails is to have
22 the members of the jury read the email and then
23 I'll be asking Ms. Capuano a few questions about
24 it. And so maybe just look up at me when you're
25 done reading and I'll start with the questions.
26 THE COURT: Mr. Myhre, this a public trial so
27 everything has to be on the record.
28 MR. MYHRE: This is -- it is an exhibit, My Lady.
29 THE COURT: It is. Is it publicly available?
30 A It's on the website.
31 MR. MYHRE: I would think the members of the public
32 could apply for access to it.
33 THE COURT: Well, I'm not sure we can proceed in the
34 way you're suggesting. Can you not direct her
35 attention to specific portions?
36 MR. MYHRE: It does seem to me that the jury will have
37 to look at this book at some point. It's an
38 exhibit and it will --
39 THE COURT: I think we need to address this so --
40 MR. MYHRE: Very good.
41 THE COURT: Members of the jury, I'm going to ask you
42 to retire to the jury room briefly. Leave all
43 your materials, please, in the courtroom. Nobody
44 will go near them. Thank you.

45
46 (JURY OUT)
47

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1 THE COURT: Now, is this a discussion that should be in
2 Ms. Capuano's presence?
3 MR. MYHRE: I don't think that will be a problem, My
4 Lady.
5 MR. LAGEMAAT: I have no objection to that.
6 THE COURT: All right. Can you give me a bit more
7 detail about the process you're intending to
8 follow, and why, please?
9 MR. MYHRE: Yes. So, each of these emails, as we've
10 just covered with Ms. Capuano, is a communication
11 between herself and Richard Riess, and she's
12 testified that they, as far as she can tell,
13 appear to be accurate, with the exceptions she's
14 mentioned, and they are tendered because they are
15 relevant to the harassment. I mean, some of these
16 emails are -- many of these emails are the
17 harassment, and a few are also there for context.
18 And, so, I guess it would be an option -- we
19 have to make sure the jury reads it. It would be
20 an option for them to retire for that purpose, I
21 suppose, because it's evidence. But it would make
22 a lot more sense, I think, for them to look at
23 each one and hear what this meant to Ms. Capuano,
24 if it's relevant to the criminal harassment, how
25 it made her feel, or if it needs some explaining
26 otherwise.
27 THE COURT: The trial needs to be conducted in public,
28 and to say, "Please look down" and read something
29 that is not on the record, and then ask Ms.
30 Capuano how that made her feel does not give the
31 public the information that made her feel a
32 certain way.
33 MR. MYHRE: I see.
34 THE COURT: And it may be true that, yes, exhibits can
35 be applied for and released in certain
36 circumstances. That's -- that's a cumbersome
37 process. It's not clear when an application can
38 be made. But then, numerous copies are
39 circulating, which may not --
40 MR. MYHRE: My Lady, I think --
41 THE COURT: -- be the best method of proceeding.
42 MR. MYHRE: Having heard your concern, maybe it can be
43 addressed this way. I could ask Ms. Capuano to
44 summarize, "What's this email about," in a couple
45 of sentences, and --
46 THE COURT: Why can't you just read it out?
47 MR. MYHRE: The simple answer is there are a lot of

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1 them and it's very cumbersome. Ms. Capuano could
2 then be asked, "Did this have an impact on you,
3 and what words here were significant," and she can
4 tell the jury that and highlight, "It was this
5 sentence" or "these sentences."

6 THE COURT: Well, that's a different way of proceeding.
7 It seems to me you've got several options. You
8 can either read aloud the portions that you're
9 going to ask Ms. Capuano to comment on so that
10 it's before the jury and it's before the public,
11 then you ask her to comment. Or you present a
12 particular email and say, "Is it one you'd seen
13 before, and if it is, was there a particular
14 portion that troubled you, and if so, where" --
15 "what portion was it, and she essentially takes us
16 to the portion," and then it needs to be, at the
17 very minimum, summarized, but probably read into
18 the record.

19 But we can't be conducting a trial on the
20 basis of a book of material that isn't before the
21 public in any way at all.

22 MR. MYHRE: I'm content to proceed in that fashion, My
23 Lady.

24 THE COURT: Mr. Fox, you were on your feet earlier, and
25 I -- I know you have a concern.

26 THE ACCUSED: Yes, yes, thank you, My Lady. I did have
27 a bit of concern with the approach of Mr. Myhre
28 for some other party reading off just what he
29 considers the pertinent segments because I think
30 that's going to then continue the situation of
31 having fragments out of context.

32 Now, when Ms. Capuano would've received the
33 email she would've read the entire email. If she
34 were only looking at specific sentences and
35 ignoring the rest of it, that wouldn't have made a
36 lot of sense.

37 I mean, her fear, if she had any fear, it
38 should have been based on the entire email.

39 THE COURT: All right. That's probably a matter for
40 either cross-examination, or argument, or both.
41 Given the volume of material there's no way all of
42 it can be read aloud in the trial.

43 THE ACCUSED: Right.

44 THE COURT: We'd be here for years. But I have your
45 concern, but in connection with this particular
46 point, I don't see it as necessary that the entire
47 content be read out each time. But there are

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1 other ways to address the concern that you've
2 raised.

3 All right. Could we have --
4 THE ACCUSED: I think that's clear.

5 THE COURT: -- the jury back, please?

6
7 (JURY IN)

8
9 THE COURT: Thank you, members of the jury.

10
11 **EXAMINATION IN CHIEF BY MR. MYHRE, CONTINUING:**
12

13 Q So Ms. Capuano, when we left off, we were talking
14 about the email titled, "Last attempt at an
15 amicable resolution," dated June -- or, sorry,
16 July 21st, 2013?

17 A Yes.

18 Q Could you summarize what this email is about?

19 A This email in particular is about Richard's demand
20 that I return Gabriel to him immediately,
21 otherwise he threatens very negative
22 repercussions.

23 Q Sorry, he threatens?

24 A Oh, repercussions.

25 Q And what kind of repercussions? And if there's a
26 particular sentence you think --

27 A Okay.

28 Q -- illustrates that, please read it out.

29 A It -- it would be easier.

30 Q Okay. Tell us where it is and read it out for us,
31 please.

32 A It's the third paragraph, starting on the fourth
33 sentence [as read in]:

34
35 And let me be perfectly clear, if we go down
36 that road, every aspect of your life will be
37 scrutinized. His investigator will research,
38 document and record everything you are doing
39 and have done for the past 10 years. Every
40 disciplinary action or behavioural report
41 about Sage will be brought up. Every single
42 time you, Michael, Christopher, your mother,
43 your brother or anyone else close to you has
44 ever interacted with any law enforcement
45 officer, not paid a bill on time, will be
46 scrutinized. Every past and present employer
47 and landlord will be interviewed. Every

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1 person you've lived with or associated with
2 will be questioned. Every tax return, every
3 credit card bill, every bank account, every
4 medical record including psychological and
5 psychiatric for all relevant people in your
6 life will be found and picked apart. Medical
7 records are confidential but investigators
8 always have a way around that. Every time
9 Sage choked a kid at school will be found.
10 Every person you've ever had a relationship
11 with or slept with, or even just had a drink
12 with will be found and questioned. Each
13 person that comes to your home or whose home
14 you go to, every person you've worked with,
15 will be researched and questioned. Every
16 person you have ever betrayed, lied to,
17 deceived, misled, will be located and
18 interviewed.

19
20 Q Okay. And we see your response above [as read
21 in]:

22
23 You do what you feel you need to.

24
25 A Yes.

26 Q How would you characterize your response?

27 A I was not going to send my son to Canada.

28 Q Why not?

29 A Again, I felt that if he went up to Canada, I
30 would not see him again and I had custody of our
31 child in the United States.

32 Q Okay. And how did Richard's words that you read
33 out make you feel?

34 A Scared.

35 Q Scared of what?

36 A That he would do this and that I would have to
37 somehow try to fix whatever damage was caused.

38 Q Okay. Now, if we flip back to the previous page,
39 there's an email titled, "One more thing," dated
40 July 21st, 2013, at 11:29 a.m. When was this sent
41 in relation to the email we just looked at?

42 A Same day.

43 Q And I see Mr. Fox's -- or, sorry, Mr. Riess's
44 words there, the third line down [as read in]:

45
46 And when I say I'm willing to lose
47 everything, I mean it. Another difference is

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1 that I really don't have anything to lose at
2 this point.
3
4 How did you take those words?
5 A I -- I didn't know what to mean -- make of them.
6 I -- it was -- it was just another threat, that he
7 would give up everything to get what he wanted.
8 Q Did Gabriel visit Richard at all in Canada in
9 2013?
10 A No. Not until winter break.
11 Q When was that?
12 A December through January 2013 to 2014.
13 Q And was the court involved in that?
14 A Yes.
15 Q Was -- so there -- was there a court order that
16 said --
17 A Yes.
18 Q -- you will send Gabriel to Canada?
19 A For these days.
20 Q Okay. If we could go to Tab 10, please, the first
21 email titled, "Your silence," dated March 23rd,
22 2014. And this is Mr. Riess telling you that all
23 of your email correspondence has been posted to a
24 website?
25 A Correct.
26 Q Prior to receiving this email, were you aware of
27 the existence of a website?
28 A I had just found out about it.
29 Q Okay. Tell the jury how you found out about the
30 website?
31 A An email was sent to my work colleagues under the
32 name Desiree Capuano with information between
33 Richard and I, and it had a link to the website.
34 Work colleagues informed me of the email, they
35 informed me of the website, and steps had to be
36 taken to make sure that we secured our network
37 against him, but that's how I found out about the
38 website.
39 Q I understand that at that time you were working
40 for a company called The Apollo Group?
41 A Yes.
42 Q When did you start working with them?
43 A 2008.
44 Q And the Apollo Group owns and operates a number of
45 on-line and physically-situated universities?
46 A Yes.
47 Q Including --

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1 A University of Phoenix.
2 Q University of Phoenix. Other than the fact of
3 telling you about this website, is there anything
4 in this email that particularly troubled you?
5 A The whole thing was troubling. The -- the second
6 paragraph was particularly troubling [as read in]:
7
8 It's unfortunate that most people do not want
9 to be the source of another person's
10 embarrassment when they're face to face with
11 that person so they will not tell you that
12 they've seen your website and read your
13 emails. Instead, they'll pretend they had no
14 idea that your website even existed. Then,
15 behind their back -- your back, they'll
16 snicker and joke amongst themselves about
17 what a fool you are and how terrible it is
18 that what you did to your son and how you --
19 and what you continue to do to your son. And
20 when you walk in the room, they'll smile
21 politely and act like your friend.
22
23 Q Okay.
24 A He's talking -- referring to my work colleagues.
25 Q And why do you find that portion significant?
26 A Because at that point, I didn't know if it was
27 true.
28 Q Sorry, to be clear, if what was true?
29 A If my work colleagues were lying to me and reading
30 the website, and talking about me behind my back.
31 Q And how did that make you feel at work?
32 A Humiliated.
33 Q The second-last paragraph reads [as read in]:
34
35 Gee, I hope this doesn't give you a complex.
36 I hate to think of you sitting in a meeting
37 wondering how many of your colleagues have
38 seen pictures of you in your underwear.
39
40 Do you know what Richard was referring to?
41 A It's a picture of me in my -- my bathrobe that he
42 had our son take and then send to him.
43 Q Do you remember the circumstances of how that
44 photo was taken?
45 A I do. I had just gotten out of the shower, I had
46 my bathrobe on. Gabriel came in laughing while he
47 was on the phone and said he wanted to take a

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1 picture, and I told him I had just gotten out of
2 the shower. He said that was fine, he really
3 wanted to take a picture. He's my son and, of
4 course, so he took a picture and it ended up on
5 the website.

6 Q Around that time, you also became aware that there
7 was a LinkedIn profile in your name that you
8 hadn't set up?

9 A Correct.

10 Q Tell the jury how you found out about that and
11 what it was.

12 A I had a project manager, work associate come to me
13 one day and she said, "It's none of my business
14 and I don't judge anybody, but you may not want to
15 put out on LinkedIn that you're a stripper." And
16 I said, "Excuse me," and she said, "Yes, you're
17 LinkedIn profile says you're a stripper and a drug
18 user," and I went to my LinkedIn profile and I saw
19 my main profile, which was fine, and then I saw
20 underneath it a secondary profile that was created
21 and many of my work associates had already
22 connected with the secondary profile. It had the
23 name of a strip club that I apparently worked at
24 and I like to sit around and watch UFC and drink
25 beer and get high in front of my kids.

26 Q Okay. What did you do about it?

27 A I called LinkedIn and I told them about the
28 situation, and they researched it. They got it
29 taken down. I contacted my work associates and I
30 told them not to connect to that LinkedIn profile,
31 that that was not me. And once it was down, I
32 thought I was done.

33 Q Do you remember if that was before or after you
34 found out about the website?

35 A It was before.

36 Q Okay. So then you subsequently found out about a
37 website?

38 A The individuals that had connected to the LinkedIn
39 profile received the first email from Richard,
40 pretending to be me, that had the link to the
41 website in it.

42 Q Okay. If we could flip to the next email, it's
43 titled, "Cease and desist," April 28th, 2014. And
44 you emailed Richard [as read in]:

45
46 Please stop emailing my coworkers' personal
47 email accounts that you managed to obtain

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1 through my LinkedIn account pretending to be
2 me. This is harassment and will be treated
3 as such if you do not cease. Your continued
4 attacks have made me fearful for myself and
5 for our son. Moreover, your aggressive
6 behaviour has made it impossible for us to
7 communicate, co-parent or work together to
8 provide a safe, nurturing and positive
9 environment for G, which is all that you and
10 I should be concerned with. I am willing to
11 work with you in regards to G, but not in
12 this hostile environment you have created.
13 Desiree.
14

15 Is that --

16 A Yes.

17 Q -- an accurate copy of the email that you sent to
18 Richard on that day?

19 A Yes.

20 Q When you sent this email to Richard, did you write
21 "Gabriel," or did you write "G*"?

22 A I wrote "Gabriel."

23 Q Okay. And you told Richard at that point that you
24 were fearful for yourself and your son?

25 A Yes.

26 Q Why were you fearful?

27 A At that point, he had my home address, he had my
28 home phone number, he had my work address, he had
29 my work phone number, he had my income and expense
30 declaration, he had a lot of things that could
31 potentially cause risk to myself and my family up
32 on the website.

33 Q When you say risk, what kind of risk, at the time
34 you wrote this email, was in your mind?

35 A Honestly, just that all of this information was
36 out there. I didn't know who could read it, I
37 didn't know who would take interest in it, I
38 didn't know who would pay attention to it. It was
39 also an attempt to get me fired from my job, and
40 which would have meant that I had no income to
41 provide for my children.

42 Q You perceived it that way?

43 A Yes.

44 Q Did you do anything within your company to try to
45 prevent this kind of thing from happening?

46 A Yes.

47 Q What happened -- what did you do?

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1 A It was known as "the Desiree Situation" and I had
2 many meetings with our legal department, our
3 security department, our technology department to
4 block access to the website, to block the email
5 addresses that were coming in, and then the legal
6 department actually worked with GoDaddy in an
7 attempt to take down the website.
8 Q GoDaddy was the Internet --
9 A Provider.
10 Q -- host --
11 A Yes.
12 Q -- hosting website at the time?
13 A Yes.
14 Q Okay. I think we'll go back to that in a little
15 bit. If we could flip to the next email, it's a
16 response to "Cease and desist," the same date.
17 And I'd like to ask you about a couple of things.
18 So we see a line along the left-hand side and
19 that's essentially your email that you had sent to
20 Richard?
21 A Yes.
22 Q And then below that where there is no line, that's
23 Richard's response?
24 A Yes.
25 Q And so in response to what you said, "This is
26 harassment," the response from Richard was,
27 "Technically, it's not." He goes on to say, at
28 the bottom of that paragraph [as read in]:
29
30 There's no private or confidential
31 information being released. Anything which
32 has been or will be published or distributed
33 as either your own words or is completely
34 true, therefore, there is no libel and no
35 basis for a claim of harassment.
36
37 A Correct.
38 Q So what did you understand from that?
39 A That he was telling me that he would -- he would
40 not stop, and that I had no basis for a claim of
41 harassment.
42 Q If I could take you to the next email dated
43 May 2nd, 2014, titled, "Reciprocity." So here,
44 Richard alleges in the first paragraph, he says
45 [as read in]:
46
47 It also occurs to me that if what you allege

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1 is true, and I have, in fact, contacted some
2 of your associates to provide them
3 information which may be damaging to your
4 reputation, then that is merely the same
5 thing you had done when you contacted Steve,
6 my rabbi, et cetera, is it not?

7
8 Did you contact somebody named Steve who was --
9 you understood to be Richard's rabbi?

10 A No, Steve was not Richard's rabbi, Steve Riess is
11 Richard's father. I never contacted a rabbi.

12 Q Did you contact Richard's father?

13 A Yes.

14 Q Did you ask his father for any assistance?

15 A Not at that time. No, not at that time.

16 Q The last paragraph, Richard wrote [as read in]:

17
18 Moreover, when I informed the court of your
19 actions and requested it order you to desist,
20 it refused to get involved.

21
22 What did you understand him to be referring to and
23 what did that mean to you?

24 A Honestly, I have no idea. He -- he made claims
25 that I contacted a bunch of his associates and
26 rabbis, but I didn't even know these people, or
27 who they were, or how to get a hold of them, and I
28 certainly never contacted anyone.

29 Q But specifically with his mentioning here, ". . .
30 I informed the court of your actions and requested
31 it order you to desist, it refused to get
32 involved," do you know what he's talking about?

33 A In the custody court, he told the custody judge
34 that I had contacted these people.

35 Q And did the court refuse to get involved?

36 A There was no evidence.

37 Q Okay. The next email, "Re waiver of rights, dated
38 May 22nd, 2013," and this email chain starts at
39 the bottom of the page with an email from Richard
40 on May 21st, 2014, and he wrote to you [as read
41 in]:

42
43 I hereby serve notice that effective
44 immediately, I waive all my rights with
45 respect to Gabriel.

46
47 And he goes on to try to be explicit that he's

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1 saying he's waiving all of his legal rights to
2 custody of Gabriel.
3 A Visitation and communication.
4 Q Okay. And we see your response above that. With
5 respect to communication, you say [as read in]:
6
7 I see no reason for anything to change with
8 respect to the communication between you and
9 your son.
10
11 And then on number 3, visitation:
12
13 I don't know how else to explain to you that
14 I think it is important for Gabriel to spend
15 time with you.
16
17 So how would you characterize your response to
18 Richard saying he gives up all legal rights?
19 A He had talked about it before so this wasn't the
20 first time that he'd brought it up. It was the
21 first time that he told the lawyer, but at this
22 point, my job as a mom is to make sure that my
23 child has both of his parents so I never -- I
24 wasn't going to restrict their communication. It
25 wasn't restricted at that point. There was no
26 reason to restrict it just because he said this.
27 And he was supposed to get on a plane in a couple
28 days and go see his father so my only concern with
29 this email was did he still want his son for the
30 visitation?
31 Q Okay. And which you address in point number 3(a),
32 you tell him [as read in]:
33
34 If you're unable or unwilling to have Gabriel
35 at any time, he can stay with me.
36
37 A Yes.
38 Q You also go on to express a concern in (b):
39
40 Let me be as blunt about this as I can. If
41 you take my son across international borders
42 using anything but his given name and ID
43 issued to him by the United States Federal
44 Government, I will use everything in my power
45 to see justice done.
46
47 A Yes.

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1 Q [As read in]:

2
3 That said, I agree to fly our son to
4 California and agree to fly him to Canada.
5

6 A Yes.

7 Q Your concern there was what?

8 A He was using a different name. He was trying to
9 indicate that my child's name should be a
10 different last name, and he indicated he wanted to
11 believe -- if I'm not mistaken, in this one he was
12 indicating that he was going to be going with my
13 son from California to Canada and I didn't want to
14 lose track of my son. I just wanted to make sure
15 that everything was documented properly.

16 Q So you made an allusion to this -- oh, I
17 understand by this time, then, Richard was no
18 longer going by the name Richard?

19 A I believe so. He had -- he had told me that he
20 had -- he was Patrick Fox.

21 MR. MYHRE: Okay. This might -- there are a few more
22 questions on that line, but it might be a good
23 time for the break, My Lady.

24 THE COURT: All right. Members of the jury, we'll take
25 the afternoon break.
26

27 (JURY OUT)
28

29 THE COURT: Anything to address? All right. Thank
30 you.
31

32 (WITNESS STOOD DOWN)
33

34 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)
35 (PROCEEDINGS RECONVENED)
36

37 MR. MYHRE: I have concerns about it being on the
38 record.

39 THE COURT: Yes, thank you.
40

41 (JURY IN)
42

43 **DESIREE CAPUANO, recalled.**
44

45 THE COURT: Thank you. Go ahead.
46
47

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EXAMINATION IN CHIEF BY MR. MYHRE, CONTINUING:

Q Ms. Capuano, when we left off, you had just mentioned that at some point, Richard started referring to himself as Patrick Fox?

A Correct.

Q And that was -- was that, roughly, around the time of this May 22nd email?

A It was summer of 2014.

Q And how did that happen from -- as far as you were concerned?

A It was -- it was very abrupt. There was no documentation to show a name change. There was nothing that I was given to indicate that -- in any way that he was anybody other than Richard Riess until he just said, "I'm Patrick Fox."

Q Okay. And did that concern you at all?

A Yes.

Q Why?

A Because this is a different identity, a different identity that was not tied to anything of his past or the child, the custody agreement, or anything else.

Q Specifically with regards to Gabriel visiting, did that cause you any concern?

A Yes. The custody agreement that said he had visitation was to Richard Riess. The birth certificate of my son has the father listed as Richard Riess. The passport that my son has says his father is Richard Riess. And with all of the documentation showing who his father is, if he went out to Canada and he's in the custody of someone named Patrick Fox, who has no documentation that he's also Richard Riess, then if anything were to happen, they would have no idea who my child was supposed to be with. And being that he's in another country, I would have very limited ability to help.

Q Okay. If we could turn to the next email, please, dated June 24th, 2014. In this email, in the first paragraph, Richard wrote [as read in]:

I would like to congratulate you on turning our intelligent, inquisitive, generally proactive son [et cetera et cetera] . . . into a lethargic, uninterested, unmotivated slug.

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- A Yes.
- Q And then it goes on to give reasons why he's saying that?
- A Yes.
- Q And then the second last paragraph, at the bottom second-last sentence [as read in]:
- You turned him into a white trash trailer park pothead boozier. People like you, white trash, are a blight on society and an infection that needs to be lanced.
- And then right at the last line on this page says:
- P.S. you will notice I've cc'd Gabriel on this.
- Now, we don't see Gabriel's name at the top. Do you remember if Gabriel was actually cc'd on his email?
- A Yes, he was.
- Q Okay. Did this email bother you at all?
- A My son was 14 years old. I had him with me all the time so I was familiar with how teenage boys behave. They're, for the most part, unmotivated so all this did was illustrate to me that he wasn't familiar with typical behaviour of teenage boys.
- Q Now, specifically with reference to "white trash," "trailer park," were those terms you'd ever heard from Richard before?
- A Oh, yes.
- Q Could you give the jury some idea of the frequency of which you heard that from Richard?
- A There's about 400 emails and in -- and in a vast percentage, there is some slight indicating that I'm white trash.
- Q If we could turn to the next email, please? "Waiver of rights," dated July 21st, 2014. The second paragraph, Richard writes [as read in]:
- I also want to be clear that this is not a surrender on my part. I have not given in or given up on anything. That family court case was getting in my way and had become a nuisance so it had to be severed so I could

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1 proceed with my plans.

2
3 Down a few lines [as read in]:

4
5 I explicitly stated, "Wanted," so that the
6 court would have no choice but to grant the
7 request unless you objected, which, of
8 course, you wouldn't because you're an idiot
9 and you have no idea when you're being
10 played, probably due to your narcissism.

11
12 What did you understand Richard to be referring to
13 when he said -- when he talked about his plans?

14 A The plan to destroy my life.

15 Q And so how did this email make you feel?

16 A The -- the part of this email that hurt me the
17 most was where he indicated that he told Gabriel
18 that he waived his rights to him and that Gabriel
19 seemed taken aback. And it was confusing to me
20 how he cannot understand that any child would be
21 upset when his father told him he was waiving his
22 rights to him, especially because it was getting
23 in the way of his plans to destroy me.

24 Q And could you just explain why that hurt you?

25 A It hurt my son.

26 Q The next email dated the next day, July 22nd,
27 2014, titled, "Telephone communication regarding
28 Gabriel," Richard wrote [as read in]:

29
30 It's obvious from how you conducted yourself
31 on the telephone a few moments ago that
32 you're afraid of and intimidated by me.

33
34 And then he goes down -- on -- if we go to the
35 fourth paragraph:

36
37 Anyway, I couldn't understand a thing you
38 said on the phone because you were trying so
39 hard to say only and exactly what you had
40 rehearsed beforehand while, at the same time,
41 trying not to cry, presumably out of fear and
42 anxiety, and you were all muffled and shit.

43
44 Do you know what phone call he was referring to?

45 A I -- I -- I don't remember exactly.

46 Q Do you remember calling him and having something
47 rehearsed to say and trying not to cry?

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1 A Yes. Yes, I do. I don't remember the
2 circumstances.

3 Q How frequently in this period of time did you
4 communicate with Richard over the telephone?

5 A I think are were a total of three times.

6 Q In what time period?

7 A The whole six years. More so in the beginning.

8 Q When you say the beginning, are you referring
9 to --

10 A 2011.

11 Q 2011. If we could go to the next email, please,
12 dated the same day, titled, "Forward Reforward
13 Income Expense Declaration," and Richard writes
14 [as read in]:
15

16 As you can see from the attached screenshot,
17 it seems you've requested that
18 desireecapuano.com be blocked by Apollo's
19 internal network. While I'm assuming you've
20 requested it, what's the matter, are you
21 embarrassed and/or ashamed of the things
22 you've done?
23

24 It goes on:

25
26 There's a few easy workarounds and I'll be
27 sure to implement before the next update is
28 posted to the site.
29

30 And then below that, there's forwarded an email
31 from a David Shroads at Western International
32 University. Do you know who Western International
33 University is?

34 A It's a college owned by Apollo.

35 Q And what did you understand to have been the
36 subject of this email from David Shroads?

37 A I believe Richard sent out a mass communication to
38 people that worked for Apollo or any of the
39 subsequent universities owned by Apollo, including
40 the income and expense declaration that I was
41 required to provide at the custody court.

42 Q And so at the top when Richard writes [as read
43 in]:
44

45 . . . it seems you've requested that
46 desireecapuano.com be blocked by Apollo's
47 internal network.

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1
2 Had you requested that?
3 A I didn't have to request it, the company blocked
4 it.
5 Q Okay. The next email dated the same day, titled,
6 "Forward forward medical marihuana program ID."
7 And this is an email, at the top, from Richard to
8 you, but it starts, if we look at the bottom just
9 where there are the little arrows [as read in]:
10
11 On July 22nd, 2014, at 5:02, Desiree Capuano
12 wrote: "Please note, as attached, I do have
13 a medical marihuana card so my use of
14 marihuana is legal and I don't have to
15 explain it or justify it to anyone and what I
16 do in my own home around my own kids is my
17 own business. Desiree Capuano.
18
19 Did you write that email?
20 A No.
21 Q Okay. What did you understand -- sorry, let's
22 just go up a little bit. Then there's an email,
23 Dawn Foster to Desiree Capuano [as read in]:
24
25 What the hell is this? Is he harassing you
26 again?
27
28 Do you know Dawn Foster?
29 A Yes.
30 Q Who is that?
31 A She was my co-worker. She was on my team.
32 Q Okay. And so what do you know about this email on
33 July -- the one at the bottom, "Please note I do
34 have a medical marihuana card"?
35 A I know that he sent it, signed by me, to make it
36 look like it was from me to my work associates.
37 So he sent out another email again to my
38 colleagues, and I only knew about that because she
39 forwarded it over to me.
40 Q Do you have a medical marihuana card?
41 A Yes.
42 Q When did you get that?
43 A 2012.
44 Q Okay. If we then go and look at what Richard
45 wrote to you at the top, in the second paragraph,
46 he states [as read in]:
47

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1 You do realize that the passive dissemination
2 of already publicly-available truthful
3 information, for example, court documents and
4 their attached exhibits is not harassment,
5 right?

6
7 Down:

8
9 Because telling the truth is not illegal and
10 is not harassment.

11
12 And then in the PS section:

13
14 In case you're wondering, from what I'm told,
15 that original message was sent to 681
16 recipients.

17
18 A Yes.

19 Q Okay. How did that make you feel?

20 A Mortified.

21 Q And Ms. Capuano, just as an aside, if you ever see
22 a point in an email where you think something's
23 inaccurate or it's been edited from the actual
24 emails that you received and sent to Richard,
25 please alert us to that.

26 A Okay.

27 Q I take it so far, they've appeared to be accurate?

28 A They have.

29 Q Okay. If we could go to the next email, please?
30 Dated the next day, "Request for a status update"
31 [as read in]:

32
33 Hello, Desiree, it has been a little over a
34 year-and-a-half now since you filed your
35 false report against me to ICE --

36
37 What's ICE?

38 A Immigration Custody.

39 Q -- claiming I was an illegal alien . . .

40
41
42 Et cetera. Et cetera. He goes on to detail some
43 of the things he's been doing as a parent,
44 criticizing you as a parent.

45 A Yes.

46 Q And then the last paragraph [as read in]:

47

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1 And for all the 1200 or so people that have
2 been bcc'd on this message, I wonder if
3 you've told them about . . .
4
5 And then a number of alleged misdeeds on your
6 part.
7 A Yes.
8 Q Do you know whether this was actually bcc'd to
9 1200 people?
10 A I don't know.
11 Q And just over the page, the first full paragraph:
12
13 Since you decided to stop all communication
14 around the time your website was set up and
15 all your emails to me have been made public,
16 I'm bcc'ing this message to all the
17 recipients that may be associated with you.
18
19 And then he provides your -- or he provides a
20 phone number, an email address and a physical
21 address, and then the website.
22 Now, was that your phone number -- were those
23 your phone numbers at the time?
24 A Yes.
25 Q Was that your actual home address at the time?
26 A Yes.
27 Q Now, in this email, Richard references you
28 stopping all communication with him?
29 A Yes.
30 Q Is that -- was that true?
31 A Yes.
32 Q And why did you do that?
33 A Communication with him wasn't going anywhere and
34 all communication was being put up on one side. I
35 wasn't going to give him anything else.
36 Q I'm sorry, Ms. Capuano, I just couldn't quite hear
37 that.
38 A I wasn't going to give him anything else that he
39 could use against me.
40 Q In the summer of 2014, did Gabriel visit with
41 Richard in Canada?
42 A Yes.
43 Q Roughly, what time period?
44 A I don't remember the exact dates. It was sometime
45 between May and July.
46 Q And for, roughly, how long?
47 A I think it was about six weeks.

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1 Q Could we flip to the next email dated the same day
2 re -- or "Forward re medical marihuana program
3 ID." And Richard writes to you [as read in]:
4

5 It seems from the number of responses I've
6 received today that people are not as
7 supportive of you as you think.
8

9 And then at the end of that paragraph:
10

11 You have to realize that most people will be
12 nice to your face and then look down on you
13 when you leave the room.
14

15 And then the next paragraph:
16

17 I told you I will destroy you slowly and
18 incrementally and legally. I will do so
19 simply by using your own actions and words
20 against you. I gave you two years to provide
21 me an amount of evidence against you.
22

23 How did those words make you feel?

24 A Terrified. I was pretty sure that my
25 communications to him were reasonable, but in his
26 hands, who knows.

27 Q And he goes in the next paragraph down, the third
28 sentence [as read in]:
29

30 And it's only a matter of time until your
31 current employer realizes how full of shit
32 you are and cuts you loose.
33

34 In your mind, did these emails that came from
35 Richard have an impact on your employment at
36 Apollo?

37 A I had support from Apollo, but because of this, I
38 was always more the security threat than anybody
39 else.

40 Q And do you feel that that impacted you in the
41 future, not at this time, but later on?

42 A Yes.

43 Q Could you tell the jury how?

44 A In 2015, Apollo went through layoffs and they were
45 only allowed to keep so many members of each team
46 and even though I had been there for seven-and-a-
47 half years, I was one of the ones let go, and

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1 another colleague of mine wasn't. And I -- I was
2 informed through her that the security risks were
3 part of the reason I was selected to be let go.

4 Q When were you let go?

5 A It was September 30th of 2015.

6 Q And then the next paragraph down [as read in]:

7
8 Don't think for one second that anything will
9 ever be more important to me than destroying
10 you. Every moment of my life is focused on
11 the single goal.

12
13 Did you believe that statement?

14 A Yeah. In this email, I also got the impression
15 that he had hired an investigator who was then
16 following me and tracking me.

17 Q Can you point the jury to the spot here where you
18 got that impression?

19 A
20 And you insisted I was full of shit when I
21 informed you about the investigator. As soon
22 as he provides me the name and contact
23 information about your druggie friends and
24 dealers, they'll be smiling right up there on
25 your site alongside you.

26
27 Okay. How did this, telling you there was an
28 investigator, make you feel?

29 A I was always looking around, always. I didn't --
30 I didn't have anything to hide, but thinking that
31 somebody's following you, thinking that somebody's
32 trying to get information about you makes you look
33 around.

34 Q Sorry, makes you?

35 A Look around.

36 Q This insinuation that you have druggie friends and
37 dealers, was that something you had heard from
38 Richard before?

39 A Yes, which didn't make sense.

40 Q Do you know why or from your perspective why that
41 was being said?

42 A I assume that he thought that I had druggie
43 friends. I have a medical marihuana card, I go to
44 a store and buy it. I pay taxes on it so I'm --
45 and I guess he assumed.

46 Q Was there anything involving your former partner,
47 Chris Lochner?

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1 A Yes. That probably had a lot to do with it.
2 He -- he was arrested for using drugs and he knew
3 people. I was not associated with them.
4 Q And we went over this pretty quickly this morning,
5 but do you remember when you separated from Chris
6 Lochner?
7 A Yeah, October 2nd of 2012.
8 Q Okay. The next email, please? Oh, sorry, was
9 there something else?
10 A Yeah. He -- he indicates that if he was really
11 motivated, he would do this. I -- I didn't think
12 that it would require him to be motivated. I took
13 this as part of something that he had planned on
14 doing [as read in]:
15
16 I would send your resume to every recruiting
17 firm and HR department in Phoenix and Tampa,
18 along with your bio. You will never be able
19 to get another job in IT. It's only a matter
20 of time until your current employer realizes
21 how full of shit you are.
22
23 Q I'm sorry, you started by saying how you took
24 that. How did you take that, I just missed that.
25 A As part of a plan of things that he intended to
26 do.
27 Q Okay. The next email, please, titled, "Use of
28 graphs and access statistics," dated July 24th,
29 2014. Just at the top, Richard writes [as read
30 in]:
31
32 As promised here, the usage graphs for the
33 site showing the spikes which follow each
34 time something was published about you.
35
36 He goes on to say in the fourth paragraph:
37
38 I have not received a single critical email.
39
40 And then in the fifth paragraph:
41
42 A quick scan of the log reports shows the
43 following are some of the most frequently
44 accessed URLs, and I note in there there's a
45 -- one that's titled "Mugshot." He's
46 labelled one as, "The picture of you in bed."
47

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1 And then he goes on to say [as read in]:
2

3 There also seems to be a lot of interest in
4 the pictures of your bedroom.
5

6 And so did you understand Richard, here, to be
7 referring to the usage statistics for the website,
8 desireecapuano.com?

9 A Yes.

10 Q And how did it make you feel to know that --

11 A He was taunting me, knowing I couldn't do anything
12 about it.

13 Q And how did that make you feel?

14 A Powerless.

15 Q In particular, did it bother you that there might
16 be a picture of you in bed, or pictures of your
17 bedroom on a public website?

18 A Yes.

19 Q Okay. The next email dated July 31st, 2014, if I
20 could just take you to the second page of this
21 email? It appears -- it starts with an email from
22 Richard, saying [as read in]:
23

24 Desiree, please be advised due to my lack of
25 interest in dealing with GoDaddy, I intend to
26 transfer the hosting of the aforementioned
27 domain and all services thereto related to my
28 own servers which are based outside the US
29 and will, therefore, not only -- not be
30 subject to US laws and regulations, but will
31 also be under the exclusive control and
32 authority of, well, me.
33

34 So what did you understand him to be referring to?

35 A Well, he was trying to indicate that he was going
36 to take down the website from GoDaddy and host it
37 himself. He tried to make it seem like it was his
38 idea, but I -- I know that Apollo Group's legal
39 department was working with GoDaddy at that time.

40 Q Okay. Now, if we go back to the other page, this
41 appears to be an email from Richard or Patrick to
42 a Detective Tuchfarber. Do you know who that is?

43 A Yes.

44 Q Who is that?

45 A He is a detective at the Phoenix Police
46 Department. I called the Phoenix Police when I
47 found out about the website and they opened a case

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1 and this was the person that was assigned to the
2 case, and he responded to Richard's initial email.
3 Q Okay. And just to be clear, you say you contacted
4 the Phoenix Police Department when you found out
5 about the website. Why did you contact them?
6 A I figured there had to be something that could be
7 done about it. He was contacting my people I work
8 with, my place of employment. He had my personal
9 information up on this website. It felt like the
10 right thing to do.
11 Q From your perspective, did the Phoenix Police
12 Department have any success in getting any of this
13 to stop?
14 A No, the detective made an arrangement with Richard
15 that Richard would stop his harassment as long as
16 the detective investigated my drug use.
17 Q Did the -- was that something communicated to you
18 by the detective?
19 A Yes.
20 Q Did the detective investigate your drug use?
21 A I had a medical marijuana card so insofar as he
22 saw that, yeah. He'd also been to the home, he
23 had seen everything.
24 Q Okay. And did Richard stop the harassment?
25 A For a little while, yes.
26 Q For how long?
27 A I'm not sure exactly.
28 Q And so when you say stopped, do you mean -- what
29 do you mean?
30 A He stopped emailing the people I worked with.
31 Q Do you know whether or not in that period of time
32 he took the website down?
33 A I -- I think it was down shortly after, but I
34 think that's because GoDaddy took it down.
35 Q If we could go to the next email, then. Moving
36 ahead in time to December of 2014, Richard writes
37 to you [as read in]:
38
39 You don't mind if I post that telephone call
40 on the website, do you?
41
42 Do you know what he's referring to?
43 A I -- I called him and spoke with him about
44 something.
45 Q Do you know whether he recorded your phone calls?
46 A I -- I have no proof he recorded it, but I
47 believed he did, and I believe that they're up on

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1 the website so I haven't listened to them on the
2 website so for myself, I don't know if they're
3 there.

4 Q Why do you believe they're on the website?

5 A I think he told me.

6 Q Richard goes on, in the third paragraph, there [as
7 read in]:

8
9 As I was saying when you hung up, a very
10 white trash response to losing a debate, by
11 the way, if you don't allow Gabriel to
12 proceed with the visitation as previously
13 agreed, you are actually helping my cause. I
14 know that the best way to hurt you
15 permanently is emotionally, not through your
16 reputation, finances or career. Remember, I
17 told you many months ago that the other stuff
18 I was doing was just to distract you? And
19 what could be more effective than for your
20 child to utterly despise you because of your
21 own actions? By telling Gabriel he could not
22 visit for the entire break, then completely
23 revoking that for no reasonable cause, you
24 have completely obliterated the last shred of
25 respect and tolerance he had for you. And
26 there's the other aspect, the court. You
27 see, the court has never seen you try to
28 interfere with visitation before because
29 there's always been an order compelling you.
30 Now I can show the court that you absolutely
31 agreed in writing to the visit, then after I
32 paid for the plane tickets, you refused for
33 what the court will consider a very
34 unacceptable reason. You see, you don't
35 think things through. You're a fool,
36 Desiree, that's why you are where you are.

37
38 A I remember what the call was about.

39 Q What was the call about?

40 A It -- it was about Gabriel travelling to Canada
41 and being in Richard's custody without him having
42 documentation showing that he was Richard Riess.
43 And I was telling him that I was not going to
44 allow Gabriel to travel to Canada unless he had
45 some documentation showing that he was Richard
46 Riess.

47 Q Okay. And how did you feel about Richard's

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1 comment, ". . . the best way to hurt you
2 permanently is emotionally"?
3 A I knew that's what he was trying to do, and it
4 worked a lot. I know that he was using my son to
5 hurt me.
6 Q Okay. And I'll ask you more about that a little
7 bit later.
8 MR. MYHRE: I did want to get to the last email, but I
9 note the time, My Lady. There's one more email in
10 2014.
11 THE COURT: Go ahead.
12 MR. MYHRE:
13 Q So if we could flip to that last 2014 email, it's
14 titled, "The ugly proof," dated December 17th. Do
15 you remember whether or not Gabriel was cc'd on
16 this email?
17 A I don't remember.
18 Q Could I ask you to check that overnight?
19 A Absolutely.
20 Q And so here, Richard tells you he's attaching his
21 BCID, right in the first sentence there [as read
22 in]:
23
24 . . . birth certificate, PAL, and just for
25 good measure, a copy of my most recent
26 paycheck.
27
28 Now, Richard goes on to say in the last paragraph
29 on that page, I'm going to start reading partway
30 into it:
31
32 If you think I'm lying and don't really have
33 a PAL, you can check with Gabriel.
34
35 What's a PAL, or what did you understand it to be?
36 A -- a gun licence, a Canadian gun licence.
37 Q
38 You need a PAL to get a membership at a
39 shooting range, which he can tell you I have,
40 or I can scan the membership card for you. I
41 can also send you pictures of my pistols and
42 his rifle, which I wouldn't be able to get
43 without a PAL. Face it, man, my name is
44 Patrick, and I have a squeaky clean
45 background and I'm an upstanding member of
46 society who makes pretty decent money and
47 Gabriel likes me more than he likes you. You

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1 have been played, you're a sucker. For
2 years, I was paying a salary in your name
3 through my corporations. You do remember
4 Vertical Inversion Systems, right?

5
6 What is that?

7 A It's a company that he incorporated when -- when
8 we were together.

9 Q [As read in]:

10
11 And not withholding taxes. You've got
12 thousands in back taxes which eventually the
13 IRS is going to go looking for and if they
14 don't, they're just a phone call away. I'm
15 methodical and think things through. I look
16 at the long-term. Sometimes my plans take
17 years to complete, but I always see them
18 through. PS, I emphasize the PAL because
19 it's hard to get, involves an extensive
20 background check and requires a clean record
21 and proof of good moral standing and
22 psychological stability. If there was any
23 truth to your claims, I would never be able
24 to get it. Do not take any statements or
25 references to firearms above as being in any
26 way threatening. I would never use a firearm
27 offensively or to threaten someone. They are
28 for sport and target practice only.

29
30 Did you know, before this email, that Richard had
31 guns in Canada?

32 A I know that he had taken Gabriel to a shooting
33 range. I did not know that he had guns.

34 Q And so we see Richard explicitly told you why he
35 was telling you about the guns?

36 A That's what he says.

37 Q Okay. How did that make you feel?

38 A He also told me I shouldn't feel offended when he
39 calls me white trash so I didn't really take that
40 at face value.

41 Q Okay. Did knowing that he had guns, or learning
42 that he actually had guns cause you any concern?

43 A Terribly, yes.

44 Q Why?

45 A The birth certificate that was attached in this
46 email was from Florida so the birth certificate he
47 sent me said that he was Patrick Fox from the

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1 United States, but then he sends me a gun licence
2 that says he can purchase firearms in Canada under
3 a name that's not his. The ability to do things
4 with those firearms and not have them traced back
5 to Richard Riess is very easy.

6 Q Was there anything else about this email that you
7 found significant?

8 A No, I -- there's a paragraph where, again, he's
9 calling me a lousy mother and that he does more
10 for our son than I do, but aside that, no.

11 MR. MYHRE: This might be a good time, then, My Lady.

12 THE COURT: All right. Thank you. Members of the
13 jury, thank you very much for your attention
14 through the day today. We're finished for the day
15 and I'll ask you all to be back and ready to
16 continue at the usual time tomorrow. Thank you.

17
18 (WITNESS STOOD DOWN)

19
20 (JURY OUT)

21
22 (PROCEEDINGS ADJOURNED TO JUNE 13, 2017, AT
23 10:00 A.M.)

24
25
26
27 Transcriber: I. Lim,
28 D. MacFie

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I hereby certify the foregoing to
be a true and accurate transcript
of the evidence recorded on a sound
recording apparatus, transcribed to
the best of my skill and ability.

I. Lim
Court Transcriber

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D. MacFie
Court Transcriber