

27178-2
Vancouver Registry

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

Vancouver, B.C.
June 13, 2017

REGINA

v.

PATRICK HENRY FOX

PROCEEDINGS AT TRIAL

COPY

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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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RULINGS

Nil

Proceedings**BAN ON PUBLICATION - INHERENT JURISDICTION**

Vancouver, B.C.
June 13, 2017

(JURY OUT)

THE CLERK: In the Supreme Court of British Columbia,
at Vancouver, this 13th day of June, 2017,
recalling the matter of Her Majesty the Queen
against Patrick Henry Fox, My Lady.

MR. MYHRE: Nothing to canvass, My Lady. The Crown's
ready to go.

MR. LAGEMAAT: There is still the issue, My Lady, of
tomorrow morning.

MR. MYHRE: Oh, right.

MR. LAGEMAAT: And I've had discussions with my friend.
I expect he'll tell you he might be finished early
today. I will need a little bit of time with Mr.
Fox before I start cross-examination. I can tell
My Lady that this is, essentially, the thickness
of the materials I will be putting to Ms. Capuano.
So I will not be nowhere near what Mr. Fox's
original estimate was. I did attempt to get ahold
of opposing counsel on my other matter and, not to
criticize him, but he's always been difficult to
communicate with, and I had my office leave
messages, my assistant call and see if he would
consent to adjourn. I did not hear back. If that
changes today, I will notify My Lady, but, as it
is, it would be a default order against my client
if I'm not there tomorrow morning.

THE COURT: All right. And you thought you could be
here by about 11?

MR. LAGEMAAT: Yes. And what I had discussed with my
friend and I'm proposing is that we could -- we
could let the jury go for the morning. It would
give me some extra time to spend with Mr. Fox, if
I got here at 11 or 12 for example, and we could
start early, start one o'clock, and perhaps have
two breaks in the afternoon. I was going to
originally suggest, if my friend finishes early
today, that we stand down until tomorrow
afternoon. And I still will suggest that, but, of
course, that would be giving up the afternoon and
the morning. But what that would give me would be
the afternoon to spend with Mr. Fox.

The court saw, I'll say, a small percentage
of the materials. I will need to go through a lot

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(Jury Out)
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1 of material with Mr. Fox before starting my
2 cross-examination because, while it is my
3 cross-examination, I do need to make sure I'm
4 getting his theory on the record. So I will need
5 to go through a lot of materials with Mr. Fox
6 before I start. So, regardless of how we proceed,
7 as long as I have the time to spend with Mr. Fox
8 before beginning my cross-examination.
9 THE COURT: All right. Anything, Mr. Myhre?
10 MR. MYHRE: No, that's something we discussed, My Lady.
11 THE COURT: All right. It's a slightly unusual
12 situation, with your involvement, Mr. Lagemaat,
13 and you have obligations inherent to your role
14 that are somewhat different from those of defence
15 counsel who might have been on the case for a long
16 time, with the ability to take instructions. We
17 will work around your obligation tomorrow morning
18 on another case, if you are not able to get some
19 assurance from opposing counsel on that other
20 case. If you can, that would, obviously, be
21 preferable.
22 MR. LAGEMAAT: Yeah.
23 THE COURT: But, if you're not, we'll work around it.
24 And I think what we should do is wait until later
25 today and see how things are going.
26 MR. LAGEMAAT: Thank you, My Lady.
27 THE COURT: All right. Are we ready for the jury?
28 THE ACCUSED: Um, I wonder if we might be able to
29 remind the jury that everything that was discussed
30 yesterday is outside of the timeframe of the
31 indictment, that that's purely just for
32 background. None of the emails that were brought
33 up yesterday make up part of the charge.
34 THE COURT: Mr. Myhre, is that something you can do in
35 your examination or that I should consider doing?
36 MR. MYHRE: I kind of did do that, My Lady, in my
37 opening. I told the jury that they were going to
38 need to really focus on the question of that time
39 period. In my submission, I know Your Ladyship is
40 going to give them a very clear instruction about
41 the charge period. But, as Your Ladyship knows,
42 what happened before is relevant to inform the
43 mindsets of the parties during the time period
44 charged, so it's not like that's irrelevant, and
45 any instruction in that regard would have to be
46 thoughtfully done.
47 THE COURT: Might it not be -- I'll put that more

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1 positively. It seems to me that it might be
2 preferable that you simply work into your
3 questions -- [background conversation]. I'm just
4 going to wait for a moment. It might be
5 preferable and more natural that you simply work
6 into your questions that you're continuing on with
7 some background to the period covered by the
8 indictment. Something along those lines. Would
9 that be acceptable?

10 MR. MYHRE: I can certainly do that.

11 THE COURT: And that would function as the reminder
12 that Mr. Fox is asking for.

13 THE ACCUSED: Thank you.

14 THE COURT: All right. Mr. Lagemaat, is everything all
15 right?

16 MR. LAGEMAAT: Yes. I was just mentioning to the
17 sheriff I'd like to spend the morning break with
18 Mr. Fox.

19 THE COURT: I see. All right. I wanted to make sure
20 there's not a problem before I bring the jury in.

21 MR. LAGEMAAT: No problems, My Lady.

22 THE COURT: We all set?

23 THE SHERIFF: Yes.

24 THE COURT: Please.

25 THE SHERIFF: Yes, My Lady.

26 THE SHERIFF: The jury, My Lady.

27

28 (JURY IN)

29

30 THE COURT: Good morning, members of the jury.

31 THE CLERK: Let me remind you, Ms. Capuano, that you're
32 still under affirmation.

33

34 **DESIREE CAPUANO**

35 a witness called for the
36 Crown, recalled, warned.

37

38 MR. MYHRE: My Lady, I have the additional copy of the
39 book of records.

40 THE COURT: Thank you.

41 MR. MYHRE: Are we okay to go, Madam Registrar?

42 THE CLERK: Yes.

43

44 **EXAMINATION IN CHIEF BY MR. MYHRE, CONTINUING:**

45

46 Q Ms. Capuano, when we left off yesterday, we had
47 just finished getting to the end of a few of the

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1 emails from 2014 that are in this book. I'd like
2 to go back. There are a couple of things and we
3 skated over a little too quickly. Could I take
4 you back to - and we're at Tab 10 of the book here
5 - to the July 22nd, 2014 email, titled "Telephone
6 communication regarding Gabriel".

7 Now, I understand you've thought about this a
8 little bit overnight. Last -- yesterday you
9 couldn't really remember what this conversation
10 was about.

11 A Correct.

12 Q Do you have any recollection of it having thought
13 about it overnight?

14 A This -- this telephone call, if memory serves
15 correctly, was in regards to me calling him and
16 asking him to stop with the website, to take it
17 down and stop emailing my co-workers.

18 Q Okay. If I could next take you a few pages
19 forward for the email titled "Forward re medical
20 marijuana program ID" from July 23rd, 2014.

21 And we talked yesterday how -- about how, in
22 many of these emails, when they're originally sent
23 to you on the dates in 2013 and 2014, the name
24 "Richard" was being used, not "Patrick".

25 A Correct.

26 Q So that looks like it's been replaced in these
27 emails.

28 A Correct.

29 Q If you look at the P.S. section of this email [as
30 read in]:

31
32 P.S., is it really necessary to keep using
33 the name Patrick?

34
35 What did that say when you received this email in
36 July 23, 2014?

37 A
38 Is it really necessary to keep using the name
39 Richard.

40
41 Q Then:
42
43 I only use it with you and that now for
44 relevant family court proceeding and you
45 already know my name is Patrick, or is it?

46
47 Did that second Patrick -- did that say Patrick?

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1 A Yes.
2 Q Okay. Moving ahead again, so the email titled,
3 "The ugly proof" from December 17th, 2010 -- 2014.
4 Did you check overnight whether or not this was
5 one of the emails that Gabriel was cc'd on?
6 A Yes, I did, and yes, he was.
7 Q Okay. And after court yesterday, you pointed
8 something out to me that troubled you in this
9 email that we'd overlooked yesterday when you were
10 testifying. What was that?
11 A The question on whether or not the email made me
12 fearful, because he's indicating that he owns
13 firearms and he's purchased these firearms under
14 the identity of Patrick Fox, but what was
15 concerning to me, particularly in this email, was
16 where he says [as read in]:
17
18 Regardless of what you believe, that birth
19 certificate, together with my BC ID has been
20 sufficient every time I've crossed the
21 border. You only require the passport when
22 flying, not driving.
23
24 Which indicated that he'd been using this identity
25 to cross into the United States on a regular
26 basis. And now he owns the firearms.
27 Q Now, at the top of this email, Richard wrote [as
28 read in]:
29
30 I've attached a few supporting documents, a
31 copy of my BC ID birth certificate, PAL, and
32 just for good measure, a copy of my most
33 recent paycheque.
34
35 Did he in fact attach those documents?
36 A Yes.
37 Q Okay. I'm going to show you a few documents.
38 MR. MYHRE: Madam Registrar, could you hand that to Her
39 Ladyship?
40 Q Can you just flip through that? It's a stapled
41 set of three -- three pages. Do you recognize
42 these documents?
43 A Yes.
44 Q Are these the ones that were attached to this
45 email?
46 A Yes.
47 Q And the ones that were attached to these -- these

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1 documents have things vetted out. It looks like
2 the middle name, Patrick-something-Fox is vetted
3 out from each of them. Was that how they were
4 sent to you?
5 A Yes.
6 MR. MYHRE: My Lady, could these be marked as an
7 exhibit, please?
8 THE COURT: Any objection, Mr. Fox?
9 THE ACCUSED: Not yet, I mean, we are getting very
10 close though, to something I'm going to object to.
11 THE COURT: But you're not objecting to this?
12 THE ACCUSED: No, I don't object to this yet.
13 THE COURT: All right.
14 MR. MYHRE: And what number exhibit are we at?
15 THE CLERK: It would be Exhibit 2, My Lady.
16 THE COURT: And you're proposing that all three pages
17 be marked together as Exhibit 2?
18 MR. MYHRE: Collectively as the attachment to the
19 December 17th email.
20 THE COURT: And the version I have, that's a copy, is
21 it, not the original?
22 MR. MYHRE: These are all copies, My Lady, printouts.
23 THE COURT: All right. But has Madam Registrar got one
24 is what I'm asking.
25 MR. MYHRE: Oh, I believe the copy that the witness has
26 should become the exhibit.
27 THE COURT: All right.
28 MR. MYHRE: That's my intention.
29 THE COURT: Can I see that one, Madam Registrar? Is
30 that a colour -- yes, it is, thank you.
31

**EXHIBIT 2: Identification documents attached
to email of December 17, 2014, 3 pages**

32
33
34
35 MR. MYHRE:
36 Q Okay, Ms. Capuano, we're now going to move into
37 the time period that -- for which Patrick Fox is
38 actually charged with criminal harassment.
39 January the 11th, 2015. So if I could take you
40 into Tab 11, and if you could flip over a couple
41 of pages to the end of this email chain. It
42 appears to start on January the 11th at 9:04 a.m.
43 and now, to be clear, by this time was Richard
44 corresponding with you in the name "Patrick"?
45 A Yes.
46 Q So it says -- Patrick wrote [as read in]:
47

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1 Good morning, Desiree.

2
3 And he's asking you some questions about how
4 Gabriel's doing.

5 A Yes.

6 Q Now, had Gabriel been with Richard over the winter
7 break?

8 A Yes.

9 Q And do you remember roughly when that was?

10 A December 20 -- in the range of December 20th until
11 January -- first week of January. It's the two
12 weeks winter break through Christmas and New
13 Year's.

14 Q Now, I'd just like to highlight something in this
15 first portion of the email, and over the next
16 page, so the very -- the very last page of this
17 email string, the second full paragraph that
18 starts with, "I know that by saying this...". If
19 you look a little further down, about halfway
20 down, Richard writes [as read in]:

21
22 The longer Gabriel is there with his bad
23 attitude, his indifference toward you and
24 Sage and your family and his subtle demeanour
25 of disgust and condescension toward you and
26 Sage and your mother and your trashy ways,
27 the more it will instill into Sage's
28 subconscious --

29
30 THE COURT: I'm sorry, Mr. Myhre, I'm lost and it may
31 be that members of the jury are too. Where are
32 you, please?

33 MR. MYHRE: Thank you, My Lady. So this is the very
34 end of the first email string that's included at
35 Tab 11.

36 THE COURT: When you say "the end", what kind of end do
37 you mean? When it began or when it finished
38 or...?

39 MR. MYHRE: Right. I see how it's all confusing. So
40 I'm looking at the third page at Tab 11, and the
41 first words on that page are, "Example, your
42 home...".

43 THE COURT: Okay.

44 MR. MYHRE: Thank you.

45 Q And so the second full paragraph down that starts
46 with, "I know that by saying this...", Ms.
47 Capuano, I'd like to ask you a question about this

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1 portion that appears halfway down [as read in]:
2

3 The longer Gabriel is there with his bad
4 attitude, his indifference toward you and
5 Sage and your family and his subtle demeanour
6 of disgust and condescension toward you and
7 Sage and your mother and your trashy ways,
8 the more it will instill into Sage's
9 subconscious that he is inferior and
10 inadequate, the more it will slowly eat away
11 at your perfect family. Sucks. Now, on the
12 one hand, you're pulled by your upbringing,
13 years of conditioning to react in the only
14 way you know, with anger and spite, to want
15 to keep Gabriel there because you believe
16 that it will adversely affect me. On the
17 other hand, you know I'm right and that I've
18 been manipulating the situation for two years
19 and that as long as Gabriel is in your home,
20 you will never be happy because you will
21 never have your fairy tale.

22
23 Now, do you remember what Gabriel's demeanour was
24 like when -- around this time when Richard sent
25 you this email?

26 A Anytime Gabriel came back from his visitation with
27 his father, his behaviour was different. He was
28 reserved, he wouldn't talk, he wouldn't associate.
29 He would --

30 THE COURT: Just -- just a moment, please, Ms. Capuano.
31 Yes, Mr. Fox?

32 THE ACCUSED: I'm terribly sorry, but I'm sometimes
33 having difficulty hearing the witness. Would it
34 be okay to request that she speak just a little
35 louder?

36 THE COURT: All right.

37 THE ACCUSED: Or is there -- is there a microphone
38 perhaps?

39 THE COURT: I'll ask Ms. Capuano can you speak a little
40 more loudly?

41 A Yes, I can try.

42 THE ACCUSED: Thank you, My Lady.

43 THE COURT: Thank you.

44 MR. MYHRE:

45 Q So you said that any time he came back from his
46 visits with Richard, he was reserved --

47 A He would not associate with the family, he would

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1 not accept hugs like he normally would, he'd shut
2 himself up in his room. If he was in the living
3 room, he would sit as far away from us as he
4 could, and it would take quite a bit of time to
5 get him to be normal again.

6 Q Okay. If we go forward in this email chain, so
7 just to the page preceding the one we've just been
8 looking at, and there's an email about a quarter
9 of the way down the page that starts, "On Sunday,
10 January the 11th, 2015, Patrick wrote...". And
11 three paragraphs down into that email, or, sorry,
12 the last paragraph in that email, Richard writes
13 [as read in]:
14

15 I've discussed all of this with Gabriel and
16 I've explained to him what my plan is with
17 respect to you. I've told him if he's
18 uncomfortable with any of it, then I won't
19 proceed. He's is fully aware that he is
20 being used as a pawn in my plan to ruin your
21 life and he seems to be okay with it.
22

23 Ms. Capuano, how did that statement from Richard
24 make you feel?

25 A Incredibly sad. But I knew that my son was being
26 manipulated to help his father, oftentimes
27 unknowingly. So I was watching this happen and it
28 was very frustrating that he put it into words, I
29 mean, put it down on paper and there's still
30 nothing I could do to stop it.

31 Q Okay, now I'd like to go to the first page of this
32 email string, so the first page after Tab 11.
33 Now, it has the parties there listed, "From
34 Patrick to Desiree" at the top. Do you know
35 whether this was one of the emails that Gabriel
36 was cc'd on?

37 A I'm sorry, which -- which one are we referring to?

38 Q So it -- as soon as you open from Tab 11, that
39 first page.

40 A Correct.

41 Q Do you know whether or not Gabriel was cc'd on
42 this email?

43 A I believe he was.

44 Q And what we see following are some little arrows
45 that show what your response to Richard's initial
46 emails that we just looked at were.

47 A Yes.

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1 Q And then below those arrows, there's Richard's
2 response to your response.

3 A Correct.

4 Q And so I'd like to take you to -- just partway
5 down the page where there are little arrows that
6 start with, "Your stalker-like obsession...",
7 about a third of the way down the page. And you
8 write to Richard [as read in]:
9

10 Your stalker-like obsession with me is truly
11 impressive. The amount of time and energy
12 spent thinking of me is flattering, but
13 honestly, a little pathetic.
14

15 Is that what you said in your email?

16 A That is what I said, yes.

17 Q And you told us earlier how you had, for a time,
18 been ignoring emails from Richard.

19 A Yes.

20 Q Here you've done something different.

21 A Yes. I was trying a new -- a new approach.

22 Q Can you explain what that approach was and why you
23 took that approach?

24 A A lot of the times with a bully, if you ignore
25 them or don't give them what they're after,
26 they'll stop, and so that's what I had been
27 trying. I was trying to placate and give him what
28 he was demanding or just not engaging.

29 At this point, I instead tried to defend
30 myself, stood my ground, and I wasn't going to be
31 pushed around anymore and I thought maybe if he
32 saw that I wasn't intimidated or if I wasn't
33 affected, that maybe he would stop, and so I
34 pushed back and I was trying some bravado and just
35 -- I was tired.

36 Q And Richard's response to you saying that was [as
37 read in]:
38

39 If there's any sincerity in your statements
40 that you -- then you've grossly
41 misinterpreted my intentions. I was pretty
42 direct when I told Detective Tuchfarber that
43 my intention was to do everything in my power
44 and capabilities to make your life as
45 miserable as possible and, if possible, to
46 the point that you ultimately commit suicide.
47 That would be my ultimate desire. But before

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1 you reach that point, it is imperative that
2 you experience as much misery,
3 disappointment, and suffering as possible
4 first. At this point in your life, you have
5 very little to lose, so there is not much
6 incentive for me to actively publish your
7 information. I shall wait patiently until
8 you rise up a bit, then proceed with the
9 billboard campaign around Phoenix. I will
10 wait until you actually have some financial
11 significance, then publish your complete
12 credit and financial history, including your
13 social security number and birth certificate.
14 Not illegal as long as it is done outside the
15 U.S. I don't see how you could interpret
16 such intentions as being misguided affection.

17
18 How did that statement from Richard make you feel?
19 A It gave me a clue into some of the things that he
20 was planning on doing.

21 Q And did that have any affect on you?

22 A Yes. At that point, I started to wonder what else
23 he had planned. I honestly figured it was just a
24 matter of time before he was going to do something
25 else. But again, I couldn't get him to stop,
26 so...

27 Q Okay, Ms. Capuano, can you flip the page and go to
28 the third page in this email string. This is the
29 page that starts at the top with, "I know he is
30 capable of so much...". And if we look at the
31 second-last paragraph, halfway down that paragraph
32 there's a little arrow and it says -- you've
33 written [as read in]:

34
35 He is the one being hurt by your actions,
36 scheming and manipulation.

37
38 You were there referring to Gabriel?

39 A Yes.

40 Q And Richard's response was:

41
42 Gabriel is not being hurt at all by what I am
43 doing. He knew before I started executing
44 the plan exactly what the plan was.

45
46 And so what was your purpose in telling Richard
47 that Gabriel -- you believed Gabriel was being

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1 hurt?
2 A Whether Richard wanted to believe it or not, my
3 son did love me. He does love me. So for Richard
4 to try to continue to convince Gabriel that I was
5 a horrible person confused him, and the fact that
6 he kept telling Gabriel what his plans were with
7 regard to me and how he was planning on destroying
8 me, is not really good for a child, especially
9 when that's his mom. The fact that he was using
10 Gabriel to get information about me to put on the
11 website, manipulating and using him as a tool,
12 that scars a kid. That hurts a child. He should
13 never be used like that. So, yeah.
14 Q How did it make you feel --
15 A I felt like I couldn't protect --
16 Q -- when this was happening --
17 A -- my child.
18 Q -- to Gabriel?
19 A I felt like I couldn't protect him.
20 Q Okay. The last paragraph on that page reads, and
21 this was Richard writing:

22
23 He once asked me if I would shoot you. I
24 told him that murder is illegal and immoral
25 and can result in spending the rest of one's
26 life in prison. And that the rest of my life
27 in prison is not a risk I'm willing to take.
28 But otherwise, no, I would have no qualms
29 about it; that that is how much I despise you
30 for the things you've done and continue to
31 do. He did not flinch; he didn't look
32 anything other than indifferent; as best I
33 could tell, he didn't care. The topic never
34 came up again. That was during his visit
35 last summer. To be clear, I told Tuchfarber
36 the same thing. There is nothing illegal or
37 threatening about wanting to harm someone as
38 long as you don't act on it. I am reasonable
39 and rational enough to know the difference,
40 and to refrain from engaging in such
41 activity.

42
43 And let me be absolutely clear on this point:
44 I would never deliberately cause you physical
45 harm, other than in self defence or defence
46 of another. Though that is nothing special
47 toward you - I have that rule for 'ALL'

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1 people. Also, I emphasize that [Gabriel]
2 brought up the question and I only responded
3 to it truthfully.
4

5 How did this statement make you feel?

6 A I -- I, in my own mind, questioned Richard's
7 ability to rationalize what's -- what's right and
8 what's not. I also questioned his respect for the
9 law and, to me, what that meant was if he could
10 figure out a way that the risk of going to jail
11 was not there, that he would absolutely shoot me,
12 and he discussed it with our child.

13 Q Okay, if we could flip to the next email chain.

14 MR. MYHRE: And again, My Lady, I do apologize for not
15 having page numbers. That would have made things
16 easier.

17 Q If we could flip to the beginning of this email
18 chain, so over the next page. If you look at the
19 bottom of that page, see an email that starts, "On
20 Monday, January 26th, 2015, Patrick wrote..."

21 MR. MYHRE: So, okay, pardon me, members of the jury.
22 I can see you're flipping. So if we could --
23 there's the email that starts, "Your talk with
24 Gabriel..." at the subject line on January 27th,
25 2015. So if you could just flip the page from
26 there and at the very bottom of that page, it
27 says, "On Monday, January 26th, 2015, Patrick
28 wrote..."

29 Q And if we look over the page, Ms. Capuano, at the
30 end of that email, the second paragraph reads [as
31 read in]:
32

33 By the bye about your medical records.
34

35 Do you see that paragraph?

36 A Yes.

37 Q So Richard wrote:
38

39 By the bye, about your medical records, I got
40 them from Penmar [phonetic] unofficially, of
41 course. That's when you were diagnosed as
42 bipolar, and since there is no cure for it
43 and it never goes away, if you were bipolar
44 then, you're bipolar now.
45

46 Do you know, Ms. Capuano, whether or not Mr. Fox
47 -- Mr. Riess was able to obtain your medical

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1 records?

2 A No, I don't know if he was able to get them or
3 not. I don't know if he has them.

4 Q Generally speaking, around this time, what was
5 your belief about Mr. Riess's ability to find out
6 information about you?

7 A I figured everything that he said he had, he
8 actually had. He generally doesn't lie, so when
9 he says he's going to get it or has it...

10 Q Now, this email continues on with a criticism
11 about your parenting [as read in]:
12

13 How is it you've still not inspected
14 Gabriel's eye and brought him to the
15 ophthalmologist. It's been two weeks since I
16 ridiculed you for being so indifferent toward
17 him that you hadn't even noticed it and now
18 you still have not. How do you live with
19 yourself being so full of shit that you claim
20 to love and care about your children and that
21 you're a good parent, dude. You're one of
22 the worst fucking parents I've ever known.
23 Even my crappy mother at least eventually
24 would have taken me to the doctor. Dang,
25 woman, you're a fuckin' sad excuse for a
26 human being. Anyway, it's about time that I
27 update your website and put it back online.
28

29 Cheers,
30 Patrick.
31

32 So there we see another criticism of your
33 parenting. Do you remember whether there was a
34 problem for which Gabriel needed to go to the
35 ophthalmologist?

36 A Gabriel is blind in one eye. He's between half
37 and three-quarters blind. He had ROP, which is
38 retinopathy of prematurity, so he had it from
39 being premature, and he lost the retina. The
40 retina detached in that eye, so the eye is
41 essentially dead, which means it's going to milk
42 over and it's going to lose the colour and it's --
43 this is just normal. I've taken him to the eye
44 doctor. There's nothing to be done about it. The
45 eye is essentially dead, and we knew that.

46 Q Okay. If we could flip back to the beginning of
47 this email string where the subject line is

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1 listed, "Your talk of Gabriel", January 27th,
2 2015. So in this file of email printout, what we
3 see here is your response to those previous
4 emails, has a line along the left-hand side, and
5 then Richard has responded underneath those.
6 A Yes.
7 Q And right at the top we see your response [as read
8 in]:
9
10 Paddy, I can clearly see that maturity is not
11 your strong suit.
12
13 A Yes.
14 Q So how would you characterize your response there?
15 A It was -- it was a little antagonistic, it
16 absolutely was. I was really tired of the
17 insults, I was really tired of being called a
18 terrible person, I was really tired of being
19 questioned on everything, especially when it was
20 not true. But I also wasn't going to be pushed
21 around anymore.
22 Q Did you notice, Ms. Capuano, whether or not there
23 was any difference in your relationship with
24 Gabriel when your responses changed in January of
25 2015?
26 A Absolutely.
27 Q How did it change?
28 A When I was not responding to Richard, then Gabriel
29 only had one side of the story. He had Richard's
30 side of the story only. I -- I refused to put my
31 son in the middle and so I wouldn't talk to him
32 about any of this. So when he saw that I wasn't
33 responding to emails, and I wouldn't talk to him
34 about the situation, all he had was his father's
35 perspective.
36 When I started responding to these emails,
37 and when I started defending myself, that's when
38 Gabriel started respecting me. When he actually
39 saw me standing up and he saw me not just laying
40 down and taking it, and he started to see some of
41 my responses as well, and he started to realize
42 that there were two sides to the story. At one
43 point, he told me it was good that I was finally
44 responding.
45 Q Now, if we go just look at the next page, and just
46 over halfway down, there's your response there
47 with the left -- bar along the left [as read in]:

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1
2 All for what, to pursue some selfish vendetta
3 against me.
4
5 And so you're questioning why Richard is doing
6 what he's doing.
7 A Yes.
8 Q And we see Richard's response was [as read in]:
9
10 Wait a second, my vendetta against you is
11 somehow more selfish than what you did? You
12 had me detained for six months, then
13 physically removed from the country of my
14 birth so that you could gain custody of a
15 child you clearly don't even care about.
16 Yet, in your warped mind, I'm the selfish
17 one? Otherwise, yes, as I've stated
18 consistently for the past year and a half,
19 the singular goal of the rest of my life is
20 to destroy your life. I don't care if I die
21 penniless and alone, as long as I know I have
22 done everything I can to make your life as
23 difficult and miserable as possible within
24 the confines of the law.
25
26 So another reminder from Richard about what his
27 goal is.
28 A Yes. And another indication that he's trying to
29 say he was born in the United States.
30 Q Okay. As we saw earlier, this email included --
31 the original email included a reminder about the
32 website [as read in]:
33
34 It's time I update your website and put it
35 back online.
36
37 A Yes.
38 Q And so right now we're going to flip to the
39 website itself. So if we could go to Tab 1 of
40 this book, Ms. Capuano. Can you give the jury
41 some idea of the frequency, if at all, that you
42 visited this website yourself?
43 A I -- I went there when I initially learned of it
44 and I would look at specific parts of it, if
45 somebody brought up something that I should look
46 at. But, for the most part, other people reviewed
47 it on my behalf.

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1 Q Why didn't you look at this website more
2 carefully?
3 A Because it's disgusting.
4 Q Okay. At Tab 1 here, we see the homepage. You're
5 familiar -- have you see this before?
6 A Yes.
7 Q You've been to this on the website?
8 A Yeah, it's changed over the course of the years,
9 but yes, I've seen this.
10 Q And so you knew, as is written at the top, that
11 the goal was to [as read in]:
12
13 Increase the awareness of Desiree Capuano by
14 informing the public of the atrocious, the
15 despicable and the downright evil things
16 Desiree has done.
17
18 Et cetera, et cetera. And we see -- if we look
19 under the goals of this website section, the
20 second paragraph [as read in]:
21
22 This site contains extensive allegations
23 against Desiree including that she is a white
24 supremacist, child abuser and drug addict.
25
26 And we saw those earlier in some of the emails.
27 A Yes.
28 Q Do you know -- did Richard ever tell you why he
29 was calling you a white supremacist?
30 A Yes.
31 Q Why?
32 A Well, having read through the book in preparation,
33 he actually has a whole post there about why I'm a
34 white supremacist, but essentially, there was a
35 single line in one email where I refer to him as a
36 dirty Mexican, and that was very bad. And then
37 there was another line in another email about
38 having to go to Compton courthouse and not being
39 able to figure out our issues on our own. So
40 those two sentences from the two emails over the
41 course of the six years is why I'm a white
42 supremacist.
43 Q Do you remember anything about a dagger in your
44 home that --
45 A Yes.
46 Q What do you remember about that?
47 A My ex, the one that was arrested, did have a

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1 knife. It was on the wall. It have a swastika on
2 it. It did face on the inside of the wall. I did
3 not like it. He tried to say that it was -- that
4 the symbol meant something before the Germans used
5 it, and that was what he was impressed by, but
6 that was him.

7 Q You're referring to Christopher Lochner
8 [phonetic]?

9 A Yes.

10 Q So this would have been 2012 or --

11 A '12.

12 Q -- sometime earlier. Okay. And when we look at
13 the -- what's on this website section, it says
14 there's a blog section, a mail section, legal,
15 police reports, pictures, background history, and
16 you know from your view that those things are all
17 on the website?

18 A Yes.

19 Q And we've already seen the mail section that lists
20 -- appears to have every -- virtually every --

21 A Correct.

22 Q -- email ever sent between the two of you since
23 2011. I'd like to flip over the page -- or to Tab
24 2. So videos of Michael Capuano, is that Michael
25 Capuano? Right, Tab 2.

26 A Sorry, Tab 2. Yes, that video was taken long
27 after we were no longer together.

28 Q And below that, is that your son Sage?

29 A Yes.

30 Q Do you know what video that is?

31 A I have that video.

32 Q Roughly how old is Sage in that picture?

33 A I think he's about six, seven.

34 Q Do you have any idea how Richard could have gotten
35 it?

36 A Same way he got the pictures of everything. I
37 then took the pictures using my cell phone, and in
38 Facebook there's an upload section, used to be,
39 and so Richard would go into Gabriel's Facebook
40 account where I was linked with him, and he would
41 go into my pictures and he would look at my
42 uploaded pictures and he would take them all.

43 Q Now, do you know that for a fact or is that your
44 best --

45 A That's my best guess.

46 Q -- guess as to how he would have gotten them?

47 A Because I didn't even post these on Facebook.

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1 They were just in the camera wall.
2 Q If we go over to Tab 3, please. So this page is
3 titled photo albums. There's a picture of you,
4 there's your current partner, James Pendleton,
5 Christopher Lochner, your son, Sage, Michael
6 Capuano. Those are -- and that's accurate, that's
7 who those people are in those pictures?
8 A Yes. The picture of Michael Capuano, that was --
9 that was after we were already separated and
10 divorced, that -- that picture he got.
11 Q Is that actually your bedroom there?
12 A It was.
13 Q That actually -- was that your bathroom?
14 A Yes.
15 Q In what years?
16 A That was -- that was 2014 and '15. That was the
17 apartment I had with just the boys and me.
18 Q When did you move out of that apartment?
19 A Summer of 2015.
20 Q Was that the bathroom?
21 A Yes.
22 Q Was that -- it's like a living room under "my
23 home".
24 A That living room was from a previous apartment
25 that I had with Christopher Lochner in 2012 or
26 2011.
27 Q Okay. Under the "San Diego", do you know where
28 that picture is from?
29 A That's from the family vacation that we took in
30 San Diego that Gabriel was supposed to be with us.
31 Q In 2011?
32 A Yes.
33 Q If we flip the page over, we see photo album,
34 Desiree Capuano. Where is the -- can you tell the
35 jury where the first three pictures are from?
36 A The first picture is the mug shot from when I was
37 arrested for marihuana. The second picture is the
38 marihuana card. The arrest actually -- the
39 charges were dropped for the arrest for marihuana.
40 And then all of the rest of the pictures are
41 still-shot images from the interview that I did
42 with the CBC.
43 Q Okay. If we flip the page --
44 MR. MYHRE: And, members of the jury, if we're counting
45 page numbers in this photo album, if you go to
46 page 3.
47 Q If you look down to the sixth row, Ms. Capuano,

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1 you see there's -- looks like a picture of you and
2 then a blurred-out face.
3 A Yes.
4 Q Whose face is that?
5 A Gabriel's.
6 Q And then the next row, the third picture, whose
7 face is blurred out there?
8 A Gabriel's.
9 Q If you flip over to the next page, there's some
10 photos of you and -- is that Christopher Lochner
11 at the top there?
12 A Yes.
13 Q Do you know where these photos came from?
14 A Some in the camera wall. They weren't -- they
15 weren't published.
16 Q Sorry, you said they weren't public?
17 A I didn't post them on the Facebook. They were
18 just in the camera wall section that you can get
19 to through Facebook.
20 Q Okay. If we could flip over to the next photo
21 album titled page, Capuano. These are all
22 pictures of your son, Sage?
23 A Yes.
24 Q How does it make you feel these -- knowing these
25 pictures are up on the website?
26 A This section was added after the last custody
27 hearing in which the judge maintained that I have
28 sole custody over our son, and that I'm
29 responsible for all visitation and communication.
30 Richard called Gabriel and Gabriel told me that
31 Richard's intentions were now to go after Sage, my
32 other child, and this was his way of doing this,
33 to put all of these pictures of my son on the
34 site. And this scares me so much, because that's
35 public. So any paedophile --
36 THE COURT: Would you just stop for a moment, please.
37 THE ACCUSED: No, I'm sorry.
38 THE COURT: All right.
39 THE ACCUSED: I don't object.
40 THE COURT: There was a hearsay issue in there. That's
41 why I'm -- can you go back and address that again,
42 please, appropriately?
43 MR. MYHRE:
44 Q So the relevant question, Ms. Capuano, is how does
45 this make you feel, and I think you were starting
46 to tell us that.
47 A Yes.

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1 Q You came to believe, for the reasons you've
2 outlined, that now --
3 A There was a reason --
4 Q -- Richard was focusing an attack on Sage.
5 A Yes.
6 Q How did that make you feel?
7 A Again, this is a danger and this is a risk to a
8 minor child. This website has my home address.
9 It has pictures of my house. It has maps
10 detailing the area where I live along with bus
11 routes, and any other information. So if anybody
12 took a liking to my kid, they could very easily
13 find him. And above that, the kid was 12 years
14 old. He did nothing to Richard. Richard might
15 claim that I deserve this punishment, but this kid
16 did nothing to deserve punishment.
17 Q How did that make you feel, to feel like Sage was
18 being punished now?
19 A Scared. At this point we talked about moving, we
20 talked about hiding identities, we talked about
21 what we could do to disappear so that I could
22 protect my family.
23 Q Okay. Ms. Capuano, if you look at the last row of
24 pictures on the first page of the Sage Capuano
25 photo album, in the middle, do you know who is in
26 that picture, the middle picture? So the photo --
27 the first page of the Sage Capuano photo album.
28 A Yes.
29 Q The last row, the middle picture.
30 A Yes.
31 Q Who's in that picture?
32 A Gabriel.
33 Q Who else?
34 A Sage.
35 Q And who's the one who's face is blurred?
36 A Gabriel.
37 Q If we flip to the -- counting page numbers of this
38 photo album, the 1, 2, 3, 4, fifth page, the last
39 -- well, actually, how about the first row. You
40 see in the middle photo in the first row, there --
41 there are two, it looks like children laying on
42 the floor and a dog.
43 A Yes.
44 Q Who is that?
45 A Sage and Gabriel.
46 Q And whose face is blurred?
47 A Gabriel's.

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1 Q If you look at the last row on that page, the
2 middle photo or the first two photos in the last
3 row, whose face is blurred out there?
4 A Always Gabriel.
5 Q And the boy in the light blue, that's Sage?
6 A Yes.
7 Q Okay. I would just like to skip ahead to Tab 5
8 now.
9 A There's also a picture of Sage in his underwear on
10 the last page outside by the pool.
11 Q So those are the last two rows on the second-last
12 page of the Sage Capuano photo album?
13 A Yes.
14 Q And you pointed them out because...?
15 A It's a child in his underwear on a disgusting
16 website. Again, these are not photos I published
17 to Facebook. They were just in the camera wall.
18 Q Tab 5, please. So this page is titled
19 "Associates". Now, my question is you've looked
20 at some of these, and some of the people you don't
21 know and some of them you do. As far as the
22 people you know, these are actually those people.
23 Like that's actually a picture of Theresa Hoffman
24 [phonetic], Donald Tomlin [phonetic], Sage
25 Capuano, James Pendleton?
26 A Yes.
27 Q Could you flip over the page, the second page?
28 The third person down is Wendy Mary Pendleton?
29 A Yes.
30 Q And that's -- it's written there [as read in]:
31
32 Wendy Pendleton is my fiancé James
33 Pendleton's mother.
34
35 Is it true that this is James Pendleton's mother?
36 A Yes.
37 Q And it's written that -- the last line under Wendy
38 Pendleton:
39
40 Wendy owns Express Employment Professionals,
41 a staffing agency in Tucson.
42
43 Is that true?
44 A Yes.
45 Q Okay. And then some of the people below that you
46 know, and some of them you don't.
47 A Correct.

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1 Q Generally the people you know, are those people
2 from Apollo?
3 A Yes. Where it actually gets to be associates, a
4 couple of pages later, those are the people that
5 -- some of them I know because they worked at
6 Apollo, but most of them I don't know.
7 Q How does it make you feel to know that there are
8 other people that you know or are associated with
9 are posted on this website?
10 A Isolated. I know that anybody associated with me,
11 anybody that knows me, anybody that supports me,
12 anybody that sticks up for me, is going to become
13 a target. These people have nothing to do with
14 this and they should not have to be referenced on
15 this. I am -- I actually had to send out a
16 message to all of these people and let them know
17 that they were on the website, just in case
18 anybody ever asked them, and I apologized to them.
19 Q Do you remember when you did that?
20 A I don't remember exactly when I did that, no. I
21 could find out.
22 MR. MYHRE: My Lady, I'm going to be moving back into
23 the emails. It might be a time for the break.
24 I'm in Your Ladyship's hands.
25 THE COURT: I would suggest we go another five to ten
26 minutes unless there's a reason to take a break
27 now.
28 MR. MYHRE: No, I'm content to continue on, thank you.
29 Q If we could go then back to Tab 11, please, Ms.
30 Capuano. Now, if we could flip to the next email
31 after the last one we were looking at. This one's
32 titled, "Your talk with Gabriel" dated January 27,
33 2015.
34 If we just look down to the -- where the
35 arrows start, it says [as read in]:
36
37 Paddy, I can clearly see that maturity is not
38 your strong suit.
39
40 So that's part of the email chain that we had
41 looked at earlier; is that right, Ms. Capuano?
42 A Correct. Yes.
43 Q And what we --
44 THE COURT: Mr. Myhre, a couple of times now you've
45 read that "maturity is not your strong suit".
46 What I'm looking at, it says:
47

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1 Maturity is your strong suit.

2

3 MR. MYHRE: Pardon me, thank you, you're right.

4 Q The question, Ms. Capuano, is the response above,
5 and I'll read it out:

6

7 Desiree:

8

9 As a show of good faith --

10

11 And I'm at the top of the page.

12

13 -- I'll fill you in on one of the plans that
14 I'm working on for you. What I'd like, very
15 much, is to be able to add some "intimate"
16 pictures of you to your web site. To do
17 that, of course, I'd have to hire someone to
18 get close to you, pretend to be interested in
19 you. Eventually, gain your trust, then
20 eventually sleep with you. That should
21 take...what, about 3, 4 days? Difficult to
22 find people that unscrupulous. But for the
23 right price there's always someone willing to
24 do what you want. Hooray America!

25

26 There's nothing criminally illegal about it.
27 You may be able to pursue a claim in civil
28 court, but I'm not going to worry about that.

29

30 Okay, good evening.

31

32 Patrick

33

34 A How did this response from Richard make you feel?

35

36 This -- this was -- he actually had Gabriel on
37 this email to me, where he was saying that he was
38 going to hire someone to have sex with me so he
39 could get pictures for the website. It is
40 disgusting. It was -- it was sick. It was sick.

41

42 Q Okay. If we could flip to the next email, please,
43 titled "More plans", dated January 28th, 2015.
44 Ms. Capuano, do you remember if Gabriel was cc'd
45 on this email?

46

47 A I don't remember, but I'm pretty sure he was. I'd
48 have to verify that, but Gabriel was put on almost
49 every email he sent, so...

50

51 Q Okay. I'm going to read it out for you, Ms.
52 Capuano [as read in]:

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1
2 Desiree:
3
4 Being that my primary goal in life is for you
5 to experience as much misery as possible,
6 allow me to point out another way in which
7 you've been manipulated. Gabriel being in
8 your home serves that goal much better than
9 if he were here with me. How so? His
10 formative years were spent in an environment
11 very different from yours, around people who
12 viewed the world very differently than you.
13 By now, you should have come to the
14 conclusion that he's not going to assimilate
15 to your way of life. He'll never see the
16 world through your perception. Sage, on the
17 other hand, has always been with you and only
18 knows your way of life. You and Safe live
19 harmoniously. Gabriel brings friction to
20 that world of yours. By now you should have
21 realized that he is and will remain a
22 constant source of contention. Gradually his
23 presence erodes the delicate fantasy bubble
24 that you're trying to maintain, and so as I
25 say, it serves my purposes better, him being
26 with you.
27
28 A few months ago, I suspected you were
29 starting to get fed up with how he was
30 disturbing the balance in your made-up world
31 which inevitably would result in you sending
32 him away. So I opened these lines of
33 communication because I know the one thing
34 that is more important to you than anything
35 else is to spite me and prove me wrong. By
36 maintaining this email correspondence, I
37 motivate you to keep fighting, i.e. to keep
38 Gabriel with you to spite me so that his
39 presence continues to eat away at your
40 ridiculous fantasies.
41
42 I tell you this now because, in your mind,
43 hearing someone else say these things which
44 you know are true gives them validity, makes
45 them more real and now you can add this
46 knowledge to the list of things eating away
47 at you. I know you'll never admit it openly,

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1 pride perhaps, but you know everything I'm
2 saying is true.

3
4 Cheers,
5 Patrick.

6
7 Around this time, January the 28th, was there
8 friction between Gabriel and Sage, or you and
9 Gabriel?

10 A He -- Gabriel had been back for a couple weeks so
11 he was starting to warm up again, starting to open
12 up. And, no, at no point was Gabriel causing
13 friction in my home. I was just trying to develop
14 and build a relationship with my son who I hadn't
15 seen in a number of years. So it was a challenge
16 to get to know each other and to build that bond
17 especially with Richard trying to destroy it at
18 every turn. But for Richard to think that the
19 only reason I was keeping my son was out of spite
20 for him is ludicrous.

21 Q Okay. If we could flip to Tab 12.

22 MR. MYHRE: My Lady, I'll just point out that there is
23 an email on the last page of Tab 11, but it's
24 actually -- just because of the double-sided
25 printing, that email is actually -- appears at Tab
26 12 as well. So I'm not skipping that email, it's
27 just duplicated.

28 Q So, Ms. Capuano, at the beginning of Tab 12, the
29 email titled, "Re mail" dated April 9th, 2015.
30 This is an email from you to Richard.

31 A Yes.

32 Q And you write [as read in]:

33
34 Richard:

35
36 I enjoy your banter as much as the next
37 person, so long as said person is going
38 through a quadruple root canal without pain
39 medication and multiple broken bones. That
40 being said, your stalking behaviour is really
41 not welcome. Unless there is something
42 pertinent pertaining to Gabriel, I have no
43 desire to receive correspondence from you.
44 Please cease and desist any and all
45 communications that do not fall under the
46 above guidance for communication.
47

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1 Further, you do not have my permission to use
2 my emails, photos, recordings, audio and
3 visual likeness or any other item to include,
4 but not limited to the website you've put
5 back up. In other words, stop stalking me,
6 stop posting things online pretending to be
7 me. Stop assuming my identity through email
8 and other sources and take down the domain
9 and foolish website. That serves as formal
10 notice.

11
12 Those are words that you wrote to Richard?

13 A Yes.

14 Q Do you know why you wrote them at that time?

15 A I believe at that time I had called the RCMP for
16 the first time, and was asked whether I
17 specifically told him to stop and to take the
18 website down, which I had, but that was another
19 attempt. And the initial sentence, it was sarcasm
20 and it was [indiscernible], but again, I received
21 emails every day from him, multiple times a day.
22 All of them were designed to just tear me down and
23 make me feel horrible about myself. So I didn't
24 want him to see that it was working.

25 Q Was it working, Ms. Capuano?

26 A He wasn't able to pull my family apart, but yes.
27 Yes, it was.

28 Q And can you elaborate on that? What do you mean,
29 it was working?

30 A There were many days I didn't want to get out of
31 bed. There were many days I didn't want to face
32 anything. There many days it was really hard to
33 just go about a normal routine. I was scared. I
34 was always looking over my shoulder. I wouldn't
35 make any new friends. I wouldn't talk to anybody.
36 I was in my head going over all of the things that
37 he could do, all of the things that he was going
38 to do, all of the things he said he was going to
39 do, all of the information that he was planning on
40 getting, what information did he have. It was
41 just constant.

42 MR. MYHRE: My Lady, could we take the break now,
43 please?

44 THE COURT: All right, we'll do that. Members of the
45 jury, we'll take the morning break now.

46
47 (JURY OUT)

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1
2 THE COURT: Anything to address before we break?
3 MR. MYHRE: No, My Lady.
4 THE COURT: Thank you.
5 THE CLERK: Order in court. This court stands
6 adjourned for the --
7 THE COURT: Mr. Fox, do you have something?
8 THE ACCUSED: No, [indiscernible/not at microphone].
9 THE COURT: All right. Thank you.

10
11 (WITNESS STOOD DOWN)

12
13 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)
14 (PROCEEDINGS RECONVENED)

15
16 **DESIREE CAPUANO, recalled.**

17
18 THE SHERIFF: The jury, My Lady.

19
20 (JURY IN)

21
22 **EXAMINATION IN CHIEF BY MR. MYHRE, CONTINUING:**

23
24 Q Ms. Capuano, I'd like to continue on with some of
25 the emails. And at Tab 12, we looked at an email
26 titled "Re mail". The next email is titled
27 "Parenting obviousness" dated April 26, 2015.
28 You've read this -- you read this email when it
29 was sent?
30 A Yes.
31 Q Would it be fair to characterize it as criticism
32 of your parenting.
33 A It would, yes, it is.
34 Q Okay. I'm just going to highlight a couple of
35 lines. If you look at the fourth paragraph, it
36 starts [as read in]:

37
38 That is why I say you're an idiot who is a
39 terrible parent.

40
41 And then if you look at the final paragraph:

42
43 One final note, you see where I called you
44 an idiot, but I have the decency to explain
45 why I believe you're an idiot. See how nice
46 and civilized I am? When was the last time
47 you backed up your claims against me?

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1
2 An example of criticisms of your parenting.
3 A Yeah. This is also an example of where he insults
4 me and then tells me that I shouldn't be offended,
5 or that he's nice and civilized about the fact
6 that he's insulting me. This criticism came
7 because my son snuck out in the middle of the
8 night and went up to the grocery -- the
9 convenience store and bought an energy drink, and
10 we found out and disciplined him. This email is
11 telling me about why I should not have disciplined
12 him.
13 Q If we could go to Tab 13, please?
14 MR. MYHRE: And, My Lady, I'd like to do maybe I ought
15 to have done when we created these books, which
16 was number these pages, because this first email
17 that starts, "Gabriel summer visitation 2014",
18 continues for quite a ways. So what I propose to
19 do is that we -- so we know where we're referring
20 to, we simply go page by page and just write 1, 2,
21 3, 4 at the bottom. You're going to see that page
22 2 is a completely blank page. Let's all label
23 that "2" so that we know where we are.
24 THE COURT: Now, what about Ms. Capuano, who has the
25 original.
26 MR. MYHRE: Could -- maybe it would be helpful if she
27 wrote those numbers too, My Lady.
28 THE COURT: All right. I wonder if Madam Registrar
29 should do that, please, in the original exhibit.
30 We're at Tab 13. So we're at Tab 13, and the idea
31 is to number every page so that we have 1, and
32 then the back of that page --
33 THE CLERK: The back is a 2.
34 THE COURT: --- is 2, although it should be a blank
35 page.
36 THE CLERK: I know, double --
37 THE COURT: Are you at Tab 13?
38 MR. MYHRE: Okay.
39 THE CLERK: Tab 13, and then it --
40 MR. MYHRE: Madam Registrar, can I see that book?
41 THE COURT: And we have a problem. And one of the
42 jurors has a problem as well.
43 A JUROR: Yeah, her book is not matching up with mine.
44 THE CLERK: Yeah.
45 THE COURT: Is that the new book that arrived today?
46 THE CLERK: No. No.
47 MR. MYHRE: Okay. My Lady, could I ask yourself and

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1 members of the jury some -- those of you who have
2 a blank page, if you flip to the next -- the start
3 of the next email, the one that says "Gabriel's
4 summer visitation 2015", and the date is May 6,
5 2015 at 5:51 p.m. So May 6th, at 5:51 p.m.
6 THE COURT: No. For me, the next email string -- all
7 right, I'm -- I'll explain what's in my copy, Mr.
8 Myhre. At Tab 13, there's the email string that
9 begins "Re Gabriel summer visitation 2015".
10 That's on the first page. On the second page,
11 that's blank, and on the third page at the top is
12 the second half of a list beginning "3. What
13 childish tantrums?"
14 MR. MYHRE: Does everybody have the email that -- for
15 some of you, it might be the first email, for some
16 of you it might be the second email that starts
17 May 5th, 2015 at 9:26 p.m.
18 UNIDENTIFIED SPEAKER: Yes, that's the right page.
19 MR. MYHRE: Okay.
20 THE COURT: Yes. For me, that is page 5.
21 MR. MYHRE: So it appears, My Lady, that in some of
22 these copies we're missing that first email that
23 starts April 26th, 2015, at 11:35 and that's
24 missing from this exhibit copy. So I'm going to
25 propose that we proceed without that. So that
26 would mean the jurors who have the April 26th,
27 2015, 11:35 email should take out the first two
28 pages, if you're content with that, My Lady. That
29 would give us all, I think, the same thing.
30 THE COURT: All right. So then if I understand you
31 correctly, for some of us, at Tab 13, the first
32 email is "Re Gabriel summer visitation 2015" and
33 it is dated Sunday, April 26th, 2015. Some have
34 that string of emails and some do not. And the
35 string goes for about four pages, although one of
36 those pages is blank in my copy, and what you're
37 suggesting, Mr. Myhre, is those of us who have
38 that string, simply remove it.
39 MR. MYHRE: Yes, so we all have the same thing.
40 THE COURT: Right. And so we would all then start with
41 an email with the same title, "Re Gabriel summer
42 visitation 2015", but the date would be Tuesday,
43 May 5, 2015.
44 MR. MYHRE: At 9:26 p.m.
45 THE COURT: At 9:26 p.m. Now, is that clear for
46 everyone?
47 A JUROR: We just noticed in our books here that in --

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1 in Tab 12, that we have the April 26th
2 [indiscernible/not at microphone] or summer
3 visitation 2015. That is in Tab 12 in this --
4 THE COURT: So it got to the wrong tab.
5 A JUROR: It looks like it, My Lady.
6 THE COURT: All right.
7 UNIDENTIFIED SPEAKER: It appears in my Tab 12, the
8 last page of it and also the first page of that
9 "Re Gabriel's summer visitation", but it's only
10 the first page of that email which, because it was
11 on the back, I guess the Crown made photocopies of
12 that and put the photocopy as the first page of
13 Tab 13. So I'm not sure if the jurors have the
14 entire email or just the first page.
15 THE COURT: All right. Mr. Myhre, how would you like
16 to deal with this?
17 MR. MYHRE: So I think that that is what's happened, as
18 they're two-sided. We just happened to get the
19 first email from that string at the back of Tab
20 12, but I'd still like to proceed by just -- I can
21 ask the questions I need to ask without those two
22 pages.
23 THE COURT: All right. So we'll go back to that plan.
24 With those who have that email that's -- the
25 string dated Sunday, April 26th, 2015, please just
26 remove it, and then we'll start Tab 13 at the
27 email that's dated Tuesday, May 5, 2015. Mr. Fox?
28 THE ACCUSED: Just so that I'm clear, then, should that
29 be numbered as page 5 or should that be renumbered
30 and we start back at 1.
31 THE COURT: I think we'll start that at -- have you
32 already numbered the exhibit, Madam Registrar?
33 THE CLERK: No, I haven't touched it.
34 THE COURT: And it will start that at page 1.
35 THE CLERK: So the Tuesday, May 5th, 2015, 9:26 --
36 MR. MYHRE: Will be page 1.
37 THE COURT: Yes. That will be page 1.
38 THE CLERK: I'll renumber them that --
39 THE COURT: And number them on every page, so the front
40 of the page is 1, the back of the page is 2.
41 MR. MYHRE: So then the email that starts May 6, 2015,
42 at 5:51 p.m. would be page 5.
43 THE COURT: Yes.
44 MR. MYHRE: And then page 9 is the email, May 6th,
45 2015, at 10:05 p.m., page 9? And then page 12
46 would be the email dated May 7th, 2015, at 12:32
47 p.m., page 12. And 13 is the last page in this

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1 email string.
2 THE CLERK: I have 26 pages.
3 MR. MYHRE: Twenty-six pages in Tab 13?
4 THE CLERK: Yes.
5 MR. MYHRE: We're only going to -- My Lady --
6 THE CLERK: And number -- you said number them back to
7 front, and so I have three here.
8 THE COURT: Sorry, what do you mean by that?
9 THE CLERK: I said I'd renumber them, as mine are all
10 double-sided, so 1, 2, I've got 26.
11 THE COURT: Perfect.
12 THE CLERK: Is that right?
13 MR. MYHRE: My Lady, my intention was only to number
14 the email string "Gabriel summer visitation 2015".
15 THE COURT: Well, it might -- personally, I'm numbering
16 all of these tabs so that I can find the documents
17 again, but it's up to members of the jury if they
18 wish to put numbers on.
19 MR. MYHRE:
20 Q Okay. Ms. Capuano, you've read this email string
21 before. You participated in it.
22 A Yes.
23 Q And it starts -- the jury doesn't have this, but
24 on April the 20th, 2015, you sent an email to
25 Richard telling you that Gabriel -- or telling him
26 that Gabriel wanted to spend his summer visit with
27 Richard.
28 A Yes.
29 Q And you provided dates to Richard?
30 A Correct.
31 Q Okay, and then I counted approximately 44 emails
32 black and forth, that'd be roughly 22 each in this
33 email string. Does that sound about right?
34 A There were 44, that is correct.
35 Q And would it be accurate to say that this email
36 string sort of devolved into an argument about
37 what the word "itinerary" means?
38 A Absolutely.
39 Q Now, in the course of this argument, Richard
40 referred to you in a number of derogatory ways.
41 A Correct.
42 Q On page 1, if you look at the very last paragraph,
43 it says [as read in]:
44
45 Go look up the word "itinerary", you fucking
46 moron.
47

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1 Do you see that?

2 A Yes.

3 Q If you flip over the page, the first full
4 paragraph --

5 THE COURT: Which page is this?

6 MR. MYHRE: So page 2.

7 Q The first full paragraph, the last sentence [as
8 read in]:

9

10 Be more fucking specific, you fucking idiot.
11 Fuck you and fuck your stupid white trash
12 single-mother bullshit games.

13

14 If you look at the bottom of page 3, the second-
15 last paragraph:

16

17 What the fuck is wrong with your head? What
18 fuck --

19

20 And then last paragraph:

21

22 What the fuck do you mean by itinerary? That
23 is such a fucking vague term. Be specific,
24 you fucking idiot.

25

26 If we look at page 5 right in the middle, Richard
27 writes [as read in]:

28

29 Sorry, I meant to say stupid fucking cunt.

30

31 If we go to page 9, the sixth paragraph, Richard
32 writes:

33

34 Do you ever get tired of being the perpetual
35 loser? Do you ever think to yourself, what's
36 the point? Ever seem to you that maybe life
37 is just too fucking hard and there's no point
38 because we're all going to die in the end
39 anyway? If not, well, that's too bad, the
40 world is going to be a better place when
41 you're no longer in it.

42

43 Ms. Capuano, did you ever wonder to yourself
44 sometimes what's the point, as Richard asked you
45 here?

46 A Yes. And I can --

47 Q Did you --

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1 A -- just be easier to give up. Many times.
2 Q Can you give the jury some idea of the -- the
3 extent to which you felt that way?
4 A I never contemplated how to commit suicide, but
5 there were many times I questioned whether I had
6 the strength to keep going, whether it would end,
7 whether I would get my life back or if this was
8 just what I was going to deal with every day for
9 the rest of my life now. It's -- this is what --
10 this is what I should just be used to, and I
11 didn't know if I could get used to living this
12 kind of life forever. But I'm -- I know who I am,
13 and I know I'm strong enough.
14 Q Okay. We're going to flip to the next email, Ms.
15 Capuano, the one that's titled, "The motivation
16 for your behaviour". This is dated May 7th, 2015
17 at 12:51 p.m., so it comes about 20 minutes after
18 the last email in the previous email string; is
19 that right?
20 A Yes.
21 Q And Richard writes, top [as read in]:
22
23 The only reason you're being such a stupid
24 cunt right now, well, always, really, is
25 because you know that Gabriel would rather be
26 with me than with you.
27
28 And he goes on to explain why he thinks that
29 you're being -- giving the responses you were
30 giving in that previous email chain.
31 A Yes. Why I was standing up for myself and not
32 just accepting, why I was actually setting rules
33 and guidelines and stipulations for visitation.
34 Q Ms. Capuano, I think you said you were -- thought
35 you were standing up for yourself?
36 THE COURT: Just a moment, please, Mr. Myhre. Mr. Fox
37 has a concern.
38 THE ACCUSED: I'm sorry, I'm just having difficulty
39 hearing again.
40 THE COURT: All right.
41 THE ACCUSED: Not hearing Ms. Capuano.
42 THE COURT: Mr. Myhre, if you keep your voice up and
43 Ms. Capuano will more likely keep hers up.
44 MR. MYHRE: Thank you, My Lady, I'll try. Apologies,
45 Ms. Capuano, I'll try to keep my voice up.
46 Q Now, you -- I think what you said was you felt you
47 were standing up for yourself in that previous

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1 email.

2 A Yes. I was actually, in my own way, trying to
3 control the situation for one of the first times,
4 determine the guidelines, the stipulations and the
5 rules for Gabriel's visitation which is something
6 that I hadn't necessarily done before, and it's my
7 belief that that's why he called me a stupid cunt.

8 Q That's how you understood his response?

9 A Correct.

10 Q If we could go to the next email, please, the one
11 titled "Belligerence" dated May 7th, at 7:01 p.m.,
12 and Richard wrote [as read in]:

13
14 For someone who claims not to care, you sure
15 spend a lot of time trying to get a rise out
16 of me.

17
18 I'll read the whole email, Ms. Capuano.

19
20 If I believe your intention was to try to
21 annoy me, to anger me, then I will phrase my
22 responses in a way that makes it seem I am
23 annoyed so that you will believe you are
24 succeeding and you will continue. You have
25 an incredible habit of saying things that
26 shoot me in the foot and that contradicted
27 previous statements. One day when Gabriel is
28 older and starts forgetting what you're like
29 and starts thinking maybe you deserve another
30 chance, like I did, then I can show him all
31 of these emails and how you lie incessantly
32 to get what you want and how you betray
33 people's trust and how you play on their
34 guilt with a passion to get what you want
35 from them, and I'm sure that will be enough
36 to convince him not to get back in contact
37 with you. You see, it will be your own words
38 and actions that keep Gabriel away from you
39 once he's no longer there under court order.
40 That has been my plan since March 2013, and
41 you consistently played right into it.
42 Because you're too arrogant to ever
43 acknowledge that you've been beat, or that
44 I'm better and smarter than you. See, I can
45 even come right out and tell you and it won't
46 matter. You'll just keep getting suckered
47 right into it.

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1
2 So another example of Richard telling you what his
3 plan was.
4 A Yes. The fact that he tells me in this email that
5 he can tell me what his plans are and it won't
6 matter, because he's smart enough to have covered
7 his tracks.
8 Q The next email is titled "Petition for annulment".
9 Do you know what Richard was referring to when he
10 said "petition for annulment"?
11 A Yes, I've submitted -- began the paperwork for an
12 annulment.
13 Q Annulment of...?
14 A The marriage between him and I.
15 Q When did you realize that you were still legally
16 married?
17 A It wasn't long after -- it was probably around
18 2005.
19 Q And so would it be fair to characterize this email
20 as Richard saying it doesn't really matter if I
21 appear. Either way I will accomplish what I want
22 to.
23 A Yes. That no matter what, he intends to drive us
24 out and keep me in court for years and never grant
25 the annulment.
26 Q And we see the last paragraph [as read in]:
27
28 You see, careful meticulous planning, that's
29 how you prevail or I'm lying about everything
30 in this message just to mess with you.
31
32 A Yes.
33 Q Did you ever determine whether or not he was
34 telling the truth in this message?
35 A He did not appear for that hearing, and the
36 annulment was granted. It's finalized.
37 Q The next email dated May the 11th, 2015, titled
38 "Website updates" [as read in]:
39
40 Desiree:
41
42 As promised I posted all the emails up to
43 this point to the site. You can view them at
44 <http://www.desireecapuano.com/mail>, but I'm
45 sure you already know that. I find it
46 fascinating that even though you know every
47 single piece of correspondence with you is

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1 going to be posted publicly on a website
2 hosted on a domain with your name, you still
3 allow yourself to get overly emotional and
4 say things that make you look like an idiot.
5 I would think you'd be a little more cautious
6 in what you say.

7
8 Patrick.

9
10 Is that an email you received on May the 11th,
11 2015 from Richard?

12 A Yes. Yes.

13 Q The next email dated May 15th, 2015 is titled "The
14 most difficult border in the world to cross".
15 This was an email in which Patrick sent you
16 pictures of a place at the border where he said he
17 could cross the border.

18 A Where he says he does cross the border.

19 Q How did that make you feel?

20 A Scared. He shows me pictures of a place where
21 there's no law enforcement, there's no
22 immigration, there's no custody, there's nobody to
23 check his identity, there's nobody to see if he's
24 got guns on him, there's nobody. He -- it's just
25 a park and he just walks across and he shows me
26 pictures of it, tells me how easy it is.

27 Q The next email is titled "Search engine results"
28 dated May 23rd, 2015. I'll read the first couple
29 paragraphs [as read in]:

30
31 Hello Desiree:

32
33 Thought you might like to know that when I
34 Google Desiree Capuano, the website is the
35 second entry on the list. Not bad for people
36 that might want to Google you. When I Google
37 Desiree Tomlin, the site is the 18th in the
38 search results. Need to improve this so
39 people who don't know you changed your name
40 can find it easier, people you went to grade
41 school with and such.

42
43 Your maiden name is Tomlin?

44 A Yes.

45 Q And is this an accurate copy of the email you
46 received on that day, other than as you've told us
47 before, the actual email address was --

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1 A Correct, yes.
2 Q Do you remember in the summer of 2015 whether or
3 not Gabriel -- you sent Gabriel to visit Richard
4 in Canada?
5 A Yes, I did.
6 Q Do you know roughly what dates?
7 A End of May through July. I was under court order
8 to provide reasonable visitation and communication
9 between Gabriel and his father. Bless you.
10 Q Do you remember when that order was made?
11 A The last hearing that we had had. I'd have to
12 look at records.
13 Q Okay. If we could go to Tab 14, please. Email
14 titled "Re automobile accident" dated June 12th,
15 2015, and Ms. Capuano, if you could flip to the
16 fourth page of this email string, the last page of
17 this email string. If I could summarize this
18 email string, this is you and Richard arguing
19 about what happened around Gabriel being born
20 prematurely.
21 A Correct.
22 Q What we see on the last page, the second-last full
23 paragraph, it appears Richard wrote [as read in]:
24
25 Now what I would like from you is for you to
26 deny these claims and call me a liar. I will
27 then gladly post the medical, insurance and
28 police reports to your website. Yes, medical
29 reports are confidential, but you live in the
30 greatest country in the world where anything
31 can be purchased, yay America.
32
33 And then at the end:
34
35 P.S., I've bcc'd all the relevant parties.
36
37 So, first of all, do you know whether Richard had
38 obtained any of your medical records?
39 A I don't know.
40 Q At that point in time, did you think that he could
41 or not?
42 A I think he's capable of getting anything he says
43 he's going to get.
44 Q Do you know whether he had bcc'd to anybody on
45 this email?
46 A I have no idea.
47 Q Did the possibility that he had cause you any

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1 concern?
2 A Only because I don't know who he would have bcc'd.
3 I don't know if it would have been more work
4 colleagues or friends or to people he knew.
5 There's no way to know. If you want to point out
6 this is -- this is the first notification that I
7 ever got that he believes that our son was
8 premature because I punched myself in the stomach,
9 and that is the story that he gave to our son
10 while he raised him.
11 Q How did that make you feel knowing that that's
12 what your son had been told?
13 A I had to talk to him about it, and he told me he
14 already knew the story. I had -- it was -- it was
15 really baffling. He was there during the whole
16 event. He -- Richard knew what had happened. I'm
17 not really sure where he got that from.
18 Q Now, I'm start -- just going to stop you there,
19 Ms. Capuano. The question is how did it make you
20 feel?
21 A Disgusted. Just -- just another lie.
22 Q Okay. If we could go to the next email, please,
23 Ms. Capuano. It's titled "Re status update",
24 dated June 15th, 2015. If we went to the bottom
25 of this page, it appears that it starts with an
26 email on June 13th, 2015, and it says -- Patrick
27 wrote [as read in]:
28
29 Hello Desiree:
30
31 So Gabriel has been here about two weeks now.
32
33 And goes on to say what they've been up to. Then
34 in the last full paragraph on this page:
35
36 I don't understand how it is that he's been
37 with you two and a half years and you've not
38 taught him anything, yet you still try to
39 convince him you're a good parent.
40
41 Another criticism of your parenting?
42 A Yes.
43 Q Then it appears later that same day if we just go
44 up from the start of that email, says on Saturday,
45 June 13th, so that same day the first email was
46 sent. Patrick wrote [as read in]:
47

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1 What, no comeback? Could it be that you
2 finally accepted that you really are a
3 terrible parent and an overall bad person?
4

5 If we look up from there, where I see -- it looks
6 like Mr. Fox has an objection.

7 THE ACCUSED: Just a correction. In the first
8 paragraph that you were reading from that:
9

10 I don't understand how it is that he's been
11 with you two and a half years and you've not
12 taught him anything --
13

14 Then she says -- then it says:
15

16 -- yet you still try to convince yourself --
17

18 You just said:
19

20 -- yet you still tried to convince him.
21

22 "Him" being Gabriel, I presume.

23 THE COURT: All right, thank you.

24 MR. MYHRE:

25 Q June 15th, some two days later, you wrote back [as
26 read in]:
27

28 I understand that you feel the need to
29 document every milestone of parental
30 responsibility to prove you'd do anything
31 beyond supporting a 14 -- with way too much
32 free money. Do you want a good boy? Well,
33 good boy, Richard, I'm so glad you taught
34 your son something, way to go.
35

36 And then the same day there's a response at the
37 top from Richard, and the last paragraph says:
38

39 Why do you want your children to remain
40 incapable of doing anything on their own so
41 they have to depend on you? That's terrible
42 parenting, but then you're a single mother.
43 That's what all single mothers do. Single
44 mothers don't want to raise children, they
45 just want to have babies. I know, because I
46 grew up around many of them.
47

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1 So another criticism from Richard.

2 A Yes.

3 Q The next email is titled "Your favourite child"
4 dated June 28th, 2015, and it's an email from
5 Patrick [as read in]:

6
7 Desiree:

8
9 I was speaking with Gabriel earlier about
10 that thing of you refusing to allow him to
11 get decent clothes when he's with you.

12
13 Do you know what Richard was referring to there?

14 A I didn't buy Gabriel designer-brand jeans.

15 Q And Richard goes on to write:

16
17 And I pointed out to him that you obviously
18 like Sage more than him.

19
20 So the question, Ms. Capuano, is how did it make
21 you feel, Richard telling you that he was telling
22 Gabriel that you like Sage more?

23 A He was telling Gabriel and convincing Gabriel that
24 I was trying to play favourites, but the reasons
25 he gave Gabriel weren't true.

26 Q And how did that make you --

27 A It was very frustrating. It was very frustrating
28 because then Gabriel came home and I had to deal
29 with the repercussions of that.

30 Q If we could go to the next email, please. This
31 one is titled "Re Carrington College", and if we
32 look at the bottom of the page, it appears to
33 start with an email on June 27th, 2015. Patrick
34 wrote [as read in]:

35
36 Hello Desiree:

37
38 May you confirm that you've taken a position
39 with Carrington College in Tucson. If so,
40 then I should update your website. If you
41 have any interesting quotes or pseudo-facts
42 that I can put on the site, but I can't
43 imagine there'd be much of a need for a
44 systems analyst at an individual campus of a
45 demi-college. Wouldn't that be a bit of a
46 step down from what you were purportedly
47 doing at Apollo? But since the campus is

1 substantially smaller, then you'd -- then
2 you'd be less anonymous and word of your
3 website and your backstory should spread
4 quickly.
5
6 Now, I think you told us yesterday that your job
7 with Apollo ended --
8 A In --
9 Q -- at the end of September 2015. Do you remember
10 whether or not at this time, June 27th, you were
11 still employed by Apollo?
12 A Maybe it was 2014 that I was laid off. I may have
13 been mistaken.
14 Q Do you want to just think about that for a second?
15 A Yeah. Yeah, it must have been 2014 then, sorry.
16 Q Now, in June of 2015, did you take a position with
17 Carrington College?
18 A No. No, I was still employed with Apollo at that
19 time. I -- I was laid off in September of 2015.
20 I moved to Tucson, and I kept my job in Phoenix
21 and I drove up to Phoenix for the last couple of
22 months of my tenure there. I was still employed
23 with Apollo at this time.
24 Q Okay. So you weren't looking for a job in June of
25 2015.
26 A No.
27 Q Okay. Did this email mean anything to you, or...?
28 A Yes, it meant that he was trying to find where I
29 would be working. He was researching places and
30 he had already indicated that if he had -- he
31 would -- as soon as he found out where I would be
32 working, he would be informing them, just like he
33 did at Apollo, which meant he was going to try to
34 ruin any new job that I got, and Apollo was having
35 difficulties, they were going through lay-offs at
36 that time.
37 Q So then above that, there's another email from
38 Richard and then on June 28th, 2015, it says
39 Desiree Capuano wrote -- you wrote [as read in]:
40
41 My job is none of your business.
42
43 A Correct.
44 Q And then above that, the first paragraph on this
45 page we see Richard's response [as read in]:
46
47 Is that because you're embarrassed about

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1 having to take such a step down? You think
2 that if you don't tell me, that I won't be
3 able to confirm it anyway? Can I not just
4 call HR and ask them, and as long as you use
5 your social security number, then couldn't I
6 just run a credit check on you?

7
8 A I was scared when I got that, because at that
9 point he'd basically just told me he had my social
10 security number.

11 Q Okay. Ms. Capuano, could we flip back in this
12 book to Tab 7, please. And what we see here is --
13 says "type of blogs" on the first page. It says
14 "recent posts" and then it says "popular posts"
15 and then near the bottom of the page, it starts
16 listing blog posts, starting with [as read in]:

17
18 Yes, this website is still here because --
19

20 And then the list continues over the next page for
21 several pages. I believe there are about 90 blogs
22 listed; does that sound roughly accurate?

23 A Based off of this documentation, yes. I don't
24 know, I haven't read any of the blogs before the
25 hearing.

26 Q You hadn't read any of these before the hearing?

27 A No.

28 Q Now, if we look at -- if we go past the list and
29 again, My Lady, I apologize for the lack of page
30 numbers. The way these -- the blogs are printed
31 out here, if you flip to the very bottom of the
32 page and you see a title of a blog that says, "My
33 new home and job", that starts after the list of
34 the blogs. It's dated July 13th, 2015 over on the
35 right-hand side.

36 A Yes.

37 Q You can see under that it says "Perspective" --
38 sorry, under the title, "My new home and job", it
39 says [as read in]:

40
41 Perspective Desiree 306 viewers, views zero
42 comments.

43
44 If we flip over the page, do you recognize the
45 house that's shown there?

46 A Yes.

47 Q And was that your house?

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1 A Yes.
2 Q When did you move there?
3 A It's not my house, it's my fiancé's house. Yes, I
4 moved there over the summer of 2015.
5 Q You moved there in the summer of 2015?
6 A Correct.
7 Q And we've already seen that's a picture of James
8 Pendleton?
9 A Correct.
10 Q Now, the next blog we see on the next page is
11 titled [as read in]:
12
13 James' attempts to get the site taken down.
14
15 I'm going to skip that one and go to the next one
16 after that, that's titled:
17
18 Green Valley Hospital career prospects.
19
20 And its website. Do you have that there, Ms.
21 Capuano?
22 A Yes.
23 Q Do you know who Green Valley Hospital is?
24 A Yes.
25 Q Okay, what -- what do you know about that?
26 A I submitted my resumé to them for multiple
27 positions.
28 Q Now, this blog is dated October 13th, 2015.
29 A Correct.
30 Q When did you submit your resumé to them?
31 A I was laid off on September 30th of 2015, and I'd
32 been submitting resumé for all potential
33 employment during those two weeks. They actually
34 had multiple openings so I submitted for multiple
35 openings.
36 Q The two weeks following September 30th, you were
37 submitting resumé?
38 A Correct.
39 Q And that included to Green Valley Hospital?
40 A Correct.
41 Q And did you ever hear from Green Valley Hospital?
42 A No.
43 Q Now, Ms. Capuano, it might be easiest to find the
44 next blog if you just start from the back, the
45 last part of Tab 7 and flip backwards until you
46 find the blog, "Oh, to work at Pima Community
47 College". And so that blog contains a picture

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1 that looks --

2 A Yes.

3 Q I'm holding it up here. And we see under the
4 title, "Oh, to work at Pima Community College",
5 it's dated May the 11th, 2016.

6 A Yes.

7 Q Did you ever apply to this college?

8 A Yes, I did.

9 Q Okay. So tell the jury how that application went.
10 Did you ever hear from them?

11 A Yes. I applied for a position with Pima. I went
12 on a series of interviews and I was made an offer.
13 It was a very good position. I was working on a
14 contract at the time, so it was substantially more
15 money. It was a full-time position, all benefits
16 for me and the kids. I had a starting date.
17 They'd already given me the offer letter which I
18 had signed, and when I asked them if I was good to
19 give my two weeks' notice at my current job, they
20 said, "Hold on."

21 Over the course of the next couple of weeks,
22 they went back and forth with their legal
23 department and determined they couldn't take the
24 risk of employing me because of the website, and
25 so they withdrew their offer.

26 Q And was that around May 2016 that was happening?

27 A Yes.

28 Q Okay. We're going to go back to the emails, Ms.
29 Capuano, if we could look at the last email of Tab
30 14. So would it be accurate to summarize this
31 email as Richard saying his lessons when he's a
32 parent and going through hard times are better
33 than your parenting approach.

34 A Oh, yes.

35 Q And then the last sentence of that email, Richard
36 wrote [as read in]:

37 He doesn't hate you because of what I tell
38 him about you. He hates you because of what
39 you do.
40 you do.

41

42 A Yes.

43 Q How did that make you feel?

44 A Sad.

45 Q The next email, the first one at Tab 15 titled
46 "Status", dated July the 5th, 2015. Was -- do you
47 remember, was Gabriel with Richard in Vancouver at

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1 this time?

2 A Yes.

3 Q And I see the first sentence [as read in]:

4

5 Hello, Desiree:

6

7 One, yes, Gabriel and I are having fun at
8 your expense.

9

10 And basically goes on to mock things you do as a
11 parent.

12 A Yes.

13 Q Do you know whether Gabriel was cc'd on this
14 email?

15 A Yes.

16 Q The next email titled "Your reasoning", dated July
17 the 5th, 2015, Richard writes [as read in]:

18

19 So why would you want a child living in your
20 home that you know doesn't respect you?

21

22 Goes on in the next paragraph [as read in]:

23

24 The only remaining reason I can think of is
25 that you do it to spite me, but that's
26 backfiring on you because I have already
27 worked out a plan that involves Gabriel
28 remaining with you until he turns 16, then
29 moving to Ontario where neither you nor the
30 U.S. or Canadian courts can touch him, and
31 I've explained that plan to him. He doesn't
32 like it, but he understands and appreciates
33 the motives.

34

35 So by insisting on keeping him with you,
36 aren't you really just spiting yourself?
37 Aren't you really just subjecting yourself to
38 the additional difficulties of providing for
39 a child that looks down on you, that
40 considers you below him because of your
41 refusal to be anything more than a white
42 trash pothead, because of your inability to
43 make any good or proper decisions, because of
44 you're continually doing things that
45 adversely affect him and giving him any
46 choices?

47

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1 Is that an email that you received from Richard on
2 July the 5th, 2015?
3 A Yes.
4 Q Another example, I suppose, of general critical
5 comments?
6 A Yes. Constant.
7 Q Do you know whether Gabriel is cc'd on this email?
8 A I believe he was.
9 Q If we could look at the next email, please, titled
10 "Fun at your expense", dated the same day, July
11 5th, 2015 [as read in]:
12
13 Hello Desiree:
14
15 In the event you're curious how exactly we're
16 having fun at your expense, allow me to
17 enlighten you.
18
19 And then goes on to list 51 ways that you are
20 being made fun of.
21 A Correct.
22 Q Who did you understand Richard to be referring to
23 when he said "we"?
24 A Him and Gabriel.
25 Q Do you know whether Gabriel was cc'd on this
26 email?
27 A Yes.
28 Q The next email dated July 12th, 2015, Richard
29 wrote [as read in]]:
30
31 Gabriel tells me that when you bring him to
32 the airport, you get a security pass and
33 escort him right to the point that he boards
34 the plane. Are you fucking retarded? Why do
35 you single mothers always baby their kids?
36 Dude, he's 14, for Christ's sake. No wonder
37 when he arrives here he seems incapable doing
38 the smallest things.
39
40 Another criticism of your parenting.
41 A Yes. I understand some parents handle things in
42 different situations, but nothing I did was right
43 by him. Didn't matter.
44 Q Okay. The next email titled "Re contact
45 information". If we flip to the second page of
46 this email and look at where it started, at the
47 bottom, the last two paragraphs, Patrick wrote [as

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1 read in]:

2
3 According to Google maps, that address is a
4 U.S. post office. You are legally required
5 to provide me the address where Gabriel will
6 be physically residing.

7
8 Had you provided an address to Richard?

9 A It was a mailing address, not a physical address.

10 Q Why didn't you provide Richard with your mailing
11 address -- or your home address.

12 A Two reasons. One, he was outside the country. He
13 was not supposed to enter the country, so there
14 should be no reason for him to need a physical
15 address, and two, I didn't want it up on the
16 website.

17 Q And it goes on. If we look at the -- further up
18 the page, this same page that we're just looking
19 at, the second full paragraph, Desiree Capuano
20 wrote [as read in]:

21
22 As long as Patrick Fox continues to put my
23 personal information on a public website, it
24 will not be provided.

25
26 A Yes.

27 Q That is what you said to Richard at that time?

28 A Yes.

29 Q And it goes on. If we look, flipping back to the
30 first page, he demands the address again. You
31 don't give it to him, and then his final response
32 at the top of the page [as read in]:

33
34 Since I've not heard back from you with the
35 current address at which Gabriel will be
36 residing, I will not be transporting him to
37 the airport.

38
39 A Yes, he was telling me in this email thread that
40 unless I gave him a physical address, he's not
41 going to return my son to me.

42 Q The next email titled "Re update to your site", if
43 we look halfway down the page on July 13th, 2015,
44 Patrick wrote [as read in]:

45
46 Desiree:

47

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1 I've updated some of the information on your
2 site. Let me know if anything is inaccurate,
3 namely on the home page and on the news page.
4 I was sure to include your new address, a
5 picture of your presumed boyfriend and a
6 picture of your new home.

7
8 And then if we look up at the email at the top of
9 the page:

10
11 Desiree:

12
13 Oh, I should mention before you freak out at
14 Gabriel and ground him for telling me where
15 you live, I already had the address from the
16 times you'd previously spent the weekends at
17 the house. Given the address, finding the
18 name of the person who owns the property is a
19 simple public records check. Given the name
20 of the property owner, a simple Google search
21 provides his Linked In and Facebook profiles.
22 From the Linked In profile, I could see that
23 he also worked at Apollo Group at the same
24 time you did. Using basic deduction and
25 given how well I know you, I was able to
26 conclude that you were intimately involved
27 with Mr. Pendleton. Why else would you take
28 your kids and spend numerous weekends at his
29 house which is hours drive from where you
30 live. So, you see, Gabriel told me nothing.
31 Any fool with partial intelligence and a bit
32 of background on you could figure it out.

33
34 A He was tracking Gabriel through the use of his
35 cell phone. He was monitoring the GPS location of
36 the cell phone. That's how he figured it out.

37 Q That's what you believe?

38 A Yes.

39 Q The next email, "Gabriel's return", dated July
40 14th, 2015 [as read in]:

41
42 So tell me, Desiree, how was Gabriel upon his
43 return? How's his demeanour seem? Does he
44 seem happy to be back with you? Has he been
45 sharing with you all the things he did, his
46 wonderful accomplishments? Is he excited
47 about his new home? Is he looking forward to

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1 starting his new school? Or has he been
2 withdrawn, keeping to himself, spending most
3 of his time in his room? And as I've said
4 repeatedly, the misery that will bring --
5 that will bring you and your home is far
6 greater than a court order for you to return
7 him. The court order gives you the
8 opportunity to get people's pity, a son that
9 hates you because you're a narcissistic fuck-
10 up, leaves only you to blame.

11
12 Do you remember around that time how Gabriel was
13 when he returned home from his visit with Richard?
14 A That one was worse than any of the others. That
15 was also during the same visit where he had told
16 Gabriel that I loved my other kid more, and given
17 him reasons. When Gabriel got back, he was like a
18 completely different person. He wouldn't come
19 near me. He wouldn't talk.

20 He was excited for the move before he went to
21 Canada. And when he got back, he was just scared,
22 and it broke my heart.

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

24 THE COURT: All right. We'll break for lunch now,
25 members of the jury.

26
27 (JURY OUT)

28
29 THE COURT: Mr. Myhre, I'd like to raise an issue --
30 again, it's hearsay evidence -- relating to the
31 application at Community -- Pima Community
32 College. Bearing in mind that Mr. Fox is
33 self-represented, I have a concern that that
34 evidence went in without objection and without any
35 suggestion that there are limits on the use to
36 which the evidence can be put. I'm thinking that
37 a mid-trial instruction may be in order. Do you
38 agree?

39 MR. MYHRE: I'd support that.

40 THE COURT: I let it go at the time because I wasn't
41 sure whether there would be later emails that
42 would, essentially, confirm the hearsay evidence
43 given, but I didn't hear anything.

44 Mr. Fox, what I am getting at is that Ms.
45 Capuano testified that she was told by Pima
46 Community College that she wouldn't be hired,
47 they'd be withdrawing their offer because of the

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1 website, and that was the reason that her offer
2 was withdrawn, and that's considered hearsay
3 evidence. It was -- what was said, if it was
4 said, was said by someone who's not here to
5 testify and not available to be cross-examined.
6 So the evidence that Ms. Capuano gave can be
7 considered only as going to her state of mind,
8 what she believed, what she understood.
9 Actually, I'm not sure it can even be -- I'm
10 thinking out loud there. I'm not sure that it
11 can, because that would, essentially, reinforce
12 the truth of the content. I think the jury has to
13 be told that they have to disregard that evidence
14 and they can take from the evidence simply that an
15 offer she had been given was withdrawn.
16 Mr. Myhre?
17 MR. MYHRE: My Lady, I'm just thinking we should
18 address this without Ms. Capuano here.
19 THE COURT: All right. How do you propose that we
20 manage that? There's a sequence here that takes a
21 bit of time.
22 MR. MYHRE: Right. Well, if Your Ladyship's content to
23 do it in her presence, then I'll just go ahead.
24 THE COURT: Well, if it's something that -- if it's not
25 appropriate that she be here, she shouldn't be
26 here and we'll have to --
27 MR. MYHRE: It --
28 THE COURT: -- find a way --
29 MR. MYHRE: It won't affect her evidence. I mean,
30 we've covered that. The Crown's moved on. We
31 won't be revisiting it.
32 THE COURT: Well, is it --
33 MR. MYHRE: So I don't see how it would affect her
34 evidence.
35 THE COURT: Well, there's always the potential that it
36 would affect it later.
37 MR. LAGEMAAT: I would worry it might affect her --
38 THE COURT: All right.
39 MR. LAGEMAAT: -- cross-examination, My Lady.
40 THE COURT: Then, we had better stand down for a couple
41 of minutes, make the arrangements for Ms. Capuano
42 to leave the courtroom and begin her lunch break,
43 and then we'll resume in a couple of minutes times
44 and address this.
45 MR. MYHRE: Thank you, My Lady.
46 THE COURT: All right. Just stand down now.
47 THE CLERK: Order in court. This court stands down.

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1
2 (WITNESS STOOD DOWN)

3
4 (PROCEEDINGS ADJOURNED)
5 (PROCEEDINGS RECONVENED)
6

7 MR. MYHRE: So, My Lady, the Crown position, of course,
8 is that that evidence is not tendered for the
9 truth of its contents. That's part of the
10 narrative, and it explains why Ms. Capuano feels
11 the way she does, and that's the relevant
12 evidence. She felt that she was denied a job for
13 that reason, and the relevance of it. And I think
14 a jury instruction along the lines you first
15 mentioned, but not going as far as you then went,
16 would be appropriate.

17 THE COURT: It might be easier to give a jury an
18 instruction to that effect if the evidence of what
19 she was told hadn't been led. But, once that's
20 been said, it's difficult to tell the jury to
21 disregard that evidence, but -- or to view it as
22 only going to her state of mind and not for
23 anything having to do with the truth. I'll see
24 what I can draft.

25 MR. MYHRE: And, My Lady, I think there is -- there is
26 other evidence that the Crown is tendering in the
27 same fashion for the same reasons. For example,
28 things Gabriel said to her. What's relevant is
29 Ms. Capuano's perception of what's going on, not
30 how Gabriel was feeling or what Gabriel actually
31 did. It's what Ms. Capuano's perceiving. And so
32 I'm just saying I think a generalized instruction
33 would be appropriate, perhaps with specific
34 examples like the one about Pima Community
35 College.

36 THE COURT: Well, I'd prefer that more care be taken in
37 leading the evidence in the first place than there
38 be a generalized instruction, because there may be
39 a difference between the use that could be put to
40 evidence of what Gabriel said to her as opposed to
41 what the legal department at Pima Community
42 College said to her. So I'm going to ask you to
43 try to avoid the type of problem that we're
44 dealing with now, but thank you for your
45 submission about what you see as a suitable
46 instruction.

47 Now, Mr. Fox, you have a submission too?

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1 THE ACCUSED: I just wanted to respond to Mr. Myhre's
2 comment about possibly entering some statements
3 that Gabriel may have made to Ms. Capuano. That I
4 would strongly oppose calling, especially since
5 Gabriel is not present to confirm any of it. In
6 my exper -- well, I believe that much of what Ms.
7 Capuano would say about her relationship or any
8 communication with Gabriel is going to be
9 extremely [indiscernible/not near microphone].
10 THE COURT: All right. Thank you. So, Mr. Myhre, you
11 need to keep that in mind as you continue with the
12 evidence. Bear in mind that there may be
13 objection to certain portions if you consider it
14 appropriate to try to lead them.
15 Anything else?
16 MR. MYHRE: Not from me, My Lady.
17 THE COURT: Mr. Fox?
18 THE ACCUSED: Oh, I think maybe Mr. Lagemaat might have
19 some concerns that he mentioned on direct -- or I
20 mean on cross there might be some issues, but if
21 this hearsay --
22 MR. LAGEMAAT: That was regarding whether she was going
23 to be here to make this submission.
24 THE ACCUSED: Oh, okay.
25 MR. MYHRE: My Lady, I think I'll be done direct with
26 Ms. Capuano roughly by the time of the break this
27 afternoon, maybe a little before, maybe a little
28 after, just to alert my friends to where I think
29 the timeline is.
30 THE COURT: All right. Thank you.
31 MR. LAGEMAAT: And then, I can say, My Lady, I will
32 need to spend some time with Mr. Fox following
33 that, downstairs. And, given the considerable
34 amount of materials I have, that could be at the
35 end of the day before I finish.
36 THE COURT: All right.
37 MR. LAGEMAAT: Or I can -- I can show My Lady that --
38 THE COURT: You don't need to give me visual aids --
39 MR. LAGEMAAT: Thank you.
40 THE COURT: -- Mr. Lagemaat. Shall we talk at the end
41 of the day or perhaps at the afternoon break about
42 timing for tomorrow?
43 MR. LAGEMAAT: Thank you, My Lady.
44 THE COURT: Thank you.
45 THE CLERK: Order in court. This court stands
46 adjourned till 2:00 p.m.
47

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1 (PROCEEDINGS ADJOURNED FOR NOON RECESS)
2 (PROCEEDINGS RECONVENED)

3
4 (JURY OUT)

5
6 MR. MYHRE: My Lady, did you want to address the topic
7 of a potential jury instruction?

8 THE COURT: Yes. I have a trial instruction. Is
9 there any difficulty with my giving it in the
10 presence of Ms. Capuano?

11 MR. MYHRE: Not for me, My Lady.

12 MR. LAGEMAAT: Not for me, My Lady.

13 THE ACCUSED: Not for me.

14 THE COURT: Could we -- do you wish to review -- I
15 drafted it beforehand. It's brief. It's along
16 the lines that were discussed before lunch.

17 All right. Could we have the jury, please.

18 THE SHERIFF: Yes.

19
20 **DESIREE CAPUANO, recalled.**

21
22 (JURY IN)

23
24 THE SHERIFF: The jury, My Lady.

25 THE COURT: Members of the jury, before we go on with
26 Ms. Capuano's evidence, there's an instruction I
27 need to give you about a portion of her evidence
28 before lunch, probably 10, 15, 20 minutes before
29 lunch.

30 Ms. Capuano was asked about a blog titled
31 "Oh, to work at Pima Community College," and she
32 was asked about an application she made to that
33 college for employment, which she said was in or
34 around May of 2016. She testified that an offer
35 was made to her, with a starting date, but that
36 when she asked if she should give her two-weeks
37 notice at her contract job, there were further
38 discussions and the offer was withdrawn. Ms.
39 Capuano then testified that the offer was
40 withdrawn because of the website.

41 That part of her evidence was hearsay
42 evidence and you can use it only in the way I'm
43 about to tell you about. It is hearsay evidence
44 because nobody is here from Pima Community College
45 to testify in this courtroom and be cross-examined
46 about the reason the offer was withdrawn. You
47 must not use Ms. Capuano's hearsay evidence about

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1 why the offer was withdrawn as evidence of why in
2 fact the offer she described was withdrawn. You
3 can use her hearsay evidence only as evidence of
4 what she believed the reason to be.

5 So I'll repeat that last part, and it's
6 referring to the hearsay evidence about why the
7 offer was withdrawn. You must not use that
8 evidence for why in fact the offer Ms. Capuano
9 described was withdrawn. You can use the evidence
10 as evidence of what Ms. Capuano believed the
11 reason to be.

12 All right. Thank you for your attention to
13 that instruction.
14

15 **EXAMINATION IN CHIEF BY MR. MYHRE, CONTINUING:**
16

17 Q Ms. Capuano, if we could continue where we left
18 off with the emails. Tab 15, we had finished
19 looking at the email "Gabriel's return", and we --
20 I would now like to direct you to the "Ridiculous
21 tattoo on your finger", dated July 14th, 2015.

22 A Yes.

23 Q And the email states [as read in]:
24

25 I heard you're in the process of having that
26 tattoo removed. Wonderful, more money you're
27 spending on yourself while you make your
28 children live like vagrants. Nice. But, you
29 know, white trashiness is a mindset.
30 Removing a tattoo won't make you less trashy.
31 It might just make it easier to conceal until
32 you open your mouth anyway.
33

34 Another example of the way that Richard would
35 speak to you.

36 A Yes. He also got this information from our son,
37 so for me, it was another example of how he was
38 taking innocent things that my son would say to
39 him in passing and use them to try to hurt me.

40 Q The next email titled "Gabriel's infection" dated
41 July 18th, 2015. Do you know whether Gabriel was
42 cc'd on this email?

43 A I don't. I would have to check. He might be, but
44 I don't know for sure.

45 Q And I'll just read a few of the lines [as read
46 in]:
47

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1 Desiree:

2
3 What the fuck is wrong with you? You're
4 still not taking Gabriel to the doctor about
5 the infection on his ear and neck.

6
7 Next paragraph:

8
9 What the goddamn fuck is wrong with you? Get
10 the fuck off your lazy fucking ass and take
11 your fucking son to a fucking doctor, you
12 stupid piece of shit. How the fuck do you
13 get off calling yourself an excellent mother?

14
15 And it goes on. And then the last paragraph:

16
17 Better yet, why don't I just forward this
18 email with pictures of the rash on Gabriel's
19 neck to all the people in your contacts list
20 for you.

21
22 A Yes.

23 Q How did this -- do you know what he was referring
24 to, an infection?

25 A Yes. Before Gabriel went up to Canada for a
26 visitation, he had a sore on the back of his ear,
27 put Neosporin on it, and then he went up to Canada
28 where apparently it spread to cover his neck and
29 both ears. So when he came back, the rash that he
30 had covered ears and neck. He had some
31 medication, ointment, that he apparently got up in
32 Canada, so we were going to finish that out and
33 then I was going to take him to the doctor.

34 It took us actually a long time to get rid of
35 that. It was some form of a staph infection. We
36 tried various different things. Coincidentally
37 when he dyed his hair, the rash came back. So we
38 don't know for sure what caused it. It could have
39 been an allergic reaction to hair dye, but we're
40 still not sure. But we did eventually get it
41 taken care of. It took about six weeks, but we
42 eventually got it.

43 Q How did this email make you feel?

44 A Furious.

45 Q The next email, titled "Re contact information",
46 and here, if we look about halfway down this first
47 page, we see the first inline portion on July

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1 18th, 2015. You wrote [as read in]:

2
3 Richard, have you stopped to consider that if
4 what you have was a real address or not, just
5 an intentional misdirection, that you would
6 be endangering Gabriel's safety and privacy
7 with your amateur website, publishing an
8 address your son would potentially be
9 residing at. Good job, classy, real classy.

10
11 Did you write that?

12 A Yes.

13 Q Did -- did Richard in fact have your correct
14 address?

15 A Yes.

16 Q Okay. And so what did you mean when you said he
17 would be endangering Gabriel's safety?

18 A There's a lot of information on the website that
19 could be insulting to a great many people. To put
20 the address of the website also on -- the address
21 of my home also on the website was a risk to
22 everybody in the house, including his son.

23 Q Okay. If we look at Richard's response, the
24 second paragraph from the top [as read in]:

25
26 I've considered whether publishing the
27 address of an openly racist anti-Latino who
28 happens to be physically present at the same
29 house which my son is also physically present
30 at, and after careful consideration have
31 concluded if such an event as angry Mexicans
32 showing up to express their discontent with
33 you and your white supremacist beliefs were
34 to occur, the focus of their attention would
35 be on -- would be you, not Gabriel. The
36 Latino people are generally honourable and
37 would not harm an innocent child if they had
38 issues with the child's misguided mother.
39 So, no, I don't believe Gabriel would be put
40 in danger -- put in any danger by publishing
41 your address.

42
43 So did -- is that what Richard wrote back to you?

44 A Yes, that is what he wrote back.

45 Q And what did you understand him to mean, or how
46 would you summarize what you understood from that?

47 A He selected one potential scenario that could

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1 cause danger, and determined that as long as that
2 one potential scenario was not going to happen,
3 that myself and the family were safe. But that's
4 just one potential scenario of what could happen
5 that would cause us harm. A great many people
6 besides angry Mexicans could show up at my house
7 for any number of reasons.

8 Q Did --

9 A So it did not alleviate my fear.

10 Q If we flip the page to the next email in -- with
11 the same subject line, "Re contact information",
12 sent the same day, July 18th, 2015 about a -- it
13 looks like it would be about 15 minutes after the
14 previous one. There's another response from
15 Richard, and he goes on to say [as read in]:

16
17 I also considered the legal implications if
18 something were to happen like, for example, a
19 pissed-off Mexican showed up at your house
20 and attempt to cause you -- harass you in
21 retaliation for your racist views. Some
22 might say I was criminally negligent by
23 publishing your address along with your
24 racist comments. They might try to argue
25 that had I not done so, then you would not
26 have been harmed. However, both your racist
27 view and related comments and your current
28 address are all points of fact. The
29 publishing of facts simply cannot be
30 considered negligent, criminal or otherwise.
31 I'm pretty sure not a court in America would
32 hold me responsible for anything that might
33 occur to you as a result of you openly
34 expressing racist, anti-Latino sentiments
35 while living in an area with a very high
36 Mexican population.

37
38 Another thing you can't prevent me from
39 publishing is your social security number.
40 There is no law in Canada which prohibits a
41 person from publishing the non-Canadian
42 identifying information of another person
43 who's not in Canada, and even if it were
44 illegal under U.S. law, I'm not in the U.S.
45 and therefore not subject to U.S. laws.

46
47 How did this response from Richard make you feel?

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1 A I was so angry.
2 Q The next email, again titled "Re contact
3 information", this is the next page, July the
4 19th, 2015. If we look at the bottom of the first
5 page, it says, on July 19th, 2015, Patrick wrote
6 [as read in]:

7
8 Allow me to also point out that of course I
9 had considered that I could potentially raise
10 the issue of Pendleton publicly disclosing
11 that he has top secret clearance which, in
12 itself, would likely result in him losing
13 such clearance if in fact he did actually
14 have it, which I suspect by the fact that he
15 publicly advertised, that he does not.
16 However, since I have no issue with Pendleton
17 and he has not harmed me in any way, he is
18 purely collateral to this matter, and it
19 would be against my morals to cause harm to a
20 person collaterally in order to adversely
21 affect you.

22
23 That is, of course, one of the fundamental
24 differences between you and I. You would not
25 think twice about harming an innocent
26 bystander in order to reach your target, case
27 in point, Liz, though I suppose I could
28 rationalize it by saying I was just doing my
29 duty as a patriotic citizen, right? But, no,
30 I would not stoop to such levels.

31
32 Now, if we go up to the top of that same page --
33 so this email, 10:56, so it looks like it was
34 written 50 minutes after the one we've just read.
35 Richard wrote [as read in]:

36
37 Now that I think about it, this situation
38 does raise a few disturbing questions
39 actually. A security clearance is based on a
40 person's character as well as their actual
41 arrest and or convictions. A person who
42 cohabits with a clearance-holder or applicant
43 is also subject to a background check,
44 usually just as stringently as the
45 clearance-holder himself.

46
47 And then the last paragraph of that email:

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1
2 I just don't see how it's possible that
3 Pendleton could possibly maintain a security
4 clearance while also cohabiting with you. I
5 mean, wouldn't a responsible patriotic
6 citizen feel a sense of obligation to report
7 such a situation to the proper authorities?
8 How can a person with such poor judgment that
9 he would be seriously committed enough to a
10 woman that he would have her move into his
11 house with her two children, be trusted with
12 a security clearance, a top secret clearance
13 at that.
14
15 Does James Pendleton have some form of security
16 clearance that allows him to take jobs that
17 require security clearance?
18 A Yes.
19 Q What did you understand from this email from
20 Richard?
21 A I took this as a veiled -- veiled threat that he
22 was going to contact authorities regarding the
23 security clearance of James Pendleton.
24 Q How did that make you feel?
25 A Very scared. I know what it felt like to go
26 through that at Apollo, and I did not want James's
27 livelihood damaged because of me, and I didn't
28 want him to have to go through that same
29 embarrassment and humiliation.
30 Q Okay. If we could go to Tab 16, please, the first
31 email titled, "Forward TKT" with a number,
32 DesiréeCapuano.com, and if we look halfway down
33 the page, there's an email from
34 JamesPendletonJunior@gmail.com to abuse@web.com.
35 Do you -- had you seen this email --
36 A Yes.
37 Q -- before? What is -- what is the email that
38 follows there?
39 A This is James sending an email to the abuse
40 department of the website host company, letting
41 them know that this website was up and that it was
42 damaging and that -- asking them to look into it
43 and try to take it down, then said they forwarded
44 it over to Mr. Riggs. Then he put it on the
45 website.
46 Q Okay. Do you know if this complaint from James
47 had the effect of having the website taken down?

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1 A It absolutely did not.
2 Q Okay. If we could go to Tab 17, please. This
3 email is titled "Re Gabriel's visit for winter
4 break, 2015", and if we look halfway down, we see
5 you're initiating email to Richard sent November
6 14th, 2015, in which you basically bring up the
7 subject of Gabriel coming to visit for the winter
8 break and you put some stipulations on it.
9 A Yes. Richard had sent me emails requesting
10 Gabriel for the winter break, so this was my email
11 to him with the stipulations.
12 Q And Richard's response was essentially -- this was
13 -- we see in the first line [as read in]:
14
15 This was not an invitation to negotiate,
16 and --
17
18 A Correct.
19 Q And it goes on in the third paragraph.
20
21 There will be no negotiating and I will not
22 agree to any terms you try to impose.
23
24 You will soon be homeless; you have no money;
25 nobody believes anything you say anymore;
26 nobody is coming to your aid or defence; you
27 will not be able to secure another job as
28 long as that website exists - and it's not
29 going anywhere as long as you're alive.
30
31 Your boyfriend has reached the point of being
32 fed up, and only his sense of decency towards
33 Sage keeps him from kicking you guys out. He
34 knows Gabriel will be fine because of me.
35
36 Do you remember in November of 2015 whether you
37 had yet secured a job?
38 A I -- I was still working the contract.
39 Q So I take it after you were laid off by Apollo in
40 September 2015, you were then able to obtain a
41 contract somewhere?
42 A Correct. The same one I was told not to give
43 notice to.
44 Q Right. Okay, Ms. Capuano, I'd like to talk for a
45 minute about some of the different steps you've
46 taken to try to get that website taken down.
47 We've heard about some of them already. I'll

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1 summarize. We saw an email where you asked
2 Richard to take the website down. You had taken
3 steps to have it blocked at Apollo when you were
4 working there.
5 A Correct.
6 Q Do you know whether or not Gabriel ever asked
7 Richard to take it down?
8 A He did.
9 Q And what -- tell us what happened.
10 A He did ask.
11 Q How do you know that?
12 THE ACCUSED: Objection.
13 THE COURT: All right. What's the nature of your
14 objection, Mr. Fox?
15 THE ACCUSED: I believe that it would be hearsay.
16 THE COURT: All right. Can you be careful of that,
17 please, Mr. Myhre, and approach the matter in a
18 way that will not elicit hearsay.
19 MR. MYHRE:
20 Q How do you know that Gabriel had asked Richard
21 that?
22 A Gabriel called Richard and had me -- he put him on
23 speakerphone.
24 Q So you were --
25 A Richard and I and Gabriel were all in the same
26 room.
27 Q Okay. What was said by Gabriel to Richard when
28 you were sitting there?
29 A Gabriel told him that he needed to take down the
30 website and he needed to stop the harassment, and
31 if he did that, the condition was that I would
32 return the cell phone to Gabriel. That's what
33 Gabriel wanted. He wanted his cell phone back and
34 the website and harassment to stop.
35 Q Do you remember if Richard had any response to
36 that?
37 A He said no.
38 Q Okay. We've seen -- do you -- sorry, do you
39 remember when that was?
40 A That was the summer of 2015, shortly after he
41 returned.
42 Q From his visit with Richard?
43 A Correct.
44 THE ACCUSED: I'm sorry, did she say December?
45 A Summer.
46 THE ACCUSED: Summer, thank you.
47

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1 MR. MYHRE:
2 Q We've seen that you -- or at least from James
3 there was a complaint to this web host?
4 A Yes.
5 Q There were earlier complaints made to a site -- or
6 to a host called "GoDaddy"?
7 A Yes.
8 Q We've heard that you interacted with a Detective
9 Tuchfarber with -- sorry, was that Phoenix or
10 Tucson?
11 A That was Phoenix.
12 Q You also tried to get help from the police in
13 Canada.
14 A I did.
15 Q So let's talk about that for a minute. Do you
16 remember when you first contacted the RCMP?
17 A I believe it was spring of 2015.
18 Q And what did you ask them to do for you?
19 A I told them that the website was up and that I
20 kept receiving emails in abusive nature from
21 Richard. Also informed them that the emails
22 indicated that he was crossing the border using
23 this identity from Florida, and that the identity
24 from Florida, to my understanding, was not valid,
25 was not true, and asked if they could explain to
26 me how he was able to get a PAL.
27 Q Okay. Did you get a response from the RCMP?
28 A At the time, yeah, I got something of a response.
29 Q Were there any results in terms of the website?
30 A No.
31 Q I understand that then, in the summer of 2015, you
32 contacted the RCMP again?
33 A Yes.
34 Q And this time you interacted with Constable Dupont
35 [phonetic]?
36 A Yes.
37 Q And you told him the nature of your complaint.
38 A Correct. At that time, the new information about
39 my home address was up on the website.
40 Q And what was your understanding of what Constable
41 Dupont did?
42 A He requested copies of the emails that had been
43 sent, so I forwarded those over. He seemed taken
44 aback with the website, so it was my understanding
45 that he was doing an investigation and looking
46 into the matter. At some point, I was informed
47 that Richard was arrested, but that he didn't stay

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1 in custody as far as I know, was released, and
2 then I was given very scattered information, not
3 properly informed about what was happening.
4 Q You eventually found out that Richard hadn't
5 actually been charged with anything as a result of
6 that?
7 A Correct.
8 Q How did you find that out?
9 A I didn't find that out until I spoke with the
10 media quite a bit later. Richard did tell me in
11 emails, but I did not hear from any other source
12 until then.
13 Q And when you started contacting the media, roughly
14 when was that?
15 A It was spring of 2016.
16 Q Now, I understand that -- well, fair to say that
17 the outcome of your complaint to Constable Dupont
18 didn't result in the website coming down.
19 A Correct.
20 Q You also looked for help from the courts in
21 Arizona?
22 A Yes.
23 Q In July of 2015, you obtained an order of
24 protection in Sahuarita?
25 A Yes.
26 Q That order of protection forbid any contact with
27 you, forbid Richard from going near your residence
28 and also forbid him from any harassment.
29 A Correct.
30 Q Do you know whether it said anything about the
31 website?
32 A The website was considered harassment, but it was
33 not a direct order to take it down.
34 Q What do you mean the website was considered
35 harassment?
36 A In the -- in the order of protection case, the
37 website was brought up as evidence of harassment.
38 Q So what was your understanding of what was
39 supposed to happen as a result of that order?
40 Sorry, let me rephrase that. Why did you get that
41 order? Why did you seek it?
42 A In order to move through legal channels to have a
43 website taken down from a provider, the first step
44 is to get a restraining order or an order of
45 protection. So that was only as a first order.
46 That, in itself, cannot be used to take down the
47 website, but it is the first necessary step. So I

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1 went through that process.
2 The other reason that I got it is because if
3 Richard were to show up physically, and I had the
4 restraining order in place, then the cops would
5 show up faster with a restraining order than they
6 would if I didn't have it. So it did help me were
7 he to show up in person at any point.
8 Q Okay. I understand that Richard later challenged
9 that order in the -- at the next level --
10 A Municipal, yeah.
11 Q -- of court. At the Municipal Court. Was the
12 order upheld?
13 A Yes.
14 Q Okay. Did Richard participate in a hearing --
15 A Yes.
16 Q -- for -- of the appeal of the order?
17 A Yes, over the phone.
18 Q Okay. Did he --
19 A Sorry?
20 THE ACCUSED: Can you clarify, are you referring to the
21 order of protection hearing that were made in
22 Municipal Court or the appeal in the Pima County
23 Superior Court?
24 MR. MYHRE: So as I understand it -- thank you, we'll
25 clarify.
26 Q Ms. Capuano, you obtained an order for
27 protection --
28 A From the Municipal Court.
29 Q Okay. And then there was an appeal of that?
30 A At the municipal level.
31 Q Okay. So did Richard participate in the appeal at
32 the municipal level?
33 A Yes, he did.
34 Q Okay. Did he give any indication, one way or
35 another, as to whether he intended to abide by the
36 order?
37 A Absolutely. He said he would not.
38 Q Did he give a reason?
39 A He said he was not within the jurisdiction.
40 Q I understand that Richard -- pardon me, back up.
41 The appeal at the Municipal Court level, when did
42 that take place?
43 A I believe that was December of 2015.
44 Q I appreciate I'm asking you this without --
45 A That's okay.
46 Q -- having any documentation, but just roughly. I
47 understand that Richard further challenged that

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1 order to the Superior Court level?

2 A Yes.

3 Q And that actually there was a hearing scheduled

4 for June the 7th, 2016.

5 A Yes.

6 Q That was to be held where?

7 A In Tucson, Arizona.

8 Q Okay. I'm going to back up a little bit. You

9 went to the media?

10 A I did.

11 Q In the spring of 2016.

12 A Yes.

13 Q How did that come about and why?

14 A I hadn't heard anything back about the initial

15 case with the RCMP. I couldn't get any footing, I

16 couldn't get anybody to do anything about the

17 website or the harassment, and I was still at a

18 point where anytime anybody Googled my name, the

19 website would come up and I was -- it appeared

20 that I wrote the website. So it was still under

21 the appearance that all of that was things that I

22 had done. Nowhere in any of that information was

23 Richard's name ever mentioned, and I wasn't going

24 to allow him to continue to push that website,

25 making it appear as though I had written it and --

26 so I went to the media, made a call to the CBC to

27 see if anybody would be interested in helping me.

28 Q Okay, and you actually gave a televised interview

29 to CBC?

30 A I did.

31 Q You're aware they wrote an article?

32 A Yes.

33 Q Did that have any effect as far as what you could

34 tell in terms of when your name was Googled?

35 A Yes. Yes.

36 Q What was the effect?

37 A After that, any time my name was Googled and the

38 website came up, there was also information that

39 it was written by Patrick or Richard. He also

40 modified the website after that to include

41 disclaimers that the website was written by him

42 that weren't there before.

43 So it did help to identify that I was not the

44 one responsible for that website.

45 Q At some point, you set up a GoFundMe page?

46 A I did.

47 Q Why did you do that?

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1 A I was asked to. A media source said that she was
2 getting requests from people who wanted to find
3 out how to help me and had requested that I set up
4 a GoFundMe page for that, so I did.
5 Q Did you get financial help from that page?
6 A Some. There's about \$900 total. In order for
7 those things to work, you have to continuously ask
8 for help, and I wasn't going to do that.
9 Q In terms of custody of Gabriel, I understand that
10 the last order that was made was made in March of
11 2016?
12 A Yes.
13 Q And so what's -- what is the -- what was Gabriel's
14 custody status as of that order in March 2016?
15 A I was -- still retained sole custody. Up until
16 that hearing, it was still under terms that I
17 provide reasonable visitation and communication.
18 After that hearing, it changed.
19 Q Did visitation change after -- with that final
20 order?
21 A Yes. The judge determined that that hearing
22 that --
23 Q So I just want to be careful --
24 A Sorry.
25 Q -- how I ask this. Do you have to provide
26 visitation --
27 A No.
28 Q -- as of that order?
29 A Or communication.
30 Q I understand that in April or May of 2016, you got
31 some calls from somebody you believe was Richard.
32 A Oh, yes, sorry. Yes. April 2nd, I received a
33 phone call to my home number. The incoming number
34 was from Tucson, Arizona, and the message that was
35 left was from Richard. It was to Gabriel and it
36 only instructed him to call Richard on his mobile
37 phone. Then April 8th, there was another call to
38 my home, this time from a California number, from
39 a corporation, again a message left from Richard
40 instructing Gabriel to call him on his mobile
41 phone. April 22nd, there was a third call to my
42 home, again with a message from Richard for
43 Gabriel to call him on his mobile. This one was
44 also from California.
45 Q Did those calls cause you any concern?
46 A Yes, absolutely.
47 Q Why?

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1 A I didn't know if they were spoof calls. I didn't
2 know if he was actually in the country. I don't
3 know if he was doing it to mess with my head. I
4 don't know if he was doing it to scare me. But it
5 certainly worked.

6 Q Okay. Ms. Capuano, I'm nearing the end of my
7 questions, and obviously we've covered a lot of
8 territory in the last four or five hours that
9 you've been testifying.

10 A Yes.

11 Q Could you summarize for the jury for the period
12 between January 2015 and May 2016, did you have
13 concerns for your physical safety?

14 A Yes, I did.

15 Q Could you summarize what they -- what those
16 concerns were?

17 A The concerns were it was my belief that Richard
18 was crossing into the country on a regular basis,
19 that he had figured out a way to cross into the
20 United States undetected with no issues. He had
21 access to guns and owned firearms under an
22 identity that, in my opinion, could probably be
23 tossed if he needed to. It wasn't his actual
24 birth certificate. It wasn't actually his
25 identity is my understanding.

26 I'd already seen how quickly he could get to
27 Los Angeles in just a matter of days, and he had
28 contacts in Los Angeles that would help him, give
29 him a place to stay, food, shelter,
30 transportation. I live six hours away from those
31 resources, and I know how much he despises me, and
32 all of the times that he told me the world would
33 be better without me in it, he wouldn't stop until
34 I'm deceased, the website would be up until I was
35 dead, and he was just -- there were -- there were
36 many comments that scared me.

37 Q Did you have any concerns about a potential
38 physical reprisal from people in the community due
39 to the website?

40 A I don't know how many people saw the website. He
41 took out a Google ad in my neighbourhood so
42 anybody that accessed -- Googled my name, an ad
43 would come up and take them right to the website,
44 and he targeted that for a 20-mile radius around
45 my home address. I don't know how effective it
46 was. I didn't necessarily feel fear that the
47 people in my neighbourhood would hurt me.

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1 Q Can you summarize, Ms. Capuano, the impact that
2 the emails that we've looked at and this website
3 had on your life in that time period, January 2015
4 through May 2016?

5 A I felt isolated, I felt beat up, I felt powerless,
6 frustrated and stopped at every turn. It felt
7 like he had worked it out so that nothing he did
8 he could get in trouble for, and so I felt like it
9 was just going to continue, that this was never
10 going to get any better, and that I would never be
11 able to make him stop. I was losing jobs, I was
12 losing friends, I was struggling every day. I was
13 depressed, but I had to try to conceal that so
14 that I could still raise my kids and make them
15 smile and make sure their lunches were made, go to
16 work, and take care of my dogs and live a normal
17 life.

18 There was a strain on the relationship with
19 James and I, not because of him and I, but because
20 now his livelihood was being threatened. His
21 mother was -- information put on the website, so
22 she'd been brought into it. Everybody I know --
23 everybody I knew. I even asked James if it would
24 just be better if I left so he wouldn't have to
25 deal with this, so that they would be safe. He
26 stood by my side.

27 Q Did you contemplate relinquishing custody of
28 Gabriel?

29 A I had thought about it, yes. But I knew that even
30 if I had, he wouldn't stop. It wouldn't fix it,
31 it wouldn't make it stop. I could give him
32 everything he wanted and it wouldn't matter. He
33 wouldn't stop.

34 Q And so by May 2016, did you have any more ideas to
35 -- for things you could do to try to get this
36 website taken down?

37 A There were some more complicated in-depth legal
38 processes that we were looking at, but honestly,
39 by that point, I was starting to consider how to
40 seal any public records, change my name without
41 him knowing, figure out a way to move and somehow
42 hide a new address and just try to disappear.

43 Q You haven't done that.

44 A No.

45 Q Why not?

46 A I don't want to run, and I don't want to hide. I
47 just want it to stop.

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1 MR. MYHRE: My Lady, there's something I need to
2 address with the court outside of the presence of
3 the jury, please.

4 THE COURT: All right. Members of the jury, if you
5 wouldn't mind please going to the jury room.

6
7 (JURY OUT)

8
9 THE COURT: Is this brief, Mr. Myhre, or should we call
10 it the afternoon break?

11 MR. MYHRE: I think it's brief, My Lady.

12 THE COURT: All right. And should this be in the
13 absence of Ms. Capuano?

14 MR. MYHRE: I'm afraid so.

15 THE COURT: All right. So we'll stand down very
16 briefly and then resume.

17
18 (WITNESS STOOD DOWN)

19
20 (PROCEEDINGS ADJOURNED)

21 (PROCEEDINGS RECONVENED)

22
23 MR. MYHRE: Thank you, My Lady. At this point, Mr. Fox
24 still hasn't been identified in court, and so I
25 wanted to address the procedure for that, if it's
26 still necessary from Mr. Fox's point of view.

27 THE ACCUSED: I believe it is.

28 THE COURT: Mr. Fox, I need to make sure that you
29 understand what it seems you're agreeing to. One
30 of the elements of both of the offences that are
31 charged is that you, the person accused, were --
32 you were the person who did the various acts that
33 are alleged. We've heard Ms. Capuano testify at
34 length about Richard Reiss, Patrick Fox, and we
35 need to know whether or not you are agreeing that
36 that person is you. If not, the Crown needs to
37 find a way to prove that, if it can. And it's an
38 element of the offence, so it does have to proven
39 beyond a reasonable doubt.

40 THE ACCUSED: I apologize. I guess my response was
41 ambiguous. What I meant by "I believe it is" is I
42 believe it's necessary for her to identify me.

43 THE COURT: I see. Then I'm glad I canvassed that.
44 Perhaps I misunderstood -- well, I obviously did.
45 All right.

46 THE ACCUSED: [Indiscernible/overlapping voices]. I
47 should've been more clear.

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1 THE COURT: Either way. Mr. Myhre --
2 MR. MYHRE: I think the procedure, My Lady, should be
3 we should have the jury brought back in, then I'll
4 bring Ms. Capuano in, I'll have her stand close to
5 where Mr. Sheriff is and ask her if she recognizes
6 anybody in the court as the person she's been
7 referring to. Oh, recording. I'll have to put
8 her back in the witness box. So maybe we can just
9 take these down or move them aside.
10 THE COURT: I think that would be better. Also, I
11 would like to be able to see her as that's being
12 done, and otherwise I wouldn't be able to.
13 MR. MYHRE: So, My Lady, could I just have two minutes
14 to communicate this to Ms. Capuano? She's not
15 aware that she has to do this.
16 THE COURT: All right. Now, when that's done, is that
17 the end of your direction examination?
18 MR. MYHRE: I believe it will, My Lady. What I would
19 ask is that we not put her under cross-
20 examination. I suppose there is the potential
21 that I could review my notes tonight and think I
22 need to ask her a couple more questions. I don't
23 think so at this point but, in my submission, she
24 shouldn't be under cross-examination overnight.
25 THE COURT: All right. And at that point we will be at
26 roughly three o'clock. Will we have got as far as
27 we can get for the day, then?
28 MR. MYHRE: I believe so, if we're not going to start
29 cross-examination.
30 THE COURT: I don't believe we are.
31 MR. LAGEMAAT: My position, My Lady, would be that I
32 would like to spend the rest of the afternoon with
33 Mr. Fox.
34 THE COURT: All right. And then --
35 MR. LAGEMAAT: Depending on when the bus leaves.
36 THE COURT: I'm asking all these questions now so that,
37 when we've completed this process, I can tell the
38 jury when we next need them. And what's the
39 answer to that?
40 MR. LAGEMAAT: Unfortunately, My Lady, I had no reply
41 from opposing counsel.
42 THE COURT: All right.
43 MR. LAGEMAAT: And I expected that.
44 THE COURT: So where are we? You were suggesting, Mr.
45 Lagemaat, that we start tomorrow at one o'clock?
46 MR. LAGEMAAT: That -- that was in discussion with my
47 friend and I this morning, we -- that I would

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1 offer to start earlier and perhaps have two
2 breaks.
3 THE COURT: What's the earliest you think you'd be
4 ready tomorrow to start?
5 MR. LAGEMAAT: Well, I think the earliest I could
6 safely say would be during the lunch hour.
7 THE COURT: I see.
8 MR. LAGEMAAT: If I -- my matter's on a list. I will
9 go to the JCM and ask that they put me first.
10 But, if not, even if I finished at 11:30, I would
11 be back here at 12:00, but I'd --
12 THE COURT: All right.
13 MR. LAGEMAAT: Ideally, I'd like to finish it at 10:00
14 and -- or 9:30 and 10:00, but I can't say for
15 sure, My Lady.
16 THE COURT: And do you expect to complete within the
17 week?
18 MR. LAGEMAAT: Fully expect to complete within the
19 week.
20 THE COURT: All right.
21 MR. LAGEMAAT: Thursday.
22 THE COURT: All right. Then, I think what I'll do is
23 ask the jury to come at one o'clock tomorrow, if
24 that's feasible for them, assuming nobody's got
25 something planned over the lunch hour that can't
26 be changed. And we'll start then and go through,
27 so that way we won't lose too much time tomorrow.
28 MR. LAGEMAAT: Thank you, My Lady.
29 THE COURT: All right. So we'll stand down briefly,
30 configure the court -- do we need to stand down
31 for this? We probably do.
32 MR. MYHRE: I think just to get these out of the way.
33 And then, just so we're all clear, my
34 understanding is that when we come back into court
35 we'll have the jury brought in, then I'll bring
36 Ms. Capuano in, put her back in the witness stand,
37 ask her the question, and then we'll invite the
38 jury to retire and let them leave. Or should we
39 then ask Ms. Capuano -- then, why don't we let Ms.
40 Capuano leave after that?
41 THE COURT: Well --
42 MR. MYHRE: And then you can discuss with the jury what
43 time they should come back tomorrow.
44 THE COURT: I -- the problem is, if we do it that way,
45 we'll have to stand down yet again --
46 MR. MYHRE: So --
47 THE COURT: -- while Ms. Capuano leaves, then bring the

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1 jury back in again.

2 MR. MYHRE: I think we won't have to do that, My Lady,
3 just because the screens aren't here. That ship
4 sails --

5 THE COURT: Oh, I see. All right. Will you be closing
6 your direct examination or --

7 MR. MYHRE: I would prefer not to, My Lady.

8 THE COURT: All right. Very well. We'll stand down
9 briefly.

10 THE CLERK: Order in court. This court stands down.

11

12 (PROCEEDINGS ADJOURNED)

13 (PROCEEDINGS RECONVENED)

14

15 **DESIREE CAPUANO, recalled.**

16

17 THE COURT: Ready for the jury?

18 MR. MYHRE: Yes.

19

20 (JURY IN)

21

22 THE SHERIFF: The jury, My Lady.

23

24 **EXAMINATION IN CHIEF BY MR. MYHRE, CONTINUING:**

25

26 Q Okay. Ms. Capuano, at this stage I need to ask
27 you to look around the court and tell the jury
28 members if you see the person here who you've been
29 referring to as Richard Riess or Patrick Fox, and
30 if you see him, please tell the jury what he's
31 wearing.

32 A The gentleman in red.

33 MR. MYHRE: No more questions, My Lady.

34 THE COURT: Are you closing your examination?

35 MR. MYHRE: My Lady, those are all my questions for
36 today.

37 THE COURT: And you're asking to continue tomorrow?

38 MR. MYHRE: Yes.

39 THE COURT: Based on what you told me earlier, I take
40 it you likely have very few questions left to ask,
41 if any?

42 MR. MYHRE: Yes, My Lady.

43 THE COURT: All right. I'm going to have a quick
44 discussion with the jury about timing, scheduling.
45 Does Ms. Capuano wish to leave the courtroom at
46 this point or to stay where she is --

47 A I'm okay.

Proceedings

BAN ON PUBLICATION - INHERENT JURISDICTION

1 THE COURT: -- during that discussion?
2 MR. MYHRE: I think she's okay, My Lady.
3 THE COURT: All right. Members of the jury, we've
4 reached a point in the trial where, for two
5 reasons, we need to take a little bit of a pause.
6 I won't go into what those reasons are, but
7 they're good and proper reasons. And counsel and
8 Mr. Fox and I have discussed how best we can
9 proceed in a way that makes the best use of your
10 time, as well as court time, and moves things
11 along the most efficiently, and what we would like
12 to suggest is that you be excused for the rest of
13 today and for tomorrow morning, and that you be
14 asked to be ready to start again tomorrow at one
15 o'clock. So you would be asked, essentially, to
16 have an early lunch, be ready to start at one, and
17 we'll go through till four, taking either one or
18 two short breaks during that time.
19 Now, if there's anyone for whom that doesn't
20 work, because it's quite a departure from the
21 usual schedule, we'll obviously reconsider. Are
22 you able to give me a quick nod now to indicate
23 whether that will work or would you like to retire
24 to the jury room, have a discussion, and then let
25 me know? One of you could let me know on behalf
26 of the rest of you.
27 You're like to ret -- you're indicating this
28 will work for you?
29 A JUROR: [Indiscernible/not near microphone].
30 THE COURT: Is there anyone for whom it's a problem?
31 All right. So let's go that way. I will thank
32 you for your attention today. I am excusing you
33 for the rest of today and for tomorrow morning,
34 and asking that you be back here and ready to
35 start again tomorrow, ready in time for one
36 o'clock, please. Thank you.
37
38 (JURY OUT)
39
40 (WITNESS STOOD DOWN)
41
42 THE COURT: All right. Is there anything else we
43 should canvass today?
44 MR. MYHRE: Not from the Crown, My Lady.
45 MR. LAGEMAAT: No, My Lady.
46 THE ACCUSED: No, My Lady.
47 THE COURT: All right. Thank you. And we'll adjourn

75
(Jury Out)
Proceedings

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1 until tomorrow at 1:00.
2 THE CLERK: Order in court. This court stands
3 adjourned till tomorrow at 1:00 p.m.
4
5 (PROCEEDINGS ADJOURNED TO JUNE 14, 2017, AT
6 1:00 P.M.)
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9 Transcriber: S. Goossens
10 Transcriber: D. Rochfort
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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.

S. Goossens
Court Transcriber

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the best of my skill and ability.

D. Rochfort
Court Transcriber