

27178
Vancouver Registry

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

Vancouver, B.C.
June 15, 2017

REGINA

v.

PATRICK HENRY FOX

PROCEEDINGS AT TRIAL

COPY

BAN ON PUBLICATION – INHERENT JURISDICTION
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Crown Counsel:

M. Myhre

Appearing on his own behalf:

P. Fox

Defence Counsel:

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

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RULINGS

Nil

Proceedings**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 Vancouver, B.C.
2 June 15, 2017
3

4 THE CLERK: In the Supreme Court of British Columbia,
5 at Vancouver, this 15th day of June, 2017,
6 recalling the matter of Her Majesty the Queen
7 against Patrick Henry Fox, My Lady.

8 MR. MYHRE: We're ready, My Lady.

9 THE COURT: All right. Can we have the jury, please.

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DESIREE CAPUANO

a witness called for the
Crown, recalled, warned.

THE CLERK: I remind you, Ms. Capuano, that you're
still under affirmation.

A Yes, ma'am.

(JURY IN)

MR. LAGEMAAT: I'll be referring now to -- and I'm sure
we've all lost track of what page we're on in the
book, and I don't have page numbers, so it's
called -- the email chain is called "Re G. summer
visit 2015". I believe it's 13 pages in from the
back. And this was also a fairly lengthy chain,
seven pages. So if we could number the pages 1 to
7, please.

THE CLERK: Sorry, where is it starting?

MR. LAGEMAAT: It's starting on --

THE COURT: Can I show you, Madam Registrar?

MR. LAGEMAAT: Yes, "Re summer visit".

THE COURT: It's this one. It's this one, and that
would be page 1.

THE CLERK: And seven in you wanted it?

THE COURT: You said seven?

MR. LAGEMAAT: Yes. Yes, My Lady, seven pages.

CROSS-EXAMINATION BY MR. LAGEMAAT, CONTINUING:

Q And again, this -- this email chain was referred
to in my -- in the Crown's book of exhibits, and
we're going to go a little bit further in time in
the chain. And I'll direct you to page 3 of 7 at
the bottom. And what -- Ms. Capuano, you can
confirm for me, this -- this email chain is
largely about confirming a trial itinerary for --

Desiree Capuano (for Crown)
cross-exam by Mr. Lagemaat
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1 and this is what you characterized in direct
2 evidence, defining the term "itinerary", and
3 you're basically arguing back and forth about
4 itinerary for Gabriel going to visit Patrick; is
5 that correct?
6 A Yes.
7 Q In this chain. Hence the title.
8 So going a little bit further than we went in
9 direct, and I'll go to the bottom of page 3,
10 Desiree Capuano wrote, April 26th -- I'm assuming
11 May 4th -- you've copy and pasted into there where
12 you have previously asked him for an itinerary; is
13 that correct, Ms. Capuano?
14 A Yes.
15 Q Okay. And then you've put in a dictionary
16 definition, turning the page to page 4 of 7 at the
17 top. It's a continuation of that email. And
18 you've put in a dictionary definition of "full"
19 and "all" --
20 A Yes.
21 Q -- correct? And again, that -- you didn't think
22 he -- you understood he knows what "full" and
23 "all" means; correct?
24 A Well, according to this conversation back and
25 forth, I was just trying to get him to see that
26 what I wanted was the travel plans for my son.
27 Q I suggest you were just doing what you've done in
28 previous emails and just arguing.
29 A I had full control over visitation and determining
30 that visitation. After the website went up, the
31 attacks, the reference to shooting, I was still
32 offering to send Gabriel to him. All I wanted
33 were travel plans. And the fact that it took two
34 weeks to get a plane ticket was very frustrating.
35 I tried many different ways to tell him what I
36 wanted were travel plans.
37 Q Do you know why it took two weeks?
38 A Because he kept saying that what I was asking for
39 he didn't understand, although I referred to it in
40 the same way he had referred to it in previous
41 emails.
42 Q Going over to page 2 of 7, and about halfway up
43 the page, on Thursday, May 7th, 2015, Desiree
44 Capuano wrote -- and can you read -- and you wrote
45 two in a row again here. Can you read those in,
46 please? It starts with "Would you like me to
47 forward". Is that your reply, Ms. Capuano?

Desiree Capuano (for Crown)
cross-exam by Mr. Lagemaat
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1 A Yes.

2 Q Okay. Could you read those both in, please?

3 There's two in a row.

4 A [As read in]:

5

6 Would you like me to forward you the email
7 thread where I purchased a ticket and it
8 interferes with your work schedule so you
9 denied it? Or the one where I told you the
10 flights were cheaper on a different day and
11 you responded that you didn't care about my
12 financial troubles and it wasn't your fault
13 that I was a white trash person incapable of
14 budgeting my money, and again denied it?
15 Oh, but you probably have them up on your
16 website, so you can just go read it there.
17 Actually, you interfered with almost every
18 visitation I have with Gabriel, from pulling
19 stupid things like refusing to put him on a
20 plane, calling the airlines and changing the
21 plane tickets yourself, filing for a
22 restraining order the day prior to
23 visitation, sending him for a week with
24 nothing but the clothes on his back and a box
25 of Jewish crackers. You and he decided that
26 he would not participate in any event over
27 Christmas break, including eating dinner,
28 because he was Jewish and it was against his
29 religion. You sure as hell never permitted
30 me to have him for a visitation without
31 return plans solidified. I believe I have
32 been extremely accommodating to you, given
33 the hardships you caused me while you had
34 partial custody. Where's your argument
35 again?

36

37 Q Why did you ask at the end, "Where's your argument
38 again?" Is that asking him for a reply?

39 A Because he's telling me in his -- that he's not
40 agreeing to the terms of visitation, meaning that
41 he was requiring that I drive two hours during the
42 work week from Tucson to Phoenix to put him on a
43 plane, and he didn't care that I had to work.

44 Q Did you know if he was working at this time?

45 A I don't know. I assume so.

46 Q Going over to page 1 of 7, and about halfway up
47 the page, May 11th, 2015 -- and again, this is

Desiree Capuano (for Crown)
cross-exam by Mr. Lagemaat
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1 again May 11, Desiree Capuano wrote [as read in]:

2
3 See, Richard, it doesn't matter.

4
5 Is that your response, Ms. Capuano?

6 A Yes.

7 Q Could you read that in, please?

8 A

9 See, Richard, it doesn't matter what I say or
10 how I say it. You're bound and determined to
11 argue everything I say and you adamantly
12 refuse to even attempt to understand what I'm
13 talking about. So tell me why I should try
14 to defend myself against a person like that.
15 It's a futile effort and I have better things
16 to do. You nitpick like a little old lady.
17 Oh, my God, are you going to say that I'm
18 racist against little old ladies?

19
20 Q And up at the top of the page, "and you're
21 incapable", is that your reply, Ms. Capuano?

22 A Yes.

23 Q Can you read that in, please?

24 A

25 And you're incapable of having a conversation
26 without a dictionary, encyclopedia, or case
27 law book for reference.

28
29 Q And this, again, was at a time when you say you
30 were in fear of Mr. Fox?

31 A Yes, and I still had to determine visitation for
32 my child.

33 Q Pardon --

34 A Was still required to put him on a plane to go see
35 his father. So no matter how scared I was, I
36 still had to communicate with him.

37 Q Well, if he didn't send a ticket --

38 A Then he wasn't getting on the plane.

39 Q Exactly.

40 A Yeah. And then he would take me back to court and
41 say that I prevented visitation. I knew what I
42 was facing.

43 Q Did you have to go out of your way that far to get
44 him to send you the plane tickets --

45 A Yes.

46 Q -- compared -- compared to just leaving it?

47 A Yes. The only time I got him to send me the plane

Desiree Capuano (for Crown)
cross-exam by Mr. Lagemaat
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1 ticket is when I said, "'Stupid fucking cunt' does
2 not look like an itinerary. Send me the
3 itinerary."

4 Q I -- I suggest, Ms. Capuano, this is just like
5 every other email we went through where it came a
6 point where you did not have to engage but you
7 did. And in this case there's one instance again
8 where you send two in a row.

9 A In 2014, the beginning of 2014 when the website
10 went up, I was not responding. It was not till
11 the end of 2014 that I started going back and
12 forth with him on [indiscernible], as you said
13 yesterday, bickering back and forth, trading witty
14 remarks.

15 In the fall of 2014 -- in the winter,
16 actually, in December, is when one of those two
17 parties brought up shooting the other one. I
18 don't care what reference is around that, I don't
19 care how many times he tells me not to be
20 threatened, the person doing the attacking is the
21 person saying that they think about shooting the
22 other person. At that point every other threat
23 has a different meaning, everything else becomes
24 important. That doesn't mean that I'm going to
25 stop interacting with him the way that I had been.
26 I'm not going to cower and cry and beg and plead
27 for him to stop.

28 Q So instead of --

29 A I'm just going to continue in the same thing that
30 I had been.

31 Q Would --

32 A And in the background I'm going to take steps to
33 protect myself and my family.

34 Q Which is insulting him, provoking him, insulting
35 his family.

36 A I'm just trading back and forth the way that I had
37 been before he said he was going to shoot me.

38 Q Exactly. You're trading back and forth.

39 A But that doesn't mean I'm not taking steps on my
40 own to also protect myself and my family.

41 Q And -- and you said yesterday, I -- I asked you
42 several times, "Why didn't you just stop?" and you
43 gave a period of years where you had just not
44 replied and it hadn't -- it kept on going. What
45 were those years again where you said? And I have
46 it in my notes. I'm wondering if you recall.

47 A It was between 2012, 2013, and beginning of 2014.

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1 Most of the responses, if I had responses, were
2 very civilized in my attempt to be civilized and
3 respectful.
4 Q So you were responding. You said yesterday --
5 A To some -- I had to.
6 Q Okay.
7 A We had a child. We were in a custody battle.
8 Q And --
9 A There was no choice of me not responding to it.
10 Q And would it be a correct characterization to say
11 that communications during that time were more
12 limited to the family court issues about --
13 A Absolutely.
14 Q -- about visitation, about what went back and
15 forth with the child?
16 A From my respect, yes.
17 Q Mm-hmm.
18 A But that doesn't mean that his insults were not
19 there.
20 Q Was there -- was there insults and threats during
21 that period?
22 A Absolutely.
23 Q Thank you.
24 A Yes, there were, and I did not respond to them.
25 Q Next email in the chain is titled "Values" and
26 this was again May 11th, 2015. Do you -- do you
27 have any idea what it was about May 11th that
28 you --
29 A Yes. We were getting ready for visitation travel.
30 Q Okay. This is a two-page chain. At the bottom,
31 the last email, Patrick writes to you [as read
32 in]:
33
34 Desiree, I believe this epitomizes the
35 difference between you and I. In December
36 2013, G. gave me a coffee mug that he picked
37 up at the airport on the way here. I've
38 since used that mug every day, every single
39 time I have coffee at home, which is at least
40 once a day.
41
42 And did you reply to that email?
43 A Yes.
44 Q And that's your reply above, that May 11th at
45 10:50?
46 A Yes.
47 Q And can you read that in?

Desiree Capuano (for Crown)
cross-exam by Mr. Lagemaat
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1 A [As read in]:
2
3 You would not have the opportunity --
4
5 Q No, sorry, Ms. Capuano --
6 A Oh.
7
8 Are you saying that Gabriel being in this
9 world means nothing?
10
11 Q Sorry, Ms. Capuano, it's -- it starts with "Ha".
12 It's -- I'm on the second page --
13 A Oh.
14 Q -- of that chain. I apologize. Second page.
15 A
16 Ha! I picked out your precious coffee mug
17 that you use every day. Guess it's time to
18 trash it now, huh?
19
20 Q So you got -- you took it upon yourself to point
21 out that it wasn't actually from Gabriel, it was
22 -- you picked it out?
23 A I picked it out and bought it.
24 Q Right. And -- and why did you feel it's necessary
25 to point that out to Mr. Fox, to hurt him?
26 A There's information that he doesn't have, because
27 he assumes that he knows everything that's going
28 on at all times, and he doesn't.
29 Q So you -- you felt it necessary to point that out
30 to show him he's wrong or to hurt him?
31 A Well, he's saying that I have no values and don't
32 respect anything that Gabriel gives me.
33 Q So yet --
34 A So now he's saying that in comparison, he respects
35 everything Gabriel gives him, but he didn't --
36 Gabriel didn't buy that or pick it out, I did.
37 Q But -- but in his email he's saying how special it
38 is to him, he uses it every day, but you took it
39 upon yourself -- you had to point out, "He didn't
40 pick it out, I did. Ha!"
41 A Why did he have to point out that I don't cherish
42 the things that my son gives me?
43 Q Why start with "ha" exclamation mark?
44 A Because it was ridiculous.
45 Q And then above that, he asks you, and I'll only
46 read in the last paragraph, it's again arguing --
47 sniping back and forth [as read in]:

Desiree Capuano (for Crown)
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1
2 Can you list one thing you're [sic] done in
3 your life to make the world a better place,
4 either directly or indirectly?
5
6 Turning over to page 1 of 2, and -- and you say,
7 this -- at May 11th at 11:08, at the very bottom,
8 did you write that about the maple coffee?
9 A Yeah.
10 Q And can you read that in, please?
11 A [As read in]:
12
13 I finished the maple coffee he bought me.
14 You don't have any facts at all.
15
16 Q And then two minutes later, above, again you sent
17 two in a row, these aren't replies anymore -- did
18 you write that email at 11:10, "Can you list"? Is
19 that your --
20 A Yes.
21 Q Can you read that, please, Ms. Capuano?
22 A
23 Can you list one thing you've done in your
24 life to make the world a better place, either
25 directly or indirectly? Yes, I gave birth to
26 your son. Bam, that just happened.
27
28 Q What do you mean by "Bam, that just happened"?
29 A It's proof that I've done something.
30 Q Isn't it proof that you've just won a little bit
31 of an argument?
32 A No, it's proof that I've done something good in my
33 life.
34 Q So "that just happened" means that you gave birth.
35 A That -- no, it means that I came up with something
36 that I've done.
37 Q So you've won a little piece of this argument;
38 correct? You're saying, "Bam, that just happened.
39 I've won this little piece of this argument."
40 A Sure.
41 Q Thank you.
42 A You're welcome.
43 Q I suggest again that all these emails are a game,
44 little pieces of winning and losing for both of
45 you, back and forth. And in some cases such as
46 this again, you don't even wait for a reply, you
47 send another one with a "bam" at the end.

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1 A There's no game, but there is a game plan. And if
2 there's any prize, it's my freedom.
3 Q Next email, "Carrington College", and it's a two-
4 page chain. And at the bottom, June 7th -- or
5 27th, 2015, Patrick wrote [as read in]:
6
7 Oh, I see now. So Paulo [phonetic] was -- is
8 having serious financial problems and doing
9 yet more layoffs. Is that what happened?
10 Were you let go?
11
12 And he's talking about your position and
13 potentially some problems at your employer. Would
14 you agree that's the content of that email from
15 him, the subject matter?
16 A That he's trying to get information about where I
17 work? Yes.
18 Q Mm-hmm. And then what did you reply at 8:17 p.m.?
19 And it's just above there, Ms. Capuano.
20 A
21 My job is none of your business.
22
23 Q And then he replies again, insulting. And then
24 you ask him a question up above, Desiree Capuano
25 wrote. It says:
26
27 May you please confirm ...
28
29 Is that -- you sent that email, Ms. Capuano?
30 A Yes.
31 Q Could you read that in, please?
32 A
33 May you please confirm which facility you are
34 working at?
35
36 And I give him two addresses.
37 Q You -- you give two addresses.
38 A Yes.
39 Q And then up above, he replies:
40
41 I shall verify that. Thank you.
42
43 And he --
44 A Actually, I wrote that.
45 Q He -- oh, sorry, you wrote that. He says:
46
47 Jacobson Way.

Desiree Capuano (for Crown)
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1
2 So he confirms where he's employed.
3 A Yes.
4 Q Why is it your job is none of his business but
5 then you go on to ask him where his job is?
6 A I want him to understand that it can work both
7 ways. He's already contacted my employer. He
8 already sent emails pretending to be me. He
9 already created a LinkedIn account, he already
10 created a Facebook account, he already said that
11 he's going to destroy me, he already said he's
12 going to do all of these things. I want him to
13 know that there are risks to him too.
14 Q You want him to know that you can do the same
15 thing. You're threatening here that you can do
16 the same thing; correct?
17 A But I never did it. That's the difference.
18 Q Well, it doesn't matter. You're threatening that
19 you can do it and he's giving you the information
20 you need to do it --
21 A Yes.
22 Q -- correct? Thank you.
23 A Yes.
24 Q Page -- next email chain. This is "G.'s adventure
25 with the RCMP". And at the bottom, he sends you
26 an email on June 30th, 2015, and I'm assuming
27 there's been some kind of discussion about -- I'll
28 go look back. I'm assuming there's been some kind
29 of discussion about the authorities being called
30 and he's saying about you making a frivolous
31 claim. Is that Child Protection Services or --
32 A It's not. I just asked for a home check.
33 Q Pardon me?
34 A I asked for a home check.
35 Q Okay. And then your reply, up above, at 8:46
36 p.m., June 30th [as read in]:
37
38 Richard, when you said ...
39
40 Is that your reply?
41 A Yes.
42 Q Could you read that in, please?
43 A
44 When you said, or would that have been too
45 complicated for you to think of? I believe
46 you meant to use the word "to". You really
47 should use a dictionary. That sort of poor

Desiree Capuano (for Crown)
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1 grammar, common against [sic] the lower
2 echelon of society, makes it difficult for
3 you -- to take you seriously. Not that
4 anyone does anyway. As you well know,
5 Gabriel's phone does not receive calls while
6 in Canada. Again, nice try. I chose not
7 only to pursue a wellness check this time
8 and, as such, no frivolous claim exists. To
9 the contrary, I actually had a very nice chat
10 with the RCMP and they indicated that they
11 would be keeping an eye on you. I thanked
12 them for checking in on Gabriel for me. Have
13 a nice day.
14

15 Q The second paragraph [as read in]:
16

17 I believe you meant to use the word "to".
18 You really should use a dictionary. That
19 sort of poor grammar, common amongst the
20 lowest echelon of society, makes it difficult
21 to take you seriously.
22

23 So again you're -- you're insulting his grammar
24 skills?

25 A He had no ID that said he was Richard Riess. My
26 son is in a foreign country and he just told me
27 he's not going to get a return ticket.

28 Q That's not what I asked you, Ms. Capuano.

29 A And I'm --

30 Q I asked you --

31 A -- being punished because I said a frivolous
32 sentence, and that that gives him permission to do
33 this, and that I'm saying it's okay because I
34 insulted his use of the word "to". Are you saying
35 that it's okay that he's done all of this?

36 Q Well, if you're so afraid and threatened and
37 harassed, why do you have to harass --

38 A Because I need my son back and I'm not going to
39 back down.

40 Q And the last sentence:
41

42 Not that anyone does anyways.
43

44 And reading back, you're saying his grammar "makes
45 it difficult to take you seriously. Not that
46 anyone does anyways." I suggest you don't take
47 this seriously, do you?

Desiree Capuano (for Crown)
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1 A Oh, I absolutely do.
2 Q It doesn't seem to me you do. When you reply with
3 all these insults, it doesn't appear you do.
4 A All we're doing is looking at emails back and
5 forth. That does not take into account the other
6 activities that are happening.
7 Q Well, the --
8 A They were a lot of other things happening at --
9 Q -- the -- the email --
10 A -- this time besides emails.
11 Q Sorry, I apologize. Finish.
12 A The emails were just a front. That's all they
13 are. It's just a front.
14 Q The -- the emails are also the -- the entire
15 relationship between you two is in the emails.
16 There's -- you've said there was only three phone
17 conversations. This is the relationship between
18 the two of you, this is what we have.
19 A There's also actions.
20 Q Moving on to the Crown's book of exhibits, Tab 3,
21 the photo section. And we'll go to the second
22 page, "Photo album, Desiree Capuano".
23 You said in direct evidence there was a photo
24 of you on the website in your underwear.
25 A No, he said that.
26 Q So there is no photo of you in your underwear on
27 the website.
28 A It's me in my bathrobe. I'm --
29 Q Or your bathrobe.
30 A -- pretty sure that's what he's referring to.
31 Q And would that be --
32 A Fourth page --
33 Q -- the red plaid bathrobe?
34 A -- fifth row down --
35 Q Yes.
36 A -- right-hand side. I didn't say that, he said
37 that.
38 Q So there's nothing racy or unusual about that
39 photo. You're fully dressed, you're fully garbed;
40 correct?
41 A He's the one that said it, not me. His direct
42 quote was something along the lines of, "How does
43 it feel knowing everybody in work has seen you in
44 your underwear?"
45 Q Go back to -- or further in, "Photo album, Sage
46 Capuano". And the second page, five rows down, is
47 that Mr. Lochner [phonetic] --

Desiree Capuano (for Crown)
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1 A Yes. It's --
2 Q -- with Sage?
3 A -- a BB gun.
4 Q It's a BB gun.
5 A It's just a BB gun. It's not real.
6 Q How old was Sage at the time?
7 A Seven; six, seven.
8 Q A BB gun is a real gun, it's just not a firearm.
9 A Correct.
10 Q Correct. One -- one thing about these photos, and
11 perhaps you can explain this -- you work in IT;
12 correct?
13 A Yes.
14 Q You said you didn't post these pictures on your
15 Facebook; Facebook allowed, I'm assuming your
16 friends, because it -- you allege it was through
17 G.'s Facebook account, that Facebook allowed your
18 friends into your photo album?
19 A There's a -- there was a camera roll option in the
20 pictures in Facebook.
21 Q So you selected that camera roll option, so people
22 who were -- who could have access to your Facebook
23 page could have access to your entire camera roll?
24 A Yes. They were people that I knew, family.
25 Q And this at a time when you were concerned about
26 your information being made public, you shared
27 your camera roll on Facebook?
28 A No, I'd already blocked it, but he had gotten
29 these before I put up the privacy.
30 Q Well, I'm saying there was a time when it was all
31 public.
32 A There was, yes. I didn't realize that somebody
33 was going to go in there and try to take
34 everything out of there and use it against me.
35 Q So you're saying --
36 A I just assumed that it was to be -- be a normal
37 Facebook account.
38 Q But you're saying you were very concerned about --
39 A It was in 2014 that I blocked it. As soon as he
40 put this stuff up on the website. And then he
41 would taunt me about how much more stuff he had
42 that he hadn't put on the website, but he got it
43 all before I put up the blocks.
44 Q Speaking of firearms, guns, you said in Tab 10,
45 when we were referring to Tab 10 of the Crown's
46 emails, that you were terrified to learn that
47 Patrick had guns.

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1 A That he owned them? Yes.
2 Q But you knew he had guns previously; right?
3 A No.
4 Q When you were together he didn't have guns?
5 A No.
6 Q He never owned firearms when you were married.
7 A Absolutely not. Never once.
8 Q And --
9 A We also never went to a shooting range when we
10 were together.
11 Q I didn't ask --
12 A He put --
13 Q -- if he went to a shooting range.
14 A No.
15 Q He did not own firearms.
16 A He did not own firearms while we were together.
17 He was using a fake social security number at the
18 time.
19 Q I'm going to -- I'm going to go through the
20 custody situation a little bit of Gabriel, just --
21 just to clear it up, get a -- a timeline because
22 -- and this will be brief.
23 So he was born September 27th, 2000, in
24 Phoenix; correct?
25 A Yes.
26 Q You guys both moved -- moved to Los Angeles, or
27 the three of you moved to Los Angeles sometime
28 2001, beginning, March.
29 A Yes.
30 Q October the same year you moved back to Phoenix?
31 A Yes.
32 Q Sometime after that, you said in direct, or I'm
33 asking you now, you went to Florida and you left
34 G. with your mother. You went for a short trip to
35 Florida or whatever, you went to Florida, left G.
36 with your mother.
37 A In December, yes.
38 Q How long were you going to Florida for?
39 A I was only there for a couple days. I already had
40 a plane ticket back to go get him.
41 Q So you -- you made a two-day trip to Florida?
42 A No, it's a two-day drive. It was going to be a
43 week that I was there.
44 Q So you were making a one-week trip to Florida and
45 leaving Gabriel with your mother; correct?
46 A Correct.
47 Q How long did you have Gabriel for at that visit?

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1 Was it a -- was it a -- what was the period of
2 time you were going to have Gabriel for, or did
3 you have him at that time?
4 A I had him.
5 Q Okay.
6 A There was never any discussion about who would
7 have him.
8 Q Okay.
9 A Richard never indicated once that he wanted
10 Gabriel.
11 Q So you went to Florida, Patrick drove and picked
12 up Gabriel from your mother; correct?
13 A Correct.
14 Q And February 2002, you had a hearing, a joint
15 hearing -- or a custody hearing, you were both
16 there, and you were granted joint, two weeks on,
17 two weeks off; right?
18 A Yes.
19 Q And you were directed to move back to Phoenix
20 because --
21 A I was given the option.
22 Q And you agreed.
23 A No.
24 Q You -- you told the court you were going to remain
25 in Florida?
26 A Yes, I did.
27 Q And then you took -- the first two weeks was with
28 you; correct?
29 A Yes.
30 Q And then Patrick's first two-week access, he came
31 there and picked him up; correct?
32 A Yes.
33 Q And is that the last time you saw him for a long
34 period of time?
35 A Yes.
36 Q You said in direct evidence that Patrick
37 disappeared for 10 years with Gabriel, but then
38 you said nine also. That -- I'm not making
39 anything of that. It was nine or 10 years in that
40 time frame you said Patrick disappeared with
41 Gabriel; correct?
42 A Yes. He showed up twice, in 2005 and 2007.
43 Q But to your mother, not -- not to you; correct?
44 A Correct.
45 Q Isn't that kidnapping?
46 A Yes.
47 Q Did you ever file a police report that your child

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1 had been kidnapped?
2 A Yes.
3 Q And police took no actions on a kidnapping?
4 A I didn't know where he was. I didn't know whether
5 he was in Los Angeles or Phoenix.
6 Q The police couldn't find him?
7 A No. Using what identification? He was Richard
8 Riess in a foreign country.
9 Q But he must have been working; right?
10 A I don't know. I don't know that. I don't know if
11 he was getting contract jobs, I don't know if he
12 was working at all, I don't know where he was -- I
13 don't know.
14 Q So sometime in early 2011 -- well, okay, let's put
15 it this way, then. If you filed a kidnapping
16 report, when they eventually --
17 A I called CPS, I did not file a kidnapping report.
18 Q Okay. You said previously you filed a
19 kidnapping --
20 A I did not file a kidnapping report.
21 Q -- report with police.
22 A I contacted police, I contacted CPS, I contacted
23 attorneys and lawyers.
24 Q Why was he not charged with kidnapping if you --
25 well, you're saying now you didn't file a police
26 report with kidnapping. So sometime in early
27 2011, Patrick wrote you a letter to reinitiate
28 contact; is that correct?
29 A Yes. I did go and see him in 2009 and demand to
30 know where my son was, and he refused to tell me.
31 But, yes, in 2011 he reached out to me.
32 Q And you replied to him in a letter; correct?
33 A Yes.
34 Q Do you recall that letter you sent?
35 A Yes.
36 Q If you were to see it, would you recognize it?
37 A Yes.
38 Q I'm going to pass you a letter and you can take a
39 look and tell me if you recognize this as the
40 letter you sent him on March 8th, 2011. Take your
41 time, Ms. Capuano.
42 A Yes.
43 Q So you accept that's a letter you wrote to him?
44 A Yes.
45 MR. LAGEMAAT: March 8th, 2011? My Lady, I'm going to
46 ask that this letter be made an exhibit.
47 THE COURT: Mr. Myhre, any objection?

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1 MR. MYHRE: Well, I think my friend can cross-examine
2 Ms. Capuano on her statement. I'm not sure it
3 becomes an exhibit in the trial.

4 MR. LAGEMAAT: Would you like a copy to the jury to
5 follow along? I'm going to be --

6 THE COURT: Can I see it, please, so I have some idea
7 of what we're talking about?

8 MR. LAGEMAAT: I will be going through --

9 THE COURT: Thank you.

10 MR. LAGEMAAT: -- a total of three paragraphs, not in
11 -- not the complete paragraphs because the first
12 paragraph is two pages.

13 THE COURT: I think I need to hear from you about the
14 purpose for which it's tendered or to be used, and
15 maybe that needs to be -- maybe we need to stand
16 down --

17 MR. LAGEMAAT: I -- I agree, My Lady.

18 THE COURT: All right. So members of the jury, I'm
19 going to ask you to take a short -- short break,
20 please.

21
22 (JURY OUT)

23
24 MR. LAGEMAAT: Perhaps would we have --

25 THE COURT: Yes.

26 MR. LAGEMAAT: -- Ms. Capuano remain?

27 THE COURT: Ms. Capuano, I'm going to ask you to remain
28 outside the courtroom while we have this
29 discussion, so we'll stand down very briefly.

30
31 (WITNESS STOOD DOWN)

32
33 (PROCEEDINGS ADJOURNED)

34 (PROCEEDINGS RECONVENED)

35
36 (JURY OUT)

37
38 THE COURT: All right.

39 MR. LAGEMAAT: It's -- it's my theory that this -- this
40 was a custody battle gone very bad and Ms. Capuano
41 has made it look like Mr. Fox essentially -- I use
42 the word kidnapping, but took the child and
43 disappeared for nine years or ten years.

44 And this letter is the first -- the beginning
45 of a correspondence at the end of that period, and
46 it's her saying what she has been up to, but most
47 importantly in my view it is her saying that she

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1 agreed for him to take the child and raise the
2 child, because -- and that's on the first page and
3 then she says she thought it would be better for
4 her to get her life together, and she goes on to
5 explain for a few pages what she has done to do
6 that.

7 So it's -- it's my position this letter sets
8 out what had happened and the part I am mostly
9 re -- relying on is the first paragraph -- or the
10 second full paragraph, the long one [as read in]:

11
12 What changed for me, what made me stop
13 fighting, was a conversation you and I had
14 where you actually asked me not to take
15 Gabriel. You were sincere.

16
17 So she agrees in -- in -- and I'm sure she'll
18 have her own point of view, but she agrees that
19 Gabriel should go with him, and then she takes
20 these steps to improve her life and be in a better
21 position for when she could essentially be a
22 mother again, and at one point she says:

23
24 I could search him out, that is true, but why
25 would I do that?

26
27 which it would be my position that she wasn't
28 taking steps.

29 THE COURT: So do I take it from that that it would be
30 cross-examination on a previous inconsistent
31 statement?

32 MR. LAGEMAAT: Yes.

33 THE COURT: So normally the statement wouldn't go in,
34 and particularly when it's much longer than what
35 you are proposing to cross-examine on.

36 MR. LAGEMAAT: Then I would suggest I would -- it won't
37 go in and I'll just cross-examine her -- I'll put
38 it to her and cross-examine her on what she said
39 in the letter, but I will read it in.

40 THE COURT: It may be that her responses will take us
41 to other parts of the letter.

42 If it gets to the point that the jury is
43 going to need the whole thing in order to
44 understand the evidence, then we might reconsider,
45 but if you are simply proposing to put certain
46 portions to her as previous inconsistent
47 statements then I would think -- subject to any

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1 further submissions from either of you, I would
2 think that it shouldn't -- copies should not go to
3 the jury and the statement itself would not be an
4 exhibit.
5 MR. LAGEMAAT: And what about me reading in sentences
6 to -- or putting those to her?
7 THE COURT: Well, you need to do that, yes --
8 MR. LAGEMAAT: Yes, okay. Then --
9 THE COURT: -- so that the jury knows what she --
10 MR. LAGEMAAT: Then we'll leave it at that and I'm only
11 relying on small portions, not enough that it
12 needs to be an exhibit.
13 THE COURT: And I am wondering, since we have broken,
14 whether I should give the jury a mid-trial
15 instruction about previous inconsistent
16 statements --
17 MR. LAGEMAAT: I -- I think that would be a good time
18 to do that, My Lady.
19 THE COURT: -- explaining that it would go to
20 credibility only.
21 MR. LAGEMAAT: Yes.
22 THE COURT: Yes? Yes, Mr. Myhre?
23 MR. MYHRE: I agree, My Lady.
24 MR. LAGEMAAT: And there's one issue -- one -- one
25 other issue I could bring up now, rather than
26 saving -- removing the jury again later, and it's
27 to do with what we talked about Carrington College
28 yesterday, the hearsay.
29 And I looked back through my student's notes,
30 which are quite precise, and a similar statement
31 was made about her job at Phoenix, that she was
32 told she was let go because she was a security
33 risk.
34 THE COURT: Yes.
35 MR. LAGEMAAT: I believe that should be added on to the
36 Carrington instructions.
37 THE COURT: Do you wish me to give another mid-trial
38 instruction or keep that thought --
39 MR. LAGEMAAT: Yes.
40 THE COURT: -- for the final instructions?
41 MR. LAGEMAAT: I would say keep it for final
42 instructions. I just wanted to bring it up while
43 we have everybody out.
44 THE COURT: What was it called again?
45 MR. LAGEMAAT: It -- it was the Phoenix University, her
46 first job that she said she lost, and it was --
47 she was told she was let go because she was a

20
(Jury Out)
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1 security risk, and then the Carrington was she was
2 told she didn't get the job because of --
3 THE COURT: I'm not sure it was Phoenix University.
4 MR. MYHRE: It was Apollo.
5 MR. LAGEMAAT: Or, sorry, sorry, Apollo, who owns
6 Phoenix, yes.
7 MR. MYHRE: And the other was Pima Community College.
8 Pima Community College was the one that she said
9 that she --
10 MR. LAGEMAAT: Pima -- Pima -- not Carrington, Pima.
11 MR. MYHRE: -- [indiscernible/ 10:43:55 AM].
12 MR. LAGEMAAT: I apologize.
13 THE COURT: All right. Now, logistics, should I be
14 giving the instruction about previous inconsistent
15 statements in the presence of Ms. Capuano or not?
16 MR. LAGEMAAT: I don't have a submission on that, My
17 Lady.
18 MR. MYHRE: Me neither, My Lady. I don't think it
19 matters.
20 THE COURT: All right.
21 MR. LAGEMAAT: I have no -- either way.
22 THE COURT: Then we I think only need to stand down
23 once. Will this be a lengthy line of cross-
24 examination? I was -- you were looking at the
25 clock, Mr. Lagemaat, and I'm wondering whether we
26 should just take the morning break early.
27 MR. LAGEMAAT: I think that would be a good time to do
28 that, My Lady.
29 THE COURT: Now, I've not given the usual warning to
30 Ms. Capuano. Mr. Myhre, would you just remind
31 her, without saying anything else, please?
32 MR. MYHRE: I will.
33 THE COURT: Is there anything else we should deal with?
34 MR. LAGEMAAT: Not from me, My Lady.
35 THE COURT: Mr. Sheriff, if you wouldn't mind advising
36 the jury we're going to now take the morning
37 break?
38 THE SHERIFF: Yes, My Lady.
39 THE COURT: Thank you.
40
41 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)
42 (PROCEEDINGS RECONVENED)
43
44 (JURY IN)
45
46
47

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DESIREE CAPUANO, recalled.

THE COURT: Members of the jury, before we continue on this, an instruction I'm going to give you, you're going to hear some cross-examination on -- I'll call it a statement said to have been previously made. It's actually a set of statements. So this is a general instruction that applies to witnesses who are cross -- applies when witnesses are cross-examined about statements they've made on previous occasions.

Common sense tells you that if a witness says one thing in the witness box but has said something quite different on an earlier occasion, this may reduce the value of his or her evidence. The inconsistency may affect the witness's credibility. You will have to decide whether the witness in fact gave an earlier and different version from his or her testimony about the same event. If you find, after you've heard all the evidence, that the witness did give an earlier and different version of events, then you consider whether the differences are significant. You should consider any explanation the witness gives for the differences, you should consider also the fact and nature and extent of any differences when you decide whether and how much to rely on the witness's testimony. That all relates to the witness's credibility.

You must not use the earlier statement as evidence of what actually happened unless you conclude that the witness accepted the earlier statement as true while testifying in the witness box, and even then, as with any evidence, you will decide whether and how much to rely on it.

And finally, if you do not find that the witness gave a different version of events in an earlier statement, you may not use the earlier alleged statement in any way at all. The allegedly inconsistent earlier statement must play no part in your assessment of the witness's credibility or in your determination of what happened.

I will give you instructions similar to these

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1 in the instructions I give you at the end of the
2 trial, but because you're about to hear some
3 cross-examination on what is said to be a previous
4 statement, I wanted you to have a preview of how
5 that cross-examination may and may not be used.
6 All right. Thank you for your attention to
7 that.

8
9 **CROSS-EXAMINATION BY MR. LAGEMAAT, CONTINUING:**

10
11 Q So you've accepted, Ms. Capuano, that this is the
12 letter you wrote to Patrick on March 8th, 2011;
13 correct?

14 A Yes.

15 Q I'm going to read in a portion of what you wrote
16 here. Firstly you apologize for typing it. Your
17 handwriting's -- your hand's cramped up and you're
18 lazy and prefer typing. And then you move on that
19 you'll start with you because it's easier. You
20 start in 2001, 2002.

21 THE COURT: I think, if you're paraphrasing --

22 MR. LAGEMAAT: Yes.

23 THE COURT: -- you need to -- it's not clear who --

24 MR. LAGEMAAT: Okay.

25 THE COURT: -- you're referring to as "you"

26 MR. LAGEMAAT:

27 Q Ms. Capuano, going -- on the second paragraph, and
28 I'll read in what is eight lines down, what you
29 wrote to Mr. Fox [as read in]:

30
31 What changed for me, what made me stop
32 fighting, was a conversation you and I had
33 where you actually asked me not to take
34 Gabriel. You were sincere. You weren't the
35 nicest to Gabriel for the first year when we
36 were still together.

37
38 In brackets:

39
40 I know you probably don't want to admit it
41 now.

42
43 Smiley face, bracket closing.

44
45 So to hear that you had a love for him, that
46 touched me. Then when we took him to Florida
47 for those two weeks, Richard, he didn't want

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1 to leave you and he certainly didn't want to
2 go with me. There was a bond there. And
3 although it crushed me that he didn't even
4 remember me, it made me happy that he wanted
5 to be with you. If tension and emotions
6 weren't already running so hot, we may have
7 been able to work something out at that
8 point. But to my regret, I let someone else
9 take the lead. I remember the last email I
10 sent to you. It was in response to you
11 saying that, no matter what, Gabriel needed
12 his mother. It was not because I had given
13 up on him, it was because you guys loved each
14 other.

15
16 Isn't it accurate, Ms. Capuano, this is referring
17 to you making a decision that it would be best for
18 Gabriel to go with Patrick during this period?
19 A The fighting was for custody. The fight that I
20 indicated that I was not going to continue was a
21 fight for custody.
22 Q So you were giving up on the fight for custody is
23 what you're saying here.
24 A Yes, I wasn't going to try to take him away.
25 Q You were going to let him go with Patrick. You
26 thought that was --
27 A Well, I was going to let --
28 Q -- best for the -- sorry.
29 A I was going to let the joint custody stand.
30 Q Moving down one, two, three, four, five full lines
31 down [as read in]:

32
33 That said, it was so hard to be away from
34 him. It tore me apart and it hurt 10 times
35 worse every time we talked or emailed or
36 anything, so I let you have him.

37
38 A Mm-hmm.
39 Q You let him have him.
40 A During that first couple months of the separation
41 and the fighting.

42 Q
43 I used that pain as my strength to do
44 everything I could to improve my life,
45 thinking that the day I could be with him
46 again I would have food in my fridge, video
47 games for him to play, bills paid, and money

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1 that we could use to go see movies and such.
2
3 And I'll -- not to characterize the letter, but in
4 your direct evidence you said you basically got
5 your life together and went to school; correct?
6 A Yes.
7 Q Is that what you're referring to here?
8 A Yes.
9 Q Turning to the second page and about halfway down,
10 if you look in the middle of the sentence -- in
11 the middle of the sentence, there's a new sentence
12 starts with "I vowed at that point". Are you
13 there?
14 A Yes.
15 Q Okay. [As read in]:
16
17 I vowed at that point that I was moving back
18 to Phoenix. Actually, I just straight up
19 told Michael we were moving. It was always
20 my plan, primarily because it might be where
21 you and Gabriel were. And if not, at least
22 not so far away from CA.
23
24 That's California?
25 A Yes.
26 Q Bracket:
27
28 I will add here that it absolutely killed me
29 both times Gabriel asked me to see him. I
30 had to think of some way to say no while
31 telling him how so very much I wished I
32 could. That drove me to go to school full-
33 time, including over the summers.
34
35 Closing bracket.
36 Your child wanted to see you and you -- you
37 had to think of some way to tell him no?
38 A It was during a conversation in 2005 while he was
39 with my mom and I was in Florida, and then during
40 our conversation in 2007 while he was in Arizona
41 and I was in Florida.
42 Q Why did he ask --
43 A He wanted me to -- he wanted to see me right then.
44 Q Sorry, I was speaking. Why did -- he ask you to
45 see him. Why didn't you say yes?
46 A I was hundreds of miles away without the money to
47 get a plane ticket.

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1 Q Yet you hadn't seen your child for how long? He
2 asks you to see him and you could not get to where
3 he was, and he's there -- you're -- you're saying
4 in your evidence you didn't know where he was all
5 this time, and all of a sudden now in this letter
6 you're saying he's there, this is where he is,
7 he's called me twice, wants to see me, and you
8 could not make the effort to get there.
9 A He was gone days after. Even if I had got on a
10 plane --
11 Q Well --
12 A -- he might not have been there by the time I got
13 there.
14 Q Did you try?
15 A No.
16 Q You said he might not have.
17 A He had contact with my mom.
18 Q Pardon me?
19 A He had contact with my mom, and my mom was giving
20 me updates of where he was.
21 Q Regardless --
22 A And two days later Mom says, "He's gone."
23 Q Regardless -- regardless, you're saying here he
24 asked you twice and you had to think of some way
25 -- what -- what way did you tell him no? How did
26 you tell him no? Did you lie to him?
27 A No. I told him I couldn't get on a plane and told
28 him I couldn't fly out there. I also had no phone
29 number to reach him. He called -- my mom called
30 me from her phone when he was at her house in
31 2005. I had no phone number to reach him. So if
32 I could have gotten on a plane, all I could have
33 gone was to my mom's, and she may have had some
34 way to reach Richard, but he was the one that was
35 initiating the contact.
36 Q May have had. So you don't know.
37 A If my mom would have had a way to reach him? No,
38 I don't know. Richard is the one that reached out
39 to my mother.
40 Q You also --
41 A And then in 2007 I tried to call back and no
42 answer. I got no answer. And in 2007, I was
43 already planning on moving.
44 Q But you had these two opportunities to see your
45 son and you said, "No," and you say you didn't --
46 you may have got there --
47 A I wasn't able to.

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1 Q I'm sorry, I'm talking -- you may have got there
2 and he wouldn't have been there anymore, but you
3 didn't even make the effort to get there; is that
4 correct?

5 A I -- I had another child too.

6 Q But you had a child who'd been missing.

7 A Yes. Yes.

8 Q Thank you. Turning to the next page, bottom
9 paragraph [as read in]:

10
11 As far as Gabriel goes, I have been waiting a
12 very long time for this to happen and there's
13 no way I'm going to rush anything or make
14 anyone feel uncomfortable in -- in any way.
15 I'm completely prepared for him to have a lot
16 of questions and to not think the world of
17 me. That's okay. He's completely justified
18 in whatever feelings or opinions he has
19 toward me. I hope, like you, that he can
20 overcome them and try. But just knowing how
21 well he's doing is enough for now. I will go
22 at no one else's pace but his. I could
23 search him out, that is true, but why would I
24 do that?

25
26 What do you mean by that? You -- you told -- you
27 said earlier you were searching him out. Here
28 you're saying, "I could search him out, that is
29 true, but why would I do that?"

30 A I'm talking to the man that holds all the cards.

31 Q Pardon me?

32 A I'm talking to the man that holds all the cards.
33 I'm talking to the person that has the location
34 and -- and the whereabouts. And I'm admitting my
35 faults. I wasn't perfect. I didn't handle that
36 situation perfectly. I didn't. There were a lot
37 of things I could have done a lot different
38 throughout the whole thing, but this is how it
39 happened.

40 Q So you didn't search him out during that period.

41 A I did call CPS. I did not do a social security
42 number search for him.

43 Q So you --

44 A I didn't know if that would even get me anywhere.

45 Q And you didn't call the police.

46 A I called CPS, I called Homeland Security, I called
47 all kinds of people. But the police --

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1 Q CP --
2 A -- I called -- I did not make a missing police --
3 person report with the police.
4 Q CPS is Child Protection Services --
5 A Yes.
6 Q -- correct? The best way -- and I continue on:
7
8 The best way is for the people he loves,
9 trusts, and knows to give him the information
10 and let him process it in his own way and
11 make his own decision about he wants to do,
12 always. I will hope for a phone call one
13 day, believe me. It's the only thing I wish
14 for, but I'm not going to initiate it.
15
16 Is what you said in that letter true or false,
17 that you didn't seek him out?
18 A Trying to find --
19 MR. MYHRE: Sorry, that's not an accurate quote.
20 MR. LAGEMAAT:
21 Q Did you search him out?
22 A Trying to find his physical location and trying to
23 make contact with him are two different things. I
24 tried to find his location. I did not try to make
25 contact with him.
26 Q Thank you.
27 A You're welcome. Making contact with him is a much
28 more delicate situation.
29 Q So going back to the timeline which I was going
30 through before and I -- I stopped at 2011, we're
31 at the end of this nine or -- approximately nine-
32 or 10-year period. August 2011, after sporadic
33 contact with G., and I'm -- I believe it was
34 telephone contact, you show -- you -- you
35 travelled to Los Angeles to see him, to meet him?
36 A Twice.
37 Q Twice. September 2011 there was a custody hearing
38 in Arizona court?
39 A Yes.
40 Q What happened in that custody hearing?
41 A Richard filed the UCCJEA, said the home state of
42 the child is California, and the judge agreed and
43 made me return him.
44 Q So it was a jurisdiction argument. He was
45 returned to California; correct?
46 A Yes.
47 Q November 8, 2011, custody hearing in California.

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1 A Oh, sorry, the one in -- in August was in Arizona.
2 Q Yes. I'm moving on now to -- to November 8th.
3 There was a custody hearing in California and
4 again Patrick had the child, correct, and you had
5 visitation?
6 A No. In August, the case that was heard was in
7 Arizona. I was trying to move the custody case to
8 Arizona. The one in November 8th was Richard
9 saying that the home state of the child was
10 California --
11 Q Who --
12 A -- and that I should return him.
13 Q Who walked out of that courtroom November 8th with
14 physical custody? 2011.
15 A Physical custody wasn't determined at that, it was
16 only the home state of the child.
17 Q So still with Patrick.
18 A Gabriel was with me at the time.
19 Q Or with you. Sorry. December 6th, 2011,
20 mediation. And where was this mediation? It was
21 in California because that was jurisdiction now;
22 correct?
23 A Correct.
24 Q And what happened during that mediation?
25 A We got joint custody. Primary physical custody
26 was with Richard. I had visitations.
27 Q February 12th, 2012, Patrick petitioned California
28 court to have you do a drug test --
29 A Yes
30 Q -- for -- for your access, right, before you could
31 -- before he would facilitate your access;
32 correct?
33 A Yes.
34 Q Why did he want you to do a drug test?
35 MR. MYHRE: Objection.
36 MR. LAGEMAAT:
37 Q Did you do the drug test?
38 A No.
39 Q And that was to do with your arrest; correct?
40 A Yes.
41 Q Your arrest for marihuana possession?
42 A Yes.
43 Q Were you convicted?
44 A No.
45 Q What happened to that conviction?
46 A They were dropped.
47 Q Or the charge. Sorry.

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1 A Charges were dropped.
2 Q Under what program?
3 A I did -- I submitted to a test program that does
4 drug testing, random drug testing, and a fine. So
5 I submitted to multiple months of random drug
6 testing --
7 Q And what's that --
8 A -- [indiscernible/overlapping speakers.
9 Q -- program? I believe the acronym is P-O-P.
10 A TASC is the program that administered the drug
11 tests.
12 Q No, no, the --
13 A It's a PROP.
14 Q -- the program under which the -- we have programs
15 here that do similar things. The program under
16 which the conviction is not -- or the charge is
17 not a conviction, there's not --
18 A PROP 202.
19 Q Pardon me?
20 A PROP 202.
21 Q PROP 202. What does PROP stand for?
22 A I don't know.
23 Q Okay. And under that you admit your guilt.
24 A Yes.
25 Q And you submit to testing, and they want to see --
26 I'm asking you, and they want to see that you're
27 doing well, and then there's no conviction, no
28 charge; correct?
29 A Correct.
30 Q Okay. October 2012, and you talked about this in
31 direct, there was a search warrant on your home.
32 November 28th, 2012, Patrick took the matter into
33 court, he requested to relocate with G. to
34 Vancouver; correct?
35 A Yes.
36 Q And that was denied.
37 A Correct.
38 Q And he stayed in California.
39 A Yes.
40 Q December 2012 -- what does ICE stand for?
41 Immigration ...?
42 A Custody Enforcement, I think.
43 Q Yes, Immigration Custody Enforcement. Did you
44 make a report regarding Patrick to ICE?
45 A I called a tip line.
46 Q And is it correct in January 2013 he was arrested?
47 A Yes.

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1 Q What was the purpose of your tip?
2 A To let them know that a person who was not a U.S.
3 citizen was in the United States and he was trying
4 to take my son.
5 Q That was the tip. What was the purpose of your
6 tip? Why --
7 A To have him removed from the country.
8 Q Did you think that would be in your child's best
9 interest for his father to be removed from the
10 country?
11 A At this point, yes.
12 Q Or would be in your best interest because then you
13 wouldn't have him there bothering you in
14 California courts making applications, trying to
15 take away your time? Isn't that more accurate,
16 Ms. Capuano?
17 A He was in the United States using another name,
18 trying to get a job illegally. In my opinion, it
19 was both.
20 Q So you're concerned for the economy and -- and
21 immigration --
22 A Well, I was just concerned about my son seeing
23 what's right and wrong --
24 Q Pardon me?
25 A -- and my son being taught that this type of
26 behaviour and going through life lying and
27 pretending is not right.
28 Q But you had no concern for your marihuana use with
29 your son?
30 A I had a card. I had a medical marihuana card --
31 Q At the time you were charged?
32 A Before I saw the judge for that -- for that
33 charge, I had my card in hand.
34 Q But you didn't have it when they came into your
35 home.
36 A When they arrested me, no.
37 Q Yes.
38 A I had a meeting set up with a doctor already.
39 Q Yet -- yet you feel that you need to inform on
40 Patrick when you see him doing something unlawful
41 and knowing the end result could be he's out of
42 the country.
43 A I told him and asked him many times if we could
44 work amicably on a resolution for the child. That
45 was not possible. Multiple times he had tried to
46 remove visitation, multiple times he had tried to
47 interfere with custody, multiple times he had gone

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1 after me for child support when I was the only one
2 financially providing for him, besides Liz Munoz.
3 Multiple times I had been trying to be a part of
4 my son's life, a good part, and time after time it
5 was negated and torn apart and -- and confusing --
6 Q He -- he took it away from you.
7 A He tried.
8 Q Similar to what you did on February 6th, 2013,
9 when you went to court requesting sole custody and
10 no communication between --
11 A Temporarily.
12 Q -- Gabriel and Patrick, exactly what you're saying
13 he's been doing to you.
14 A Only temporarily.
15 Q Temporarily. Well, that day is what you wanted;
16 correct?
17 A Yes.
18 Q Similar to what you're just saying he was doing to
19 you or attempting to do to you. And this -- this
20 is -- this is two months after you call the tip
21 line. I suggest -- when I asked you what was the
22 purpose of the tip, I suggest here's the purpose
23 right here, that two months later you have him
24 removed -- you don't have him removed, you make
25 the tip that results in him being removed, and two
26 months later you're in court saying, "Sole -- I
27 get sole custody, I want sole custody, and no
28 communication."
29 A Here's the difference. Every time that he tried
30 to do that and I defended myself, I won because I
31 was right and I was telling the truth. The one
32 time that I did that to him, he lost because he
33 was lying.
34 Q So it's about winning and losing.
35 A No, it's about telling the truth.
36 Q It's about winning and losing, just like these
37 emails where it was a game between you, a --
38 A No.
39 Q -- banter of who would get the last word. And at
40 this point it had gone beyond emails of trying to
41 get the last word to in court and immigration and
42 deportations and cutting off communications. It
43 had gone beyond what we --
44 A At this point --
45 Q -- read in the email.
46 A -- there was no bantering back and forth. There
47 was none. This is -- this is January of 2013. At

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1 this point there's no bantering in emails at all.
2 Q So February 15th, 2013, Patrick was deported
3 again. You -- you'd called ICE again saying he
4 was in the country. He was --
5 A He was in the country again.
6 Q He was deported again. And March 20th, you again
7 called ICE. And this is the day that -- this is
8 the day that there was a court appearance.
9 A He thought there was a court appearance.
10 Q He thought there was -- there was some mix up and
11 there was a court appearance on the list, and he
12 was there. You didn't think he'd be there, so you
13 didn't attend.
14 A It was off calendar.
15 Q Yes. But he was there, nevertheless.
16 A Yes, he was.
17 Q You found out he was there from the registrar or
18 the court clerk or somebody at the court. You can
19 correct me on that if I'm wrong. And you called
20 immediately to your source or your person you were
21 working with at the FBI or ICE -- sorry, ICE, and
22 said, "He's there. Go get him"; correct?
23 A I didn't say go -- "He's there, go get him," no.
24 I did say, "He's in the country again."
25 Q And where he -- and exactly precisely where he is;
26 correct?
27 A The courthouse.
28 Q Yes. And they went and got him and deported him
29 again; right?
30 A Yes.
31 Q You -- you were going to make sure that he wasn't
32 in America; correct?
33 A Yes.
34 Q Did you find it amusing that you had him deported?
35 A No.
36 Q You didn't find it amusing at all.
37 A No. It was scary that he kept coming in. The
38 fact that he would continuously try was
39 flabbergasting.
40 Q But not amused.
41 A In a very ironic way.
42 Q Do you recall giving a statement to the police, a
43 Corporal Wilcott [phonetic] --
44 A Yes.
45 Q -- on July 13th, 2016?
46 A Yes.
47 Q How was that statement given?

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1 A I don't remember exactly.
2 Q Were you amused in that statement that he'd been
3 deported?
4 A I was dumbfounded that he would try again and go
5 to a courthouse.
6 Q I asked you, were you amused?
7 A No.
8 Q Did you laugh?
9 A Amusing in an -- no. Yes, I probably laughed but
10 it was not in amusement.
11 Q It was in -- what was it in?
12 A It was in, "What is this guy thinking?"
13 Q Do you wish you could have been in the courtroom
14 watching or in the courthouse watching when
15 the ICE --
16 A I would have loved to have seen it.
17 Q Why?
18 A Because he was trying to say that there was a
19 court hearing that was on calendar, it was not on
20 calendar. He's standing there arguing. And I
21 know that when he thinks that he's right about
22 something, he does not give up. And so he's
23 challenging them and he's probably arguing back,
24 and then Immigration walks in.
25 Q Probably. You don't know that.
26 A Of course not.
27 Q But you would have loved to have been there to see
28 them come in and get him; correct?
29 A At that point, some small victory.
30 Q Small victory. There we go. Again, you -- you
31 won that part of the game, definitely, because he
32 was removed again.
33 A He was wrong. He was in the country illegally.
34 He was in the country illegally trying --
35 Q Did you --
36 A -- to take my kid and make me pay him child
37 support while living in my country illegally.
38 Q Did you report --
39 A Yes.
40 Q Did you report Mr. Lochner when you knew he was
41 using methamphetamine?
42 A No. No, he did himself in.
43 Q He was doing --
44 A He damaged himself all by himself. He needed no
45 help from me.
46 Q But he was breaking the law and you're
47 concerned --

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1 A He wasn't --
2 Q -- you're concerned with laws. He was breaking
3 the law while living in your home.
4 A The drugs that were in the home he had stashed,
5 and when he was breaking the law he was nowhere
6 around. I couldn't even reach him. He wouldn't
7 answer the phone, he wouldn't come back to the
8 house. He was gone all the time.
9 Q And you didn't turn yourself in when you were
10 using marihuana without a marihuana card, did you?
11 A No. It was the one thing I did that was illegal
12 that I hated, and as soon as it became legal, I
13 got my card.
14 Q That's the one thing you did that was illegal?
15 A Yes.
16 Q You've never been arrested other than that?
17 A For misdemeanour charges back when I was very
18 young.
19 Q So you've done other things that were illegal.
20 A Well --
21 Q That's not the one thing.
22 A Working in an establishment that sold alcohol and
23 getting arrested at the establishment, yes, that's
24 -- that's --
25 Q Arrested because they sold alcohol?
26 A The -- one of the arrests that I had.
27 Q What was the other one?
28 A But that was at 18 years old.
29 Q Well, yeah, but the reason I'm asking you, because
30 you said the marihuana was the one thing you've
31 done illegal.
32 A Yes.
33 Q So there was more things.
34 A I worked in a strip club that got raided. That
35 was one charge at 18 --
36 Q Okay.
37 A -- years old. And then the only other charge was
38 marihuana based.
39 Q So you knew that him being across the border,
40 deported, would be much easier -- or much more
41 difficult for him and easier for you to fight
42 custody battles in court in California; correct?
43 A Him being out of the country meant that I probably
44 would not have to fight many more custody battles,
45 yes.
46 Q And you knew that if it did come down to a custody
47 battle, it would be difficult for him because,

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1 look, he's been deported three or four times.
2 That -- that would be difficult for him in getting
3 custody; correct?
4 A No. The judge didn't really care about that.
5 Q I'm going to suggest at this time again that you
6 never, during this time, feared him. This -- this
7 was just a big game, and you've said won and lose;
8 is that correct?
9 MR. MYHRE: What time?
10 A Thank you.
11 MR. LAGEMAAT:
12 Q During this time that -- that we've gone through
13 all this evidence, the emails that we started
14 with, the ones Crown read in, the ones I read in,
15 these family law hearings, these -- these tips to
16 Immigration, I'm going to suggest this was one big
17 game to you, and you've used the term "win and
18 lose", and that at this point you're winning.
19 You've had him deported, you're winning; correct?
20 Because you were frustrated in the emails, and
21 you've said that. That wasn't getting you
22 anywhere, insulting, demeaning, insulting his
23 manhood, his stature, his family, his
24 intelligence, his maturity, and you weren't
25 winning. But now you're winning, correct? And
26 you've used that term.
27 A You're mixing up dates and times and timelines of
28 events pretty severely.
29 Q I'm not talking about timelines and dates --
30 A During 2013, when I was going through a custody
31 battle with him, there -- I was not insulting his
32 manliness, I was not insulting his stature, I was
33 not calling him names. I was fighting a custody
34 battle in 2012. In 2013, when he was deported, I
35 got custody of our son and, yet, I called a tip
36 line. Yes, the intent was to have him removed
37 from the country. Yes, he came back multiple
38 times and, yes, I called each time. I did end up
39 with custody. But even then he got visitation and
40 I never went after him for child support.
41 The insults and the bantering didn't happen
42 until late 2014, and none of that happened until
43 after the website went up. And I never called for
44 harassment until after the website went up. I
45 never called for fear of my life until the email
46 that said he was -- he thought about shooting me.
47 Q Two --

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1 A So, no, what you --
2 Q Two --
3 A -- said was incorrect.
4 Q 2014 --
5 A Yes.
6 Q -- winter visit.
7 A Yes.
8 Q Do you recall what the -- when that was? It was
9 -- I'm assuming was it his -- G.'s Christmas
10 vacation from school?
11 A Yes. And again, that is when the bantering
12 started, as I said. And I never called for
13 harassment until the website went up, and I never
14 called for physical harm of my safety until after
15 the email was sent that said he was -- he thought
16 of shooting me. That is when the physical fear
17 for my safety started. Never called for that
18 beforehand. And I never called for harassment
19 before the website, even with all of the emails
20 and the custody battle. I put up with a lot.
21 Q But you've said -- you've said in evidence here
22 you've been harassed for years.
23 A Well, yes, to me it's harassment. And even in
24 some of those emails. Finding out how I vote
25 based off of my driver's licence and asking me to
26 confirm if I've changed my voting registration out
27 of the blue, no prompting, that's scary. Telling
28 me that he's got private investigators following
29 me, that's scary. That happened in 2012.
30 Q None of that's against the law, though, is it?
31 A No, but it's still scary. And to me it's
32 harassment.
33 Q And you were scared at the time, and this is also
34 the time when -- I'm not going to go through them
35 again, where there's the emails.
36 A No, that's 2014.
37 Q 2014. You were scared in 2014.
38 A Yes. That was when the harassment started.
39 Q And that's also when you were partaking in -- in
40 this what we -- we're calling banter; correct?
41 A Late 2014. Months after the website went up.
42 Q Well, Ms. Capuano, the emails I started on were
43 January 2014, not late 2014.
44 A He hadn't put the website up in January of 2014.
45 Q That's the -- I'm talking about the emails I --
46 A Which one?
47 Q -- I was going through. So 2014 winter visit for

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1 Christmas vacation.
2 A Yes.
3 Q As per the court order; correct?
4 A Yes.
5 Q So you'd had Mr. Fox -- not had Mr. Fox deported,
6 but you'd made -- you'd made the calls that had
7 resulted in him being deported, yet you -- still
8 in 2014, you followed the court order, you sent
9 Gabriel up there.
10 A Yes.
11 Q Did you not think to try to take away that
12 visitation? Were you not worried of what would
13 happen up there? You've said how worried you were
14 about Mr. Fox --
15 A Yes.
16 Q -- yet you sent your son up there to be with
17 him --
18 A Yes.
19 Q -- correct? 2015 summer visit. And it would
20 seem, from your evidence in direct, that by 2015
21 would you agree things had escalated --
22 A Yes.
23 Q -- in the communications in -- and the
24 communications being the emails because that was
25 the only communication. And in May 2015, you went
26 through this in direct evidence, he sent you an
27 email with his PAL attached.
28 A Yes.
29 Q Which is another acronym. I -- I don't know what
30 it stands for. It's a firearms licence; correct?
31 A Up here in Canada, yes.
32 Q Yes. So you knew he had firearms and you've said
33 you were afraid knowing, and alarmed and --
34 knowing he had this identity and firearms, but you
35 still sent your son up there --
36 A I was still required under law.
37 Q -- to spend the summer with him.
38 A Yes.
39 Q Correct. So you -- I -- I suggest you weren't
40 really afraid of anything at that time because
41 your son, in your evidence, means so much to
42 him -- to you, you wouldn't have sent him up there
43 if you thought there was any danger, would you?
44 A I don't think Richard's going to hurt Gabriel.
45 Q What about keep him?
46 A That is a risk, yes.
47 Q But you sent him. You weren't afraid.

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1 A I had to. At that point he hadn't kept him --
2 Q And we --
3 A -- so I had no basis to change that in the court
4 yet.
5 Q And we went through the emails where we talked
6 about the definition of "itinerary". You never
7 got that return ticket. You sent him up there on
8 a one-way ticket; correct?
9 A Yes.
10 Q Yet you had all these fears, you knew he had
11 firearms, you knew he had a new identity, and you
12 sent your son there on a one-way ticket. Yes or
13 no?
14 A Yes.
15 Q I want to move on a bit to the GoFundMe page which
16 you talked about in direct evidence. I ask you,
17 if this was as terrible for you and your family,
18 everybody, as you make it out to be, and you say
19 what a terrible person Mr. Fox is, why didn't you
20 just go underground? You're -- you work in IT,
21 you've done some court applications on your own,
22 which we've seen, you've -- you're not -- you're
23 not a -- you're a sophisticated person as far as
24 the internet. Why didn't you just change your
25 name?
26 A It's public record.
27 Q If you change your name, it's public record?
28 A Yes.
29 Q Okay. So you looked into that?
30 A Yes.
31 Q So --
32 A So is buying a house.
33 Q So it just simply wouldn't work. You couldn't
34 just change your name and --
35 A He'd find it.
36 Q He'd find it. Then why did you ask the public to
37 give you \$10,000 --
38 A Just the minimum.
39 Q -- to change your name?
40 A That's the typical GoFundMe limit. It's --
41 Q Well, I don't think so, because GoFundMe, you
42 choose the limit.
43 A Asking people for \$10,000, I -- I set the limit at
44 \$10,000 because that was what was suggested. But
45 you actually have to go out and repeatedly ask
46 people for money. I set it up and never sent any
47 additional requests. You're supposed to go and

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1 put it on Facebook all the time, and you're
2 supposed to send it out to your friends and
3 family, you're supposed to have them send it out
4 to their friends and family. Never did any of
5 that.
6 Q I'm not --
7 A I put it up once.
8 Q I'm not asking you what you did to follow up, I'm
9 asking you, you at one point asked the public for
10 \$10,000 to change your name, but you've just
11 said --
12 A Initially.
13 Q -- you -- you knew that changing your name doesn't
14 help.
15 A Changing -- yeah, I would have to seal all of my
16 records.
17 Q Then why didn't you just do that?
18 A I don't know how. I don't know how. I don't know
19 how. I don't ...
20 Q Did you ever Google how to seal public records?
21 A Yes, and it's really confusing. It would take a
22 lawyer.
23 Q And I suggest to you that if it was as terrible as
24 you're making it out to be, you would have changed
25 everything, had your records sealed, found the
26 money for a lawyer, and done it.
27 A Why? Why can't he just stop? Why do I have to
28 change my name? Why do I have to go into hiding?
29 Why do I have to become somebody else just for him
30 to not do this?
31 Q Well, you asked the public for \$10,000 to do this.
32 You must have --
33 A I got 900.
34 Q Well, it doesn't matter what you got. It says what
35 you were seeking -- you were seeking \$10,000 to
36 change your name and disappear with your son;
37 right? Correct? You weren't going to leave your
38 son with Patrick if you disappeared, were you?
39 A I didn't have any thoughts about hiding my son
40 from Richard with that GoFundMe page.
41 Q Is it correct that in your seek you said, "I need
42 to hide all my public records to be able to move,
43 change my name"? Is that correct?
44 A Yes.
45 Q And were you going to tell him, "But this is where
46 Patrick -- this is Patrick's address and his new
47 name"? Were you going to -- in -- in your -- if

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1 you got the \$10,000, would -- were you intending
2 on telling Patrick, "But -- but here's Gabriel's
3 new name and address"?
4 A I wasn't trying to get Gabriel a new -- I hadn't
5 figured out how that was going to work. At that
6 point, I was just scared.
7 Q But you said in direct evidence that you were
8 never going to run and hide; correct? Then what
9 was the money for, the \$10,000, if you got it? We
10 -- you don't know. For all you knew, you could
11 have got the \$10,000 in a couple days of GoFundMe
12 because this was a high-profile case at that time.
13 A You still have to ask people for help repeatedly
14 to make your goals.
15 Q But for all you knew at the start --
16 A I knew I wasn't going to get \$10,000.
17 Q Pardon me?
18 A I knew I wasn't going to get \$10,000. I didn't
19 care if I got a dime. That was put up as a
20 request. Somebody requested that. I've never
21 even considered doing that on my own.
22 Q Someone requested that you do it.
23 A Yes.
24 Q And you did it.
25 A Sure. People wanted to help.
26 Q So you knew people wanted to give you money and
27 you thought, "Sure, I'll take that money." Isn't
28 it correct, Ms. Capuano, that you've been
29 approached for movie rights for this?
30 A No.
31 Q No?
32 A No movie rights, no. As far as I know, there
33 might be a documentary on proceedings, but not my
34 life story, no.
35 Q Well, I'm talking about not your life story but
36 let's say --
37 A It's not -- as far as I --
38 Q -- your life with Mr. Fox.
39 A -- understand, from what I've been told, it's not
40 even about what happened to me with the
41 harassment, it's just about the legal proceedings
42 that happened. I don't know. I haven't actually
43 been approached for rights on anything.
44 Q In your GoFundMe seek, why didn't you ask for
45 money to take the website down?
46 A Money is not going to take the website down.
47 Q Well, no, I'm -- again, you're an IT person. Is

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1 there -- was there any way that website could have
2 been taken down? I mean --
3 A IT is a very broad and general term for a lot of
4 different things. Just because I work in IT
5 doesn't mean that I understand how websites work.
6 Q Do you -- do you know if someone has a website
7 with child pornography, is it allowed to just
8 continue on or is there, and I don't know, some
9 governing body that would say, "Take that website
10 down"?
11 A Yes. Yes. And that governing body is apparently
12 who I have to go through since he refuses to take
13 it down by court order.
14 Q And why didn't you ever go to --
15 A It's a very long --
16 Q -- take this avenue?
17 A -- complicated process. At the point I was also
18 in the process of trying to get the order of
19 protection. I'm working on it.
20 Q But the \$10,000 you were looking for was to go
21 underground and hide and move, change your name,
22 with your son, not -- not to --
23 A The GoFundMe --
24 Q -- not to remedy the situation and try to take the
25 website down; is that correct?
26 A GoFundMe does not allow you to put up a page if
27 you're requesting money for a lawyer.
28 Q Well, it wouldn't have been for a lawyer. This --
29 you could have had a lawyer do these things too,
30 but you just said, "This is what I need the money
31 for." You could have -- you wouldn't have had to
32 say, "I need a lawyer to do this," could have
33 said, "I need to get this website taken down";
34 correct?
35 A Sure.
36 Q I suggest --
37 A But at the time my thought was hiding.
38 Q What did you do with the \$965?
39 A I paid my lawyer.
40 Q So you didn't do with it what you were -- what you
41 said you were seeking it for; correct?
42 A No.
43 Q So you lied. You said, "I need the money for
44 this," and you didn't even do this or attempt to
45 do this, what you were seeking.
46 A I was trying to get the order of protection. I
47 had other immediate steps. And honestly, with the

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1 order of protection, my thought was first step to
2 take the website down, so that's what the money
3 went to. The money went to taking the website
4 down, which is what you suggested I use it for.
5 Q I -- I suggest, Ms. Capuano, this -- this was just
6 another step in this very -- very nasty, intricate
7 game you two were playing with each other where
8 you had him deported, then now he's gone, "Now I'm
9 going to try to get some money so I can disappear,
10 then I've really won"; is that correct?
11 A No.
12 MR. LAGEMAAT: My Lady, I'm -- I'm nearing the end of
13 my cross-examination, and I think this might be a
14 good time to break, and then I can spend some time
15 with Mr. Fox, as we discussed yesterday. I'm
16 actually potentially finished.
17 THE COURT: All right.
18 MR. LAGEMAAT: And I would suggest we break until two
19 o'clock and I could go spend a significant amount
20 of time with him and come back. And if -- if
21 there's anything I can go further, I will.
22 THE COURT: All right. You do need that much time, do
23 you, Mr. -- if you do, you do.
24 MR. LAGEMAAT: Well, I would need at least until 12:30.
25 I expect Mr. Fox has some issues arising after
26 sitting here for two days.
27 THE COURT: You'd prefer to come back at -- did you say
28 2:00?
29 MR. LAGEMAAT: I would prefer that, My Lady.
30 THE COURT: Prefer that over 1:30, say?
31 MR. LAGEMAAT: Well, I also need -- need to take a
32 break.
33 THE COURT: I see. All right. Then that's what we'll
34 do. Members of the jury, we'll take a longer
35 lunch break today, and I'll ask you, please, to be
36 back at two o'clock.
37 Mr. Myhre, is there anything from your
38 perspective that would affect that schedule?
39 Should we discuss this briefly before I give the
40 jury their instructions?
41 MR. MYHRE: If we could, please.
42 THE COURT: Yes?
43 MR. MYHRE: Yes, please.
44 THE COURT: All right. Then, members of the jury, if
45 you wouldn't mind just going to the jury room for
46 a moment.
47

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1 (JURY OUT)

2
3 THE COURT: Now, should Ms. Capuano be out of the
4 courtroom while we have this discussion?

5 MR. MYHRE: I think that might be best, My Lady.

6 THE COURT: All right. Then --

7 MR. MYHRE: I agree, My Lady.

8 THE COURT: -- we'll stand down very briefly.

9

10 (WITNESS STOOD DOWN)

11

12 (PROCEEDINGS ADJOURNED)

13 (PROCEEDINGS RECONVENED)

14

15

16 (JURY OUT)

17

18 MR. MYHRE: ... starting the procedure when we come
19 back, after my friend has a chance to confer with
20 Mr. Fox.

21 There actually is a little bit of case law on
22 how to deal with potential disputes between s.
23 46.3 counsel and a self-represented accused, and
24 so I wanted to take you -- Your Ladyship to that
25 before we broke and just point out the relevant
26 paragraphs, so that you could at least read a few
27 paragraphs before we come back in.

28 Now, I understand that this situation arose
29 in a case with Justice Harvey. It was in 2013. I
30 can give you a case number, if you like, but the
31 way they dealt with the matter was --

32 THE COURT: Do you have a copy of that?

33 MR. MYHRE: I -- there is no written decision actually,
34 or I don't have one. I just was talking to a
35 colleague who is actually dealing with an appeal
36 of what happened there, but I don't have a copy of
37 Justice Harvey's decision, because it doesn't
38 really -- there was no formal order.

39 The way they dealt with it in court --

40 THE COURT: Which Justice Harvey was this, in New
41 Westminster?

42 MR. MYHRE: It was in New Westminster. The way they
43 dealt with it in court was after cross-examination
44 the complainant was stood down, counsel conferred
45 with the accused, and they came back into court
46 and laid out the exact issues.

47 I think there were only two or three in which

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1 the accused wanted the complainant cross-examined
2 and counsel wasn't willing to do that, and what
3 ultimately happened at the end of that was the
4 judge decided that the lines of questioning were
5 irrelevant and so they weren't allowed, but it was
6 it seems to me beneficial to at least put that on
7 the record, so that if there is a review it is
8 clear where the lines of dispute were, if there
9 are any.

10 Now, there are two cases that I am aware of
11 that deal with the responsibilities of s. 46.3
12 counsel and you have already seen one of them in
13 the 46.3 application. I have another copy here.
14 It's the *Faulkner* case.

15 And then there is another case called
16 *Thornton*, and I have copies for Your Ladyship, for
17 my friend and for Mr. Fox, and I will just refer
18 Your Ladyship to a few paragraphs.

19 THE COURT: Thank you.

20 MR. MYHRE: Mr. Fox. No? Okay.

21 Sorry, I handed someone my little notes --
22 no, no, here they are.

23 So, My Lady, I am not going to take you to
24 particular paragraphs right now, but I will just
25 point them out. In the *Thornton* case it's
26 paragraphs 58 and 59, and in the *Faulkner* case
27 it's paragraph 35 that are relevant and -- and
28 basically *Thornton* says appointed counsel
29 shouldn't be putting any line of cross-examination
30 to the complainant that's not admissible or
31 unethical, whereas in *Faulkner*, as you saw,
32 Justice Code states that this counsel would have
33 the same obligations as retained counsel and
34 therefore makes their own tactical decisions about
35 a cross-examination.

36 THE COURT: All right. Mr. Fox?

37 THE ACCUSED: I'm -- I'm sorry, I'm not a hundred
38 percent clear on what exactly the concern is here.
39 I wonder if Mr. Myhre might enlighten me on that?

40 Is this about a recording of that interview or --

41 THE COURT: No -- oh, do you mean to what it relates?

42 THE ACCUSED: What -- yeah.

43 THE COURT: The -- the concern expressed generally
44 as --

45 THE ACCUSED: Oh, okay.

46 THE COURT: -- far as I understand is that there may
47 when the cross -- when Mr. Lagemaat has finished

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1 cross-examination, there may be lines of cross-
2 examination that you would like him to pursue that
3 he determines are not appropriate to pursue; how
4 do we deal with that, with this situation of
5 counsel appointed by the court who is not counsel
6 that you have retained.

7 MR. LAGEMAAT: Correct.

8 THE COURT: And Mr. Myhre is trying to alert me to this
9 possibility, and equip me with the case
10 authorities he has come across, that address this
11 in some way.

12 THE ACCUSED: Okay. So we're just speaking in general,
13 not about specific evidence? Okay.

14 THE COURT: At this point, yes.

15 MR. LAGEMAAT: And -- and that's one reason, My Lady, I
16 requested the extra time. I want to make sure Mr.
17 Fox fully understands what we're discussing here.

18 THE COURT: All right. Thank you.

19 MR. MYHRE: Now, could we also discuss just the
20 logistics and witnesses, My Lady --

21 THE COURT: Yes.

22 MR. MYHRE: -- as far as proceeding?

23 In terms of not wasting the jury's time, I
24 wonder if we could come back half an hour or 15
25 minutes before two o'clock to try to sort this
26 out, in the hopes that we would be ready for the
27 jury at two?

28 The other thing I anticipate happening this
29 afternoon is I do have some re-examination, and I
30 don't know if Your Ladyship would prefer to find
31 out from me first, before I embark on it, what I
32 intend to re-examine on or if you'd prefer to --
33 and if you do then we need a little bit of extra
34 time for that, but that would have to happen after
35 any cross-examination is finished.

36 I'm just alerting Your Ladyship to potential
37 delays I see this afternoon.

38 So then following up on that, I can have
39 Constable Potts here this afternoon and that is my
40 intention, so that if we do finish before three
41 o'clock we can at least keep going with Mr. Fox's
42 statement to Constable Potts and get started on
43 that.

44 That said, Constable Potts would be the only
45 witness I have prepared for Friday, and so if we
46 start Constable Potts this afternoon, if we get an
47 hour of the statement in we'll finish it tomorrow

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1 morning, or we could break early this afternoon if
2 we do finish early and then Constable Potts could
3 be until about three o'clock tomorrow.

4 I don't think we have to -- well, we kind of
5 do have to decide that now. I have to know if I
6 should bring Constable Potts in.

7 THE COURT: Well, first of all, let's work out the
8 first issue.

9 Mr. Lagemaat, Mr. Myhre is suggesting that we
10 resume without the jury for 15 minutes to iron out
11 some of these issues, but will that -- if we were
12 to resume at quarter to two does that give you
13 enough time?

14 MR. LAGEMAAT: The -- the only one concern I have, My
15 Lady, is -- is if I do decide to embark on another
16 line of cross-examination I haven't already,
17 there's a potential issue if I have to print out
18 materials. I have to go to my office if it's 18
19 copies of -- or 16 copies of materials, I will
20 have to return to my office to do that.
21 That's -- that's one concern I have.

22 Other than that, if at all possible I'm --
23 I'm fine with coming back early and starting
24 without the jury for the last -- or the 15 minutes
25 before two o'clock or 30 minutes, and if I need
26 more time with Mr. Fox poten -- possibly we can
27 get -- I -- I can't say how much time I'm going to
28 need.

29 I haven't had this discussion with him yet,
30 but we could potentially come back and get those
31 matters done, and if I needed more time then I
32 could go spend more time.

33 THE COURT: Or there might be some other way of getting
34 printing done --

35 MR. LAGEMAAT: Yes.

36 THE COURT: -- more quickly. So 1:45 would work?

37 MR. LAGEMAAT: Yes. Yes, My Lady.

38 THE COURT: And then we'll ask the jury to come back at
39 two?

40 MR. LAGEMAAT: Yes.

41 THE COURT: And should we have Constable Potts for the
42 afternoon?

43 MR. LAGEMAAT: I think that is -- there is such a big
44 unknown here of what is going to happen with Mr.
45 Fox, so I can't really say and I -- that's -- I'm
46 out after the cross-examination, so that would be
47 an issue for Mr. Myhre and Mr. Fox.

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1 THE COURT: I think it would be a good idea to have him
2 here. It's quite possible that everything will
3 wrap up very quickly with Ms. Capuano. That is
4 one possibility, and we'll have sent the jury away
5 for two hours.

6 It will be nice that there be something that
7 they are coming back to, even if it means tomorrow
8 they are sitting only part of a day, and we all
9 know that when recordings are played and so forth
10 of statements there can be technical problems that
11 slow things down, and so I think we want to allow
12 plenty of time for that.

13 MR. LAGEMAAT: Very good.

14 THE COURT: All right. Do I need to bring the jury
15 back in or, Mr. Sheriff, would you be able to just
16 ask them, please, to --

17 THE SHERIFF: I could ask them.

18 THE COURT: -- start their lunch, take a longer lunch,
19 and come back at two?

20 THE SHERIFF: Yes. Yes, My Lady.

21 THE COURT: All right. Thank you. And is that
22 everything?

23 MR. MYHRE: Yes.

24 THE COURT: All right. Then we'll be back at quarter
25 to two. Thank you.

26 MR. MYHRE: Thank you, My Lady.

27
28 (PROCEEDINGS ADJOURNED FOR NOON RECESS)
29 (PROCEEDINGS RECONVENED)
30

31 MR. LAGEMAAT: My Lady, I have no more than ten minutes
32 of questioning to -- that's an estimate to finish
33 my cross-examination and it's my understanding --
34 Mr. Fox will speak for himself -- but there are no
35 issues arising that Mr. Fox wishes to -- me to
36 examine on.

37 There's been no dispute is what I am trying
38 to say so that I expect, unless Mr. Fox says
39 something different, that will be the end of my
40 cross-examination

41 THE COURT: All right. So it seems that at the end of
42 the cross-examination we should probably stand
43 down. I don't want to be canvassing this issue in
44 front of the jury.

45 MR. LAGEMAAT: Is -- is My Lady saying do one last
46 check after I finish my cross-examination, is that
47 what you're --

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1 THE COURT: Yes.
2 MR. LAGEMAAT: I -- that would be appropriate and I --
3 I expect that wouldn't take more than a couple of
4 minutes, from our discussion we just had.
5 THE COURT: All right. And Mr. Myhre, you are
6 expecting to have some re-examination.
7 MR. MYHRE: Yes, My Lady. I would estimate -- well, 20
8 minutes or so, but has Your Ladyship decided
9 whether you'd like to know in advance the lines of
10 questioning?
11 THE COURT: I think if you are estimating 20 minutes
12 then the answer is yes, I would, please.
13 MR. MYHRE: I'm happy to.
14 THE COURT: All right. Unless you have discussed it
15 with Mr. Lagemaat and -- no. Is there anything
16 else we should discuss now?
17 MR. LAGEMAAT: I don't think so.
18 MR. MYHRE: No, My Lady.
19 THE COURT: I don't think we have the jury just yet,
20 unless --
21 THE SHERIFF: Just hold on a second, My Lady. We can
22 call them.
23 THE COURT: Then we need to stand down. They are
24 ready?
25 We'll need to stand down so Ms. Capuano can
26 come back into the courtroom, so we'll do that and
27 then we will resume.
28
29 (PROCEEDINGS ADJOURNED)
30 (PROCEEDINGS RECONVENED)
31
32 (JURY IN)
33
34 THE COURT: Please.

35
36 **DESIREE CAPUANO, recalled.**
37

38 **CROSS-EXAMINATION BY MR. LAGEMAAT, CONTINUING:**
39

40 Q Ms. Capuano, I'd just like to clear up one thing.
41 We discussed, before lunch, when I was going
42 through the timeline of custody and court issues,
43 November 7th, 2011, was a hearing. And I'm -- I
44 -- I -- put the words in your mouth, I -- I said
45 it was a jurisdictional issue, that he was
46 returned -- or G. was returned to his father, and
47 you agreed.

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1 Isn't it true it was a little bit more than a
2 jurisdictional issue, that there was actually a
3 determination made on the merits at that hearing
4 and, tell me if this is true, Gabriel was going to
5 be returned to you because the court did not want
6 him changing schools a couple months into the
7 year, until it was learned that you in fact had
8 just moved into a different catchment area
9 anyways, so the judge said, "Well, if he's
10 changing schools anyways, he might as well come
11 back to Los Angeles and be with his father"; is
12 that correct?

13 A The judge determined that the home state of the
14 child was California but was content to wait until
15 a break to remove him from my custody, until he
16 learned that we had just moved and, yes, he was
17 not in school yet.

18 Q So it was decided on its merits. It was more than
19 simply -- and isn't it also true that -- that the
20 judge did not accept as true your allegation that
21 Mr. Fox had hidden him away for nine years?

22 A That wasn't discussed.

23 MR. MYHRE: My Lady, I'm just rising because my friend
24 started a question and I'm not sure if it was a
25 statement or a question. He said it was decided
26 on the merits, and then seemed to move to another
27 question.

28 MR. LAGEMAAT: So I'll go back.

29 Q So it was in fact a determination made on the
30 merits, it wasn't simply a jurisdictional issue.
31 It was a determination made on the merits and that
32 it would not be -- or it was appropriate for him
33 to start the school year a couple months in in Los
34 Angeles; is that correct?

35 A No, the jurisdiction issue was what was at the
36 heart. The timing issue, that that -- that was
37 the only caveat. It was just a matter of when he
38 would be returned, not if. His -- his being --
39 the judge determining to return Gabriel to him was
40 not due to me moving. The judge determined that
41 Gabriel would be returned because California was
42 determined to be the home state, not because I had
43 just moved.

44 Q But there was discussion of him going back to
45 Arizona --

46 A The timing. The timing for him to be returned.

47 Q The timing. But it wasn't an appropriate time

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1 because it was two months into the school year;
2 correct?
3 A Yes.
4 Q Thank you. Back to the guns. You said when you
5 received the PAL attached to an email that you
6 were alarmed to learn that he had gun -- firearms
7 and that was the first time you knew he had
8 firearms; correct?
9 A It was the first time I knew that he owned
10 firearms or had the ability to purchase firearms.
11 Q Isn't it true that you knew that sometime in 2000
12 or 2005, 2006, he was in Arizona with a firearm?
13 A He had a gun but that wasn't -- you can get a
14 firearm in Arizona without having a licence or
15 legal permission to buy one. I thought the terms
16 for that were a little bit different in Canada.
17 Q But you said in evidence that you were alarmed to
18 find out that that was the first time -- you
19 didn't know him to have guns before that. Is
20 it --
21 A His having guns scared me.
22 Q That's not the question I'm asking. I'm asking
23 you --
24 A I don't know if he owned that firearm. I just
25 knew that he was carrying it that day, and I only
26 knew about that because my mother told me. I
27 didn't see him with it. I didn't know if he owned
28 it, I don't know if he purchased it, I don't know
29 if he was carrying it for somebody, I don't know
30 how long he had it in his possession, I don't know
31 anything about it. All I know is that my mom saw
32 him with a gun in a bar, lining up bullets on the
33 table.
34 Q So it wasn't quite accurate to say that when you
35 received the PAL, that was the first time you were
36 aware that he had firearms; correct?
37 A It was the first time I knew he ever was able to
38 purchase them legally.
39 Q Okay. Well, that's not what you said --
40 A -- [indiscernible/overlapping speakers].
41 Q -- in your evidence. But moving on, who's --
42 who's Virginia Tomlin [phonetic]?
43 THE COURT: Mr. Lagemaat, you need to address that by
44 way of a question.
45 MR. LAGEMAAT: Okay. What was -- what was it, My Lady?
46 I just said "moving on".
47 THE COURT: Before you said "moving on". I don't want

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1 to repeat it. If you're putting an inconsistency
2 to her, you need to give her an opportunity to
3 respond.
4 MR. LAGEMAAT: Okay.
5 Q You can respond to my last statement about the
6 gun. Isn't it true that when you said in evidence
7 that when you received his PAL was the first time
8 you were aware he had firearms? Is that false?
9 A That he owned firearms.
10 Q So now you're changing it to the first time you
11 knew he owned firearms.
12 A Had firearms --
13 MR. MYHRE: My Lady --
14 A Sorry. Wording.
15 MR. LAGEMAAT:
16 Q Okay, so it's wording.
17 MR. MYHRE: -- I think it's important to be accurate
18 about what was said in direct.
19 MR. LAGEMAAT: I'll move on.
20 Q Who's Virginia Tomlin?
21 A Virginia Tomlin was an alias that I used when I
22 was 19 years old because I did not want to be
23 associated with my real name.
24 Q So Virginia, who's -- where did you get the name
25 Virginia? Is that your middle name or ...?
26 A My best friend grew up in Virginia.
27 Q So it's a fake name.
28 A Yes, an alias used because the actions that I was
29 -- at 18 years old, I did not want associated with
30 my real name. So it was an alias, yes.
31 Q You said in cross-examination that being caught
32 with the marihuana and arrested was the only time
33 you broke the law, and then later we expanded on
34 that, that it wasn't in fact the only time. Isn't
35 it true that you also have an arrest as Virginia
36 Tomlin?
37 A It was also related to marihuana. It was public
38 intoxication.
39 Q But it's not the marihuana incident we were
40 talking about, is it?
41 A You asked me if I had any charges related to
42 anything under the marihuana. I said marihuana
43 was the only reason I got in trouble, besides for
44 the stripper. Public intoxication --
45 Q Wasn't it also --
46 A -- was for marihuana.
47 Q Sorry. Wasn't it also for using a false name --

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1 A No.
2 Q -- as Virginia Tomlin?
3 A No, not at all.
4 Q Was it for under the influence?
5 A Public intoxication.
6 Q So there's more than only the one time that you
7 said earlier. There's actually three times;
8 correct?
9 A Two of them were for marihuana, which is what you
10 asked.
11 Q I don't think I asked that.
12 A Okay.
13 MR. LAGEMAAT: No further questions, My Lady.
14 THE COURT: All right. Members of the jury, we're
15 going to stand down fairly briefly. It may be
16 five or 10 minutes, something of that nature,
17 please. If you wouldn't mind retiring to the jury
18 room.
19
20 (JURY OUT)
21
22 THE COURT: And, Ms. Capuano, you'll need to leave the
23 courtroom for that same period of time, so we'll
24 stand down now.
25
26 (WITNESS STOOD DOWN)
27
28 (PROCEEDINGS ADJOURNED)
29 (PROCEEDINGS RECONVENED)
30
31 (JURY OUT)
32
33 THE COURT: [Recording begins]... do you need?
34 MR. LAGEMAAT: Like minutes. Five minutes.
35 MR. MYHRE: My Lady, the good news is we've
36 canvassed --
37 MR. LAGEMAAT: Yes.
38 MR. MYHRE: -- re-exam and there are no issues, so that
39 went smoothly.
40 THE COURT: All right. Then stand down for another
41 five minutes.
42 MR. LAGEMAAT: Thank you, My Lady.
43
44 (PROCEEDINGS ADJOURNED)
45 (PROCEEDINGS RECONVENED)
46
47 (JURY OUT)

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1
2 MR. LAGEMAAT: Yes, My Lady. There is one piece of
3 evidence that Mr. Fox was hoping would go in
4 through my cross-examination. I knew that all
5 along.

6 It's -- it's a statement of the complainant
7 and -- and I tried to impeach her on it several
8 times, but she accepted it, and I never raised the
9 statement and Mr. Fox will at this time make a
10 submission on that piece of evidence.

11 THE COURT: Can I just, first of all, Mr. Lagemaat, ask
12 you to tell me which statement?

13 MR. LAGEMAAT: It's -- Ms. Capuano made four statements
14 to the police and it was the last statement she
15 gave on Wednesday, July 13th, 2016, at 1323 hours
16 to a Corporal B. Wilcott [phonetic], who I
17 believe -- oh, yeah, Burnaby RCMP.

18 THE COURT: And what is it you say you cross-examined
19 on and she accepted?

20 MR. LAGEMAAT: I had -- I had cross-examined her on a
21 couple of things she said in the state -- the
22 statement and -- and she accepted them, and if she
23 didn't accept them I was going to put the
24 statement to her, but I never had an opportunity
25 to, because she -- there was a couple of areas I
26 went into and she accepted them, so...

27 THE COURT: Can you remind me what they were?

28 MR. LAGEMAAT: I'm not sure if I can, My Lady. Just
29 let -- let me have a quick look.

30 THE COURT: Was this today or yesterday?

31 MR. LAGEMAAT: One of them was where she took -- and --
32 and this was the main area, where -- where she --
33 Ms. Capuano took some pleasure in the fact that
34 her tip to ICE had resulted in Mr. Fox being
35 deported, and I asked her, "Did you take pleasure
36 in that," and she agreed she had, and I said,
37 "Isn't it true you actually wished you could
38 be" -- these aren't the exact words, but "You
39 wished you could be in the courtroom or the
40 courthouse when they came and got him," and she
41 accepted that, and I left it at that.

42 And again I -- I can tell My Lady that I was
43 going to -- if she denied that, I was going to
44 seek to play the audio of the statement and this
45 is when Mr. Fox's submissions will be, from my
46 understanding, because in the audio there is some
47 laughing, which is even transcribed as brackets

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1 laughing.
2 And -- and that was the only reason I was
3 going to try to play a part of that, a small
4 portion of that statement, if she denied the fact
5 that she was laughing and took enjoyment in the
6 fact that her call resulted in Mr. Fox's
7 deportation.
8 THE COURT: All right. I am just looking for my notes.
9 I remember that portion of the cross-examination.
10 Was there another portion?
11 MR. LAGEMAAT: No, My Lady, that -- that was it. Oh,
12 and --
13 THE COURT: I think --
14 MR. LAGEMAAT: -- I apologize.
15 THE COURT: My note is that she said -- you asked her
16 was she amused and she said she probably laughed,
17 but not in amusement.
18 MR. LAGEMAAT: Mm-hmm. There -- there was one area --
19 other area, My Lady, and that was the last -- the
20 second to last line of questioning about Mr. Fox
21 previously having or owning firearms, and it was
22 about her knowledge that in 2005 or 2006 he did
23 have a firearm in Phoenix and she accepted that
24 also, that that came from her mother, and that we
25 got into a discussion whether it was owning or
26 having and -- but that's -- if she had denied
27 knowledge of that, I would have taken her to the
28 statement.
29 And that's the two areas where I was -- would
30 have referred to the statement, if she had not
31 accepted what I put to her.
32 THE COURT: And the issue that may engage the question
33 of your role as appointed counsel is whether there
34 should be further cross-examination?
35 MR. LAGEMAAT: No, if I could interrupt --
36 THE COURT: All right.
37 MR. LAGEMAAT: -- there's no question about my role in
38 cross-examination. That's -- we finished that.
39 Mr. Fox, and I believe he'll tell you this,
40 has no -- no issues with my cross-examination.
41 I'm only bringing this up because he is going to
42 make a submission to you now about -- that he
43 feels that statement as a whole should be entered,
44 and I'm not sure what the basis of that submission
45 will be, but he is going to make a submission and
46 I don't believe he sees it as an issue with my
47 cross-examination.

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1 He just wants that statement in -- to be
2 heard by the jury in its entirety and he -- he'll
3 -- I expect he'll tell you why.

4 THE COURT: All right. Then Mr. Fox, I'll hear from
5 you, please.

6 THE ACCUSED: Okay. In -- not the entire statement,
7 the entire -- the entire recording is almost two
8 hours, so it's the second hour of a -- of the
9 recording.

10 There are frequent statements that Ms.
11 Capuano makes as she is speaking with the RCMP
12 where her demeanour and her overall character
13 throughout the -- the statement is extremely
14 contrary to what she is trying to present here in
15 court today and what she has presented on the news
16 media.

17 For example, when she was talking about the
18 incident with punching herself in the stomach to
19 try to cause a miscarriage, that she claims is not
20 true, she's very somber when she speaks about that
21 normally, but in this interview she's actually
22 laughing and joking with the officer about it and
23 talking about how she joked with Gabriel about it,
24 as if it's all just a big game.

25 And I think that, given it's a criminal
26 harassment case, not only fear for her safety is
27 a -- well, an element of the offence, but the
28 credibility of the complainant is at least in this
29 case very, very significant.

30 For that reason and for the other comments
31 that she makes in here, and the laughing and the
32 joking, I think it is critical for the jury to be
33 able to see what she really thinks of these issues
34 outside, when there is no cameras on her and when
35 a jury is not looking at her. There's also a
36 statement that she makes at --

37 THE COURT: Now, just before you go on --

38 THE ACCUSED: I'm sorry.

39 THE COURT: -- -- you say where -- when there are no
40 cameras on her.

41 THE ACCUSED: Oh, meaning the news media.

42 THE COURT: But there were -- usually the RCMP will
43 have a video camera.

44 THE ACCUSED: This one was just audio recorded and also
45 this was conducted in her home.

46 THE COURT: All right.

47 THE ACCUSED: The -- the other interviews that she had

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1 done with the RCMP, one was done from her
2 attorney's office -- I'm not sure where the others
3 were done from, but they were all done on the
4 telephone.

5 There is another point in -- in this
6 interview where she openly admits that -- well,
7 first she says that she has proposed to me
8 numerous times, that if I would just take the
9 website down then everything could go back to
10 normal, and then she goes on to say that she has
11 no resentment and if I would just stop then
12 Gabriel would continue coming or go back to coming
13 out here for visitation, which seems to me a very
14 clear admission that she is blatantly using
15 Gabriel to try to get me to take down the website
16 or engage in any other type of conduct.

17 Now, that of course doesn't have anything to
18 do with the laughing and joking, but I thought it
19 was quite important that that should be brought
20 up.

21 THE COURT: Can you tell me a bit more about why -- I
22 think there are two issues I need to deal with
23 here. It does seem to me that particularly --
24 particularly that last point is something in which
25 it's your wish that there be cross-examination on
26 that and Mr. Lagemaat has not cross-examined on
27 that.

28 THE ACCUSED: I -- I would agree with that, but I
29 wouldn't say that I think that Mr. Lagemaat was
30 deficient in that respect at all. This was
31 something that I myself just noticed very recently
32 and so perhaps it just fell through the cracks.

33 THE COURT: Well, perhaps one reason that it may not
34 have been picked up is that it doesn't seem -- and
35 I'll hear from you further, but it doesn't seem to
36 me to go the issues that the jury needs to decide.

37 The issue in this trial is not whether Ms.
38 Capuano was using Gabriel as a pawn
39 inappropriately. The issue is did the website and
40 the other communications amount to criminal
41 harassment, and it's quite possible that both
42 could have coexisted, that she in theory could
43 have used Gabriel as a pawn and the website could
44 have resulted in criminal harassment. They're --
45 what I am trying to say is they're separate
46 issues.

47 THE ACCUSED: Sure.

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1 THE COURT: So I am having trouble seeing how that
2 would be relevant to the issues in this trial.
3 THE ACCUSED: Okay. I should have explained -- or I
4 should have mentioned also that this is one of the
5 claims that Ms. Capuano has made against me
6 repeatedly, I'm not sure if she did while she was
7 on the stand testifying though, that I have been
8 trying to use Gabriel against her and using him as
9 a pawn.
10 So I thought that this might be another
11 example of how she is repeatedly accusing me of
12 doing the things that she is actually doing to me,
13 and meanwhile there is no evidence that I'm
14 actually doing any of the stuff that she's
15 claiming.
16 So that -- that was one of the reasons I
17 thought that that might be significant, but
18 certainly the most important aspect I think of
19 this recording is her overall demeanour as she is
20 going through and explaining the -- we're talking
21 about the very things that while she's on the
22 stand she was reduced to tears and getting very
23 emotional and choked up about, yet when she
24 doesn't believe people are watching her she is
25 only laughing and joking, like I said there's
26 really nothing to it.
27 THE COURT: All right. Thank you. Now, doesn't that
28 engage the question of what you would like Mr.
29 Lagemaat to cross-examine on?
30 THE ACCUSED: Well, I believe Mr. Lagemaat's position
31 on it was that he could only have it admitted if
32 there was a prior conflicting statement, but what
33 I'm hoping to argue here or to persuade the court
34 of is that it's more a question of her demeanour
35 and her mindset, as she was making these
36 statements, as opposed to whether or not they
37 conflict with what she is verbalizing on the stand
38 now.
39 THE COURT: All right. Thank you.
40 THE ACCUSED: I should also mention, though, that
41 rather than making a decision about proceeding
42 with allowing it before the jury, at this point I
43 would probably request that the court listen to it
44 first and then make a decision, or at least listen
45 to some of the more [indiscernible] parts.
46 THE COURT: Mr. Lagemaat, it seems to me that in a
47 sense Mr. Fox is saying that there's more

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1 inconsistency in the statement than you cross-
2 examined on.

3 MR. LAGEMAAT: He is saying there is inconsistency in
4 her demeanour, between her demeanour at the time
5 of the statement and her demeanour here today, and
6 I would not have chosen that line of cross-
7 examination and I have listened to the recording
8 many times.

9 THE COURT: All right. I am going to ask you to
10 clarify. Is it your understanding that the law
11 would permit you to cross-examine on essentially
12 inconsistent demeanours at different times --

13 MR. LAGEMAAT: If -- if I was going to cross-examine on
14 it I would have done what I did with the -- her
15 fly on the wall comment. I would have said did
16 you find that amusing, that he had been deported,
17 which is what I did, and did you laugh, and she
18 agreed, not in precisely those words, and that's
19 how I would have done it and -- and in my view
20 that was the most significant example in the
21 statement of her taking it lightly and I did go to
22 that.

23 THE COURT: Thank you. Mr. Myhre, do you have anything
24 to contribute?

25 MR. MYHRE: Yes, and on the point of cross-examining
26 her on her demeanour during the statement it seems
27 to me as a general proposition that certainly
28 could be relevant, but the further those purported
29 times of amusement are from the issues that we're
30 dealing with the less relevant they get, and so
31 if -- my submission would be that if the only
32 example is Ms. Capuano laughing it sounds like
33 about how ridiculous the notion that she was
34 punching herself in the stomach was, we're just so
35 far removed from the time and the issues of this
36 trial that it's -- it just has no relevance. If
37 we're talking about things like --

38 THE COURT: I think another area of concern for Mr. Fox
39 was --

40 MR. MYHRE: Her -- Ms. Capuano using Gabriel.

41 THE COURT: Yes, and the business about laughing if she
42 had the opportunity to see him removed from the
43 country.

44 MR. MYHRE: As I say I -- I think that would be proper
45 to put to her in -- in either format. There's
46 nothing improper about that. That's -- that's one
47 of the turning points in this -- the whole --

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1 THE COURT: I think we're struggling a little bit with
2 what the issues are, Mr. Fox. You -- you've said
3 that in -- Ms. Capuano in the police statement was
4 talking about things that had -- that reduced her
5 to tears in this courtroom, but seemingly caused
6 her to laugh when she was speaking with police
7 officers. What kinds of things?

8 THE ACCUSED: I'm sorry, may I just -- one moment.

9 Do you have that list that I gave you with
10 the timing positions where various
11 [indiscernible/2:48:20 PM].

12 Another -- another thing that I think is very
13 relevant or very interesting about this interview,
14 My Lady, is --

15 THE COURT: Well, can we just deal with this one
16 question first?

17 THE ACCUSED: Oh, sure, yes, I'm sorry. Oh, no, when I
18 gave you the transcript of it, it was -- it had
19 highlights in yellow.

20 MR. LAGEMAAT: I -- I gave you that transcript back.

21 THE ACCUSED: Yeah. I gave you the transcript
22 [indiscernible].

23 MR. LAGEMAAT: I've given -- I gave you the entire
24 transcript.

25 THE ACCUSED: Okay. Well, I'll start with this. So an
26 example then would be where she talks about
27 wishing that she could have been in the courthouse
28 and what she says is that -- oh, I have it here --
29 "And I called the FBI agent that morning," and
30 then it says chuckles here, but actually it was
31 much more than chuckles. "I wish I was a fly on
32 the wall," and then she laughs some more.

33 Down below on the same page, she laughs
34 through an entire section here and says [as read
35 in]:

36
37 So if you can picture it, there was Richard
38 at the courthouse arguing with him, demanding
39 that his hearing is supposed to happen and
40 trying to figure out why it's not scheduled,
41 knowing that he's there illegally and the FBI
42 walking in and arresting him.

43
44 There's another part where she's also laughing
45 about the scars that she has, from having to deal
46 with me over the years, and then the officer joins
47 in at that time and starts laughing with her.

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1 And I apologize, I wish I had more organized
2 notes on this at this point. Then when she is
3 talking about the allegations of the LinkedIn
4 profile, she says [as read in]:
5

6 Um, but you might not want -- you might not
7 want to put up on your LinkedIn profile that
8 you're a stripper --
9

10 I guess she's referring to what other people were
11 saying to her.
12

13 -- and I said I don't -- I don't -- what
14 you're talking about. She said your LinkedIn
15 profile it says you're a stripper and you
16 smoke pot and I'm not, she says.
17

18 [Indiscernible]. Now, as she was saying that she
19 was also laughing as well, but there I have the
20 notes.
21

22 Now, there is a point in the interview as
23 well, where she is talking about getting the order
24 of protection in Arizona, and the Arizona order of
25 protection is supposed to be based on solely a
26 person's credible fear for their safety from the
27 other party, and she admits in this interview very
28 likely that her only goal with that was to try to
29 get the website taken down and it had nothing at
30 all to do with her safety. She did make a brief
31 reference to that in her testimony.

32 And there is one point where she's laughing
33 and then immediately moments later crying -- or
34 no, sorry, she was crying about the quote unquote
35 "sick people that would read the website and
36 potentially harm her children," and then she
37 immediately goes into laughing about something
38 which is unknown, even hard to tell what she is
39 saying on the recording, and she also laughs and
40 makes jokes about how it is that I seemed to
41 frequently know more about her legal proceedings
42 than she did, I would often know about coming
43 hearings before she did.

44 So on the one hand here in court she's --
45 she's claiming before the jury that that was very
46 frightening for her, that I was able to know that
47 before she did even, but then in this recording
she's laughing and joking about it.

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1 Oh, yes, and she also finds it very, very
2 funny that the family court in California kept
3 delaying my petition for the child support, and
4 she makes a number of jokes about that and laughs
5 about that as well.

6 And those were -- those were the ones that I
7 wrote down on here, the ones that I wanted to
8 bring up in the 486 hearing.

9 THE COURT: And you're saying you would like Mr.
10 Lagemaat to cross-examine on each of those points,
11 because some of them he didn't touch on.

12 THE ACCUSED: If people with much more knowledge and
13 experience than myself, such as the attorneys and
14 yourself, believe that those are areas that should
15 be cross-examined then I would definitely like
16 that to happen as well, but I -- I think that the
17 most important thing that I would hope to get from
18 this would be for the members of the jury to see
19 how Ms. Capuano is when they're not sitting there
20 looking at her, in other words how the real Ms.
21 Capuano is.

22 THE COURT: All right. Thank you.

23 THE ACCUSED: But may I just point out one other thing
24 that I would hope to show the jury with this is
25 the frequency and the quickness with which Ms.
26 Capuano can transition from crying about one thing
27 at one moment -- I mean literally crying -- to
28 laughing almost hysterically about something a few
29 moments later and then going right back to crying
30 again, which I think really goes to her
31 credibility.

32 When they see this or when they hear this,
33 it's very clear that there is not a lot of
34 sincerity to the emotions that she is expressing,
35 so then I think projected that onto the testimony
36 she provided here and question whether there is
37 really any sincerity to what she is demonstrating
38 in court. Thank you.

39 THE COURT: Thank you. Mr. Lagemaat, now that you have
40 heard that spelled out in some detail what is your
41 suggestion?

42 MR. LAGEMAAT: Well, I will repeat that I ran the
43 cross-examination the way I would have run the
44 cross-examination. I am appointed by the court
45 and if the court orders me to bring up these lines
46 of cross-examination I will.

47 I have the statement on my computer. I

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1 believe we have sound equipment here. The only --
2 the only time -- it would take a little bit of
3 time to get to the remarks, but Mr. Fox has them
4 marked down quite accurately where they are --

5 THE COURT: Yes.

6 MR. LAGEMAAT: -- because I have already looked them up
7 on the -- on the audio. They are quite easy to
8 find.

9 THE COURT: All right. Thank you.

10 Mr. Myhre -- and I do have a question for
11 both Mr. Myhre and Mr. Lagemaat.

12 MR. MYHRE: It seems to me most of that is -- it's not
13 irrelevant.

14 THE COURT: Not irrelevant?

15 MR. MYHRE: And -- it's not irrelevant and so -- so if
16 Mr. Lagemaat is willing to do it, even though he
17 might not have done it that way, I am not opposed.

18 THE COURT: So I'd like to raise a question for you to
19 consider, and it comes from something Mr. Fox
20 said. He asked essentially for the court's advice
21 on whether these additional areas should be
22 introduced through cross-examination or not.

23 I can say that I have reviewed the two cases
24 Mr. Myhre gave me, *R. v. Thornton* and *R. v.*
25 *Faulkner*, and I have come to the view that I would
26 share with Justice Gray in *Thornton* the view that
27 counsel appointed under s. 486.3 is not in a
28 solicitor-client relationship with the accused in
29 the way that defence counsel is, but is subject to
30 ethical duties that may be very similar to those
31 that retained counsel bears, and of course is
32 subject to the requirement that a cross-
33 examination be on relevant points and -- and
34 confirm in the various other ways with the rules
35 of evidence.

36 However, ultimately it is my view, as it is
37 the view of Justice Gray, that where an accused
38 person is self-represented in the trial it's the
39 accused person's decision that governs concerning
40 the lines of inquiry to be pursued in the cross-
41 examination, subject to the ethical duties on
42 counsel who is conducting the cross-examination
43 and the rules of evidence.

44 And I reach that view because appointed
45 counsel is not defence counsel, is not appointed
46 for the benefit of the accused person, but rather
47 is appointed to protect potentially vulnerable

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1 witnesses from being cross-examined by the very
2 person against whom they have made allegations.
3 So it is a measure to protect potentially
4 vulnerable witnesses, not to restrict the accused
5 person's right to present the case in the way that
6 he wishes to put it before the court.

7 That is my view concerning the role of
8 appointed counsel, but there is an additional
9 factor to be considered, and that is the role of
10 the court in ensuring that Mr. Fox has a fair
11 trial as a self-represented person and that his
12 own decisions about the course of his defence
13 don't cause him to -- particularly where he has
14 sought the advice of the court to -- I won't say
15 lead himself into error, but to make a very bad
16 strategic decision.

17 It is clearly Mr. Lagemaat's view that the
18 various lines of cross-examination Mr. Fox spoke
19 of were either not proper or were strategically
20 dis -- not -- not of advantage to Mr. Fox.

21 So can counsel assist me on the question of
22 to what extent there is a duty on the court to
23 consider the -- the potential strategic advantages
24 and disadvantages of this line of cross-
25 examination?

26 MR. LAGEMAAT: I haven't reviewed the cases in depth,
27 but it would be my submission that once the 486
28 appointee, me, has said they've completed their
29 cross-examination, it could be the court's role to
30 order to continue on and I believe the case said
31 if you feel it's relevant and yes, he -- Mr. Fox
32 does have a right to have those lines if -- if --
33 for his fair trial to have the line of cross-
34 examination he would have taken if he was self-
35 represented heard, if it's relevant.

36 THE COURT: Does the court have an obligation to, for
37 example, listen to this audio recording and make
38 an assessment of whether cross-examining on it
39 would assist Mr. Fox or not?

40 MR. LAGEMAAT: I would think that would be the only way
41 he could do it, rather than us just summarize it,
42 this is what it says.

43 Mr. Fox is looking for the demeanour. I
44 would think that would be the only way the court
45 could make that determination is by listening to
46 it.

47 THE COURT: But I mean I, the judge, not the jury.

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1 MR. LAGEMAAT: Yes. Yes, you the judge, to make a
2 determination on whether it's relevant and you go
3 a step further and order counsel to cross-examine
4 on it, because it is demeanour Mr. Fox is seeking
5 to get at, which isn't -- I mean there is in
6 brackets laughing, but I've listened to it and you
7 don't get it out of the transcript quite as much.

8 THE COURT: All right. Thank you. Mr. Myhre?

9 MR. MYHRE: My Lady, I think that is a dangerous area
10 for the court to go into, because you do not have
11 all the context that counsel do, both myself and
12 appointed counsel.

13 Obviously I am not giving any advice and I
14 think it would just be dangerous to give strategic
15 advice to Mr. Fox, when you don't have everything.

16 I would think the most appropriate course of
17 action would be to encourage Mr. Fox to rely on
18 counsel, but after that, short of trying to
19 introduce improper or irrelevant evidence, I would
20 say it's up to him.

21 One question I would have is I -- I'm not
22 sure how I would get this in, if she accepts that
23 she was laughing and taking it lightly, as she did
24 on the most significant -- what I will say is the
25 most significant one, the being the fly on the
26 wall and laughing, she accepted that she wished
27 she was there and so it would be my concern --
28 also how I would get this in if she accepts it
29 that Mr. Fox has one, two, three, four -- nine
30 clips here, none of them are more than from my
31 estimation a minute.

32 THE COURT: Mr. Fox?

33 THE ACCUSED: To clarify, though, there's nine clips on
34 there, but those were just the ones that I thought
35 at the time of the 486.3 hearing would be the most
36 important ones to bring to your attention.

37 There is actually a lot more through that 45
38 minute to one hour stretch of the audio and there
39 are many points and in fact, if we want to hear
40 how we frequently moves from laughing to crying
41 and back and forth so much, then it would be a
42 matter of simply playing the eight or nine clips
43 that are referred on there.

44 THE COURT: All right. Generally, Mr. Fox, we don't
45 play -- there are some exceptions where a very
46 different use is made of previous statements, but
47 generally we don't play recordings of witnesses

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1 giving interviews.

2 I have your point that you wish Ms. Capuano
3 to be cross-examined on her basically ability to
4 turn the tears on and off -- I am paraphrasing --
5 and to quickly change emotions and to apparently
6 be a lot more lighthearted in talking about things
7 that here are apparently causing her much more
8 concern. That's -- that's your position. I don't
9 know. I haven't heard this audio recording.

10 Mr. Lagemaat is a very experienced lawyer.
11 He tells the court that he has listened to this
12 audio recording several times, and that in his
13 professional view it is not suitable to cross-
14 examine further on those kinds of topics, but
15 ultimately it is your call, Mr. Fox, and if you
16 wish there to be some further cross-examination
17 there will be, and I will ask Mr. Lagemaat to
18 conduct it on your behalf, but you need to be
19 aware of several things.

20 One is that you could be making an unwise
21 decision. It's possible that what to you sounds
22 like making light of things by laughing is nervous
23 laughter, or is the kind of laughter stimulated by
24 strong emotion that has nothing to do with finding
25 something funny, and the strong emotion could be
26 fear.

27 So there is a danger that further examination
28 -- cross-examination on these points could
29 backfire for your case, and in fact there is even
30 a little bit of a basis in something Ms. Capuano
31 has said already, which was when she was being
32 cross-examined about laughing she said that it
33 wasn't amusement that was causing her to laugh,
34 she was scared, something along those lines. So
35 there is the germ of that idea there and you would
36 run the risk that further cross-examination would
37 just solidify that.

38 I should also tell you that further cross-
39 examination would be restricted by the rules of
40 evidence. It would almost certainly not be
41 permitted for Mr. Lagemaat to just start the tape
42 and run it.

43 If he were to, for example, suggest to Ms.
44 Capuano that on repeated occasions she laughed and
45 in fact she went quickly from laughing to crying
46 and back to laughing, and she did this, you know,
47 15, 20 times, whatever it is, if she agrees that's

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1 the end of it. The tape doesn't get played.
2 It's only if she says, oh no, that wasn't
3 what happened that then the tape could be played
4 to show that that is in fact what happened. So
5 we're not going to be in a situation where we
6 start at the beginning of the tape and play it for
7 an hour, or the second half, or whatever it is
8 that most interests you.
9 I think what we're going to do is we're going
10 to take a short afternoon break, about ten
11 minutes. I am going to encourage you to think a
12 little bit more about these questions. If you
13 wish Mr. Lagemaat to pursue them in further cross-
14 examination, then he will do so, so long as they
15 are relevant to the issues in the trial.
16 And there are some of the issues you
17 mentioned that probably are not relevant, at least
18 the substance -- for example the premature birth,
19 what actually happened is not going to be
20 relevant. Perhaps the changes of emotions while
21 she talked about that may be relevant.
22 So do you have something you wish to ask me,
23 Mr. Fox?
24 THE ACCUSED: No, no, My Lady.
25 THE COURT: Anything further to say at this point?
26 Otherwise I think we'll take ten minutes and you
27 can think it over some more.
28 THE ACCUSED: Yes, ten minutes sounds great. I am
29 wondering, though, if I might be able to confer
30 with Mr. Lagemaat during that time?
31 MR. LAGEMAAT: Of course.
32 THE COURT: Yes.
33 THE ACCUSED: Okay.
34 THE COURT: Mr. Myhre, anything further?
35 MR. MYHRE: My Lady, counsel and Mr. Fox and I had
36 discussed the potential re-exam and there was one
37 issue that came up about the authenticity of an
38 email. It was agreed amongst all of us that it
39 would be okay to ask Ms. Capuano if she has that
40 email, so I am just asking the courts leave to ask
41 her about that specific thing over the break, do
42 you have the specific email we discussed.
43 THE COURT: Do you agree?
44 MR. LAGEMAAT: That is the agreement we came to, My
45 Lady.
46 THE COURT: All right. Do I need to tell Ms. Capuano
47 that?

67
(Jury Out)
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1 MR. LAGEMAAT: I think you can rely on me as officer of
2 the court, My Lady.
3 THE COURT: I'm not worried about my relying on you,
4 but as long as she will accept that --
5 MR. LAGEMAAT: If she tried to broach anything I would
6 shut it down, My Lady.
7 THE COURT: No, I want her to be confident that she is
8 permitted to speak to you about that.
9 MR. LAGEMAAT: I see. Pardon me.
10 THE COURT: You can advise her that you have been
11 permission by the court.
12 MR. LAGEMAAT: Thank you.
13 THE COURT: All right. Thank you. We'll stand down.
14
15 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)
16 (PROCEEDINGS RECONVENED)
17
18 (JURY OUT)
19
20 MR. LAGEMAAT: Mr. Fox has decided and you can confirm
21 this with him, that there is nine files he intends
22 to have questioning on five of them, and we are
23 all ready to go. It won't take up much of the
24 court's time and none of them are more than one
25 minute.
26 THE COURT: All right. So we're all set to go
27 essentially?
28 MR. LAGEMAAT: We're all set to go, My Lady.
29 THE COURT: All right. Mr. Myhre, you're nodding. Mr.
30 Fox, you're agreed?
31 THE ACCUSED: Yes.
32 THE COURT: All right. Please.
33
34 (JURY IN)
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47

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4
5
6 THE COURT: Thank you. Thank you for your patience,
7 members of the jury. There's going to be some
8 further questions.
9

10 **DESIREE CAPUANO, recalled.**
11

12 **CROSS-EXAMINATION BY MR. LAGEMAAT, CONTINUING:**
13

14 Q Ms. Capuano, we talked in -- you talked in direct
15 evidence that Mr. Fox had accused you of punching
16 yourself in the stomach when you were pregnant in
17 an attempt to miscarry. Do you recall that
18 conversation?

19 A Yes.

20 Q Did you find this allegation amusing?

21 A Yes.

22 Q And it makes you laugh?

23 A It's ridiculous, yes.

24 Q You find it funny.

25 A The miscarriage was not funny but the fact that I
26 would punch myself in the stomach to try to abort
27 my child, yes. What's disturbing is that he told
28 our child that.

29 Q It was disturbing or funny?

30 A It was disturbing that he told our child. It's
31 funny to me.

32 Q So you find it funny.

33 A That that's his belief, yes. He was sitting right
34 there, he -- he was there with me that day and
35 it's completely ridiculous.

36 Q You're laughing now.

37 A Yeah.

38 Q Do you recall giving a statement to Constable --
39 or Corporal Wilcott of the Burnaby RCMP?

40 A Yes.

41 Q And, sorry, but that was on July 13th, 2016. How
42 was that statement taken? Did -- did he go down
43 to Arizona?

44 A Yes.

45 Q And he attended at your residence?

46 No, at the police station.

47 Q At the police station. And you recall giving that

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1 statement; correct?
2 A Yes.
3 Q Do you recall laughing about the allegation that
4 you'd punched yourself in the stomach?
5 A I probably did.
6 Q You probably did or you did?
7 A I probably -- I don't remember.
8 Q You don't remember?
9 A It was a three-hour interview.
10 Q So you don't know if you laughed about it.
11 A I don't.
12 Q I'm going to suggest to you you did.
13 A And that's why I said probably.
14 Q But you don't know.
15 A No. I haven't listened to the interview and I
16 haven't listened to it since I gave the interview.
17 I don't remember exactly what points --
18 Q I'm -- I'm going to play a clip of the interview
19 to you at this time.
20 A Yes.
21 MR. LAGEMAAT: And you can confirm whether you find
22 this allegation funny or you're laughing about it.
23
24 (AUDIO BEING PLAYED)
25 (AUDIO STOPPED)
26
27 MR. LAGEMAAT:
28 Q Would you now agree that you were laughing about
29 it in the statement you gave to Corporal Wilcott?
30 A I agree that the terms "funny" and "laughing" can
31 be done in various different ways. When you go
32 see a circus act, you can laugh because a
33 juggler's funny, but if you fall down and hurt
34 your elbow you can also laugh.
35 Q Really?
36 A If you hit your funny bone, sure. I've laughed
37 because of pain before. Everybody's --
38 Q So you were laughing --
39 A -- different.
40 Q -- there because -- sorry. I'm sorry to
41 interrupt. Continue.
42 A All I'm saying is that not every laugh is a
43 comical laugh, not every funny is a ha ha comical
44 funny. Some of them are ridiculous, some of them
45 are ludicrous, some of them are sarcastic, some of
46 them are ironic, some of them are ha ha funny.
47 That was not a ha ha funny, but it's ridiculous.

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1 It's ridiculous that that would be the story that
2 my son would believe --
3 Q But -- but --
4 A -- or know. But, yes, I did laugh.
5 Q But you were comparing it to falling down -- or
6 hurting your elbow, that laugh?
7 A No, that's not what I said at all.
8 Q So why were you laughing?
9 A Because it's ridiculous. Same reason I said in
10 the recording.
11 Q Okay. Do you in any way find it funny that quite
12 often during this time, and you've made this
13 allegation, that -- or tell me first, quite often
14 during this period did Mr. Fox know things about
15 you before you knew them? And I'm talking about
16 legal issues.
17 A Yes.
18 Q And did you find that funny?
19 A No, I found that scary. Like during the time of
20 that happening, that was during court proceedings.
21 The website hadn't come up, the harassment hadn't
22 really started yet, so really it was just a lot of
23 custody battles and emails back and forth. So I
24 thought it was creepy that he would be researching
25 and paying to get information on me before I would
26 even know about it. But at the time it was not --
27 I was not trying to say that there was harassment
28 or a fear for my life.
29 Q Well, at the time, in hindsight, do you find it
30 funny that he knew things before you knew them --
31 A No.
32 Q -- about you? You don't find it funny. Do you
33 recall giving the statement, the same one on July
34 13th, to Corporal Wilcott at the police station in
35 -- or Arizona?
36 A Yes.
37 Q And were you laughing when you were talking about
38 him knowing more than you --
39 A My laughing is a --
40 Q -- or sooner than you?
41 A My laughing is a coping mechanism in a lot of
42 cases. If I don't maintain some sense of --
43 Q I --
44 A -- sanity through this --
45 Q I asked you --
46 A -- then I would lose my mind. And so a lot of
47 times I will laugh in -- so that I don't cry.

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1 Q I asked you if you were laughing.
2 A I don't remember, but I assume that you have the
3 clip so we can find out. I would assume that yes.
4 Q So you don't know if you were laughing at the
5 time.
6 A I don't remember everything that I laughed at
7 during this interview.
8 MR. MYHRE: My Lady, my friend has already established
9 that she doesn't remember giving this statement.
10 There's no utility in asking her whether or not
11 she remembers every time.
12 MR. LAGEMAAT: I'm going to play for you a clip, Ms.
13 Capuano. Sorry, it's a little bit hard to get on
14 the precise seconds and I've got to play it up to
15 that portion.
16
17 (AUDIO BEING PLAYED)
18 (AUDIO STOPPED)
19
20 A Yeah, I was about to cry.
21 MR. LAGEMAAT:
22 Q Would you agree with -- pardon me?
23 A I was about to cry, so I laughed instead.
24 Q That was about to cry?
25 A That was me about to cry, and so I laughed
26 instead. That's the way I go on.
27 Q Do you think it's funny, in hindsight, the fact
28 that you are able to represent yourself in family
29 court and win?
30 A I think that it was ironic that I had spent a lot
31 of money on lawyers and gotten nowhere in my case
32 until I took over. I think that's ironic, yeah.
33 Q Irony or funny?
34 A They can be construed as the same.
35 Q Do you recall giving the -- I've asked you, the
36 statement, and we're going to talk about the same
37 statement, Corporal Wilcott. Do you recall
38 talking about being able to represent yourself in
39 court, family court, and winning, and laughing
40 about the -- the court deferring a child support
41 request? Do you recall laughing about that?
42 A I don't remember it being said like that.
43 MR. LAGEMAAT: Again I'm going to play a clip to you,
44 Ms. Capuano, and it will just take a second to get
45 to it, or 30 seconds.
46
47 (AUDIO BEING PLAYED)

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1 (AUDIO STOPPED)

2
3 MR. LAGEMAAT:

4 Q Would you agree with me you were laughing about
5 what happened in court, you won and the child
6 support being deferred?

7 A No.

8 Q You would not --

9 A I don't agree with that.

10 Q -- agree you were laughing.

11 A I don't agree that I was laughing because I was
12 not assigned child support, no. That's not what
13 that meant at all.

14 Q What were you laughing about?

15 A The laugh wasn't a laugh because the situation was
16 funny, the laugh was in exasperation again. This
17 has been really hard. The laughing is a coping
18 mechanism.

19 Q Have you laughed at all here the last three days?

20 A Yes. You just called me on it.

21 Q Did you find it funny, Ms. Capuano, when your
22 coworkers would approach you, knowing that you had
23 said on LinkedIn -- or a LinkedIn profile in your
24 name had said that you were a stripper? Did you
25 find that funny?

26 A No.

27 Q And in the same statement with Corporal Wilcott at
28 the police station, did you laugh about that?

29 A Probably, yes. And I think that that proves my
30 point. Anybody in a work situation, if they're --
31 come out with their colleagues and their
32 colleagues tell them that they saw a LinkedIn
33 profile that says they're a stripper, I don't
34 think that anybody would find that comically
35 funny.

36 Q But why would they laugh, then?

37 A It's in coping. If I don't laugh about some of
38 these things, if I don't, then I cry.

39 Q But you don't recall if you laughed, is that
40 correct, in -- with Corporal Wilcott?

41 A I can't guarantee you that that's one of the
42 moments. I don't remember --

43 Q Yes.

44 A -- every time. And my laugh is not a ha ha ha,
45 it's a "I can't believe I made it through this. I
46 can't believe I made it through another one of
47 these things."

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1 Q I'm going to play a short clip for you, Ms.
2 Capuano.

3 A Sure.

4

5 (AUDIO BEING PLAYED)

6 (AUDIO STOPPED)

7

8 MR. LAGEMAAT:

9 Q Would you agree with me, Ms. Capuano, that you
10 were laughing there?

11 A Not laughing at the situation, but I did in
12 telling Wilcott about it. Trying to get through
13 the story is hard.

14 Q So -- so you're saying that that wasn't genuine
15 laughing in any of these clips.

16 A No.

17 Q Sorry, I'm just getting to the last one. One
18 minute, please.

19 I think, from all of this evidence you've
20 gone through, and you're just about finished,
21 would you say that you were left with some scars
22 from this whole experience?

23 A Yes. It's still happening.

24 Q And do you find it humorous at all that you've
25 been left with scars from all of this?

26 A No, but I do have pride in myself for my strength
27 and my resiliency.

28 Q I'm going to play a short clip for you, Ms.
29 Capuano, in a second here. And -- and, sorry,
30 this again you recall giving the statement to
31 Corporal Wilcott --

32 A Yes.

33 Q -- in Phoenix in the police station.

34 A Tucson.

35 MR. LAGEMAAT: Tucson.

36

37 (AUDIO BEING PLAYED)

38 (AUDIO STOPPED)

39

40 MR. LAGEMAAT:

41 Q Would you agree with me, Ms. Capuano, you were
42 laughing in that clip?

43 A Yes, I was.

44 Q But now you're crying.

45 A That was what the laugh was to prevent.

46 Q What would -- what would have been wrong with
47 crying there? Why can you cry here but --

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1 A I'd already cried.

2 Q -- not there?

3 A I was just trying to get through the story. We
4 still had years to go through. I couldn't break
5 down that stuff.

6 Q Why not?

7 A Because I was trying to get through the story.

8 Q Isn't that what we're doing here?

9 A Yeah.

10 MR. LAGEMAAT: No more questions.

11 MR. MYHRE: My Lady, if there's any chance we could do
12 re-exam, I think I'll be about 10 minutes. And if
13 we're longer than that, I promise I will just
14 stop.

15 THE COURT: Members of the jury, is there anyone who
16 will have difficulty staying for another 10
17 minutes?
18

19 **RE-EXAMINATION BY MR. MYHRE:**
20

21 Q Ms. Capuano, I'm just going to show you a document
22 here. And, My Lady, pardon me, I only have one
23 copy of this document, so I'm going to ask the
24 question from right here, if that's okay.

25 Ms. Capuano, if you flip through these, it
26 just looks like emails between yourself and -- and
27 Richard, some that we've -- in fact all of them
28 that we've gone through already.

29 A Yes.

30 MR. MYHRE: So, members of the jury, I'm going to refer
31 Ms. Capuano to some of the emails that my friend
32 referred her to in the binder.

33 Q And so, Ms. Capuano, can I see that document? The
34 first email I'm showing you is dated January 21st,
35 2014, at 8:34 p.m., and it's titled "On the topic
36 of love"?

37 A Yes.

38 Q The original email in that chain, so the first one
39 that came from -- from Patrick Fox at 8:34 p.m.,
40 was Gabriel cc'd on that?

41 A Yes.

42 Q And so just for the record, I'm showing you a
43 document. Does that refresh your memory about
44 whether Gabriel was on that chain?

45 A Yes.

46 Q The next document I'm showing you is an email
47 titled "Telephone call", dated December 17th,

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1 2014, at 8:30 p.m.
2 A Yes.
3 THE COURT: Can you give us a clue where we find this,
4 please?
5 MR. MYHRE: So it's titled "Telephone call" and it's
6 dated December 17th, 2014.
7 THE COURT: All right.
8 MR. MYHRE: And I'm looking at the originating email in
9 that chain.
10 THE COURT: Members of the jury, it's about what I've
11 numbered the eighth page in the defence binder,
12 Exhibit 2. In Exhibit 2, it's about page 8.
13 MR. MYHRE:
14 Q Ms. Capuano, having looked at this copy of what
15 looks like that email, does that refresh your
16 memory about whether Gabriel was cc's on the
17 original chain?
18 A Yes.
19 Q And was he?
20 A Yes.
21 Q The next email I'm showing you is dated January
22 15th, 2015. It's titled "A little test".
23 A Yes.
24 Q And I'm showing you what appears to be the
25 original email in the chain from Patrick Fox at
26 9:44 p.m. on January 15th, 2015. Having looked at
27 this document, do you remember now if Gabriel was
28 cc'd on this first email?
29 A He was included, yes.
30 Q Moving on to an email dated January the 11th,
31 2015, titled "Your loving home and parental
32 teaching and guidance".
33 A Yes.
34 Q I'm showing you what appears to be the originating
35 email in that chain, from Patrick Fox at 9:04 a.m.
36 Was Gabriel cc'd on the originating email?
37 A Yes.
38 Q In that same chain there was -- the next email in
39 the chain is dated January the 11th, 2015, at
40 10:20 a.m. It just followed -- I think, in the --
41 in the defence book it just followed right on top
42 of the first one.
43 A Yes.
44 Q There are two emails in a row from -- from Patrick
45 Fox. Was Gabriel cc'd on the second one?
46 A I believe so, yes.
47 Q Moving ahead to an email January 26th, 2015,

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1 titled "Your talk with Gabriel".
2 A Yes.
3 Q I'm showing you what appears to be the originating
4 email in that chain, from Patrick Fox at 10:03
5 p.m. on January 26th, 2015. Having looked at this
6 document, can you tell us whether Gabriel was cc'd
7 on that first email?
8 A Yes.
9 Q Moving ahead to an email titled "Your belief in my
10 motives", dated February the 8th, 2015. I'm
11 showing you what appears to be about the third
12 email in the chain.
13 A Yes.
14 Q Was Gabriel cc'd on the third email in that chain?
15 A Yes.
16 Q And that was an email from Patrick Fox to you
17 dated February the 8th, 2015, at 10:08 a.m.
18 A Yes.
19 Q Lastly, showing you an email from May 7th, 2015,
20 titled "More of what I know".
21 A Yes.
22 Q And I'm showing you the originating email on that
23 chain, May 7th, 2015, at 1:07 p.m., from Patrick
24 Fox to you. Can you tell us whether Gabriel was
25 cc'd on that email?
26 A Yes.
27 Q Ms. Capuano, I'm showing you a document. Could
28 you just take a quick look at that and tell me
29 whether you recognize it.
30 MR. MYHRE: There's a copy for Your Ladyship.
31 THE COURT: Thank you.
32 MR. MYHRE:
33 Q Ms. Capuano, do you recognize this document?
34 A Yes.
35 Q And this is an email from Richard that came to you
36 in the middle of a long chain that we've looked at
37 over the last few days.
38 A Yes.
39 Q And is that an accurate printout of the email?
40 A Yes.
41 MR. MYHRE: My Lady, could that be marked as an
42 exhibit, please?
43 THE COURT: Don't we need to know more about it?
44 MR. MYHRE: I believe, My Lady, she's authenticated it
45 as an email she received in the middle of that
46 chain and that's --
47 THE COURT: Well, don't we need to know what chain?

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1 MR. MYHRE: There is a subject line on that email.

2 Q Ms. Capuano, could you read it out?

3 A "Your loving home and parental teaching and
4 guidance".

5 THE COURT: All right. Any objection?

6 MR. LAGEMAAT: No objection --

7 THE COURT: All right.

8 MR. LAGEMAAT: -- My Lady.

9 THE COURT: So that would be what?

10 THE CLERK: Exhibit 3, My Lady.

11 THE COURT: Thank you.

12 MR. MYHRE: Thank you.

13

14 **EXHIBIT 3: Printout of email chain from**
15 **Patrick Fox to Desiree Capuano dated**
16 **01/14/2015, subject line "Your loving home**
17 **and parental teaching and guidance"**
18

19 MR. MYHRE:

20 Q Ms. Capuano, I'm showing you another document. Do
21 you recognize this as the email you sent that
22 started the long chain we looked at titled
23 "Gabriel's summer visitation 2015"?

24 A Yes.

25 Q And is this an accurate copy of that email?

26 A Yes.

27 MR. MYHRE: My Lady, could that be marked as the next
28 exhibit, please?

29 THE COURT: Okay. No objection?

30 MR. LAGEMAAT: No objection, My Lady.

31 THE CLERK: Exhibit 4, My Lady.

32

33 **EXHIBIT 4: Printout of email from Desiree**
34 **Capuano to Patrick Fox dated 04/20/2015,**
35 **subject line "Gabriel summer visitation 2015"**
36

37 THE SHERIFF: Counsel, we're short by five.

38 MR. MYHRE: By five?

39 THE SHERIFF: Yeah.

40 MR. MYHRE: Please pardon me, My Lady. I'll have to
41 bring in new copies tomorrow.

42 THE COURT: Perhaps the jurors wouldn't mind sharing
43 for now, and Mr. Myhre will bring some copies
44 tomorrow.

45 MR. MYHRE: I'm hitting 4:10, My Lady, but these are my
46 last -- this is the last document I'm asking
47 about.

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1 THE COURT: All right.
2 MR. MYHRE: And I have a copy for Your Ladyship.
3 THE COURT: Thank you.
4 MR. MYHRE:
5 Q Ms. Capuano, do you recognize this as a printout
6 of what appears to be all or virtually all emails
7 between yourself and -- and Mr. Riess between May
8 2016 going back to February 2014.
9 A Yes, these are the emails.
10 Q Okay. And do you see that there's some
11 highlighting on this page?
12 A Yes.
13 Q And can you just look it over and tell me if you
14 agree that this is accurate? The emails that are
15 highlighted in pink are email -- pardon me, let me
16 back up. I'm going to suggest that every
17 highlighted email is an originating email in a
18 chain.
19 A Okay.
20 Q There may or may not have been follow-up emails.
21 Now, the pink highlighting shows an email that you
22 initiated, the yellow highlighting shows an email
23 that Richard initiated but to which you did not
24 respond --
25 A Okay.
26 Q -- and the green highlighting shows an email that
27 Richard initiated to which you did respond.
28 A Okay.
29 MR. MYHRE: Just look through that document and tell me
30 if that appears to be accurate, please.
31 My Lady, may I give copies to the jury?
32 THE COURT: No objection?
33 MR. LAGEMAAT: No objection.
34 MR. MYHRE:
35 Q Ms. Capuano, does my characterization of the
36 highlighting appear to be accurate?
37 A Yes.
38 MR. MYHRE: My Lady, if this could please be marked as
39 an exhibit.
40 THE COURT: All right.
41 MR. LAGEMAAT: No objection.
42 THE CLERK: Exhibit 5, My Lady.
43
44 **EXHIBIT 5: Document titled "Desiree Capuano"**
45 **containing printout of emails**
46
47 MR. MYHRE: My Lady, those are all my questions.

Proceedings**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 THE COURT: All right. Thank you very much.
2 Members of the jury, thank you for your
3 attention and your patience through the day when
4 you've had to spend some time in the jury room. I
5 ask you to come back tomorrow ready to start at
6 the usual time, please. Thank you.

7
8 (JURY OUT)
9

10 THE COURT: Is there anything else we need to deal
11 with?

12 MR. MYHRE: No, My Lady.

13 MR. LAGEMAAT: No, My Lady.

14 THE COURT: I take it that's the end of your
15 involvement, Mr. Lagemaat.

16 MR. LAGEMAAT: Yes

17 THE COURT: Thank you very much.

18 MR. LAGEMAAT: Thank you, My Lady.

19 THE COURT: Thank you, Ms. Chatha.

20 Ms. Capuano, thank you for coming, and I
21 understand you're excused now. There's no need
22 for her to remain, I take it.

23 A Thank you.

24
25 (WITNESS EXCUSED)
26

27 (PROCEEDINGS ADJOURNED TO JUNE 16, 2017, AT
28 10:00 A.M.)
29
30
31

32 Transcriber: K. Lowe
33 S. Curran
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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.

K. Lowe
Court Transcriber

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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. Curran
Court Transcriber