

27178-2
Vancouver Registry

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

Vancouver, B.C.
June 26, 2017

REGINA

v.

PATRICK HENRY FOX

PROCEEDINGS AT TRIAL

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JURISDICTION

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

1
(Jury Out)
Proceedings

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1 Vancouver, B.C.
2 June 26, 2017
3
4 (JURY OUT)
5
6 THE CLERK: In the Supreme Court of British Columbia,
7 at Vancouver, this 26th day of June, 2017, calling
8 the matter of Her Majesty the Queen against
9 Patrick Henry Fox, My Lady.
10 THE COURT: Yes.
11 MR. MYHRE: My Lady, I think there are just a couple of
12 housekeeping things quickly before we get going.
13 MR. LAGEMAAT: Yes, My Lady, I'm now counsel for Mr.
14 Fox. We will be dividing up the closing. I will
15 be covering the harassment charge, Mr. Fox will
16 cover the firearm charge.
17 THE COURT: All right.
18 MR. LAGEMAAT: And one -- one issue I can see arising
19 from that would be if the jury has questions
20 during deliberation, I would be called back if
21 it's to do with the harassment. If not, it would
22 be Mr. Fox answering the question if it's to do
23 with the other count.
24 THE COURT: I would think you would need to be
25 available during the deliber --
26 MR. LAGEMAAT: Yes, I will be available regardless
27 throughout deliberation, and perhaps if -- if --
28 if you prefer, I could answer questions on the
29 other charge, but I would have to consult with Mr.
30 Fox because, as you're aware, I wasn't here for
31 that evidence.
32 THE COURT: Well, maybe we'll -- as long as you're
33 available, perhaps the best approach is we deal
34 with it --
35 MR. LAGEMAAT: Yes.
36 THE COURT: -- as it arises.
37 MR. LAGEMAAT: I agree.
38 THE COURT: Have you spoken with Mr. Myhre about this
39 arrangement?
40 MR. LAGEMAAT: Yes, I have. I actually proposed it to
41 him before accepting the retainer to see if there
42 was going to be any opposition.
43 THE COURT: And obviously no, Mr. Myhre?
44 MR. MYHRE: Right.
45 THE COURT: And how -- are you ready to proceed this
46 morning?
47 MR. LAGEMAAT: Yes, I am.

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1 THE COURT: And do you -- you may be aware that Mr.
2 Myhre and Mr. Fox have been reviewing a draft of
3 the charge that I've prepared. Is that something
4 that you wish to have some involvement with?
5 MR. LAGEMAAT: I -- I've reviewed the charge, and I --
6 I have no issues with it. It's sufficient.
7 THE COURT: All right. I think perhaps what we'll do
8 then is if everyone is ready, we'll continue on.
9 Are you, when we get to the defence closings, have
10 you worked out an order and a rough timeline?
11 MR. LAGEMAAT: I would like to go first on the
12 harassment charge, and I don't expect to be more
13 than 30 or 40 minutes, and I don't know how long
14 Mr. Fox plans to be on the other count.
15 THE ACCUSED: I wouldn't anticipate more than 15
16 minutes.
17 THE COURT: All right. So that doesn't upset the rough
18 timeline we had in mind. Mr. Myhre, anything from
19 you with respect to this?
20 MR. MYHRE: My Lady, I do think I will be about an hour
21 and a half. My preference, subject to Your
22 Ladyship's direction would be to take a break
23 after roughly an hour. I think that I'm going to
24 need one partly due to the amount of coffee I've
25 consumed this morning, but also to give the jury a
26 break after listening to me for an hour.
27 THE COURT: All right. Then we'll do that. Do you
28 want to keep an eye on the clock and let me know
29 when a good time is somewhere around 11:00 to --
30 to break or perhaps a little bit after 11:00?
31 MR. MYHRE: Yes, thank you.
32 THE COURT: Anything else we should --
33 MR. MYHRE: No, My Lady.
34 THE COURT: -- deal with? You're ready to go, Mr.
35 Myhre?
36 MR. MYHRE: Yes.
37 THE COURT: Mr. Fox, all of that accords with what you
38 had in mind for today as well?
39 THE ACCUSED: Yes, My Lady.
40 THE COURT: All right. And Mr. Myhre, where will you
41 be speaking from?
42 MR. MYHRE: My intention is to speak from here, My
43 Lady.
44 THE COURT: I see. All right.
45 MR. MYHRE: And maybe --
46 THE COURT: Now --
47 MR. MYHRE: -- should we confirm that this is being

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1 picked up by --
2 THE CLERK: It is.
3 MR. MYHRE: Thank you.
4 THE COURT: Mr. Fox, does that cause you any concern,
5 you're not able to see all of the jurors with Mr.
6 Myhre standing there?
7 THE ACCUSED: I'm okay with it. It's not ideal, but I
8 guess I could always move around him.
9 MR. MYHRE: I wouldn't be opposed to Mr. Fox sitting in
10 my chair while I'm --
11 THE COURT: Does that cause you any concern, Mr.
12 Lagemaat?
13 MR. LAGEMAAT: No, My Lady.
14 THE COURT: All right. Mr. Fox -- and Mr. Sheriff, it
15 doesn't cause you any concern?
16 THE SHERIFF: [No audible response].
17 THE COURT: Then if you wish to move over now, you
18 could do that, or. Mr. Fox, when the jury come
19 in, they will probably notice that Mr. Lagemaat is
20 here. Shall I tell them that he will be making
21 some of your closing address?
22 THE ACCUSED: Yes, I -- I would have you tell them.
23 THE COURT: All right. All right. So we're ready.
24 Please.
25 THE SHERIFF: The jury, My Lady.

26
27 (JURY IN)

28
29 THE COURT: Good morning, members of the jury. Before
30 we start with the closing addresses, just to
31 explain to you that, as you probably noticed, Mr.
32 Lagemaat is back in the courtroom. When we get to
33 the defence closing addresses, Mr. Lagemaat will
34 be making Mr. Fox's closing address concerning
35 Count 1, and Mr. Fox will be making his own
36 closing address concerning Count 2.
37 But first we have the Crown's closing
38 address, Mr. Myhre?

39
40 **CLOSING ADDRESS FOR CROWN BY MR. MYHRE:**

41
42 MR. MYHRE: Thank you, My Lady.
43 Ladies and gentlemen, if you knew that
44 someone hated you so much that they had made it
45 their life's goal to make you miserable, and if
46 they were actually taking steps to accomplish that
47 goal, and day after day and week after week you

Closing Address for Crown by Mr. Myhre**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 knew they were out there working on it because
2 they reminded you about it, if you knew that there
3 was a website out there dedicated to that purpose,
4 if they kept reminding you about how effective
5 they were in their efforts to make you miserable,
6 ladies and gentlemen, would you be scared? Would
7 you have concerns for your psychological,
8 emotional and physical safety?

9 Now, you, of course, are the finders of fact
10 in this matter. It's for you to decide whether
11 Mr. Fox's action harassed Ms. Capuano. It's for
12 you to decide whether her fears that she told you
13 about were legitimate. And my suggestion to you
14 is that the evidence you heard now almost two
15 weeks ago, primarily in the form of Mr. Fox's own
16 words, should lead you to conclude that he has
17 what could be fairly characterized as an obsessive
18 and all-consuming hatred for Ms. Capuano. He
19 would like to see her dead, and he actually did
20 try to make that happen.

21 He tried to be clever in how he went about
22 it, but he wasn't subtle, and I suggest to you
23 that that's because he thought what he was doing
24 was legal. Unfortunately for him he was mistaken
25 about the law, and what he was doing, in my
26 submission, was quite plainly criminal harassment.

27 My submissions to this morning will take
28 about an hour and a half, and are divided into
29 five parts.

30 First, I'll discuss what to make of the
31 evidence that predates the period for which he's
32 charged with criminal harassment on January 11th,
33 2015, and how you use that to inform your
34 deliberations on whether his conduct from January
35 11th on constituted harassment.

36 Second, I'll address how Mr. Fox's conduct
37 fits into the definition of prohibited conduct
38 when it comes to criminal harassment, and I'll
39 suggest to you ten specific categories of his
40 conduct that fall within the definition.

41 Then we'll talk about the effect that his
42 actions had on Ms. Capuano. To constitute
43 harassment, Ms. Capuano would have to be harassed
44 or tormented, and she would have to have a
45 legitimate fear for her emotional, physical or
46 psychological wellbeing.

47 And then finally on the harassment charge

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1 we'll talk about Mr. Fox's intention shown through
2 his many statements that will show, I suggest,
3 that he was well aware that his actions were
4 harassing Ms. Capuano.

5 And then finally and somewhat briefly, I'll
6 address the s. 93 charge.

7 As I make my submissions I'll be taking you
8 through some excerpts from Exhibit 1. Does
9 everyone have their copy of Exhibit 1? Sorry, I
10 should have asked Mr. Sheriff to get that because
11 I think it will be important because we will
12 actually be referring to it.

13 Pardon me, My Lady, that's an oversight on my
14 part, but could we ask the jury to retrieve
15 Exhibit 1?

16 THE COURT: Are these copies in the jury room?

17 THE SHERIFF: [Indiscernible/not at microphone].

18 THE COURT: All right. What's the best way --

19 THE SHERIFF: [Indiscernible], My Lady, would be to get
20 them themselves.

21 THE COURT: All right. Then we'll stand down briefly.

22
23 (JURY OUT)

24
25 THE CLERK: Order in court.

26 THE COURT: While the jury is out, I can give you
27 copies of what I propose as a verdict sheet and --

28 THE SHERIFF: The jury, My Lady.

29 THE COURT: Oh, I'll do that later.

30
31 (JURY IN)

32
33 THE COURT: Thank you.

34
35 **CLOSING ADDRESS FOR CROWN BY MR. MYHRE, CONTINUING:**

36
37 MR. MYHRE: Now, as I make my submissions, there will
38 be times where I ask you to read emails and there
39 will be other times where I'll just give you a
40 date and a subject line, a reference for you to
41 look up later if you want to get the full context.

42 And, on that note, I would certainly
43 encourage anybody not to take any of these little
44 excerpts out of context. If you're not sure about
45 the context, by all means, go back and review the
46 entire email.

47 So, first the evidence predating the charge

Closing Address for Crown by Mr. Myhre**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 period. Now, this evidence is relevant to the
2 charge of criminal harassment in this way. It's
3 relevant to understanding how Ms. Capuano and Mr.
4 Fox would have been feeling during the charge
5 period, explaining why they did the things that
6 they did, and understanding what they can be
7 expected to have been aware of at that time.

8 So, to recap briefly, in 2000 we know that
9 Desiree Capuano and Mr. Fox had a brief
10 relationship, they had a son named Gabriel. And
11 then there's a conflict in the evidence. Maybe
12 Mr. Fox disappeared with Gabriel, maybe Ms.
13 Capuano kind of absented herself from his life for
14 a period of time.

15 That's not something that, in my submission,
16 needs to be resolved in this case. The truth, I
17 submit to you, is probably somewhere in the
18 middle.

19 But we do know that in 2011, at Mr. Fox's
20 invitation, Ms. Capuano resumed contact with
21 Gabriel. She learned that Gabriel was living not
22 with Mr. Fox but with a family friend, and then
23 she got nervous about whether he was going to
24 disappear again, so she went and took custody of
25 him. There followed the custody battle.

26 And then in late 2012 Mr. Fox applied to take
27 Gabriel to Vancouver with him, and suspend
28 visitation with Ms. Capuano. Ms. Capuano told you
29 that she was scared she wasn't going to see him
30 again, and she retaliated by calling the FBI and
31 telling them that Patrick Fox, Richard Riess, was
32 in the country illegally and if they didn't do
33 something about it, she was going to go to the
34 media. And then he was removed from the country
35 two times, he was removed and came back, and he
36 was removed again when she called the FBI again.

37 And you saw several statements over the
38 course of the trial from Mr. Fox that he feels
39 entirely justified because of those actions on her
40 part to do what he then did over the next two
41 years.

42 You may recall this statement that he made
43 when he was talking to Constable Potts. He said
44 [as read in]:

45
46 She's made it so that I can't even go back
47 and visit friends or family that live in L.A.

Closing Address for Crown by Mr. Myhre**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 I can't attend any of our son's school
2 functions like when he graduates and stuff.
3
4 That was line 1095 of that statement.
5 Consider this, ladies and gentlemen. He had
6 already been removed from the country in 2011,
7 that's in his statement at line 1091. He had come
8 back into the country illegally. He was trying to
9 take Gabriel from Ms. Capuano and go to Vancouver.
10 And so, when you consider justification isn't an
11 excuse for criminal harassment, but when you
12 consider that, put those actions in that context.
13 So then we saw an email in 2013 at tab 9, I'm
14 not going to take you there, and it was generally
15 to the effect of, if she didn't return Gabriel to
16 him, he was going to spend thousands of dollars
17 investigating her, everyone she was associated
18 with, taking her to court, and she would be left
19 with nothing in the end, and she would lose in the
20 end. And he followed that up with another email
21 saying "And I meant it."
22 So then we jump forward to the spring of 2014
23 when a colleague of Ms. Capuano's informed her
24 that there was a LinkedIn site in her name saying
25 she was a stripper, suggesting maybe you don't
26 want to put that on your LinkedIn profile. Ms.
27 Capuano went on to discover that that profile had
28 been linked to a number of her work colleagues.
29 Then there was the March 23rd, 2014 email
30 from Mr. Fox informing Ms. Capuano that he had set
31 up this website, that he had posted private
32 information on it. He taunted her in that email
33 that her colleagues would be looking at it, and
34 joking amongst themselves about what a fool she
35 was, what a terrible parent she was, maybe
36 thinking about her in her underwear.
37 Mr. Fox, of course, admits that he's
38 responsible for this website, although he was a
39 little coy about it in some of those early emails.
40 You can see that plainly at line 610 of his
41 statement. There's no question that he created
42 this website.
43 So then April 28th, 2014, and you have the
44 cease and desist email. She asked him quite
45 directly, quite politely to stop. His response to
46 that email, if you go back and look at it, can be
47 characterized as "that's not really harassment."

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1 And then on May 2nd there was another email and
2 the tone of that email, I suggest to you, was "and
3 you deserve it."

4 Then there's a May 22nd email where Mr. Fox
5 waives all rights to custody of Gabriel. In the
6 July 21st email he would tell her "that's just
7 part of my overall plan," but her response to him
8 waiving all of his rights to Gabriel, I suggest to
9 you is quite indicative of the person Ms. Capuano
10 is. She could have then said, "Great, I win,
11 Gabriel stays with me." And of course, we know,
12 you saw the email, that's not what she did. She
13 said "I think it's important for Gabriel to spend
14 time with you."

15 In the July 23rd, 2014 email Mr. Fox was
16 again explicit about his intentions with respect
17 to Ms. Capuano, and I'm quoting here [as read in]:
18

19 I will destroy you slowly and incrementally.
20 Don't think for one second that anything will
21 ever be more important to me than destroying
22 you. Every moment of my life is focused on
23 that single goal.
24

25 And that was July 23rd.

26 Now, you heard Ms. Capuano's testimony that
27 she tried the tactic of not responding, and if you
28 review Exhibit 5, it was the list of emails that I
29 showed her during re-examination, you can see that
30 she did. She tried not responding. If you look
31 at the yellow highlighter, she doesn't respond to
32 most of his emails through March, May, June and
33 July of 2014.

34 We know that during that time at some point
35 she contacted the Phoenix Police Department to try
36 to get help. We know that either her or the
37 Apollo Group contacted the website host and tried
38 to get them to take it down. If you look at Mr.
39 Fox's July 31st email, you can see his response.
40 He moved the server out of the jurisdiction.

41 Now, I'd like to take you to a couple of the
42 December 17th emails, so if you could pull out
43 Exhibit 1 and go to tab 10, and they're the last
44 two emails in that tab.

45 So if you go to the second last one titled
46 "Telephone call," and I'm going to quote from the
47 middle of the largest paragraph there. You've

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1 already heard this [as read in]:

2
3 I know that the best way to hurt you
4 permanently is emotionally, not through your
5 reputation, finances or career, and what
6 could be more effective than for your child
7 to utterly despise you because of your own
8 actions?

9
10 And then on down at the bottom of that paragraph:

11
12 You see, you don't think things through.
13 You're a fool, Desiree. That's why you are
14 where you are.

15
16 And then the second insight that we get into Mr.
17 Fox's intentions at that time, the next email, the
18 ugly proof, he says a lot in this email. He says
19 [as read in]:

20
21 I cross the border at will. I have handguns,
22 but don't take that as harassment or
23 threatening. I have a changed identity.
24 Gabriel likes me better. I've been paying
25 you a salary for years and not paying your
26 taxes so the IRS is going to come for you.

27
28 All of these things are in this email. And then
29 if I could take you to the bottom of the first
30 page, the last two lines there, this is just after
31 he's made the taunt about the IRS coming for her:

32
33 I'm methodical and think things through. I
34 look at the long-term. Sometimes my plans
35 take years to complete, but I always see them
36 through.

37
38 And then we know that Gabriel went to visit
39 his father over the winter break right around that
40 time. He came back in January, and you may
41 remember Ms. Capuano's characterization of Gabriel
42 when he came back home. He was reserved, he
43 wouldn't associate with the family, he would shut
44 himself up in his room, he would sit far away
45 whenever he could, and I suggest to you that that
46 ties right back into what Mr. Fox was saying in
47 the first December 17th email about harming her

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1 emotionally.

2 And so we get to January 11th, 2015, and I
3 suggest that what we know about Patrick Fox's
4 intention is quite plainly stated by him, and he
5 couldn't have been more explicit, and as we will
6 that his intentions didn't change moving into the
7 period after January the 11th, 2015.

8 But consider also by this point in time,
9 eight or nine months after the website has been
10 created, the LinkedIn profile, all the
11 difficulties she's had at Apollo, how is Desiree
12 Capuano feeling at this point?

13 So knows her ex-husband hates her so
14 passionately he's said I've dedicated my whole
15 life to making your life miserable. He said he's
16 thinking long-term, he's already humiliated you at
17 work, he appears to be actively trying to
18 manipulate the custody situation so that Gabriel
19 hates her.

20 She tried ignoring the emails, that didn't
21 help. She looked for help from the police, that
22 didn't help. She tried to get the website shut
23 down, that didn't help.

24 I would suggest to you, members of the jury,
25 that by this point in time Ms. Capuano was already
26 feeling extremely harassed, and that's where she
27 was at in January the 11th, 2015.

28 So that brings me to the next section,
29 Patrick Fox's actual conduct during this period in
30 time, January the 11th, 2015 until May 2016.

31 Now, tomorrow when Her Ladyship gives you the
32 instructions on the law, she's going to ask you to
33 go through what we call the elements of the
34 offence step by step and decide as a group whether
35 you're satisfied beyond a reasonable doubt about
36 each one of them. And the first one has to do
37 with Patrick Fox's conduct, and does it fall
38 within the prohibited conduct set out in the
39 *Criminal Code*. And that conduct is specified in
40 the *Criminal Code* in these two ways.

41 It can be repeated communication to Desiree
42 Capuano or anyone she knows, or it can be
43 threatening conduct, conduct that causes her to
44 fear for her emotional, physical, psychological
45 wellbeing.

46 Now, a couple of caveats about how I discuss
47 this evidence at this point. Some of the stuff

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1 that we talk about under Patrick Fox's conduct is
2 also going to be relevant to understanding what
3 his intention was with that conduct, and it's also
4 going to be relevant to trying to decide whether
5 she had legitimate fears for her safety. So just
6 because I mention it here and not again doesn't
7 mean you can't refer to it when you're thinking
8 about each of those subsequent elements. There's
9 a caveat to that.

10 There are some things that Desiree Capuano
11 wasn't aware of. You didn't hear her talk about
12 many of the blogs that are at tab 7 in Exhibit 1,
13 and I'm going to take you to a few of them today,
14 but when you're considering the elements of the
15 offence, if Desiree Capuano didn't know about it,
16 then it's not relevant to your determination of
17 whether she feared and had a legitimate fear. But
18 what it is relevant to is Patrick Fox's intention.
19 So I'll discuss that more as we discuss the
20 evidence.

21 So another word on threatening conduct,
22 threatening conduct is any conduct designed to
23 instill a sense of fear. You don't have to write
24 this down because Her Ladyship will give you the
25 instructions on the law, and that can be fears for
26 your emotional, physical, psychological safety.
27 It has to be conduct that's meant to intimidate or
28 to be taken seriously, and that's it can be either
29 one.

30 For example, someone might say "I'm going to
31 bomb your house". You might know full well they
32 don't have that capability. That doesn't mean
33 necessarily that they're not trying to intimidate
34 you. It may be relevant to that determination,
35 but threatening conduct is conduct designed to
36 intimidate or to be taken seriously.

37 So, as I said at the outset, I'm going to
38 suggest to you that you can think about Patrick
39 Fox's conduct in ten different categories.

40 We spent four days going over these things
41 with Ms. Capuano. I'm only going to be giving you
42 examples because I don't say that doesn't mean
43 there might not be other things that are relevant.

44 So, number 1, Mr. Fox threatened to
45 relentlessly pursue her misery. He told her his
46 future plans to accomplish that, and then he
47 taunted her about his effectiveness and her

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1 inability to do anything about it.
2 If we could go to the first email at tab 11,
3 there are several statements in this email that
4 fall into that category, and if we could go to
5 where the chain starts on the fifth page, you can
6 see that these emails start with what I suggest to
7 you are two taunting emails from Mr. Fox that have
8 to do with Gabriel, and they tie in quite closely
9 with remember what Ms. Capuano said about how
10 Gabriel's demeanour was when he returned from his
11 visit with his father.
12 If you look at the last page, this -- the
13 second paragraph, he taunts her about how Gabriel
14 -- Gabriel and his demeanour is going to undermine
15 her family. Halfway down the paragraph [as read
16 in]:
17
18 The longer Gabriel is there with his bad
19 attitude, his indifference towards you and
20 same for your family and his subtle demeanour
21 of disgusting condescension towards you and
22 same for your mother and your trashy ways,
23 the more it will instill and stay in his
24 subconscious that he is inferior and
25 inadequate, the more it will slowly eat away
26 at your perfect family.
27
28 If you look at the previous page, the bottom of
29 the second email from Mr. Fox, the paragraph that
30 starts with:
31
32 I've discussed all of this with Gabriel, and
33 I've explained to him what my plan is with
34 respect to you. I've told him if he's
35 uncomfortable with any of it, then I won't
36 proceed. He is fully aware that he is being
37 used as a pawn in my plan to ruin your life,
38 and he seems to be okay with it.
39
40 Then if we could go back to the first page in that
41 email chain, and if you look at about three
42 paragraphs down or so you see Ms. Capuano had
43 tried to respond to this with what she
44 characterized as bravado. She says [as read in]:
45
46 Your stalker-like obsession with me is truly
47 impressive. The amount of time and energy

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1 spent thinking of me is flattering but
2 honestly a little pathetic.

3
4 And Mr. Fox tries to distill that in no uncertain
5 terms. [As read in]:
6

7 If there is any sincerity in your statements,
8 then you have grossly misinterpreted my
9 intentions. I was pretty direct when I told
10 Detective Tuchfarber that my intention was to
11 do everything in my power and capabilities to
12 make your life as miserable as possible and,
13 if possible, to the point that you ultimately
14 commit suicide. That would be my ultimate
15 desire.
16

17 And then he goes on to taunt her with a threat to
18 have a billboard campaign in and around Phoenix.

19 Ladies and gentlemen, I respectfully suggest
20 to you that, if that's not a threat to harm you
21 psychologically, I suggest that that quite clearly
22 is exactly that.

23 I'm not going to take you there, but I'll
24 give you references to a couple of other emails
25 where this intention is repeated [as read in]:
26

27 January 27th email regarding your talk with
28 Gabriel...
29

30 I've got a quote,
31

32 As I've stated consistently for the past year
33 and a half, the singular goal for the rest of
34 my life is to destroy your life. I don't
35 care if I die penniless and alone, as long as
36 I know I have done everything I can to make
37 your life as difficult and miserable as
38 possible within the confines of the law.
39

40 If you look at -- no, there are actually two
41 excerpts in this book from that same email string,
42 if you look at the next email, you may recall that
43 that's where he threatened to have somebody -- to
44 hire somebody to sleep with her and then take
45 pictures that he could then put on the website.
46 Again, in my submission, clearly a threat to cause
47 her emotional and psychological harm.

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1 If I could take you to tab 17, to the last
2 email the Crown asks you to look at in their
3 correspondence, and in my submission this email
4 shows him taunting Ms. Capuano about how effective
5 he's been, and if you look at the third paragraph
6 from the top [as read in]:
7

8 There will be no negotiating and I will not
9 agree to any terms you try to impose. You
10 will soon be homeless. You have no money,
11 nobody believes anything you say any more.
12 Nobody is coming to your aid or defence. You
13 will not be able to secure another job as
14 long as the website exists, and it's not
15 going anywhere as long as you're alive. Your
16 boyfriend has reached the point of being fed
17 up, and only his sense of decency towards
18 same keeps him from kicking you guys out. He
19 knows Gabriel will be fine because of me.
20

21 So he's threatened to make her miserable, he
22 certainly seems to believe that he's been
23 effective.

24 The second way, in my submission, that he
25 tried to and did harass Ms. Capuano was by his
26 repeated gratuitous denigration of her, and I
27 expect that, as we went through email after email
28 and insult after insult from Mr. Fox, you may have
29 felt the weight that Ms. Capuano might have felt
30 as she got these emails, but she couldn't stop
31 because she had to communicate because of Gabriel.

32 You may remember some of his language.
33 January 27th [as read in]:
34

35 You're one of the worst fucking parents I've
36 ever known. Dang woman, you're a fucking sad
37 excuse for a human being.
38

39 April 16th email [as read in]:
40

41 Parenting obviousness...
42

43 Basically he tries to explain to her why she's an
44 idiot and then tells her what a civil person he is
45 for having the courtesy to explain to her why
46 she's such an idiot.

47 You probably recall that very long email

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1 string from May of 2015, that's at tab 13,
2 regarding Gabriel's summer visitation. In that
3 email chain, which Mr. Lagemaat took Ms. Capuano
4 through as well, she certainly trades some insults
5 with him. Mr. Fox's language includes "fucking
6 moron" "fucking idiot" "fuck, your stupid white
7 trash single mother bullshit games, stupid fucking
8 cunt". You may recall several emails sent in the
9 summer of 2015, and you remember Ms. Capuano's
10 testimony that while many of those emails were
11 sent, Gabriel was actually with Mr. Fox in Canada.
12 If you look at the June 15th email "re status
13 update", basically denigrating her parenting
14 ability. He says to her [as read in]:
15

16 Why do you want your children to remain
17 incapable of doing anything on their own so
18 they have to depend on you. That's terrible
19 parenting, but then you're a single mother.
20 That's what all single mothers do. Single
21 mothers don't want to raise children. They
22 just want to have babies.
23

24 There are completely gratuitous emails that follow
25 that. July 12th there's an email titled "Babying
26 Gabriel." July 14th, there's an email titled "The
27 ridiculous tattoo", how their white trashiness is
28 just her mindset.

29 Then, and at this point it appears Gabriel's
30 back home with Ms. Capuano, July 18th there's an
31 email titled "Gabriel's infection". Mr. Fox's
32 language [as read in]:
33

34 What the God damn fuck is wrong with you?
35 Get the fuck off your lazy fucking ass and
36 take your fucking son to a fucking doctor,
37 you stupid piece of shit. How the fuck to
38 you get off calling yourself an excellent
39 mother? God damn, you're a fucking waste of
40 fucking space.
41

42 The third way that Mr. Fox harassed Ms. Capuano
43 was by reminding her over and over again of this
44 humiliating website.

45 Now, I suggest to you that it may be an
46 interesting legal question of whether posting a
47 website could, just in and of itself, amount to

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1 harassment, would that fall within the definition
2 of repeated communication as is set out in the
3 *Criminal Code*, and as you'll get instructions on
4 tomorrow?

5 I suggest to you, you don't have to wrestle
6 with that issue because he reminds her of it over
7 and over again in the emails. It's like having a
8 big billboard and saying "Hey, the billboard is
9 right there, look at it, it's still doing what it
10 was meant to do." And so for that reason the
11 website itself comes within the definition of
12 repeated communication. And he, of course,
13 repeatedly taunted her about it and the fact that
14 she couldn't do anything about it.

15 There are -- it's an interesting question of
16 what -- to what extent Ms. Capuano is aware of
17 what was on this website. If you're thinking
18 about that question, look at the email from 2014
19 title "Usage graphs" because he tells her about
20 it, including, you know, "there's picture of you
21 in your underwear, people are really interested in
22 looking at the pictures of your bedroom."

23 I'm going to list several emails where, if
24 you want, you can go and look at some of his
25 reminders to her about the website. January 27th,
26 regarding "Your talk with Gabriel" he tells her
27 about updating the website. May the 11th, 2015 he
28 just sends her an email titled "Website updates."
29 May the 23rd, an email titled "Search engine
30 results". June the 12th, an email titled "re
31 automobile accident." He talks about getting her
32 medical reports and posting them up there. June
33 28th, re Carrington College, and then the November
34 14th email that we just looked at.

35 And fourth way in which his conduct fell
36 within the definition of the criminal harassment
37 conduct section is threats to ruin her reputation.
38 They're very closely tied to his reminders about
39 the website and, in my submission, threatening to
40 ruin someone's reputation is threatening to hurt
41 them emotionally and psychologically.

42 That email I just mentioned, June 28th, "re
43 Carrington College", he tells her [as read in]:

44
45 Since the campus is substantially smaller,
46 then you'd be less anonymous, and word of
47 your website and your backstory should spread

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1 quickly.
2
3 The July 13th email, "Updates to your site" [as
4 read in]:
5
6 I've updated some of the information on your
7 site. Let me know if anything is inaccurate,
8 mainly on the home page and on the news page.
9 I was sure to include your new address, a
10 picture of your presumed boyfriend and
11 picture of your new home. Your reputation
12 will undoubtedly spread quickly.
13
14 And you'll remember Ms. Capuano's evidence that
15 she was aware that there were Google ads taken out
16 within a 20-mile radius of her home that would
17 point people to that website.
18 The fifth way that Mr. Fox tormented Ms.
19 Capuano in a way that is captured by the
20 definition of criminal harassment, he threatened
21 to interfere with her ability to gain employment.
22 It goes without saying, but of course as job is
23 central to your dignity as a human being, your
24 ability to care for your children, to function in
25 our society and, in my submission to you, attempts
26 to interfere with someone's ability to gain
27 employment are quite clearly attempts to hurt them
28 psychologically and emotionally. We already
29 looked at the November 14th email, taunting her
30 that she wasn't going to be able to get a job, as
31 long as the website is around.
32 When you're considering what Mr. Fox's
33 intention was and whether there's any -- any
34 ambiguity in it, there are three blogs that you
35 can look at. I'm going to take you to one of
36 them, so if you could go to tab 7, and again I
37 have to apologize for the lack of page numbers,
38 but about 14 pages in, if you just -- I'm not
39 counting them double-sided, there's a -- there's a
40 blog titled "An Open Letter to All Perspective
41 Employers."
42 So we see a date there, December 6th, 2015,
43 and just step back and imagine for a second that
44 you're a potential employer, and you've Googled
45 Ms. Capuano and this page comes up. It looks like
46 it's written by her [as read in]:
47

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1 An Open Letter to All Perspective Employers:
2 Why you should hire me. I'll cut right to
3 the chase. (1) I use drugs while I'm at
4 work; (2) I regularly get high before going
5 to work; (3)...

6
7 And it just goes on and on and finishes with the
8 term:

9
10 Suck it, bitches. Keep your fucking jobs. I
11 wouldn't work for you anyway. Stupid dirty...

12
13 And I'm not going to repeat the rest of it. So,
14 imagine, what's the intention of a person who
15 posts this about somebody else? This person who's
16 threatened you already that they're going to
17 interfere with your ability to gain employment.

18 Two other blogs that I'm not going to
19 specifically take you to right now, there's one
20 titled "Green Valley Hospital", which contemplates
21 an employer going to the website, and what they
22 might think. And then there's the blog "Oh to
23 work at Pima Community College" and you'll
24 remember Ms. Capuano's evidence that she actually
25 had a job offer from there and it was rescinded.

26 Patrick Fox admits this particular type of
27 harassment when he's talking to Constable Potts.
28 If you want to look it up, it's at line 1592 of
29 his statement, and Constable Potts is asking him
30 about that email where he says his intention is to
31 cause her as much misery as possible. And he
32 says, Mr. Fox says [as read in]:

33
34 Mm-hmm. Mm-hmm. Um, by pursuing things like
35 her or by trying to do things like making it
36 so she can't get a job, but by doing it
37 legally. By publishing, um, proof the kind
38 of person she is, proof of her drug use,
39 proof of how she's a compulsive liar.

40
41 The sixth way that he tried to harass Ms. Capuano
42 was by trying to destroy her relationship with
43 Gabriel, and that could fall into the repeated
44 communication category or it could fall in with
45 threatening conduct category.

46 We've already looked at his December 2014
47 email where he said he knew the best way to hurt

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1 her was emotionally, and what could be more
2 effective than to have Gabriel despise her. We've
3 already looked at the January 11th email where he
4 talks about using Gabriel as a pawn in his plan.
5 You could look at the January 28th, 2015 email
6 titled "More Plans". I suggest that's an email
7 just gratuitously sent and explaining how he's
8 using Gabriel to make her miserable.

9 There's a May 7th email titled "The
10 motivation for your behaviour" where he taunts her
11 that Gabriel isn't bonding with her. There's the
12 June 29th email where he taunts her, telling -- he
13 says [as read in]:

14
15 Is what I'm saying false? If it's the truth,
16 then you can't really say I'm manipulating
17 him...

18
19 Referring to Gabriel,

20
21 ... by telling him such things. Telling the
22 truth is not manipulation. He doesn't hate
23 you because of what I tell him about you. He
24 hates you because of what you do.

25
26 There's the July 5th email titled "Status" that
27 begins with the words [as read in]:

28
29 Yes, Gabriel and I are having fun at your
30 expense.

31
32 And you'll recall, I believe it was Ms. Capuano's
33 evidence that Gabriel was cc'd on many of these
34 emails. There's another July 5th email titled
35 "Your reasoning", another July 5th email titled
36 "Fun at your expense", and then I'd like to take
37 you to this email from July the 14th, that'll be
38 at tab 15. It's titled "Gabriel's return."

39 So the email titled "Gabriel's return" July
40 14th, 2015 [as read in]:

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

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

11
12 The seventh way, in my submission, that he tried
13 to harass Ms. Capuano was by hurting the people
14 she loves, Sage. I'll talk first about Sage and
15 then about James Pendleton.

16 So remember that threatening conduct in the
17 definition of criminal harassment is any conduct,
18 can include conduct directed at Ms. Capuano or any
19 member of her family. We looked, when Ms. Capuano
20 was testifying, at the photo album of Sage
21 Capuano. You heard Ms. Capuano say that she
22 perceived that to be threatening, a picture of him
23 in his underwear along with their address for any
24 pedophile to find.

25 Did Mr. Fox intend for this conduct to be
26 threatening? Well, consider that he's floated
27 Gabriel's image out everywhere and taken out his
28 name from the website.

29 Consider that Mr. Fox -- we read this email
30 already, it's part of the January 11th "Re your
31 loving home" email, taunting her about how
32 Gabriel's demeanour is going to have an impact on
33 Sage.

34 There is also a June 28th 2015 email titled
35 "Your favourite child" where Mr. Fox says [as read
36 in]:

37
38 I pointed out to him that you obviously like
39 Sage more than him.

40
41 What's the intention of a person who says that to
42 their son?

43 So (8) is hurting James. You may recall the
44 email that was sent on July 19th in which I would
45 suggest to you there's an implied threat to
46 interfere with James' employment status by calling
47 his security clearance into question. If you're

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1 wondering, well, did he really intend that as a
2 threat, did he intend for that to be taken
3 seriously, you could go and look at the blog at
4 tab 7. I'm not going to take you there, but I'll
5 just give you the reference. It's titled "James'
6 security clearance under review" and, again, this
7 is one of those that purports to be written by Ms.
8 Capuano [as read in]:
9

10 Oh, my fucking god, I can't believe that
11 stupid...
12

13 I'll leave a few words out:
14

15 ... that fucking asshole called the
16 Department of Defence and filed a false
17 fucking claim against James Pendleton. Now
18 James' security clearance is under review.
19

20 So if you're thinking about Mr. Fox's intention
21 with that email to Ms. Capuano, think about this
22 blog. There are other blogs that you could look
23 at. There's one titled "An objective review of
24 James Pendleton's résumé." You might also
25 consider the fact that he published a picture of
26 James' mother, listing her place of business on
27 this website. That was part of -- that's in tab
28 5, if anybody wants to go back and refer to it.
29 The ninth way, in my submission, that Mr.
30 Fox's conduct fell within the definition of
31 harassment was the fact that he posted her contact
32 information along with taunts to whole groups of
33 people. If we could go to tab 15, there's an
34 email July 18th that's titled "re Contact
35 Information." So there are actually two. It's
36 the second last email at tab 15. The last email
37 is from the same chain.

38 So this is July 18th, 2015 at 11:07 p.m.,
39 right in the middle of the page we see that Ms.
40 Capuano has responded to this threat and says [as
41 read in]:
42

43 Richard, have you stopped to consider that if
44 what you have were the real address and not
45 just an intentional misdirection that you
46 would be endangering Gabriel's safety and
47 privacy with your amateur website, publishing

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1 an address of your son would potentially be
2 residing at. Good job, classy, real classy.
3 Desiree.

4
5 So then Mr. Fox responds to that basically saying
6 [as read in]:
7

8 I've considered the implications, angry
9 Mexican showed up at your house, they
10 probably wouldn't hurt Gabriel, and I
11 wouldn't be held responsible.
12

13 Does Mr. Fox in any way take her concerns in that
14 regard seriously? Well, that email was sent in
15 July 18th, on July 18th, and if you look through
16 the blogs, and I'm not going to take you to them,
17 but there's one titled "Yes, I am a racist" dated
18 in October 2015, there's another one February
19 28th, 2016 titled "Of racism, white supremacy,
20 Nazis and those damn dirty Mexicans".

21 So, Ms. Capuano tells him there could be a
22 problem with these emails. She's concerned about,
23 you know, the implications for their children. He
24 dismisses them and then doubles down by writing
25 these even more inflammatory blog posts.

26 The tenth way that, in my submission, Mr. Fox
27 harassed Ms. Capuano was by reminding her that he
28 had guns and would shoot her if he could get away
29 with it. This whole thing is captured in one
30 email and it's worth looking at Mr. Fox's words,
31 so if I could take you back there, it's tab 11,
32 the first email, the third page, and ladies and
33 gentlemen, I will ask Her Ladyship if she'll give
34 us a break after this. I know you've been sitting
35 for almost an hour now.

36 So the last paragraph on the third page of
37 that email [as read in]:
38

39 He once asked me if I would shoot you. I
40 told him that murder is illegal and immoral
41 and can result in spending the rest of one's
42 life in prison, and that the rest of my life
43 in prison is not a risk I'm willing to take,
44 but otherwise, no, I would have no qualms
45 about it, that that is how much I despise you
46 for the things you've done and continue to
47 do. He did not flinch, he didn't look

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1 anything other than indifferent. As best I
2 could tell, he didn't care. The topic never
3 came up again. That was during his visit
4 last summer. To be clear, I told Detective
5 -- I told Tuchfarber to say the same thing.
6 There is nothing illegal or threatening about
7 wanting to harm someone as long as you don't
8 act on it. I am reasonable and rational
9 enough to know the difference and to refrain
10 from engaging in such activity. And let me
11 be absolutely clear on this point. I would
12 never deliberately cause you physical harm,
13 other than in self-defence or defence of
14 another, so that is nothing special towards
15 you. I have that rule for all people, so I
16 emphasize that Gabriel brought up the
17 question and I only responded to it
18 truthfully.

19
20 Now, how is Ms. Capuano supposed to take this
21 statement? As a -- as a joke? As witty banter?
22 Mr. Fox, in my submission, seems to be saying
23 contradictory things. "I would shoot you if I
24 could get away with it, oh, but I wouldn't shoot
25 anybody except in self-defence or defence of
26 another." Well, consider that Mr. Fox, what would
27 defence of another mean to Mr. Fox? Would he see
28 himself as defending his son if he shot her? I
29 suggest to you that if you read through the tone
30 of his emails, he certainly might.

31 Now, consider also what Ms. Capuano knows at
32 this point. She knows he owns guns, he's told her
33 he crosses the border at will, he knows how to
34 find you. In April or May of 2016 she started
35 getting phone calls from him that seemed to
36 originate in the United States. So, when you're
37 thinking about the effect of that statement on Ms.
38 Capuano, think about those facts.

39 But then there are more facts that Ms.
40 Capuano didn't know that are relevant when you
41 think about what Mr. Fox meant. Was he trying to
42 intimidate?

43 And, in my submission, his situation is kind
44 of analogous to this, what if somebody called the
45 off -- and I'll use the bomb example again and
46 said I'm -- I'm going to drop a nuclear bomb on
47 your house. You might not take it seriously. But

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1 if you later learned the person actually did have
2 nuclear weapons, they were the president of North
3 Korea? What if you later learned that they had
4 moved their guns closer to you? Well, and that's
5 exactly what you know, that Ms. Capuano didn't
6 know.

7 You know that he surreptitiously sent his
8 guns to the United States. I suggest to you that
9 you know that he did that at great risk both to
10 himself and to Liz Munoz. If you look at line
11 1689 of his statement, he knew that he was
12 prohibited from having firearms in the United
13 States, so he risked -- that's a risk to himself
14 of consequences for possessing guns in the United
15 States.

16 And if you look at line 1944 of his
17 statement, he says [as read in]:

18
19 I'm a little concerned that if I tell you
20 specifically where it is, the guns, that all
21 of a sudden storm troopers are going to go
22 racing into her place.

23
24 He knew that he was putting Ms. Munoz at risk by
25 having those guns there.

26 So what if he then discovered that Mr. Fox
27 had crossed the border illegally again, and again
28 at great risk to himself, line 1836 of his
29 statement he tells Constable Potts:

30
31 I knew I was going down to L.A. for a visit,
32 so I knew there was a possibility I could get
33 detained, they might charge me with
34 something, who knows, I might go to prison
35 for five years.

36
37 Is a person who's facing five years jail just
38 going to visit?

39 If I could take you to tab 7 back to the
40 blogs, and this one is right about in the middle.
41 Now, these things are organized by date, so maybe
42 it will be helpful if I give you a date. February
43 13th, 2016, it's titled "My ex-husband wants to
44 kill me or at least that what I keep telling
45 people." February of 2016.

46 And so this is one of those things where I'm
47 not going to read the whole thing. It's two and a

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1 half pages, and I would encourage you to read the
2 whole thing to get the full context, but it's
3 ostensibly Mr. Fox's response to Ms. Capuano
4 saying that she was scared that he would shoot
5 her, and if you look at the page that would be the
6 -- the third page of the blog, there's a section
7 right near the top that's titled "The logistics"?

8 And, ladies and gentleman, it's okay if you
9 don't have it yet. I apologize. That's my fault
10 for the page numbers. I'll characterize this for
11 you and I -- I'd ask you to go and read it for
12 yourself. But there's a section in this blog
13 titled "The logistics", which clearly and very
14 explicitly contemplates what would be involved in
15 going down to the United States and killing Ms.
16 Capuano. It even contemplates which gun might be
17 used. To be fair to Mr. Fox, he adds one of his
18 typical caveats to the bottom, and says [as read
19 in]:

20
21 No, this would just be too -- logistically
22 this is too impossible. I couldn't do it.
23 Ms. Capuano should know that. Her fear is
24 not legitimate.

25
26 Well, when you're considering what he meant with
27 that email, saying he would shoot you if he could
28 get away with it, and then he's quite clearly
29 contemplated the logistics of doing it, in my
30 submission, that's a factor to consider when
31 you're thinking about whether he meant for that
32 statement to intimidate her.

33 My Lady, that might be a good time for the
34 break.

35 THE COURT: All right. Members of the jury, we'll take
36 the morning break at this point.

37
38 (JURY OUT)

39
40 THE CLERK: Order in court. Court is adjourned for the
41 morning break.

42
43 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)
44 (PROCEEDINGS RECONVENED)

45
46 (JURY OUT)

47

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1 THE ACCUSED: My Lady, one thing I'd like to address.
2 My friend estimates he'll be another possibly 30
3 minutes. He feels he's --
4 THE COURT: I was going to raise that as well.
5 THE ACCUSED: Yes. He feels he's two-thirds of the way
6 through, and that took an hour, so I would ask if
7 I could start at 2:00 p.m. so I can spend some
8 time going over what he has said and adapt my --
9 my submissions accordingly. I still don't believe
10 that I will be over 30 minutes, and I understand
11 My Lady does not want to give her charge until
12 tomorrow morning regardless.
13 THE COURT: That's true, and I'll certainly give you
14 the time. The timing issue is I would like to
15 have some time after you've each given your
16 closing addresses to develop the portion of the
17 charge that deals with the positions of the
18 parties, and ideally I would like you each to have
19 an opportunity to review that before I charge the
20 jury.
21 THE ACCUSED: Perhaps if I came back at 1:30?
22 THE COURT: That would help.
23 THE ACCUSED: Yes, if that would move things along.
24 THE COURT: If -- if that gives you enough time.
25 THE ACCUSED: Yes, it would. Because I -- I expect to
26 be -- like if my friend's estimate is correct,
27 he'll be finished much before 12:30, so.
28 THE COURT: Right. Well, let's tentatively settle on
29 that as a plan. All right.
30 THE ACCUSED: May I --
31 THE COURT: Ready? Yes?
32 THE ACCUSED: And I understand there's a revised
33 edition of your draft of your final instructions.
34 Is that going to be provided?
35 THE COURT: Yes, in fact there's a further revised one,
36 and I'll print that out over lunch.
37 THE ACCUSED: Thank you, My Lady.
38 THE COURT: All right.
39 THE SHERIFF: The jury, My Lady.

40
41 (JURY IN)
42

43 **CLOSING ADDRESS FOR CROWN BY MR. MYHRE, CONTINUING:**
44

45 MR. MYHRE: So, ladies and gentlemen, I think I'm going
46 to be less than 45 minutes here, and then my
47 understanding is that we're going to break for

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1 lunch.

2 Moving on to the next section of my
3 submissions to talk about the effect that these
4 actions had on Ms. Capuano. Now, the elements of
5 the offence of criminal harassment require you to
6 consider, in terms of the impact on Ms. Capuano,
7 two things. Whether she was harassed, and Her
8 Ladyship will give you some definitions of what
9 that means. One of the synonyms is tormented.
10 And, second, whether she actually did fear for her
11 psychological, emotional or physical safety. And
12 Her Ladyship will tell you, I expect, that it's
13 not necessary that victims of harassment suffer
14 ill health or a major disruption to their lives.
15 It doesn't have to go that far when we're talking
16 about emotional and psychological safety.

17 So, what did Ms. Capuano tell us about her
18 fears, and I'm going to -- the evidence, in my
19 submission, on these two points, it's all the same
20 when you're thinking about whether she was
21 harassed and whether she feared for her safety,
22 and so I'm going to address it at the same time.

23 So here's what she actually told us in terms
24 of her physical safety. She said [as read in]:
25

26 I believe Richard was crossing into the
27 country undetected regularly. He had access
28 to guns under an identity he could toss if he
29 needed to. I knew he could get to Los
30 Angeles in days. He had contacts there, and
31 I live six hours from there. I know how much
32 he despises me. All the times he's told me
33 the world would be a better place without me,
34 and the website would continue until I was
35 dead.

36
37 She was scared for her physical safety. Her
38 emotional or psychological safety, she told you
39 that she wondered if it was easier to give up.
40 She said:

41
42 I never contemplated how to commit suicide,
43 but many times I questioned whether I had the
44 strength to keep going, if I would get my
45 life back or if this was what I was going to
46 have to deal with every day.
47

Closing Address for Crown by Mr. Myhre

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1 She said [as read in]:

2
3 I didn't know if I could, but I know who I
4 am, and I know I'm stronger.

5
6 My submission to you about what she said here is
7 that she's not being melodramatic. That's
8 entirely consistent with a response to the actions
9 that we've just gone over, and if she wanted to
10 embellish, why not say "I had a rope hung in my
11 room ready to go." She could have said that and
12 nobody would have contradicted her on it. She
13 didn't go that far and, in my submission, she was
14 a straightforward witness with you.

15 She also told you that she felt isolated,
16 beat up, powerless, frustrated, Richard had worked
17 it out so that things were never going to get
18 better, she was losing jobs, friends. She said
19 she was struggling every day. She was depressed
20 but she had to conceal it. She was raising two
21 children, and had to hold down a job. It strained
22 her relationship with James because his livelihood
23 was threatened and his mom had been brought into
24 it, to the point where she asked James if it would
25 be better if she just left.

26 So, in my submission, what Ms. Capuano told
27 you about is a very significant psychological and
28 emotional impact from all of Mr. Fox's actions,
29 and I suggest to you, of course there is.

30 Now, the tenor of the cross-examination of
31 Ms. Capuano was to the effect of, when you really
32 look at the emails, it's just back and forth witty
33 banter between two people who obviously don't like
34 each other, and because it's just witty banter Ms.
35 Capuano didn't really fear for her own
36 psychological or emotional or physical safety.

37 So I have five response to that. The first
38 one is I would suggest to you that what you see in
39 the email correspondence is a massive difference
40 in kind. If this was just a few emails where
41 people called each other names that started with
42 the expletive *fuck*, I'd suggest to you we wouldn't
43 be here listening to this evidence.

44 But that wasn't what you have. On one hand,
45 we have one person who's made it their explicit
46 long-term goal to make one person miserable, and
47 on the other hand you have somebody who counters

Closing Address for Crown by Mr. Myhre**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 with what are mostly insults to his intelligence.
2 The second thing to think about is that Mr.
3 Fox made it very difficult for her not to respond
4 by CC'ing Gabriel on these emails. He put her in
5 a nearly impossible situation. If you review the
6 defence book of emails, by my count there were 17
7 emails in there; 15 were initiated by Mr. Fox, and
8 seven of them had Gabriel cc'd on the original
9 email. And you see in some of those emails he
10 actually taunts Ms. Capuano that people are being
11 bcc'd that she doesn't know about.

12 So this is Gabriel, who I believe would have
13 been about 14 at that time, and Ms. Capuano
14 testified that when Gabriel saw no response to
15 what the father was saying, he didn't seem to
16 respect her, and that when she started to fight
17 back her son started to respect her again.

18 When people are scared, they can have a fight
19 or flight instinct. Ms. Capuano's first instinct
20 was to try not responding. She tried that, it
21 didn't work. The fact that she then fought back
22 with what she characterized as bravado, doesn't
23 mean she's not scared. If someone started
24 attacking you on the street, does the fact that
25 you take a swing back mean that you're not scared
26 that you're being attacked? Of course not.

27 And it may be that some very special person
28 would not have responded to all of these taunts
29 and threats to destroy her, but you don't have to
30 be a saint to get the benefit of the law of
31 criminal harassment.

32 The third thing is that interpretation that
33 she wasn't scared is not consistent with all the
34 things she actually did. What do we know she did
35 during the charge period? We already talked about
36 the pre-charge period. In April 2015 she went to
37 the RCMP. She sent him an email on April 9th,
38 2015 that was a formal request to cease all
39 communication not specifically relating to Gabriel
40 and to take down the website.

41 She wasn't getting action from the RCMP, so
42 she called again in July of 2015. That same month
43 she also obtained an order of protection in
44 Arizona. She fought that when Mr. Fox challenged
45 it and appealed it to two different levels, and
46 she kept fighting to have it.

47 And then you know that in February of 2016

Closing Address for Crown by Mr. Myhre**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 she went to the CBC with her story, and she
2 explained why that was. Nothing else worked.
3 She'd tried to get help from everywhere. When you
4 Googled her name, the first thing that came up was
5 still this website.

6 So if all of these actions weren't tormenting
7 someone, why would they spend days of their lives
8 in court trying to get orders of protection?
9 That's not consistent with her actual actions.

10 It was suggested to her at one point, well,
11 why -- why didn't you change your identity? So
12 are we to think that she's not harassed because
13 she didn't take the most dramatic step you could
14 imagine? And think about that would entail, for a
15 second, trying to change your identity and keep it
16 hidden. Would you have to cut off contact with
17 your friends and relatives?

18 Consider from Ms. Capuano's perspective how
19 effective would that have been anyways? This is a
20 guy who was telling her, "Oh, in America, I can
21 get your medical records. I can get anything."

22 The first point is that because a person
23 chuckles in a police interview doesn't mean they
24 haven't been scared and are scared. And you see
25 this perspective, you would have seen it in
26 Patrick Fox's statement at line 1121, he talks
27 about her interview with CBC, and a radio
28 interview that was done the day after, and he says
29 [as read in]:

30
31 The radio interview was done the day after
32 the CBC story aired, and you listen in there
33 there's no fear in her voice. She's laughing
34 and joking about the stuff on the website.
35 There's no fear there.

36
37 So, two points about that. In my submission, it's
38 very disingenuous when you've suggested that your
39 whole goal in life is to ruin someone's life and
40 to make them miserable, to then suggest that your
41 actions are not actually having that impact.

42 And the second submission is that what this
43 comment by Mr. Fox shows is that it's reflective
44 of his belief that emotions are, what are his
45 words "Just labels that simple-minded people put
46 on the physical sensations" and I'll give you a
47 reference in a sec, "caused by the self-induced

Closing Address for Crown by Mr. Myhre**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 secretion of chemicals by the brain." And you can
2 find that in the defence book of emails, the third
3 email titled with subject line "Re I'm flattered
4 really."

5 So, in cross-examination, Ms. Capuano was
6 confronted with some little chuckles that she
7 makes when Detective Wilcott is interviewing her
8 in Arizona, when she talked about her coworkers
9 confronting her about the LinkedIn profile saying
10 she was a stripper, when she talks about being
11 scarred by what's happening, and when she talks
12 about Mr. Fox telling Gabriel that she had induced
13 an early delivery by punching herself in the
14 stomach. There are little chuckles there, and she
15 explained to you that laughing for her was a
16 coping mechanism, and that is she didn't laugh,
17 she would cry.

18 Think about how long she'd been dealing with
19 this situation.

20 The fifth point, fifth reason I suggest to
21 you that this interpretation that is wasn't really
22 troubling here is that Mr. Fox acknowledged it
23 himself. Mr. Fox didn't believe that it wasn't
24 having any effect on her.

25 Now, in his statement at line 498, he makes
26 the claim to Constable Potts that "None of this
27 really bothered he until I started putting her
28 fiancé's picture and information about him on the
29 website. And that's when she starts freaking out
30 and doing all this. I suspect she, herself,
31 doesn't care at all really because she never did
32 anything prior to that because she just didn't
33 care and she even admitted herself in some of the
34 interviews."

35 Well, ladies and gentleman, that's a bald
36 faced lie. Mr. Fox knew full well that prior to
37 the summer of 2015 when he posted that information
38 about James Pendleton, she had taken a number of
39 steps, contacted the RCMP, the Arizona PD,
40 contacted the web-post to try to get the website
41 taken down.

42 Mr. Fox knew within a few months of his
43 activity that she was scared. There is an email,
44 July 22nd, 2014 subject "Telephone communication
45 regarding Gabriel", and I won't ask you to flip to
46 it but I'll read you the quote [as read in]:
47

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1 It's obvious from how you conducted yourself
2 on the telephone a few moments ago that
3 you're afraid of and intimidated by me. I
4 couldn't understand a thing you said on the
5 phone because you were trying so hard to say
6 only and exactly what you had rehearsed
7 beforehand, while at the same time trying not
8 to cry, presumably out of fear and anxiety,
9 and you were all muffled and shit.

10
11 So, within three to four months of him creating
12 this website, and starting the harassment campaign
13 at her workplace, he knew she was scared. Did he
14 do anything in the intervening time before the
15 charge period to make her less scared?

16 Another admission to this effect, you'll
17 remember counsel spent some time going over with
18 Ms. Capuano their back and forth in the January
19 11th email string. And she suggests things like ,
20 in fact, we reviewed it [as read in]:

21
22 The amount of time he spent thinking about me
23 is flattering, but honestly a little
24 pathetic.

25
26 And then he responds:

27
28 In no uncertain terms, my intention is to see
29 you dead, have you commit suicide.

30
31 But what wasn't part of that chain, what was put
32 to Ms. Capuano in re-examination, Exhibit 5,
33 you'll remember there's one email where Mr. Fox
34 acknowledges the hollowness of what Ms. Capuano is
35 saying to him, and he says -- sorry, it's Exhibit
36 3 [as read in]:

37
38 The level of overcompensation in your sarcasm
39 makes it obvious that you are angry and hurt,
40 and you do not believe the points you are
41 repetitiously overemphasizing.

42
43 More acknowledgement of the fact that he knew that
44 he was having an effect on her, the email from May
45 6th, 2015, "Gabriel's summer visitation", and I'm
46 not going to take you there. It's -- there were a
47 few of those. It's the one that's at May 6, 10:05

Closing Address for Crown by Mr. Myhre**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 p.m. He tells her [as read in]:
2
3 Do you ever get tired of being in a perpetual
4 loser? Do you ever think to yourself what's
5 the point? Ever seem to you like maybe life
6 is just too fucking hard and there's no point
7 because we're all going to die in the end
8 anyway? If not, well, that's too bad. The
9 world is going to be a better place when you
10 are no longer in it.
11
12 And you can also consider that November 14th email
13 that we've already looked at a few times. He knew
14 that he was being effective in what he was doing,
15 that it was having an effect on her.
16 Now, I'm going to take you to the last blog
17 at tab 7, the very last -- the last blog. It's
18 titled "Yes, this website is still here, bitches."
19 And I suggest to you, ladies and gentlemen, this
20 is a man who is taking great delight in the fact
21 that his harassment has been very effective in
22 causing her emotional and psychological damage.
23 [As read in]:
24
25 Good evening, gentle reader. We'd just like
26 to take a moment and say to all those whining
27 pussies, feminists, white knights, soccer
28 moms and anyone else that made a big deal
29 about this website a few months ago when it
30 was on the news, suck it. The website is
31 still here, still serving its goal of
32 informing the world of what a horrible person
33 Desiree Capuano is. All of your whining and
34 complaining, all of your talk of getting the
35 government, the police and the prosecutors to
36 do something about it has accomplished
37 absolutely fucking nothing. And because of
38 all of your shouting about how much of an
39 asshole I am, the site has received way more
40 notice than it would have if you just shut
41 the fuck up and said nothing at all.
42
43 So, thank you for that free publicity.
44 Because of your incessant addiction, hundreds
45 of thousands of people, including almost
46 every person, every hiring manager, every
47 recruiter who lives within 50 miles of

Closing Address for Crown by Mr. Myhre**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 Desiree has seen this site and knows what a
2 horrible cunt she is. And tomorrow and next
3 month and next year this website will still
4 be here, still chugging along, and every day
5 this website continues to make Desiree's life
6 a little more dreary as it gets harder and
7 harder for her to continue to lie to and
8 manipulate people. Every day Desiree gets a
9 few steps closer to that inevitable rock
10 bottom. Hate me if you want, but you know
11 what, the bullshit between Desiree and I is
12 none of your fucking business. Sincerely,
13 Patrick.

14
15 So that's a person who will also try to tell you
16 that this website and the things that he were --
17 was doing didn't cause her to have a legitimate
18 fear for her safety. He knew that it was. He
19 knew it was having the effect of tormenting her.
20 He knew it was impacting her emotional and
21 psychological wellbeing.

22 You'll have to consider whether her fear was
23 legitimate. The person has to have an objectively
24 reasonable fear. In my submission, you should
25 have no difficulty with that.

26 Consider just the depth of this man's hatred
27 for her. I suggest you see it in the tone of
28 every single email. His explicit goal in life is
29 to make her so miserable she'll kill herself.
30 He's actively followed through with it. He's
31 created a website and, in his words, spent
32 countless hours on it, you can find that in his
33 background section at tab 6.

34 He's moved the site to Iceland so that nobody
35 can do anything about it. That's line 1451 of his
36 statement. In my submission, most telling about
37 the depth of the -- depths of this man's hatred,
38 he was willing to use his own son as a pawn.

39 The next section, whether he knew that she
40 was harassed, or wilfully blind, so a person -- a
41 person can be guilty of criminal harassment if
42 they're reckless in their actions without
43 considering the risk that the other person will be
44 harassed, if they're wilfully blind to it, or if
45 they knew it, and my submission to you is clearly
46 that he knew it, and we've already gone over
47 several of his statements that show that he did.

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1 Right at the outset I suggested to you that
2 there's a good explanation for why he was so
3 brazen, and that's because he thought that what he
4 was doing was legal. You can see that in his
5 statement at line 1996, he told the police officer
6 [as read in]:
7

8 I always look into what the laws are before I
9 do something. It's very rare that I violate
10 a law. I come very close sometimes, but I
11 always try to stay on this one side.
12

13 And at line 2088 he says:
14

15 Even if she were to appear and testify and
16 she was credible, given the wording of the
17 statute there hasn't actually been any
18 criminal harassment.
19

20 His mistake of law is set out in some of his
21 emails if you look at the April 28th, 2014 email,
22 his response to the cease and desist email from
23 Ms. Capuano, he tells her [as read in]:
24

25 Anything which has been or will be published
26 is either your own words or is completely
27 true. Therefore, there is no liable and no
28 basis for a claim of harassment.
29

30 And you've probably noticed in a few other places.
31 Mr. Fox's conception of truth is interesting. He
32 feels justified in calling her a white supremacist
33 because her ex-boyfriend had a dagger with a
34 swastika on it hung on their wall. That's kind of
35 no moment because the truth is not a defence to
36 criminal harassment.
37

38 Just think if it was, think of the law of
39 threatening, somebody said "I'm going to bomb your
40 house", they might truthfully mean it. It doesn't
41 mean they couldn't be held guilty of threatening.
42 Truth is not a defence to criminal harassment, and
43 you won't see that in Her Ladyship's instructions
44 to you.

45 So I suggest to you that tells us why he was
46 so brazen in all the statements that he made.
47 We've already looked at so many of his statements
about his goal in life to essentially to torment

Closing Address for Crown by Mr. Myhre**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 her. You can see that he reaffirms that in his
2 June 2016 email -- or, sorry, statement to
3 Constable Potts, if you look at line 1555 when
4 asked about whether the primary goal in his life
5 was to have her experience as much misery as
6 possible, he said [as read in]:
7

8 Yes, I don't deny that. Absolutely. But
9 once again I emphasize legally within the
10 bounds of the law.
11

12 His intention didn't change from the spring of
13 2014 or the summer of 2013 until June of 2016.

14 I'd like to take you to another blog. This
15 one's about nine pages in at tab 7, and by pages
16 I'm not talking double-sided, just flip about nine
17 pages and it's titled "Of anal sex and cooking
18 oil". Ladies and gentlemen, if you have any
19 doubts about Patrick Fox's intention with this
20 website, read this blog. It's basically what the
21 title says it is, a story about Ms. Capuano, anal
22 sex and cooking oil. What could the intention of
23 a person be in publishing this story, other than
24 to completely humiliate someone?

25 So when you're thinking about his intention,
26 think about what he knew. He knew all of the
27 steps that she had taken to try to stop him. If
28 you want to see them all categorized neatly, read
29 his -- his -- his document titled "Background" at
30 tab 6. He knew about her attempts to get the
31 police to help her. He knew -- he knew about her
32 orders of protection, of course. He knew James
33 was filing complaints. We've already looked at
34 several emails that Ms. Capuano sent him to that
35 effect, telling him that she felt harassed and she
36 was in fear.

37 Other people told him. The email at tab 16
38 of Exhibit 1, you'll remember that's -- came from
39 the website but it starts with an email by James
40 Pendleton complaining about harassment to the
41 webserver, so Patrick Fox knew about that from
42 James Pendleton. The court told him there was an
43 injunction against harassment out of Arizona.
44 Constable Huggins told him, and you heard that
45 evidence from Constable Dupont.

46 And in the face of all of this, the only way
47 someone could not believe they were harassing

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1 would be if they were wilfully blind, in my
2 submission.

3 But of course he wasn't wilfully blind.
4 We've seen so many statements, we've just reviewed
5 several of them where he acknowledges that he's
6 being effective. He knew it. We saw it in that
7 blog, "Yes, this website is still here".

8 He acknowledged it in his statement of
9 Constable Potts. If you read the paragraph at
10 1527 he talks about how once he stopped
11 communicating with her, his efforts became much
12 more effective. So he knew they were being
13 effective. They just became more effective after
14 he was not allowed to communicate with her for a
15 little while.

16 So, my respectful submission to you on the
17 criminal harassment charge is that there's nothing
18 tricky here. These are all Patrick Fox's words.
19 His intent was to torment her, he did it in many
20 different ways, he did it effectively, he knew
21 that she was scared.

22 So, moving on to the next section and to talk
23 about the gun charge, so this charge is that he
24 possessed his firearms in a place other than a
25 place indicated on authorization or licence as
26 being a place where he could possess it.

27 As I already pointed out to you a few of
28 those conditions that are on his licence. Those
29 are permissive. You can only take them to the
30 places listed on there. There's nothing about
31 taking your guns to the Packaging Depot to have
32 them shipped, in his licence. He can take them to
33 a port of entry, but that's personal transport.
34 You can't give your guns to a third party and have
35 them take them across the border for you or
36 anywhere else.

37 And so Her Ladyship will tell you about the
38 legal definition of *possession*, but basically
39 possession at law can mean in your hands, or it
40 can mean at a place that you know about and within
41 your control. And so you heard Mr. Mangat talk
42 about the fact that Mr. Fox still did exercise
43 some control while those -- while the boxes were
44 at the shipping depot until I think he said it was
45 4:00 a.m. the next day when TNT [phonetic] would
46 come and get them and they would go away.

47 And so it's not really of any moment whether

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1 this particular box that had the handguns in it,
2 whether it was picked up at his place or whether
3 Mr. Fox somehow got it to the Packaging depot.
4 The only real question is were those guns in
5 that box that Mr. Mangat received and shipped.
6 So, you heard Agent Spizuoco's evidence that he
7 opened the box and he found the firearms inside a
8 desktop. And it may be that we could imagine some
9 scenario whereby those guns weren't in the box
10 when they were given to Mr. Mangat, and somehow
11 Mr. Fox, in a way that didn't contravene his
12 licence, I can't imagine a way in which to do it
13 without contravening his licence, but somehow got
14 them in there without being in possession of them
15 and -- and they weren't in the box.
16 And I would suggest that any scenario that
17 you might posit about how those guns got in there
18 would not be a reasonably plausible one. We still
19 deal with reasonable doubt, which is a very high
20 bar, but it doesn't include completely fanciful,
21 speculative scenarios. You have to use your
22 common sense.
23 In this case, I'm going to suggest to you
24 that we don't even get into that speculation for
25 this reason, Mr. Fox talks in his statement about
26 what he did with them. If you look at line 1836
27 he tells Constable Potts [as read in]:
28
29 The reason I was shipping things, and rather
30 than using the word *shipping* because that
31 implies using the postal service or something
32 which introduces certain legalities, the
33 reason I was transporting let's say things to
34 my friend in Los Angeles is because...
35
36 So he slips up, he talks about shipping his
37 firearms and then back-peddles, *transporting*,
38 them, I'm transported them.
39 Those are my submissions, ladies and
40 gentlemen.
41 THE COURT: Thank you, Mr. Myhre. Members of the jury,
42 I think we will break early for lunch, rather than
43 having the defence closing split before lunch and
44 after. Mr. Lagemaat, what do you suggest as the
45 time for returning, perhaps quarter to 2:00?
46 MR. LAGEMAAT: Yes, that's fine.
47 THE COURT: So, members of the jury, if you wouldn't

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1 mind changing our lunch hour just a little bit, I
2 think that will make the best use of the time for
3 today, and I'll ask you to come back, please, at
4 1:45. Thank you.

5
6 (JURY OUT)
7

8 THE COURT: I said I would give you a copy of the
9 verdict sheet I propose to use. Madam Registrar,
10 one should be marked as the next exhibit for
11 identification, and do you know what that is?

12 THE CLERK: Exhibit I for Identification, My Lady.
13

14 **MARKED I FOR IDENTIFICATION: Proposed**
15 **verdict sheet for jury**
16

17 THE COURT: Thank you. If there are any comments about
18 it, please make those when we resume. Anything
19 else before we break.

20 MR. MYHRE: No, My Lady.

21 THE COURT: Okay. We'll break.

22 THE CLERK: Order in court. Court is adjourned until
23 1:45 p.m.
24

25 (PROCEEDINGS ADJOURNED FOR NOON RECESS)
26 (PROCEEDINGS RECONVENED)
27

28 MR. MYHRE: My Lady, my sincere apologies. I somehow
29 left here thinking it was two o'clock, and
30 obviously I missed something that everybody heard.
31 I'm sorry.

32 THE COURT: Are we ready?

33 MR. LAGEMAAT: Yes, My Lady.

34 THE SHERIFF: The jury, My Lady.
35

36 (JURY IN)
37

38 THE COURT: Mr. Lagemaat?
39

40 **CLOSING ADDRESS FOR ACCUSED ON COUNT 1 BY MR. LAGEMAAT:**
41

42 MR. LAGEMAAT: I'll start with a brief opening about
43 the seriousness of your role as jurors.

44 When you swore in as jurors, you promised
45 that you would give Mr. Fox a fair trial, that you
46 would ford -- would afford him the presumption of
47 innocence and the benefit of a reasonable doubt,

Closing Address for Accused on Count 1 by Mr. Lagemaat**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 reasonable doubt, and this is the same right that
2 you would expect if you committed an offence or
3 were alleged to have committed an offence and were
4 being tried by 12 of your peers. And this is the
5 cornerstone of our justice system.

6 Mr. Fox chose you as jurors, expecting and
7 trusting that you would do this, and being a juror
8 comes with a grave responsibility. You -- you
9 have the responsibility to come to a decision
10 based on the evidence and the law, not on your
11 like or dislike of the accused or a witness or for
12 tasteless or perhaps immoral things he may have
13 done, if those things are within the law. You're
14 here to come to a rational logical decision based
15 on the law, not your opinion of the man as a
16 person.

17 The jury is the trier of facts. I'll be going
18 through the facts, and if my version differs from
19 your recollection, you base your decision on your
20 recollection. You're the trier of the facts.

21 The same with the law, Her Ladyship is the
22 trier of the law, and she will instruct you on the
23 law. I'll cover some of the points of law that I
24 feel are relevant to my submissions, but if it
25 differs from Her Ladyship's version of the law,
26 you -- she is the trier of the law, you listen to
27 her.

28 I'm here to address you on Count 1, the
29 criminal harassment charge only. That being
30 between January 11th, 2015 and May 27th, 2016,
31 inclusive, at or near Burnaby, Mr. Fox, without
32 lawful authority and knowing that another person
33 was harassed or being reckless as to whether the
34 other person was harassed, engaged in conduct that
35 caused the other person, in this case, Ms.
36 Capuano, to reasonably fear for her safety, or
37 anyone known to her.

38 I'll go through the elements of the offence.
39 My friend touched on that. I'll -- I'll go
40 through them in slightly different order, and
41 putting greater detail on different elements.
42 I'll remind you that Mr. Fox, and this is about
43 the presumption of innocence that I mentioned,
44 comes before you as an innocent man. You'll
45 notice he's in custody. That does not mean you
46 can infer him guilty of anything. He is an
47 innocent man until the point that the Crown, has

Closing Address for Accused on Count 1 by Mr. Lagemaat**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 the burden of proving, proves Mr. Fox guilty
2 beyond a reasonable doubt, and that's the same
3 with any criminal offence. The prosecutor must
4 prove the elements of the offence beyond a
5 reasonable doubt before there can be a conviction.

6 So what does beyond a reasonable doubt mean?
7 Her Ladyship will instruct you in more detail on
8 this, but it's not an imaginary or frivolous
9 doubt. It's a doubt based on reason and common
10 sense, which I'm going to ask you to come to based
11 on the evidence, and it's a doubt that arises
12 logically from the evidence or lack of evidence.

13 In assessing whether the Crown has proven the
14 elements of the offence beyond a reasonable doubt,
15 I'm going to ask you to consider both the evidence
16 of Ms. Capuano and her credibility as a witness,
17 and in assessing her credibility I'll lead you to
18 some discrepancies in her evidence, and I'll also
19 ask you to consider her demeanour in giving her
20 evidence, which you can do to assess her
21 credibility.

22 And, lastly, the evidence of Mr. Fox, which
23 you heard through a statement he made to the
24 police, and on that note, one thing I'd like to
25 point out is you noticed Mr. Fox did not take the
26 witness stand, and that's a choice that any
27 accused facing criminal allegation can make. You
28 cannot make any inferences from that, and you do
29 have his version of events through his statement.

30 You also heard in some emails we went through
31 that Mr. Fox was incarcerated in the United
32 States. You also cannot use this to inform any
33 decision you make in this trial. It's very
34 important that you only consider what he is
35 charged here with, including the dates of that
36 charge and the places of that charge, not his past
37 or any opinions you have formed regarding his
38 character.

39 So we'll start by assessing Ms. Capuano's
40 credibility as a witness before we get into that
41 evidence. And, as I said earlier, you -- you can
42 consider demeanour in assessing her credibility,
43 although there's a caveat. It would be an error
44 if demeanour became the sole or dominant basis for
45 determining her credibility as a witness, but it
46 can be a factor in determining her credibility.

47 Firstly, I'll talk about her demeanour. I'll

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1 remind you that during her direct evidence, Ms.
2 Capuano cried through most of her evidence when
3 being reminded of the emails Mr. Fox had sent to
4 her. I ask you to consider was the crying real?
5 Was there actual tears? Did you see her support
6 person ever hand her Kleenex or her using Kleenex.
7 These are all things I ask you to think about and
8 consider.

9 Then, in cross-examination, you can
10 characterize -- characterize her demeanour as how
11 you will, but I suggest to you that she was often
12 hostile and argumentative at times, quite
13 different from the way she was in her direct
14 evidence. You also heard excerpts from the
15 statement that Ms. Capuano gave to a Corporal
16 Wilcott on June 13th, 2016 where she was laughing
17 about essentially the same things that she was
18 crying about only days before in her direct
19 evidence.

20 She explained that laughter is laughing in
21 fear, but you have to ask yourself was that
22 laughter in fear or was it genuine laughter? And
23 she didn't laugh at all during her direct
24 evidence, but she cried when talking about the
25 same points.

26 I'll go through some discrepancies in her
27 evidence. You'll recall that Ms. Capuano said
28 that Mr. Fox had disappeared with Gabriel for a
29 period of nine or ten years. She said she took
30 measures to find Gabriel, including reporting it
31 to CPS in Arizona and California. CPS is Child
32 Protective Services.

33 She agreed with me in cross-examination that
34 it was a case of kidnapping, yet she did not
35 report it to the police either during or after
36 that her child had been kidnapped. Then I had Ms.
37 Capuano read in letters or sentences from a letter
38 she had written to Mr. Fox in March 2011 when Mr.
39 Fox had reached out to her to reinitiate contact
40 with Gabriel.

41 And recall at this point those excerpts were
42 not read to you for the truth of the statement,
43 and I expect Her Ladyship will remind you of this.
44 They were read to you to assess her -- assist you
45 in assessing her credibility as a witness by
46 showing inconsistencies in a prior statement from
47 what she had said on oath in court.

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1 In the letter she admits to thinking that she
2 let Gabriel with Richard during this period, and
3 in fact Gabriel had asked her twice to see him and
4 she said no. She also said, and I quote [as read
5 in]:

6
7 I could search him out, that is true, but why
8 would I do that?

9
10 And:

11
12 I would hope for a phone call one day.
13 Believe me, it's the only thing I wished for,
14 but I'm not going to initiate it.

15
16 I suggest to you that this was in fact not a
17 kidnapping or Mr. Fox would have been facing --
18 could have been facing much more serious charges
19 than he is now, but it was never reported as a
20 kidnapping either during or after.

21 Also in direct evidence Ms. Capuano denied
22 contacting Mr. Fox's rabbi, but on January 12th,
23 2015 there's an email saying [as read in]:

24
25 I wonder (and so does your rabbi, by the
26 way) if all of your angst and hatred even
27 really relates to me at all.

28
29 She had an explanation for this, that she didn't
30 mean it, but it suggests to me that she perhaps
31 did contact Mr. Fox's rabbi but denied it in
32 direct evidence.

33 You'll recall also that Ms. Capuano said that
34 her marihuana arrest in Arizona was the only thing
35 she had done illegal. Yet later she admitted that
36 she'd been arrested while working in a strip club,
37 and also arrested for public intoxication, and
38 this time while using an alias, Virginia Tomlin
39 [phonetic], which, as you'll recall from the
40 emails, and I'm about to go through them, was
41 exactly one thing she was continually mocking Mr.
42 Fox for using an alias, and she herself had used
43 an alias and been in fact arrested under that
44 alias.

45 So you're being asked by the prosecution in
46 this case to make a decision that, beyond a
47 reasonable doubt, Mr. Fox criminally harassed Ms.

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1 Capuano during the dates that I mentioned
2 previously.

3 To convict Mr. Fox of this offence, you must
4 be left without a reasonable doubt that Mr. Fox,
5 and there's five points, and I know Her Ladyship
6 will remind you of this, but I'm going to go
7 through each point individually so I'll list them
8 now.

9 Point 1, communicated repeatedly, whether
10 directly or indirectly, with Ms. Capuano or anyone
11 known to her, or engaged in threatening conduct
12 directed at her or her family. And that is an or,
13 that's two points, it can be one of the two.

14 The second point, and that one or both of
15 those forms of conduct harassed Ms. Capuano. The
16 third point, and that Mr. Fox was aware that the
17 conduct harassed Ms. Capuano. The fourth point,
18 and that the conduct caused Ms. Capuano to fear
19 for her own safety or the safety of members of her
20 family, and finally the fifth point, that Ms.
21 Capuano's fear was reasonable in the
22 circumstances.

23 Of note right now that posting material
24 online, even personal material such as emails and
25 pictures, is not in itself an offence. This
26 happens every day. People make fan sites and post
27 personal information about people every day. That
28 is not a criminal offence.

29 On the first point, which is did Mr. Fox
30 communicate repeatedly or engage in threatening
31 conduct with Ms. Capuano, yes, on the first one,
32 he did communicate repeatedly with Ms. Capuano,
33 but I suggest to you the communication was not
34 unwanted and in fact was necessary. They were co-
35 parenting, and under court order to have
36 communication to facilitate that parenting
37 situation.

38 And if you look at the index of the emails,
39 which I believe -- you don't have to go there, you
40 can -- I'll just point it out to you, is at tab 8
41 of Exhibit 1, and that's the index of all the
42 emails and you can look at those emails, the --
43 the subject headings for those emails, and many of
44 them are -- are about the child and visitation,
45 access, such and such. So, yes, he did
46 communicate repeatedly, but it was necessary.

47 Now, was the communication he was engaged in

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1 threatening? Conduct is threatening only if a
2 reasonable person in the same circumstances as Ms.
3 Capuano would find it threatening. In deciding
4 this you can consider the context of the
5 relationship, or of the conduct, and the
6 relationship between Mr. Fox and Ms. Capuano.

7 You'll hear me, as I continue in my
8 submissions, I'm going to refer to the conduct as
9 being what we deal with in this first element of
10 the offence. Also, in order for conduct to be
11 threatening by law, it must be intended to
12 intimidate and instill a sense of fear in the
13 recipient. So there's an intent component to this
14 where the words or whatever they are, there must
15 be an intention to intimidate and instill a sense
16 of fear in the recipient.

17 In assessing that intent, you can consider
18 all -- all of the circumstances and the accused's
19 evidence, which in this case is his statement to
20 the police.

21 But I first ask you to consider the nature of
22 the communications between these two, Mr. Fox and
23 Ms. Capuano. Ms. Capuano was provoking,
24 insulting, and taunting Mr. Fox, and we'll go
25 through this shortly. It's questionable, given
26 the circumstances, whether a reasonable person
27 would have felt threatened given the circumstances
28 they found themselves in at the time.

29 And this is another question you must answer
30 before deciding if this conduct was in fact
31 threatening. The threats the Crown are alleging
32 are mostly threats to make Ms. Capuano lose her
33 job, not be able to find another job, make their
34 son dislike her, make her lose friends, ruin her
35 reputation. There's -- there's further threats
36 but I'll talk about these ones right now. You have
37 to ask yourselves are these threats to mainly --
38 or merely inconvenience a person and make her life
39 difficult or are these threats designed to
40 intimidate and instill a sense of fear in the
41 recipient?

42 I suggest for you these are threats to make
43 inconvenience to make life difficult if -- if in
44 fact these threats were carried out, they're not
45 fearful. They're -- it -- they would be very
46 difficult, but they wouldn't instill fear or
47 intimidation.

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1 As far as the email that my friend referred
2 to whereby Mr. Fox discusses in some detail his
3 conversation with Gabriel regarding harming Ms.
4 Capuano, and this will be the one email I will
5 direct you to. It's in Exhibit 1, which is the
6 blue book, tab 11, they're double-sided so it will
7 be the one, two, third page or the second page,
8 but the third page of printing. And at the
9 bottom, and we talked about this in evidence, I'll
10 read this in [as read in]:

11
12 He once asked me if I would shoot you. I told
13 him that murder is illegal and immoral and
14 can result in spending the rest of one's life
15 in prison. And that the rest of my life in
16 prison is not a risk I'm willing to take, but
17 otherwise, no, I would have no qualms about
18 it, and that is how much I despise you for
19 the things you've done and continue to do.
20 He did not flinch, he didn't look anything
21 other than indifferent. As best as I could
22 tell, he didn't care. The topic never came
23 up again, and that was during his visit last
24 summer. To be clear, I told Tuchfarber the
25 same thing. There's nothing illegal or
26 threatening about wanting to harm someone as
27 long as you don't act on it. I am reasonable
28 and rational enough to know the difference
29 and to refrain from engaging in such
30 activity.

31
32 And the next paragraph is the important one:

33
34 And let me be absolutely clear on this point.

35
36 Highlighting *absolutely clear*.

37
38 I would never deliberately cause you physical
39 harm other than in self-defence or defence of
40 another. Though that is nothing special
41 toward you, I hold that rule to all people.
42 Also I emphasize that Gabriel brought up the
43 question and I only responded to it
44 truthfully.

45
46 The term *let me absolutely clear*, could it be any
47 clearer than that? He was not threatening her.

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1 He was explaining to her his rules of life, and
2 one of them was not to harm her.

3 This is further supported in the evidence by
4 Mr. Fox's version given through the statement to
5 the police, and I'm not going to read it in, but
6 you can make note to refer to page 43 of the
7 transcript of his statement, and throughout that
8 page Mr. Fox says that both is religion and the
9 law would prevent him from harming her physically.
10 And here he includes that he would not even punch
11 here, much less shoot or kill her.

12 And to remind you, the Crown mentioned this,
13 this -- this statement cannot be used for evidence
14 of threats themselves, but it can be used -- it
15 was after the charge period but it can be used to
16 consider his intent when he was talking about his
17 earlier statements, and that's what I'm asking you
18 to do with page 43.

19 As far as Mr. Fox stating he may make calls
20 regarding Mr. Pendleton's security status, again I
21 suggest this isn't to intimidate her and instill
22 fear. This is something any citizen can and
23 perhaps should do if you know somebody with
24 security clearance is not abiding by the
25 conditions of that clearance. This isn't a threat
26 to harm or anything. This is a threat to perhaps
27 make sure he's following through on the conditions
28 of his security clearance.

29 And as far as Mr. Fox making public a
30 derogatory statement by Ms. Capuano had made about
31 Mexicans, would anybody actually believe that
32 Mexicans are going to attend the residence because
33 she at one time called Mr. Fox a dirty Mexican?
34 That, I -- I say that's not -- highly unlikely.

35 Moving on the second element of the offence,
36 the Crown must prove, and again beyond a
37 reasonable doubt, but first I will point out if
38 you find on this first element beyond a reasonable
39 doubt that he did not engage in this conduct,
40 that's the end of your analysis. You've
41 deliberated it, and you can acquit.

42 But if you move on to the second stage, the
43 second element is did the conduct in the first
44 element harass Ms. Capuano, and whether you
45 haven't decided yet, I'm hoping whether that
46 conduct was harassment, as far as the first step,
47 I'm going to call it the conduct, and that's what

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1 I'll be referring to.

2 So now you have to consider whether this
3 conduct actually harassed Ms. Capuano. And,
4 again, if you're left with a reasonable doubt, you
5 can acquit, you must acquit.

6 So, to find that Mr. Fox's conduct did harass
7 Ms. Capuano, you have to decide again the term
8 beyond a reasonable doubt that Mr. Fox's conduct
9 distressed, tormented or troubled Ms. Capuano.
10 And, again shortly I'll be reading in some emails
11 that you all heard in cross-examination that I say
12 show that she was not -- Ms. -- Ms. Capuano was
13 not distressed, tormented or troubled, and in fact
14 she was taking some pleasure and enjoying the
15 engagement of wits with Mr. Fox.

16 The third step, the third element of the
17 offence the Crown must prove, as always, beyond a
18 reasonable doubt is was Mr. Fox aware that his
19 conduct harassed Ms. Capuano, and again I suggest
20 to you, no. I again ask you to consider the
21 nature of these communications between Mr. Fox and
22 Ms. Capuano and, in particular, her responses to
23 his messages. This was a back and forth
24 communication that, as we will soon hear, and you
25 did hear, was nasty, from both sides.

26 My friend made some comments that -- or the
27 Crown made some comments that, well, Mr. Fox's
28 words were much worse than hers. Well, this isn't
29 a balancing practice. This -- one person might
30 have different ways or expressing than the other.
31 This is not a balancing exercise to see who said
32 the worst things. What I'm asking you to consider
33 is what she said in response to what Mr. Fox said.

34 So was she harassed? You'll recall in cross-
35 examination that I pointed out the timeframe of
36 the email chains, and at some points Ms. Capuano
37 was replying within minutes to Mr. Fox's messages,
38 and often at all times of the day and night; 1:00
39 a.m., 7:30 a.m., after work, middle of the day.
40 At one point there were several chains going at
41 the same time, and they were both engaging each
42 other in various email chains at the same time.

43 Ms. Capuano was replying just as equally in
44 what we called and she agreed was banter, and
45 smart wit and insults. Given this, how could Mr.
46 Fox know or expect that Ms. Capuano was feeling
47 harassed when she was throwing back the insults

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1 just as well as he was. The language might not
2 have been quite as harsh, but she was often
3 repeating his language which some of the worst of
4 it she was quoting him.

5 The Crown rightfully said that the blogs are
6 not to be considered because she did not read
7 those, other than for assessing Mr. Fox's intent.
8 These two were playing games and scheming and even
9 double scheming at times where they're remarking
10 about "You did exactly what I wanted you to, and I
11 did what you thought you were going to do," and
12 they were playing off of each other's schemes and
13 words. This -- this was a mutual engagement,
14 these communications.

15 The next step, four, is did the conduct cause
16 Ms. Capuano to fear for her own safety or the
17 safety of members of her family. This is the
18 element of the offence I'm asking you to spend the
19 most time on and consider very carefully, and pay
20 attention to the evidence you heard in trial, Ms.
21 Capuano's demeanour, the nature of the
22 communications, which I'm now going to go through,
23 not in as much detail as we did at trial, but I'm
24 just going to remind you of some of the phrases
25 Ms. Capuano used.

26 When I -- when I read a phrase in, I'll --
27 I'll tell you the topic of the email chain so you
28 can note it and refer to it later in the date. On
29 Friday, January 21st -- 24th, 2014, and this is in
30 the -- on the top at the "love" email Mr. Fox
31 sends an email fairly lengthy, "What is love?"
32 Ms. Capuano replies [as read in]:

33
34 Not bothering to read this, not worth my
35 time.

36
37 And then at the last -- at the top of this email
38 chain Mr. Fox says, on January 24th:

39
40 I don't have time for you right now. I'm
41 busily constructing my scheme to slowly
42 destroy you.

43
44 Ms. Capuano replies:

45
46 Funny. I thought that was already well
47 thought out.

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1
2 This -- this just has a tone of not threatening or
3 harassment, just bantering back and forth, two
4 people who don't like each other, there's a little
5 bit of humour here, in my opinion, "Funny. I
6 thought that was already well thought out."
7 Moving on to the next email chain, which is
8 called "My apparent manipulation of Gabriel", and
9 you'll recall this email chain, and Ms. Capuano
10 accepted it as these are accurate. Mr. Fox copies
11 and pasted a series of text messages into the
12 email where Ms. Capuano sends three in a row, Mr.
13 Fox sends one, and she sends three more in a row.
14 There's a little bit of argument about, well,
15 Desiree Capuano wrote [as read in]:
16
17 That's exactly what the interviewer said, uh,
18 you keep lying to your son and live with
19 yourself at night. I'm done with you. One
20 day maybe he will understand how you
21 manipulated your own child.
22
23 Then another one shortly after:
24
25 I doubt it though.
26
27 Then another one shortly after, a minute later:
28
29 How sad that you are the hero he looks up to.
30
31 Mr. Fox replied:
32
33 I don't believe I'm spoiling Gabriel by...
34
35 And this is what the discussion was about, her
36 alleging he was spoiling Gabriel:
37
38 I don't believe I'm spoiling Gabriel by
39 providing him a comfortable home and teaching
40 him to be classy and dignified. It's
41 certainly better than forcing him to live
42 like trash. Providing him material things as
43 rewards for doing well is not spoiling him.
44
45 Ms. Capuano's three replies in a row, all within
46 two minutes where number 1:
47

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1 Classy? You have stripper sheets.

2
3 Number 2 [as read in]:

4
5 After spending an obscene amount of money on
6 him and getting him everything he wants is
7 not rewarding him. Keep filling his head
8 with bullshit.

9
10 And lastly:

11
12 Only trashy prostitutes have satin sheets.
13 Did you inherit that from your mom?

14
15 This is a discussion regarding different views of
16 parenting, which I will assume happens in many
17 separations where the parents are co-parenting,
18 but Ms. Capuano turned it into insulting not only
19 Mr. Fox, but his mother, and -- and I would say
20 quite insulting him and his mother quite well,
21 calling her a trashy prostitute.

22 And that was not Mr. Fox starting the
23 insulting there. That -- that was uncalled for.
24 They were discussing spending money on the child,
25 and it turned into him giving satin sheets to the
26 child, his mother being a prostitute.

27 The next email in the chain is:

28
29 I'm flattered really.

30
31 And this is Thursday, May 29th, 2014.

32 One thing I'll point out at this time, at tab
33 8 is the index of the emails and I'll make this
34 simple rather than going through the Crown's book,
35 on May 1st. No, on April 28th, 2014, and -- and
36 the index goes by date, so if you go to -- it's
37 one, two, three, four, five, six, if you flip
38 through seven pages on the right-hand side you'll
39 see, about three-quarters of the way down the
40 page, or right at the bottom, three up from the
41 bottom, it's April 28th, 2014, Desiree Capuano
42 sent cease and desist email. And that email was
43 considered quite serious by her. It was formal
44 notice, "I'm not putting up this anymore," yet on
45 May 27th, she actually starts an email chain
46 called "I'm flattered really." And I asked her in
47 cross-examination, I said, "So you asked Mr. Fox

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1 to cease and desist but you, yourself, did not
2 cease and desist?" and she agreed.

3 So, on one hand, she's saying she was
4 fearful, harassed, threatened, she asks him to
5 stop, and then weeks later she starts an insulting
6 email chain.

7 And this one, the first email May 27th, she
8 writes [as read in]:
9

10 Oh, Patrick or Richard or Morgan or whatever
11 name you're going by this week, it has become
12 clear to everyone...
13

14 Everyone in brackets, she seems to be insinuating,
15 and I'm not sure what she's -- why that's in
16 brackets:
17

18 ... with the amount of hours you spend
19 researching me, collecting information about
20 me, creating accounts for me, sending emails
21 out about me, hiring private detectives to
22 follow me, pretending to be me, not to
23 mention the endless hours of work you put
24 into creating and maintaining an entire
25 website about me, that you completely obsess.
26 Can't imagine how badly I must have broken
27 your heart when we separated 10 or 12, oh,
28 no, 13 years ago, seeing as you just cannot
29 seem to get over me. Honestly, I've never
30 felt more important to anyone before. I
31 mean, you must spend every waking moment
32 consumed with me. I'm not sure how you have
33 time to think about anything other than me.
34 If you even do, I am flattered. I do have to
35 let you know though at this point you're
36 really just coming across as a stalker ex-
37 boyfriend, and although I really hate to hurt
38 you anymore, I'm never get back together with
39 you. So you can reply to this or send out
40 more emails as me, or put up more stuff on my
41 shrine of a website or hell, create an app
42 about me because all it just proves how much
43 you are still infatuated and totally in love
44 with me. Thank you so much for the ego
45 boost. Looking forward to more!!
46

47 She's inviting more. She lists out the elements

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1 of the offence here where she talks about the
2 website, the emails, threatening to hire a private
3 detective. She lists out the elements of these
4 alleged offences, and asks for more. "Looking
5 forward to more". Mr. Fox replies [as read in]:
6

7 Good morning! I can either admit nor deny
8 any of the claims made in your email. I can
9 say, given that emotions are just labels of
10 simple people put on the physical sensations
11 caused by the self-induced though typically
12 subconscious due to conditioning or
13 ignorance, secretion of chemicals by the
14 brain that are highly improbable (your
15 claims, I mean). Most sincerely, Patrick.
16

17 He's replied quite logically, no threats. She
18 replies:
19

20 You can keep denying your feelings for me,
21 but it's very clear, honestly it's kind of
22 sweet.
23

24 Smiley face. This is just after she's -- not just
25 after, weeks after she's asked him to cease and
26 desist and then she engages in this and in fact
27 starts this.

28 And then there's another email back and forth
29 talking about feelings and -- and the last email
30 of the chain she says [as read in]:
31

32 And, by the way, you will never destroy me,
33 ever.
34

35 And let's not forget, this is again an email chain
36 she created. She, who is claiming in court here
37 that she's harassed and threatened by this man,
38 yet she taunts him and provokes him with an email
39 chain like that, and thinks it's kind of sweet,
40 all what he's been doing.

41 The next email chain is entitled "Telephone
42 call", and I'm not going to go through this one in
43 detail, except that she calls him asshole, asks
44 him if he's going to change his name to Asshole
45 Smith. Because she's now called him asshole, is
46 that a formal acknowledgement his new name is
47 asshole? Then there's an argument back and forth,

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1 as usual, and the last email at the top she says
2 [as read in]:
3

4 The first amendment doesn't protect
5 Canadians, but nice try, smart guy.
6

7 *Smart* in quotations, and she agreed with me in
8 cross-examination that was an insult, meant to be
9 an insult.

10 The next email is "A little test" and just a
11 couple of things, she calls him Janet, she agreed
12 that was an insult to his manhood. Called -- she
13 said [as read in]:
14

15 I don't even have words for how stupid your
16 tantrum sounds. I usually don't respond to
17 your melodramatic stupidity.
18

19 Again, she's throwing out the insults as good as
20 she's taking, and in some of these emails, and
21 this one in particular, I ask you to look at the
22 one ahead of it, which doesn't really have insults
23 in it.

24 The next one is "Your loving home and
25 parental teaching and guidance", Monday, January
26 19th, 2015, and this one was a nine-page email
27 chain. I'm not going to go through it in great
28 detail. I'll refer to a few points starting on
29 the eighth page. She calls him [as read in]:
30

31 Ricky, Richard, Morgan, Patrick, Patricia,
32 Susan, Sally, drunk, high and lonely, grow up
33 and have a nice night Sally.
34

35 I also wonder...
36

37 And this was read in in direct -- or in cross-
38 examination to Ms. Capuano:
39

40 I also wonder, do you fold your hands and
41 cackle malevolently when you talk about
42 destroying me? It seems a bit over the top,
43 much like all of these sad and pathetic
44 emails you keep sending me.
45

46 So here's she's saying they're sad and pathetic,
47 not threatening or harassing or fear instilling.

Closing Address for Accused on Count 1 by Mr. Lagemaat**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 Sad and pathetic. Moving on, she calls him [as
2 read in]:

3
4 Perry, I assume that is a possible next alias
5 for you.
6

7 She calls him sunshine, and this is where she
8 refers to his rabbi:
9

10 I wonder (and so does your rabbi, by the way)
11 if all of your angst and hatred even really
12 relates to me at all.
13

14 So she either has contact -- contacted his rabbi
15 or she's leading him to believe she has, which is
16 essentially what she's alleging he's done to her,
17 contacting her coworkers, employees, and here she
18 is, whether she did it or not, we don't know, she
19 denied it, but she's trying to make him believe
20 she did, if -- if she's in fact telling the truth
21 when she's here saying she didn't contact the
22 rabbi.

23 Moving on, she calls him Raymond and she
24 says:
25

26 What is it like being so wrong and self-
27 assured all the time? Does it feel blissful?
28 Does it remind you of home? You know, the
29 trailer park that you grew up in.
30

31 And this was brought to her attention after she
32 took great umbrage with him continually calling
33 her trailer park trash. Yet, she's thrown the
34 exact same insult, not trash, but "trailer park
35 you grew up in."
36

37 Moving on, the same email chain, she calls
38 him Jose:
39

40 Please don't make me break out the crayon
41 diagram as it only serves to further degrade
42 you.
43

44 She calls him Cthulhu, which I believe she said is
45 a mythical creature that looks like an octopus.
46 Moving on on the same chain, January 14th, 2015,
47 calls him Gary.

Closing Address for Accused on Count 1 by Mr. Lagemaat**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 I'm glad that you've learned how Google and
2 copy/paste works. That is precious and I
3 would pat your head like the good boy that
4 you are if you were here. A for effort.
5 However, you have again failed to read.
6 F for comprehension.
7

8 And continuing on in that same email [as read in]:
9

10 You have most definitely achieved your goal
11 with this thread if its purpose was to amuse
12 me and instill a sense of pity for you and
13 all those I have shared this with. The kind
14 of pity generally shown to angry kittens.
15

16 So here she's saying his emails instill pity.
17 Before it was sadness, now it's pity. She's used
18 anger.
19

20 All sniping aside, you really should get out
21 in the world and do something that makes you
22 happy. Make a friend, get laid, whatever you
23 need to do to relieve that stress and right
24 your head again. That may be the first step
25 to you being a better person. Or a person at
26 all, as you have not provided me evidence
27 that you are not some form of subhuman like a
28 mole person.
29

30 So here she's saying he's not even human, he's
31 subhuman like a mole person.

32 The same email chain, I'm on page 2 of 9, now
33 this is January 15th, 2015, she calls him Denise.
34 She calls him a sore loser, which, to me, I put to
35 her in cross-examination the theory that this is
36 actually a game, and the term *winning and losing*,
37 as you'll see often throughout these
38 communications.

39 Here she supports that by calling him a sore
40 lose. On page 1 of this 9 page chain she now
41 calls him Bill, she says he's on meth, and this --
42 this is all of note, the email that I talked about
43 where he talks about the discussion with Gabriel
44 regarding shooting and how he would never do it,
45 and talks about his rules of life. These emails I
46 just read in and all the insults is the same email
47 chain just further up, so this is after where he's

Closing Address for Accused on Count 1 by Mr. Lagemaat**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 commented about his conversation with Gabriel, and
2 I read this in, and he talks about being
3 absolutely clear on the point that he would never
4 harm her physically.

5 I suggest to you that, given that this is the
6 same email chain, and she has no problems
7 insulting him, calling him subhuman, mole man,
8 Gary, Denise, Bill, Jose, Cthulhu, Raymond,
9 trailer park, I suggest to you this is a clear
10 example of how she was not taking that as a
11 threat. She didn't call the police right then.
12 She engaged in insulting and basically what I
13 still call it bantering back and forth.

14 Moving on to the next email chain which is
15 called "Your talk with Gabriel" January 27th,
16 2015, and here she calls him Patty, and this is on
17 January 27th at 5:05 -- or 5:45 p.m. she writes
18 [as read in]:

19
20 Maturity is not, I can clearly see that
21 maturity is not your strong suit. Did you
22 actually have something of merit to discuss
23 or is this another one of your wailing
24 tantrums you have while you go through some
25 form of narcotic opiate withdrawal?

26
27 The next paragraph:

28
29 Honestly, if I gave any merit to any of your
30 proposals or suggestions regarding myself or
31 Gabriel, I'd immediately have my head
32 examined.

33
34 So what she's saying here is, if she gave any
35 merit to his statements, she should have her head
36 examined.

37
38 Maybe you should work on reading
39 comprehension.

40
41 The bottom paragraph, the same email:

42
43 As for the rest of your delusional rantings,
44 it is clear you have some severe mommy
45 issues, transference issues, and a sick
46 fixation on me. It's obvious you miss me,
47 but it isn't flattering, just very sad.

Closing Address for Accused on Count 1 by Mr. Lagemaat**BAN ON PUBLICATION - INHERENT JURISDICTION**

1
2 Moving on to the next chain, "Your belief in my
3 motives", and I'll read in the short email at the
4 start -- or the last email of this chain [as read
5 in]:
6
7 Richard, as always every email you have sent
8 is utterly wrong and childish, every email is
9 wrong and childish.
10
11 I suggest that doesn't mean threatening or
12 harassing, wrong and childish?
13
14 Don't you have a life, better things to do?
15 In your mind are you pinky or the brain? I
16 will assume pinky given the evident insanity
17 and lack of intellect.
18
19 And then at the bottom she re -- she signs off:
20
21 P.S....
22
23 And in capitals:
24
25 You mad, Bro?!
26
27 Followed by a:
28
29 Hahaha.
30
31 Now, if that's not taunting, I don't know what is.
32 The next one "Service of Process." One page
33 -- or a short chain, one page, two emails, it
34 would appear that a B.C. sheriff went to serve Mr.
35 Fox. He refused service because of the name on
36 the document. She replies [as read in]:
37
38 Exactly what I wanted you to do. You're such
39 an idiot. Thank you very much!!
40
41 Now, you'll recall in direct examination Ms.
42 Capuano cried about Mr. Fox's plotting, but here
43 this is like double plotting. They're each doing
44 what they think the other one doesn't want them to
45 do. It's very confusing to me reading this, but
46 he did what she wanted him to do, and she thanks
47 him.

Closing Address for Accused on Count 1 by Mr. Lagemaat**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 The next email chain is "Re Mail" April 9th,
2 2015, and I'll only read in one paragraph, Desiree
3 Capuano wrote, and here she calls him Richard,
4 halfway down the first page [as read in]:
5

6 I enjoy our banter as much as the next
7 person, so long as said person is going
8 through a quadruple root canal without pain
9 medication and multiple broken bones.
10

11 She's using humour in here.

12 The next -- the next email chain "Something
13 to consider", and I'll start on the first page
14 three-quarters from the bottom, May 11th, 2015,
15 10:48, Capuano writes [as read in]:
16

17 To each their own. You're allowed to have
18 your own opinion, but that's all it is, your
19 opinion. Have a super awesome and wonderful
20 day!!
21

22 Moving up, he replies about opinion, and her reply
23 is:
24

25 Not with a defence, little man.
26

27 And Ms. Capuano agreed that this was an insult at
28 Mr. Fox's size, being he's not a very tall man.
29 And then Mr. Fox says:
30

31 Which is exactly what you say when you have
32 no choice but to realize you are wrong and
33 your argument has no merit. Good enough for
34 me.
35

36 He's saying, good enough, that's it. She -- and
37 then she replies again:
38

39 Keep telling yourself that.
40

41 With a smiley face. Again as in all of these
42 emails I ask you to consider if that's a person
43 who was in fear or threatened or harassed.

44 The next email chain is "More of what I
45 know", and this is a three-page chain, on the
46 third page, the top Desiree Capuano wrote [as read
47 in]:

Closing Address for Accused on Count 1 by Mr. Lagemaat**BAN ON PUBLICATION - INHERENT JURISDICTION**

1
2 Oh, you little man. I don't fear you or
3 Gabriel's opinion of me. I am also not
4 preventing visitation. Try as you might to
5 get me to say no, I will not.
6
7 So they're talking again how she thinks he's
8 trying to get her to say no, and -- but the
9 important part is here she says "I don't fear
10 you." Yes, of course, she had an explanation for
11 this, but it's written out clearly "I don't fear
12 you."
13 Then on page 2 of 3, halfway down, May 11th,
14 2015, 10:40 a.m. Desiree Capuano wrote [as read
15 in]:
16
17 Oh, don't you know? I'm trying to play right
18 into your plan of turning Gabriel against me
19 by showing him how you never get annoyed.
20
21 And then in quotation marks:
22
23 Why is it you don't just shut up and fuck
24 off? Clearly not annoyed.
25
26 And to be fair, she's quoting Mr. Fox "Why don't
27 you just shut up and fuck off," but still she's
28 playing right into his plan. This is again double
29 scheming where they're each scheming and trying to
30 anticipate what the other one is scheming, and
31 playing into it or not playing into it.
32 They go through some dictionary definitions,
33 and then on page 1, the second email down, Desiree
34 Capuano wrote [as read in]:
35
36 This has been funny, really. I understand
37 you think you won your argument and you're
38 proven once again to show how ignorant I am
39 and are gloating about how the whole world is
40 going to see me for the way I really am, you
41 keep thinking that. Your arrogance and
42 ignorance will be your undoing. I'm a very
43 patient person...
44
45 Smiley face:
46
47 .. talk to you later...

Closing Address for Accused on Count 1 by Mr. Lagemaat**BAN ON PUBLICATION - INHERENT JURISDICTION**

1
2 Smiley face. Again, I ask you to consider is this
3 a person who's harassed, in fear, and threatened
4 or a person who's engaging in this type of
5 communication that the Crown is here alleging is
6 criminal?

7 The next email chain is the "Motivation for
8 your behaviour". It's a three-page chain, the
9 second page, the second paragraph down, May 11th,
10 2015, 10:49 a.m., Desiree Capuano wrote [as read
11 in]:

12
13 Richard, everything you say is so far out of
14 the realm of reality it doesn't bother a
15 rebuttal, but you keep thinking you're far
16 superior. I'm sure it makes you feel better
17 about the world.

18
19 Everything he says, in her words, is so far out of
20 the realm of reality that it doesn't bother a
21 rebuttal, which could suggest that she doesn't
22 believe anything he's saying, doesn't even deserve
23 a rebuttal, mind you, she does rebut everything he
24 says, the most things he says.

25 And then at some point in this chain Mr. Fox
26 has called her a stupid fucking cunt, she sends a
27 one word email:

28
29 Nope, signed...

30
31 In quotations:

32
33 .. the stupid fucking cunt.

34
35 Which suggests to me that insult, which to me is
36 one of the worst swear words that exists, didn't
37 really bother her that much that she quoted it and
38 signed off as it.

39 The next email chain is "Gabriel's summer
40 visitation", 2015, a seven-page chain. And this
41 is -- this is basically a large argument back and
42 forth about itinerary for a vacation for Gabriel
43 to go down. Page 2 of 7, Ms. Capuano, at May 7th,
44 wrote and starts with [as read in]:

45
46 Actually you inferred with almost every
47 visitation, but it's not the contents of

Closing Address for Accused on Count 1 by Mr. Lagemaat**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 this.

2
3 At the end of it she replies with her view, and
4 then at the end she says [as read in]:

5
6 Where's your argument again?

7
8 So she's not only trying to get her point across
9 saying what she said was important to her in many
10 of these communications, she wanted to get the
11 last word. In this -- in this case and many
12 cases, she's inviting him, "Where is your argument
13 again?" She's inviting him to convince --
14 continue on in this correspondence, this argument,
15 this bickering. She's not trying to end it.
16 She's not threatened, she's not in fear.

17 And then on the first page of this chain,
18 second email, the second email down, or third, May
19 11th, 11:12 a.m., Desiree Capuano wrote [as read
20 in]:

21
22 See, Richard, it doesn't matter...

23
24 And this is after two more pages of arguing since
25 the one I just read in:

26
27 See, Richard, it doesn't matter what I say or
28 how I say it, you are bound and determined to
29 argue everything I say, and you adamantly
30 refuse to even attempt to understand what I'm
31 talking about. So tell me why I should try
32 and defend myself against a person like that?
33 It's a futile effort and I have better things
34 to do. You nitpick like a little old lady
35 (oh, my God, are you going to say that I'm
36 not racist against little old ladies???)_

37
38 And then at the top it says:

39
40 And you are incapable of having a
41 conversation without a dictionary,
42 encyclopedia, and case law book for
43 reference.

44
45 Again, this isn't a person in fear.

46 The next email chain, and I'm just about done
47 with the email, it's called "Values". And this is

Closing Address for Accused on Count 1 by Mr. Lagemaat**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 from May 11th, 2015. You'll recall this is when
2 there were several email chains going on. In this
3 one, Mr. Fox, and this is on the second page,
4 makes a point of saying that he uses the coffee
5 mug every day that Gabriel bought him. Desiree
6 Capuano wrote, May 11th, 2015, 10:50 a.m. [as read
7 in]:

8
9 HA!

10
11 Capital letter:

12
13 HA! I picked out your precious coffee mug
14 that you use every day. Guess it's time to
15 trash it now, huh?

16
17 And then they have a discussion, it goes further
18 on, the bottom of page 1, and at the bottom Mr.
19 Fox had asked Desiree Capuano earlier in this
20 chain what she has done to make the world better,
21 list one thing, and she says, she quotes him to:

22
23 List one thing that you've done in your life
24 to make the world a better place, either
25 directly or indirectly.

26
27 That's Mr. Fox's question:

28
29 Yep, I gave birth to your son!!! Bam!! That
30 just happened!!

31
32 That's like a victory, a victory where like bam,
33 exclamation mark, and it just shows what a game
34 this was between the two of them. They're like
35 she's cutting and pasting his words, and she gets
36 a win, a bam. And again in this chain she sends
37 to emails in a row without him even putting in a
38 response.

39 The next email chain "Carrington College".
40 And I won't refer to anything in this email chain.
41 You'll recall this is the email chain where she
42 refused to say where she worked, she asked him, he
43 replied right away "yes" where he works.

44 The last email in Mr. Fox's book is
45 "Gabriel's adventure with the RCMP" and I'll only
46 rely on hers at the top, Ms. Capuano's first email
47 [as read in]:

Closing Address for Accused on Count 1 by Mr. Lagemaat**BAN ON PUBLICATION - INHERENT JURISDICTION**

1
2 When you said or would that have been too
3 complicated for you to think of, I meant -- I
4 meant you to use the word too. You really
5 should use a dictionary. That sort of poor
6 grammar common amongst the lower echelon of
7 society makes it difficult to take you
8 seriously. Not that anyone does anyway.

9
10 So she's saying here it's difficult to take him
11 seriously, and likely nobody does. Your Honour,
12 I'm noting the jury yawning, and would you like me
13 to break now? I don't have much to go. Maybe 15
14 minutes maximum.

15 THE COURT: I think we will take a break. Members of
16 the jury, we'll break for the afternoon recess and
17 we'll continue on.

18
19 (JURY OUT)

20
21 THE CLERK: Order in court. Court is adjourned for the
22 afternoon recess.

23 MR. LAGEMAAT: I apologize for calling you Your Honour.

24 THE COURT: Oh, don't worry about that. It happens
25 plenty frequently. You have another 15/20 minutes
26 or so. Mr. Fox, when you estimated 15 minutes,
27 your estimates have been fairly reliable, I think.

28 THE ACCUSED: Aside for the three weeks.

29 THE COURT: Yes.

30 THE ACCUSED: Yes, I'm still thinking that about 15
31 should be sufficient.

32 THE COURT: So that should get us finished today. All
33 right. We'll break now.

34 THE CLERK: Order in court. This court is adjourned
35 for the afternoon recess.

36
37 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)
38 (PROCEEDINGS RECONVENED)

39
40 THE COURT: Are we ready? Yes.

41 THE SHERIFF: The jury, My Lady.

42
43 (JURY IN)

44
45
46
47

Closing Address for Accused on Count 1 by Mr. Lagemaat**BAN ON PUBLICATION - INHERENT JURISDICTION****CLOSING ADDRESS FOR ACCUSED ON COUNT 1 BY MR. LAGEMAAT,**
CONTINUING:

MR. LAGEMAAT: There's one more element of the offence that the Crown must prove beyond a reasonable doubt, and again at any one of these steps you find the Crown has not proven it beyond a reasonable doubt, that's the end of it. We're now at the last one, whether Ms. Capuano's fear, if you found there was fear in the last step was reasonable in the circumstances, and for this you're being asked to consider would a reasonable person in Ms. Capuano's circumstances would have felt, and in assessing this you can consider the circumstances and the relationship that Ms. Capuano finds -- found herself in at the time.

In closing, I'm going to remind you of a couple of theories that were put to Ms. Capuano in cross-examination. First, that this was a game between two smart people, with a very good grasp of the English language and, knowing each other, what words could cut and what words couldn't. It was quite witty, the communications between them, and when I say back and forth I'm going to ask you to at some point refer to tab 8 of the Crown's book of -- that's Exhibit 1, and -- and that's the index of all the emails, and just have a look at that, and note how many are from each party.

And also note early on in the -- in the index when Ms. Capuano claims she wasn't replying to any emails, just note if she was in fact replying the whole way through or not. Now, you won't see all those emails, you'll only see the emails that the Crown and I have put in, but you'll get an idea from that index the number of emails, who they're from, who sent them, and to who.

Ms. Capuano said several times that she was engaging in this banter because she was afraid, and I didn't really get a clear explanation of how being afraid would result in engaging in banter and actually insulting, provoking the person you're afraid of, but she did say that in cross-examination.

She also said she kept the banter going because she wanted to be the one to get the last word. There's two different versions of why she kept the banter going or kept replying to Mr.

Closing Address for Accused on Count 1 by Mr. Lagemaat**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 Fox's email, and she also said that she kept it
2 going to get information from him. So she's given
3 various reasons of why she was replying, insulting
4 him, provoking him, none of which were that she
5 wasn't in fact afraid of him and was enjoying it,
6 as she said it several times.

7 There were several references in the emails
8 to winning and losing, scheming, and what I've
9 referred to as double scheming which was
10 anticipating the other one's scheme, and playing
11 on it. Ms. Capuano also admitted to calling in
12 tips which resulted in having Mr. Fox deported
13 from the country, and she agreed with me that, if
14 Mr. Fox was in Canada, it would be much more
15 difficult for him to fight a custody battle, and
16 that is in fact what happened. She has custody
17 and Mr. Fox has not seen Gabriel for quite some
18 time.

19 I put to her that this was just a custody
20 battle that went way further and nastier than the
21 average one, and again if -- when you look at the
22 index of the emails you'll see that originally the
23 emails were more about visitation, access, but the
24 subject matter of the emails went off the rails at
25 one point, and I suggest on behalf of both parties
26 it went off the rails. Both parties are equally
27 responsible for the -- the tenor and the nature of
28 the communications.

29 So, that's my submissions, and I'll remind
30 you, you've heard a lot of evidence, you've got
31 more evidence than you've heard in the books. You
32 can choose to read it, it's a lot of evidence, you
33 might not like the words Mr. Fox uses, or the fact
34 that he has posted these emails and many other
35 things to a website. That, alone, is not a
36 criminal offence, and as a member of a jury again
37 I'll remind you you have a grave responsibility.
38 Society has asked you to make a decision regarding
39 a person's liberty, and that decision should be
40 informed and based on the evidence and the law,
41 and we've gone the elements of the offence, and
42 we've gone through the evidence, and that cannot
43 be a decision based on previous behaviours or
44 previous bad character or dislike of an accused or
45 a witness. It's got to be an informed, rational,
46 logical decision.

47 This is a great burden on you. I'm asking

Closing Address for Accused on Count 1 by Mr. Lagemaat**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 you to take this burden very seriously, and that's
2 the end of my submissions. Thank you.
3 THE COURT: All right. Mr. Fox, you're now going to
4 make the defence closing address concerning Count
5 2.
6

CLOSING ADDRESS FOR ACCUSED ON COUNT 2 BY PATRICK FOX:

7
8
9 THE ACCUSED: With respect to the s. 93 firearms
10 charge, the possession in a place not authorized,
11 there's really only one question that needs to be
12 determined, and that's whether or not the firearms
13 were present at the Packaging Depot in Burnaby
14 between the dates of May 17th and June 3rd, 2016.

15 There's no question that the firearms did end
16 up in Los Angeles, I don't dispute that, and they
17 were seized by the ATF in Los Angeles, but we did
18 hear from Mr. Mangat, the owner of the Packaging
19 Depot, and he testified that he had no knowledge
20 or nor did he ever see any handguns at the
21 Packaging Depot.

22 He did have knowledge of -- he testified to
23 14 boxes being shipped from the Packaging Depot,
24 and we later heard from Agent Spizuoco from the
25 ATF that he had seized 25 boxes from my friend,
26 Liz Munoz' home in Los Angeles, so there's clearly
27 a discrepancy there of at least 11 boxes.

28 Now, we also heard from Agent Spizuoco that
29 he had no first-hand knowledge, he had no
30 knowledge at all really of when any given boxes
31 may have arrived at Ms. Munoz' home, who might
32 have come -- came into contact with them, or what
33 their contents were at the time that they were
34 shipped. He only knew what the contents were at
35 the time that he seized them.

36 And he further testified that he couldn't say
37 with any certainty if the boxes had been opened or
38 their contents had been changed.

39 Now, the Crown certainly wants you to infer
40 that the fact that the firearms were found in a
41 box that had a shipping label from the Packaging
42 Depot must mean that the -- the firearms were at
43 the Packaging Depot in that box and shipped from
44 the Packaging Depot. Unfortunately -- well, I
45 shouldn't say unfortunately. There is quite
46 simply though no direct evidence to show that the
47 firearms were ever there, and Mr. Myhre, the

Closing Address for Accused on Count 2 by Patrick Fox**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 Crown, did make reference to some of the
2 statements that I had made when I was being
3 interviewed by Constable Potts.

4 However, when you review those statements,
5 which you will find from page 67 to page 82 of the
6 transcript, you will notice there is actually no
7 statement in there that the firearms were ever
8 present there or for that matter that the firearms
9 were shipped, either by mail or by a courier.

10 Throughout the statement typically the term
11 that's used is that they were sent to Los Angeles,
12 so one thing that I would suggest, you have seen
13 in Exhibit 2, which was given to you by the Crown,
14 there is a U.S. birth certificate and a British
15 Columbia driver's licence both with my identifying
16 information, given those documents, it is my
17 suggestion that it is entirely reasonable that I
18 would have no difficulty whatsoever going back to
19 the United States.

20 And what I would ask you to ask yourselves
21 whether it would be reasonable to assume that
22 either I could have simply put the computer
23 containing the firearms or the firearms by
24 themselves into my car and simply drove down --
25 driven down to Los Angeles with them, and then
26 after getting them there put them into whatever
27 box happened to be available because I didn't want
28 or let's say my friend Ms. Munoz would not want a
29 bunch of computer equipment lying around her
30 living room.

31 But I suppose another thing that I would ask
32 you to consider is how unreasonable it would be
33 that a person would have a box that's not being
34 used, let's say it was being used at some point,
35 you take the contents out of the box, so you now
36 have a box that's sitting there, and you have some
37 items, for example, a computer that you want to
38 store. Is it really so unreasonable to put that
39 computer into that box and then put it into the
40 closet? That box then later unfortunately was
41 seized by the ATF and the firearms were found in
42 there.

43 You may also notice when you look at the
44 transcript of when you listen to my interview with
45 Constable Potts, one of my significant concerns,
46 which I make reference to repeatedly, well, quite
47 a number of times actually, is that I really

Closing Address for Accused on Count 2 by Patrick Fox**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 wanted to keep my friend, Ms. Munoz, out of any
2 potential trouble. To do that, it would be
3 important that she not have any knowledge of the
4 firearms because of her status or her situation,
5 she's an immigrant in the U.S. herself, and so I
6 would not want to do anything that could
7 potentially cause her unnecessary complications by
8 bringing her attention to the possibility of any
9 firearms that might be in those boxes.

10 And I would say that that is really all that
11 I would have to say about the firearms charge, and
12 whether or not I believe that there is sufficient
13 evidence to establish that the firearms were
14 actually present at the Packaging Depot. It's my
15 -- it's my submission that there are certainly a
16 lot of explanations for how the firearms could
17 have gotten to Los Angeles, but the burden is on
18 the Crown to prove, not that the firearms got to
19 Los Angeles, but that the firearms were at the
20 Packaging Depot, and it's my opinion and it's my
21 belief that the Crown just hasn't -- hasn't
22 established that.

23 Thank you.

24 THE COURT: Thank you very much, Mr. Fox. Members of
25 the jury, I'm going to ask you to go to the jury
26 room briefly now while I have a bit of a chat with
27 counsel and Mr. Fox about timing and then I can
28 give you a time for tomorrow that will be the most
29 realistic so that we use your time as efficiently
30 as we can.

31 All right. So if you wouldn't mind, please?

32
33 (JURY OUT)

34
35 THE COURT: All right. I do have revised copies of the
36 draft charge, Madam Registrar. One should be the
37 next exhibit for identification, and the others
38 are for counsel and Mr. Fox. There's one page
39 missing. I've forgotten what number it is, it's
40 in the 30s, it's the page where there are
41 headings, the Crown position, the defence
42 position, and in that draft those positions are
43 not developed, because I'd not yet heard the
44 closings.

45 So what exhibit is that?

46 THE CLERK: Exhibit J, My Lady.

47

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1 **MARKED J FOR IDENTIFICATION: Document titled**
2 **"Final Instructions to the Jury" (revised)**
3
4 THE COURT: I will draft a brief overview of the Crown
5 position and the defence position. You probably
6 want to see that before I charge the jury. I
7 could probably have something by about four
8 o'clock, ten past 4:00 or something like that.
9 That might be the best way to handle this. I'm
10 hesitant to leave it until tomorrow morning,
11 although we can do that, but Mr. Fox, you don't
12 get here till, what time is it?
13 THE ACCUSED: It's usually about 9:30ish.
14 THE COURT: All right. How would counsel like to
15 handle this?
16 MR. MYHRE: It's somewhat ironic that I have to say
17 this, given that I was late for everybody, but I
18 do have a childcare commitment that I could do
19 4:15. Beyond that, it becomes difficult to get to
20 where I need to be.
21 MR. LAGEMAAT: I'm available, My Lady, to wait.
22 THE ACCUSED: I wouldn't be opposed to Mr. Lagemaat
23 receiving something and emailing it to me.
24 THE COURT: How does that help? Oh, you mean the
25 business about the Crown and defence positions?
26 THE ACCUSED: I'm just getting -- yes.
27 THE COURT: All right. Well, perhaps we'll do that, if
28 you -- if I've not been able to do this by 4:15,
29 as for timing tomorrow, I think -- how many pages
30 is the charge? I don't actually have a copy of
31 it.
32 MR. MYHRE: Thirty-five.
33 THE COURT: Thirty-five, two of them are table of
34 contents, 33, there'll be a bit more, a discussion
35 of the positions, that's going to be a little less
36 than two hours, so I'll ask the jury to come at
37 10:30 tomorrow, and that gives us a little bit of
38 time to deal with any concerns? Mr. Lagemaat?
39 MR. LAGEMAAT: Yes.
40 THE COURT: And we can start at 9:30? Can we start at
41 9:30 tomorrow?
42 MR. MYHRE: Yes, My Lady.
43 MR. LAGEMAAT: Yes, My Lady.
44 THE COURT: Mr. Fox, obviously your timing is a little
45 bit out of your control, but as soon as you're
46 here, we'll start.
47 Mr. Sheriff, should I have the jury come in

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1 or will you just ask them please to come at 10:30
2 tomorrow morning?
3 THE SHERIFF: I can ask them, My Lady.
4 THE COURT: All right. Thank you. And tomorrow will
5 be the day that I give them my final instructions.
6 MR. MYHRE: So you're going to put together, I'm just
7 clarifying, the both positions and would you like
8 me to wait and come back into court or will it be
9 something you -- you would like me to pick up at
10 the registry or? But then what time does the
11 registry close?
12 THE COURT: Madam Registrar, are you able to send
13 something out by email at about 4:15?
14 THE CLERK: I could, My Lady. I'm not sure if counsel
15 is able to tell the front desk that they need to
16 get in afternoon four o'clock. I don't know if
17 that's an option, if there's a paper copy.
18 THE COURT: All right. No, it's better by email.
19 THE CLERK: I can email them, My Lady. .
20 THE COURT: Thank you. There's an issue with it going
21 to Mr. Fox. I think we're just going to -- can
22 you tell the jury 10:30 tomorrow?
23 THE SHERIFF: Yes, My Lady.
24 THE COURT: I think we're just going to stand down and
25 let me see what I can do, and we'll come back into
26 court probably at about 4:00.
27 MR. MYHRE: My Lady, I'm sorry to bring this up, but we
28 have two concerns about the tail end of my
29 friend's submission. My friend reminded the jury
30 about several theories that he had put to Ms.
31 Capuano during cross-examination. I believe your
32 instruction, if I recall correctly, already
33 includes an instruction to the effect of it's the
34 person's evidence and not counsel's questions.
35 Sorry, what the person says and not what counsel
36 has to say in terms of the evidence. So I don't
37 think anything more needs to be said about that,
38 if I'm correct in my recollection of the charge.
39 The other thing I'm concerned about is my
40 friend characterized the decision they have to
41 make as one to do with Mr. Fox's liberty, and I
42 respectfully submit that incorrect. They have to
43 decide whether he's guilty. Any questions about
44 his liberty are for the court.
45 THE COURT: Does something need to be said on that?
46 There is something in the charge about questions
47 that sometimes --

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1 MR. MYHRE: If that's -- if there's something along
2 those lines, I don't think anything needs to be
3 said in particular.
4 THE COURT: Mr. Fox made mention of Ms. Munoz being an
5 immigrant. Is there any evidence of that, and
6 therefore there is more concern to keep her out of
7 trouble?
8 THE ACCUSED: In my statement to the RCMP it was
9 mentioned, I would have mentioned it to Constable
10 Potts. In fact, I probably said to him that's the
11 reason or part of the reason that -- that I was so
12 concerned about getting her into any kind of
13 trouble.
14 THE COURT: Is that your recollection, Mr. Myhre?
15 MR. MYHRE: I honestly don't recall that particular
16 word being used. I'd have to go look at the
17 statement again, My Lady. I can certainly double
18 check that for tomorrow.
19 THE COURT: If it's not there, is there something that
20 needs to be said about that not being evidence or
21 is it of no concern?
22 MR. MYHRE: I would tend to the latter view. I don't
23 think a huge amount turns on that fairly specific
24 issue.
25 THE COURT: All right. We'll stand down and resume at
26 about five past 4:00.
27 THE CLERK: Order in court. Court stands down.
28
29 (PROCEEDINGS ADJOURNED UNTIL 4:05 P.M.)
30 (PROCEEDINGS RECONVENED)
31
32 THE COURT: Madam Registrar, here's some copies of the
33 missing portion of the draft. One should be the
34 next exhibit for identification, which would be?
35 THE CLERK: Exhibit K, My Lady.
36 THE COURT: Say it again, please?
37 THE CLERK: K.
38 THE COURT: All right. Thank you.
39
40 **MARKED K FOR IDENTIFICATION: Missing portion**
41 **of Charge relating to Crown and defence**
42 **positions**
43
44 THE COURT: Would you hand those out, please? Do you
45 want to take a fairly quick look now in case
46 anything springs immediately to mind that I -- and
47 bearing in mind that Mr. Myhre needs to leave in

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1 six minutes time. Are there any comments at this
2 point?
3 MR. LAGEMAAT: One -- one thing, My Lady. Mr. Fox is
4 pointing out a typo at paragraph 168, the first
5 line.
6 THE COURT: I'm quite sure there will be typos in here.
7 MR. LAGEMAAT: Yes, yeah.
8 THE COURT: But I appreciate them being pointed out.
9 Thank you.
10 THE ACCUSED: I -- I realize it's a draft.
11 THE COURT: One-sixty-eight?
12 THE ACCUSED: It should be "Mr. Fox's conduct did not
13 harass Ms. Capuano".
14 THE COURT: Ah, thank you. Yes?
15 MR. MYHRE: And just one think, My Lady, at paragraph
16 160, the Crown also made reference to a portion of
17 Mr. Fox's statement that I wasn't able to -- it
18 wasn't just -- it wasn't just circumstantial, in
19 the Crown's submission.
20 THE COURT: Give me the paragraph number again?
21 MR. MYHRE: Oh, 160 of the charge.
22 THE COURT: What portion of the statement are you
23 relying on that you say is not circumstantial
24 evidence?
25 MR. MYHRE: Mr. Fox stated, I'll find the reference.
26 My submission to the jury was that his statement
27 at paragraph 1836 was an admission that he was
28 shipping, and Mr. Fox's submission on that is
29 there's no reference to firearms, if I could
30 summarize it.
31 THE ACCUSED: Okay. This is talking about this stuff
32 in general, not specifically firearms.
33 THE COURT: So how do I use paragraph 1836 in the
34 Crown's submission? It doesn't seem to be
35 something that you've characterized as a -- an
36 admission of shipping the firearms.
37 MR. MYHRE: That was what I put to the jury and that is
38 the Crown theory, that in the context, that's what
39 he's referring to.
40 THE COURT: Oh, I see. Let me back up a bit. I see.
41 All right. So I'll find a way to address that
42 while also including reference to the defence
43 position about that. All right. Anything else at
44 this point. We have one minute only.
45 MR. MYHRE: No, My Lady.
46 THE COURT: All right. So what I suggest is that
47 counsel review that more carefully than has been

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1 time for it, and at 9:30 tomorrow give me any
2 further comments on the draft charge. The more
3 specific, the better, as far as making a quick
4 change, if changes are needed, but assuming there
5 -- well, that should give us time to address the
6 draft, and then get the copies made for the jury,
7 and begin at 10:30. I think the charge, as I
8 said, will take a little bit under two hours, with
9 a break that's probably going to take us to 12:30,
10 I would think.

11 Anything further?

12 MR. MYHRE: No.

13 MR. LAGEMAAT: No, My Lady.

14 THE COURT: Thank you.

15 MR. MYHRE: My Lady, I'm sorry again for making
16 everybody wait today. It's --

17 THE COURT: All right.

18 MR. MYHRE: -- extremely embarrassing.

19 THE CLERK: Order in court. Court is adjourned to June
20 27th, 2017 at 9:30 a.m.

21
22 (PROCEEDINGS ADJOURNED TO JUNE 27, 2017, AT
23 9:30 A.M.)
24
25

26
27 Transcriber: C. Banks
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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.

A handwritten signature in cursive script, appearing to read "C. Banks".

C. Banks
Court Transcriber