

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ORRICK, JUDGE

PLANNED PARENTHOOD FEDERATION OF	)	
AMERICA, INC., et al.,	)	
	)	
Plaintiffs,	)	
vs.	)	No. C 16-0236 WHO
	)	
CENTER FOR MEDICAL PROGRESS,	)	
et al.,	)	San Francisco, California
	)	Tuesday
Defendant.	)	October 8, 2019
	)	7:30 a.m.

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

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## PROCEEDINGS

P R O C E E D I N G S

1  
2 October 8, 2019

7:38 a.m.

3 ---000---

4 (The following proceedings were held outside of the  
5 presence of the Jury)

6 **THE CLERK:** Please come to order.

7 **THE COURT:** Good morning, everybody. Please be  
8 seated.

9 So Mr. Mihet, when we left on Friday, the -- there were  
10 two clips that I thought were going to be presented in chambers  
11 that I could look at? What, what happened with those?

12 **MR. MIHET:** They were not presented in chambers.

13 **THE COURT:** Okay. Good.

14 **MR. MIHET:** We have them here already. My  
15 understanding is that Mr. Lopez has to go today and --

16 **THE COURT:** Yeah.

17 **MR. MIHET:** -- we want to get him out of here today,  
18 so I'm okay waiting until Thursday to handle this issue.

19 **THE COURT:** Yeah. If you would present them to me so  
20 that I can look at them ahead of Thursday, that's fine.

21 **MR. MIHET:** We will do that.

22 **THE COURT:** Okay.

23 **MR. MIHET:** Thank you.

24 **THE COURT:** All right. So I have reviewed -- took  
25 about three hours, review the deposition information that you

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1 provided for Davis, Farrell, Nguyen and Van Der Hei. If I  
2 followed through on what I said I was going to do I would be  
3 assessing the defendants about two and a quarter hours, and the  
4 plaintiffs about 45 minutes on their time. I'm not going to do  
5 that because I want you all to realize what the impact is of  
6 the litigation choices that you are making.

7 And, and I'm going to put on -- on ECF the rulings that I  
8 make on all the depositions. You will find that they were  
9 consistent with the rulings that I've made so far in trial,  
10 with the rulings that I made in the motions in limine, and at  
11 the other pretrial conference sessions that we have had.

12 And I really want you to take these to heart. You are  
13 making decisions that are going to end up impacting how things  
14 proceed. So I just want to lay that out there. But I'm not  
15 going to assess anybody this time.

16 I have one question about the Farrell -- from the Farrell  
17 deposition, which is if somebody would explain to me -- I'll  
18 start with the defense -- the "amophius" or amphioxix study  
19 that was discussed in that deposition. And I may not have  
20 described -- I may not have pronounced it well enough for  
21 Mr. Breen to understand what I was saying.

22 **MR. BREEN:** Oh, no, you did, Your Honor. I believe  
23 it was the Amphioxix study, 2005 to 2008 or so, performed at  
24 Planned Parenthood Gulf Coast, a fetal tissue study where they  
25 took whole products of conception with them. The procurement

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1 was done by the -- the folks at Planned Parenthood Gulf Coast  
2 is my understanding of that, that particular study.

3 **THE COURT:** Okay. Great.

4 Ms. Sterk.

5 **MS. STERK:** Just to clear the record, that study was  
6 actually for placental tissue, not for fetal tissue. And it  
7 was also well before what the cutoff for discovery had been,  
8 which was 2010. So this study was from 2005 to -- it was well  
9 before 2010.

10 **THE COURT:** Okay.

11 **MR. BREEN:** I don't know that the testimony was that  
12 that study was placental, because there were two studies at  
13 Gulf Coast. The second was allegedly placental, but we had  
14 further testimony about that.

15 **THE COURT:** Okay. And then there was -- I think in  
16 that deposition, there were about three or four pages that were  
17 AEO that I could not review at all. Because they were black on  
18 what you provided to me.

19 So if somebody would provide to me -- if, if this was  
20 something that somebody wants in, I would like to read it  
21 before I make a ruling on it.

22 **MS. STERK:** We'll do that, Your Honor.

23 **MR. BREEN:** Sure.

24 **THE COURT:** And I assume that that deposition is not  
25 going to be played today. So that I will put the -- I'll put

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1 my rulings out later. So, let me just remind -- so thank you  
2 on that.

3 Let me just remind you, if it hasn't already been obvious,  
4 I'm sustaining objections related to abortion procedure and the  
5 details that are in the studies. And that particularly relates  
6 to the Nguyen deposition. Most of the designations went to  
7 abortion procedures that the motion in limine order clearly  
8 prohibited.

9 The end of the deposition where there was some concern  
10 about whether NAF could participate in asking questions,  
11 whether adverse parties could ask questions, if that was an  
12 issue, it should have gone to Judge Ryu. It was my expectation  
13 that people would be participating in these depositions. So, I  
14 overruled all of those objections.

15 So now I'm hoping, maybe against hope, that the lines of  
16 acceptable testimony in the trial are clear. The plaintiffs  
17 wanted to include -- exclude defendants' journalism theme, and  
18 I said no. The defendants are entitled to provide evidence of  
19 that for context, and also for the Penal Code defense. But  
20 I've excluded testimony regarding abortion procedures because  
21 of relevance and prejudice.

22 Towards the end of Mr. Mihet's examination, I think he  
23 found the line. And it's fine for the defendants to ask, you  
24 know, questions like: What violent crimes did you believe the  
25 people you filmed had committed? What did you do to gather



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1 information? What informed your belief about that? And then,  
2 what was the information on a high level? Those sorts of  
3 questions are fine. But getting into the weeds, as I indicated  
4 before, is not, because of relevance and prejudice.

5 This isn't a criminal trial. This isn't a preliminary  
6 hearing before a judge. This is a trial about the strategies  
7 that were employed, and whether they were appropriate.

8 Okay. So, now, let me go on to the letters regarding  
9 Mr. Lopez's testimony and the video. Mr. Lopez is entitled to  
10 describe why he agreed to participate. He can describe the  
11 video -- he can describe information that led him to want to do  
12 that.

13 But I'm not going to show the video -- I'm not going to  
14 allow the videos in, under 403, of Larton and Nucatola.

15 For Taylor and Nguyen, I haven't reviewed the tape or the  
16 transcript. Has it been lodged?

17 **MR. JONNA:** Your Honor, I don't think it's been  
18 lodged, but we have the transcript -- we'll have it in a few  
19 minutes. And we'll give that to you.

20 **THE COURT:** Okay. So my idea is that you can play  
21 the video without the sound. And -- certainly. And I'll look  
22 at the transcript, and see whether the sound should be played  
23 or not.

24 And with Van Handel, that can't be used.

25 **MR. JONNA:** Okay. Can I please respond?

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1           **THE COURT:** Yes, go ahead.

2           **MR. JONNA:** Okay. As far as Larton and Nucatola, as  
3 we pointed out, Mr. Lopez viewed those videos before he decided  
4 to go undercover. And he transcribed those videos before he  
5 decided to go undercover. And the statements made in the  
6 videos are relevant to explain and to understand what motivated  
7 him to get involved in the project. And that's highly relevant  
8 in this case because they're suing him for a RICO conspiracy;  
9 they want punitive damages.

10           The jury should be able to hear what it was that motivated  
11 him to get involved. It wasn't a desire to commit federal  
12 offenses. It was a desire to prevent them from being  
13 committed.

14           So it's -- it's highly relevant, also, to the federal  
15 wiretap claim. And it's unfair for him to just say what  
16 motivated him, without showing the jury what he actually saw.

17           So those two videos go directly to his motive and intent.  
18 And we think it is highly prejudicial for him to not be able to  
19 testify and show the jury which videos were instrumental in his  
20 thought process in getting involved in this project.

21           As far as the other two videos, Dr. Taylor and Tram  
22 Nguyen, showing the videos without sound is not really going to  
23 accomplish much. The whole point is for the jury to see what  
24 was being said while there were people around. Just like what  
25 we talked about last week, with the Dr. Nucatola lunch video.

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1           **THE COURT:** Right. At the moment, you haven't given  
2 me -- I don't know what it is that was said around people. And  
3 so that's the question. The issue is whether this testimony  
4 which would otherwise be excluded under 403 or relevance is  
5 actually relevant because it was being discussed with, you  
6 know, people in the area. And that was the same thing that we  
7 went through with the videos regarding Ms. Merritt.

8           **MR. JONNA:** Another point, Your Honor, is, you know,  
9 I read all your motion-in-limine rulings. I'm very familiar  
10 with the Court's orders. None of those rulings, in our view,  
11 ever said that we couldn't show the CMP videos that they are  
12 suing over in this case.

13           I mean, they are suing, saying these are illegal  
14 recordings. And the jury is going to make a decision about  
15 whether these are illegal recordings, and they're not going to  
16 be allowed to see these videos.

17           That was never addressed in your motion-in-limine rulings.  
18 That's news to all of us.

19           **THE COURT:** Well, I have read and re-read my orders,  
20 because there does seem to be some confusion. And I think I've  
21 been quite clear about this. And I'm trying to continue to be  
22 clear, Mr. Jonna.

23           So, I appreciate your confusion. But the rulings, I  
24 think, have been consistent, and they will remain.

25           **MR. JONNA:** So what I would suggest, Your Honor,

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1 which is what we put our papers, is that if they don't want  
2 those clips shown to the jury, then they should withdraw their  
3 claims as to those clips. How can the jury make a decision  
4 whether those were illegal recordings, without seeing them?

5 **THE COURT:** The point, Mr. Jonna, is with respect to  
6 the claims in this case, it is information that occurred prior  
7 to the filming of the videos, and whether those strategies were  
8 appropriate or inappropriate. And what you want to do is get  
9 into -- and I think it's always been the desire of the  
10 defendants to get to the truth of these issues --

11 **MR. JONNA:** No.

12 **THE COURT:** -- that I'm not allowing.

13 **MR. JONNA:** Sure. And Your Honor, that's clear from  
14 your rulings. There's no question about it.

15 **THE COURT:** Thank you.

16 **MR. JONNA:** We don't want to prove -- I mean, we  
17 certainly want to, but we understand the Court is stopping us  
18 from proving what's been asserted or what's been claimed as  
19 true. We understand that.

20 We never thought that we couldn't at least show the videos  
21 that are the subject of this entire case. I mean, this is  
22 what -- the case is about these videos. The jury should be  
23 able to see these videos that they're suing over.

24 So we're not saying we want to prove what -- that the  
25 claims in the videos are true. We're saying we want to show

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1 the jury the videos. Let them decide if these are illegal  
2 recordings. Let them decide if there's a reasonable  
3 expectation of privacy when they're talking about these graphic  
4 abortion techniques in front of strangers.

5 So --

6 **THE COURT:** I understand that that's your position.

7 **MR. JONNA:** Your Honor, you're sending us -- you're  
8 sending us into a battle without any armor, without our --  
9 without any weapons. That's basically what's going on here, in  
10 our view.

11 **THE COURT:** Mr. Jonna, that may be your view. And I  
12 may be wrong. I may have drawn the lines in the wrong places.  
13 I -- I freely admit that I make mistakes all the time. But  
14 this is the line that I think is the appropriate line, given  
15 the case that the plaintiffs have brought, and given the  
16 defenses that are now available to your clients.

17 **MR. JONNA:** One last point.

18 **THE COURT:** You can make one last point.

19 **MR. JONNA:** Sure.

20 **THE COURT:** But hopefully it's the last point.

21 **MR. JONNA:** Okay, I'm sorry. I appreciate the  
22 Court's time. But obv- --

23 **THE COURT:** Mr. Jonna --

24 **MR. JONNA:** Yes.

25 **THE COURT:** Wait until I finish.

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1           **MR. JONNA:** Sure.

2           **THE COURT:** Then you can go ahead.

3           And I do -- you know, I -- I appreciate what -- I  
4 appreciate the sincerity and the importance of the issues that  
5 you are raising. I've tried to deal with them in this case in  
6 a way that preserves your client's ability to explain what was  
7 going on, why this began in the first place, and up through the  
8 time of the -- of the filming, given the kinds of causes of  
9 action. But I'm -- I'm going to continue to hold that line.

10           **MR. JONNA:** Okay. I have one point and one question.

11           The point I want to make is, Your Honor, the jury is  
12 hearing what our clients thought and believed. And they sound  
13 crazy if they can't show the -- if they can't show what led  
14 them to have those beliefs. So it's a credibility issue, too.  
15 So I ask the Court to consider that.

16           They're saying: Yeah, we thought there were all these  
17 crimes. Or: We thought -- you know, we saw this on the  
18 videos. But they can't show the jury the videos. So the jury  
19 can actually think these are sane human beings; they're not  
20 hallucinating. So that's the point I want to make.

21           The second point is if the Court is not going to let me  
22 show the Larton clip or the Nucatola clip, can I -- I have two  
23 questions. Can I introduce in evidence the transcripts that my  
24 client created after he watched those clips (Indicating)? He  
25 made transcripts. And, you know, that's -- so that's one

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1 question.

2           The other question is if I can't do that, can I at least  
3 have him talk about what he saw when he watched those clips?  
4 Again, he'll look kind of crazy without showing the jury the  
5 proof that that's what he saw. But can I at least do that?

6           **THE COURT:** Well, so, if he has notes that he took as  
7 a result of the videos, I'll take a look at those. And see  
8 that --

9           **MR. JONNA:** Actually, they're the transcripts that --  
10 so CMP created transcripts of the videos. He was the  
11 transcriber. And he did that before he went undercover. He  
12 watched them; he transcribed them. So they are the official  
13 transcripts of those videos.

14           **MS. BOMSE:** Your Honor, may I be heard?

15           **THE COURT:** Ms. Bomse, go ahead.

16           **MS. BOMSE:** So we took Mr. Lopez's deposition in this  
17 case, and we asked him why he went undercover. And there was  
18 no mention of Perrin Larton; there was no mention of  
19 Dr. Nucatola. The testimony was he had a conversation -- a  
20 couple of conversations with Mr. Daleiden, he did some Google  
21 research, and that was enough for him.

22           So, so this, this impassioned plea that he needs to tell  
23 the jury about watching Ms. Larton and Ms. Nucatola --  
24 Dr. Nucatola's testimony because that was what compelled him to  
25 go out and wear a hidden camera and go to conferences is --

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1 is -- I think lacks a certain amount of credibility. And the  
2 reality is that defendants want to get in front of the jury  
3 things that are salacious and inflammatory.

4 And just for the record, I want to make the point that  
5 plaintiffs are not suing, as the Court has found, over the  
6 finished-product videos and its harm to their reputation. So  
7 it's perfectly appropriate that those are not shown.

8 Also, plaintiffs have not objected to introduction of  
9 evidence of the scene, who was around, which is relevant and  
10 goes to what plaintiffs are suing on, which is whether there  
11 was an expectation of confidentiality. So, just to make that  
12 clear for the record.

13 **THE COURT:** All right. So, not the transcript. You  
14 can -- you can have him say what he did, afterwards. You can  
15 have him describe the -- what was -- what he learned through  
16 Doctor -- Mr. Daleiden.

17 **MR. JONNA:** Okay Your Honor. Thank you.

18 **THE COURT:** Thank you.

19 **MR. LIMANDRI:** Your Honor, we filed a motion in  
20 limine which pretty much, I think, includes the --

21 **THE COURT:** So let me stop you, Mr. LiMandri. Good  
22 morning.

23 **MR. LIMANDRI:** Good morning, Your Honor.

24 **THE COURT:** I saw the motion with respect to the  
25 evidence. I will look at it. I'm not going to change my



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1 perspective today. I will look at it. And if it shapes my  
2 view, I will certainly -- you can argue it again.

3 **MR. LIMANDRI:** Okay.

4 **THE COURT:** But maybe on Thursday or Friday.

5 **MR. LIMANDRI:** That's fine. We'll do it that way,  
6 then. Thank you.

7 **THE COURT:** And Mr. Millen, I saw your motion, and  
8 I'm going to deny it.

9 I will look -- and I just looked at it this morning.

10 **MR. MILLEN:** I appreciate time is very difficult for  
11 all of us, so I understand.

12 **THE COURT:** So, so the -- I wasn't impressed by the  
13 description of the case. And I have to say in this court, the  
14 -- you know, not only -- I'll just stick with myself.

15 I've had -- I had a four-month-long RICO trial with breaks  
16 at Christmastime, and -- you know, very long breaks. And, and  
17 the -- none of -- and over extremely serious issues. Murder  
18 and those sorts of things. And nobody objected to the rule  
19 that I have.

20 And the reason -- which I think is pretty well settled,  
21 but I will look and see whether I'm just way off base -- is  
22 once somebody starts testifying, the innate desire of lawyers  
23 to help them say things that are the -- that best present them  
24 and their case is overwhelming, unless there is a bright line.  
25 And so I just -- I just have a bright line.

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1           So I'm going keep that bright line. But I will look and  
2 see whether there is other case law that either would support  
3 that 1980 out-of-Circuit case or --

4           **MR. MILLEN:** Understood. Thank Your Honor.

5           On a different point, if I might, your colloquy with  
6 Mr. LiMandri about looking at that brief.

7           **THE COURT:** Yeah.

8           **MR. MILLEN:** It was filed very late last night. And  
9 there was a point in there that I -- in fact, I will ask the  
10 Court now if it wants briefing on this. I know that's a funny  
11 thing to say, but I'm sure the answer is pretty much: No,  
12 unless. But I do want to put it out there.

13           I have to say, especially given what Your Honor just said  
14 about his experience with lengthy RICO trials, it seems curious  
15 to me that the plaintiffs are claiming that this is a  
16 continuing criminal enterprise; that the key fruit of this  
17 enterprise, of course, is not the act of the recording; the  
18 fruit is the product. It's this video that's been edited and  
19 put out there.

20           And to have plaintiffs bring a claim that says there's a  
21 continuing RICO enterprise, and yet the jury is -- it's almost  
22 reversed where the jury -- it's not the plaintiffs who want to  
23 say: Look at the fruit of this, you know, that you might have  
24 in a classic mobster case, you know, of the damage to this or  
25 the murders or whatever else. That the defense is saying: Let

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1 the jury see the fruit. If this is such a criminal enterprise,  
2 let them see the fruit.

3 And again, you obviously have far more experience than I  
4 do in these RICO cases, but it does seem curious that the  
5 defense is unable to show the product of this criminal  
6 enterprise when it's the heart of what brought us all here.  
7 Because their damages -- as the Court knows, there's a very  
8 high-tensity argument about whether the damages are from the  
9 publication, itself, or are they from the actual act of  
10 stepping in when arguably they shouldn't have, under the fraud,  
11 et cetera, et cetera, theories.

12 So to not let that publication come out seems curious and  
13 improper to me, Your Honor.

14 **THE COURT:** Okay.

15 **MR. MILLEN:** Does the Court want a briefing on that  
16 particular issue?

17 **THE COURT:** I don't think I need any briefing because  
18 I think, as I told Mr. Jonna, I may be misreading what I read  
19 or unclear -- you know, saying things that are ambiguous to  
20 some and not others. But, no. I don't need any further  
21 briefing.

22 **MR. MILLEN:** Thank you.

23 **THE COURT:** Thank you, Mr. Millen.

24 All right, we'll get going at 8:00.

25 **MR. KAMRAS:** Your Honor? Jeremy Kamras.

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1           We had filed a motion in limine yesterday afternoon about  
2 a document that we at least anticipate that Mr. Rhomberg may  
3 testify about. I have a copy of the document here. Given its  
4 nature, we didn't want to file it on ECF. But I can provide it  
5 to you if you would like.

6           **THE COURT:** Okay.

7           (Document handed up to the Court)

8           **THE COURT:** Okay. So why don't I take a look at  
9 this, and then we can take it up at one of the breaks before  
10 Mr. Rhomberg testifies.

11           **MS. SHORT:** Your Honor, I just wanted to say for --  
12 this was not something sprung on the plaintiffs. Mr. Rhomberg  
13 happened to have a copy of that with him at his deposition, and  
14 Ms. Sterk specifically said: What's that you're holding? And  
15 he handed it to her.

16           She marked it as an exhibit, and proceeded to ask him 20  
17 minutes of questions about it.

18           **THE COURT:** All right.

19           **MS. SHORT:** Thank you.

20           **MR. KAMRAS:** It's not an issue of surprise. It's  
21 prejudice. Hearsay.

22           **THE COURT:** Thank you.

23           (Recess taken from 8:01 a.m. to 8:09 a.m.)

24           (The following proceedings were held outside of the  
25 presence of the Jury)

## PROCEEDINGS

1           **THE CLERK:** Please come to order.

2           **THE COURT:** Please be seated, everybody.

3 All right. We have a jury. Are we ready to proceed?

4           **MS. TROTTER:** (Nods head)

5           **MS. BOMSE:** (Nods head)

6 (The following proceedings were held in the presence  
7 of the Jury)

8           **THE COURT:** All right. Please be seated, everybody.

9 Good morning, ladies and gentlemen. Welcome. Thank you  
10 for being back here as promptly as you are. I hope you had an  
11 enjoyable weekend and a good Monday. So now we are moving on  
12 with the trial.

13 And who is the next witness?

14           **MS. BOMSE:** Your Honor, the plaintiffs call Adrian  
15 Lopez.

16           **THE COURT:** All right.

17                           GERARDO ADRIAN LOPEZ,

18 called as a witness for the Plaintiffs, having been duly sworn,  
19 testified as follows:

20           **THE CLERK:** Be seated.

21 Adjust the mic as you may need to, and then if you would  
22 please state your full name for the record, and spell it for  
23 the court reporter.

24           **THE WITNESS:** Gerardo Adrian Lopez. G-E-R-A-R-D-O,  
25 A-D-R-I-A-N, L-O-P-E-Z.

DIRECT EXAMINATION

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**BY MS. BOMSE**

**Q.** Good morning, Mr. Lopez.

**A.** Good morning, ma'am.

**Q.** We met earlier this morning, but again, my name is Amy Bomse, and I represent the plaintiffs in this case.

**A.** Hello.

**THE COURT:** If you could pull the mic just a little closer to you, that would be great.

(Request complied with by the Witness)

**THE COURT:** Thank you.

**BY MS. BOMSE**

**Q.** Mr. Lopez, you know David Daleiden, correct?

**A.** Yes, ma'am.

**Q.** He's a friend of yours?

**A.** Yes.

**THE COURT:** You need to speak up just a little bit.

**THE WITNESS:** Okay.

**THE COURT:** Okay.

**BY MS. BOMSE**

**Q.** You met him in 2011?

**A.** Yes.

**Q.** And you met him when you were working at a Starbucks, correct?

**A.** Correct.

## LOPEZ - DIRECT / BOMSE

1 Q. And he was a customer?

2 A. Correct.

3 Q. And at a certain point, Mr. Daleiden offered you a job.  
4 Correct?

5 A. Correct.

6 Q. The job was to transcribe video recordings.

7 A. Yes.

8 Q. And this is sometime in late 2013 or early 2014?

9 A. As I recall, yes.

10 Q. Okay. And you decided to take this job because you were  
11 working a lot of jobs, and it seemed like an easy way to make  
12 some money, correct?

13 A. Yes.

14 Q. And so you started transcribing these videos. Correct?

15 A. Yes.

16 Q. Your only instruction was: Watch the videos; write down  
17 what they say as best as you can. Correct?

18 A. Yes.

19 Q. And you didn't understand what was happening in these  
20 videos, correct?

21 A. No.

22 Q. And in fact, still to this day, you're not really sure  
23 what was being discussed in the videos. Correct?

24 **MR. JONNA:** Objection, overbroad.

25 **THE COURT:** Can you narrow that down?

1 **BY MS. BOMSE**

2 **Q.** Even to the -- even today, the video -- you do not  
3 understand and are not sure what was being discussed in the  
4 videos that you reviewed.

5 **MR. JONNA:** Objection, overbroad.

6 **THE WITNESS:** You are asking --

7 **THE COURT:** Are you going to get more specific on  
8 this?

9 **MS. BOMSE:** Yes, Your Honor. And there was testimony  
10 on this, so -- yes.

11 **THE COURT:** Okay. Well, try -- if you can narrow  
12 down your question, that would be great.

13 **MS. BOMSE:** Sure.

14 **BY MS. BOMSE**

15 **Q.** Even today, to this day, you watched, you transcribed a  
16 lot of video. Correct?

17 **A.** Yes.

18 **Q.** And after all that transcribing, you're still not really  
19 sure what those videos were about.

20 **MR. JONNA:** Same objection.

21 **THE COURT:** Yeah, I'm going to allow him -- if you  
22 can answer the question, go ahead.

23 **THE WITNESS:** That sounds like a really confusing  
24 line of questioning. Are you trying to say that I still don't  
25 know what I've transcribed, to this day?



## LOPEZ - DIRECT / BOMSE

1           **MS. BOMSE:** Madam Court Reporter, could you read back  
2 my question?

3           **THE COURT:** No; if you can clarify the question.

4           **MS. BOMSE:** Sure.

5           **THE COURT:** That's the problem here.

6           **MS. BOMSE:** Of course. Yes.

7 **BY MS. BOMSE**

8 **Q.** My question is: Still to this day, you're not really sure  
9 what was going on, what was -- what -- what the substance of  
10 the videos that you were transcribing was.

11 **A.** False.

12 **Q.** That's false?

13 **A.** Yes, ma'am.

14 **Q.** Okay.

15           **MS. BOMSE:** Your Honor, I would like to read from --  
16 or -- read from Mr. Lopez's deposition testimony, Lines 29:5 to  
17 29:19.

18           **MR. JONNA:** Your Honor, it's not impeaching.

19           **THE COURT:** But it's not improper, either.

20           **MR. JONNA:** Okay.

21           **THE COURT:** So please go ahead.

22           (Portion of videotaped deposition played, not  
23 reported)

24 **BY MS. BOMSE**

25 **Q.** And later, Mr. Lopez, you actually came to be one of the

1 people who was wearing a hidden camera and creating video  
2 recordings. Correct?

3 **A.** Yes, ma'am.

4 **Q.** And even then, when you had been at the conferences and  
5 recorded, you still had the same problem, that you really  
6 couldn't understand what was going -- what was being said in  
7 the conversations. Correct?

8 **MR. JONNA:** Objection, overbroad.

9 **THE WITNESS:** Yes. May I explain?

10 **THE COURT:** Yeah, overruled; go ahead.

11 **THE WITNESS:** Okay, so --

12 **BY MS. BOMSE**

13 **Q.** No; can you answer my question? You still had the same  
14 problem. You had been at the conferences; you had been  
15 recording. And when it came to transcribe what you had  
16 actually seen live, you still did not understand a lot of what  
17 was being said.

18 Yes or no?

19 **A.** Yes. May I explain?

20 **Q.** No. I'm sure your counsel will give you lots of time to  
21 explain.

22 **A.** Okay.

23 **Q.** Thank you. In fact, a lot of it seemed like babble to  
24 you, correct?

25 **A.** Initially, yes.

## LOPEZ - DIRECT / BOMSE

1 Q. Even after you had been at the conferences.

2 A. "Conference," singular, yes.

3 Q. Mr. Lopez, if you could -- there's a binder right there  
4 (Indicating). It has exhibits in it for you. If I could ask  
5 you to turn to Exhibit 228.

6 (Request complied with by the Witness)

7 MS. BOMSE: And Your Honor, the parties have  
8 stipulated to the admissibility of 228, and I would offer it  
9 into evidence.

10 THE COURT: All right. It's admitted.

11 (Trial Exhibit 228 received in evidence)

12 (Document displayed)

13 BY MS. BOMSE

14 Q. Mr. Lopez, have you seen Exhibit 228 before?

15 A. Yes.

16 Q. Okay. And that is an email from Mr. Daleiden to you.  
17 Correct?

18 A. Yes.

19 Q. Something that was sent to you in March of 2014.

20 A. Yes.

21 THE COURT: Ms. Bomse, I have this as 229. Is my  
22 binder off? Or is --

23 MS. BOMSE: Yes. I'm sorry, Your Honor. It appears  
24 your binder is off.

25 THE COURT: Okay. That's fine. As long as that's

## LOPEZ - DIRECT / BOMSE

1 the correct exhibit, that's fine.

2 **BY MS. BOMSE**

3 **Q.** And there's an attachment behind the email. The email on  
4 the front doesn't have any text, correct?

5 **A.** No.

6 **Q.** Right. And you see, though, that it lists an attachment  
7 there that says "Nondisclosure Agreement." You see that,  
8 right?

9 **A.** Yes.

10 **Q.** And that is a document that you have seen before, correct?

11 **A.** Yes, ma'am.

12 **Q.** Mr. Daleiden sent that to you?

13 **A.** Yes, ma'am.

14 **Q.** And if we could go to the second page, the attachment to  
15 the email.

16 (Document displayed

17 **Q.** This document is entitled "INDIVIDUAL NON-DISCLOSURE  
18 AGREEMENT," correct?

19 **A.** Yes, ma'am.

20 **Q.** And this is a contract that David Daleiden sent to you.  
21 Correct?

22 **A.** Yes.

23 **Q.** And in the contract, Item No. 1 is: Definition of  
24 confidential information.

25 **A.** Correct.

## LOPEZ - DIRECT / BOMSE

1 Q. And then, Item No. 2 talks about what you can and can't do  
2 with confidential information. Correct?

3 MR. JONNA: Objection. The document speaks for  
4 itself.

5 THE COURT: Overruled. You can answer.

6 THE WITNESS: Yes.

7 BY MS. BOMSE

8 Q. Okay. And it says that "The recipient" -- and that's you,  
9 correct?

10 A. Okay.

11 Q. You (As read):

12 "...expressly agree that you will not disclose  
13 confidential information to anyone without the  
14 discloser's prior written consent."

15 Correct? That's what it says?

16 A. Correct.

17 Q. And the discloser is Mr. Daleiden. Correct?

18 A. Yes, ma'am.

19 Q. And you signed a confidentiality agreement with  
20 Mr. Daleiden, did you not?

21 A. Yes.

22 Q. And you understood that by signing a confidentiality  
23 agreement, you were agreeing not to share the information that  
24 Mr. Daleiden gave to you with anyone.

25 A. Yes.

## LOPEZ - DIRECT / BOMSE

1 Q. And you abided by that contract, correct?

2 A. Yes.

3 Q. Now, you came to understand that the videos that you were  
4 transcribing were part of a larger project. Correct?

5 A. Yes.

6 Q. And this was a project that was being run by Mr. Daleiden?

7 A. Yes.

8 Q. And Mr. Daleiden had a company that was called Center for  
9 Medical Progress, right?

10 A. Yes.

11 Q. And I might refer to it as "CMP." Will you understand  
12 what I mean?

13 A. Yes, ma'am.

14 Q. Thank you. And your work on the project expanded, didn't  
15 it?

16 A. Yes.

17 Q. You started, you -- you were asked to do research,  
18 correct?

19 A. Correct.

20 Q. And you created factsheets?

21 A. Yes.

22 Q. You also designed a logo for the Center for Medical  
23 Progress, correct?

24 A. Yes.

25 Q. And all this was work that you were doing, and you were

## LOPEZ - DIRECT / BOMSE

1 being paid an hourly rate, right?

2 **A.** Yes.

3 **Q.** Okay.

4 **A.** It was all under the contract for transcribing.

5 **Q.** Right. Thank you.

6 And at some point, Mr. Daleiden asked you to wear a hidden  
7 video camera and record people. Correct?

8 **A.** Yes.

9 **Q.** And you agreed to do that.

10 **A.** Yes, ma'am.

11 **Q.** And you were paid to do that. Correct?

12 **A.** Yes, ma'am.

13 **Q.** And you went to four conferences, correct?

14 **A.** Yes.

15 **Q.** Two of those conferences were in Florida?

16 **A.** Yes.

17 **Q.** And one of those conferences was in Washington, D.C.?

18 **A.** Yes.

19 **Q.** And one of those conferences was in Maryland, correct?

20 **A.** Yes.

21 **Q.** This was the last conference, the National Abortion  
22 Federation conference?

23 **A.** Correct.

24 **Q.** Okay. And you didn't know in advance what kind of  
25 conferences you were attending.

## LOPEZ - DIRECT / BOMSE

1     **A.**    I don't understand the question.

2     **Q.**    You didn't know what -- what type of conferences it was  
3     that you were going to.

4     **A.**    You mean who was in charge of it or who threw it?  What  
5     would be the context?  I don't understand the question.

6     **Q.**    Okay.  I'll try to rephrase it.

7            Did you know in advance that they were abortion  
8     conferences?

9     **A.**    Yes.

10           **MS. BOMSE:**  Your Honor, I would like to read from --  
11     or play Mr. Lopez's deposition at Lines 70:11 to 71:2.

12           **MR. KOTARSKI:**  Ms. Bomse, I believe you want to start  
13     at Line 10.

14           **MS. BOMSE:**  Okay.  Thank you, Ken.

15           **MR. JONNA:**  Your Honor, there is a number of  
16     objections to the form of those questions.

17           **THE COURT:**  Yes.  And have those been deleted from  
18     the video?

19           **MS. BOMSE:**  Yes, Your Honor.

20           **THE COURT:**  Okay.  So it was --

21           **MS. BOMSE:**  70:10 to 71:2.

22           **THE COURT:**  Okay, let me just take a look at this.

23           (A pause in the proceedings)

24           **THE COURT:**  All right, you may proceed.  These  
25     objections would be overruled.



## LOPEZ - DIRECT / BOMSE

1           **MS. BOMSE:** Thank you.

2           (Portion of videotaped deposition played, not  
3           reported)

4           **BY MS. BOMSE**

5           **Q.** And that's true, right? You didn't know who was at the  
6           conferences.

7           **A.** I didn't know specifically who was going to be there. I  
8           knew generally this conference was going to be a conference for  
9           abortion as a subject, not who was going to be there,  
10          specifically.

11          **Q.** So my question was: It's true, isn't it, you did not know  
12          who was going to be at the conferences.

13                  **MR. JONNA:** Objection. Asked and answered.

14                  **THE COURT:** Overruled.

15                  **THE WITNESS:** I'm sorry; ask the question again?

16          **BY MS. BOMSE**

17          **Q.** Sure. You did not know who was going to be at the  
18          conferences that you went to, planning to record.

19          **A.** I believe the question you asked me is I didn't know what  
20          kind of conferences I would be going to. And I said it was on  
21          abortion. Who was there, I did not know.

22          **Q.** So Mr. Lopez, I asked you -- I asked you what kind of  
23          conference, and then I asked you who was going to be there. I  
24          asked you: Did you know. So let me just make sure that  
25          everyone's tracking, including me.

## LOPEZ - DIRECT / BOMSE

1           You did not know in advance who was going to be at any of  
2 the conferences that you attended.

3           **MR. JONNA:** Objection, asked and answered.

4           **THE WITNESS:** Not directly.

5           **THE COURT:** Yeah, the -- overruled. And let's move  
6 on.

7           **MS. BOMSE:** Uh-huh.

8 **BY MS. BOMSE**

9 **Q.** You didn't know if abortion providers would be there.

10 **A.** No. Not initially. Not initially.

11 **Q.** At some point, you came to know that abortion providers  
12 would be at particular conferences that you were going to, in  
13 advance?

14 **A.** Yes, ma'am.

15 **Q.** Okay. And what was that point?

16 **A.** That point? Just before every conference, you know, we'd  
17 have a meeting. We would kind of talk about just points to  
18 hit, things like that.

19 **Q.** All right. Each of those conferences was a multi-day  
20 conference. Correct?

21 **A.** Yes, ma'am.

22 **Q.** And when you attended those conferences, you were wearing  
23 a hidden camera.

24 **A.** Yes, ma'am.

25 **Q.** And that was -- it was hidden so that nobody would know

## LOPEZ - DIRECT / BOMSE

1 that you were recording.

2 **A.** Correct.

3 **Q.** And that was a camera that Mr. Daleiden gave to you?

4 **A.** Yes.

5 **Q.** And you recorded everyone that you met at the conferences.  
6 Correct?

7 **A.** Yes.

8 **Q.** You turned the camera on at the start of the day, correct?

9 **A.** Yes.

10 **Q.** And you didn't turn it off except maybe when you went to  
11 the bathroom.

12 **A.** Yes.

13 **Q.** So you didn't turn it on and off, depending on who you  
14 were speaking to.

15 **A.** No.

16 **Q.** And you recorded dozens of people at these conferences?

17 **A.** I would say so, yes, these conferences.

18 **Q.** Hundreds?

19 **A.** There was lots of people there, yes.

20 **Q.** Okay. And you never told anyone that you spoke to at  
21 these conferences that you were recording them, right?

22 **A.** No, ma'am.

23 **Q.** You never asked anyone that you interacted with whether it  
24 was okay with them if you recorded their words.

25 **A.** No.

## LOPEZ - DIRECT / BOMSE

1 Q. Could you turn to Exhibit 243 in your book, there.

2 (Request complied with by the Witness)

3 Q. Is 243 a document that you have seen before?

4 A. Yes.

5 Q. Okay. And what is it?

6 A. It's an email, "To-do List."

7 Q. Okay. And who is it from?

8 A. David.

9 Q. Who is it to?

10 A. Myself.

11 Q. Okay.

12 MS. BOMSE: And Your Honor, the parties have  
13 stipulated to the admissibility of 243. And I would offer it  
14 into evidence.

15 THE COURT: All right. It's admitted.

16 (Trial Exhibit 243 received in evidence)

17 (Document displayed)

18 BY MS. BOMSE

19 Q. So this email, as you said, the subject line is "To-do  
20 List." Correct?

21 A. Yes.

22 Q. And this is an email that Mr. Daleiden sent to you in  
23 preparation for attending one of the conferences that you went  
24 to. Right?

25 A. Yes.

## LOPEZ - DIRECT / BOMSE

1 Q. And he references a meeting that you had, you and he. So  
2 you would periodically meet, correct, to discuss the project?

3 A. Yes.

4 Q. And plans for recording?

5 A. Correct.

6 Q. Okay. And the first thing he mentions on the to-do list  
7 is:

8 "Last 2 summaries of research paper..."

9 So one of your roles, again, was summarizing research  
10 papers, correct?

11 A. Yes.

12 Q. Then he says that the next to-do is to examine your  
13 wardrobe for costuming purposes.

14 A. Yes.

15 Q. He was referring to a costume that you would wear when you  
16 attended the conferences, right?

17 A. Yeah -- he was referring to -- he wanted to make sure I  
18 had a collared shirt.

19 Q. A collared shirt.

20 A. Yeah. And I was like: I have that; we don't need to meet  
21 over this.

22 Q. Okay. Sorry, what did you say --

23 A. "We don't need to meet over this."

24 Q. You don't need to meet over a collared shirt?

25 A. Correct.

## LOPEZ - DIRECT / BOMSE

1 Q. Understood. The third item on Mr. Daleiden's to-do list  
2 is:

3 "Prepare a background summary of Adrian Lopez, BioMax  
4 Procurement technician."

5 Do you see that?

6 A. Correct.

7 Q. And the last one was -- the fourth item is:

8 "Practice the undercover scenario (your house on  
9 Monday)."

10 A. Correct.

11 Q. So you and Mr. Daleiden met in advance of the conference  
12 and practiced the undercover scenario. Correct?

13 A. So these to-do lists -- we actually had a talk about where  
14 I was going to school at the time. And like I mentioned  
15 earlier, anything that I could do from home on my own time, I  
16 would do. We don't need to meet over a costume. We don't need  
17 to, um, practice a scenario. We can do it over the phone.

18 Q. Okay. So you practiced the scenario over the phone.

19 A. Yeah.

20 Q. Okay. And you recall that you discussed in advance with  
21 Mr. Daleiden how you would approach people at the conference.

22 A. Yes.

23 Q. And also who Mr. Daleiden wanted you to try to find.

24 A. Correct.

25 Q. Right. That was what was called a target list?

## LOPEZ - DIRECT / BOMSE

1 A. Something to that effect.

2 Q. Uh-huh. And you understood that your job was to bring  
3 those targets that you found to the BioMax table, in order that  
4 they could speak with Mr. Daleiden. Correct?

5 A. Yes.

6 Q. But he wasn't called "Mr. Daleiden" at the conferences,  
7 right?

8 A. No.

9 Q. He was called "Robert Sarkis"?

10 A. Yes.

11 Q. Okay. And you created this scenario that you practiced  
12 over the phone so that you could cause conference attendees to  
13 come with you to meet Mr. Sarkis. Right?

14 A. I didn't create the scenario, no.

15 Q. Okay. But you -- the purpose of the scenario that you  
16 practiced over the phone was in order, at the conference, that  
17 you could enact the scenario, and that would cause people to  
18 come meet Mr. Daleiden. Correct?

19 A. Yes.

20 Q. Okay. If you could now turn -- we're done with that  
21 exhibit -- to Exhibit 245 in your binder there.

22 Do you see it?

23 A. Yes.

24 Q. And do you recognize that?

25 A. Yes.

## LOPEZ - DIRECT / BOMSE

1           **MS. BOMSE:** And Your Honor, this exhibit is also  
2 stipulated to, and I would introduce it into evidence.

3           **THE COURT:** All right. It's admitted.

4           (Trial Exhibit 245 received in evidence)

5           **MS. BOMSE:** Okay.

6           (Document displayed)

7 **BY MS. BOMSE**

8 **Q.** So this is another email from Mr. Daleiden to you. It's a  
9 few months later, right? You see it's in 2015 now, early 2015.

10 **A.** Yes.

11 **Q.** And it says:

12           "MeDC meeting plan."

13           MeDC was one of the conferences you attended?

14 **A.** Okay.

15 **Q.** Do you recall that?

16 **A.** Not by name, no. I identified them all by state.

17 **Q.** You divide them by state?

18 **A.** Yeah.

19 **Q.** Okay. In fact, MeDC was in Orlando. Does that help?

20 **A.** No.

21 **Q.** No. Okay. Not a problem. And this is an email that  
22 Mr. Daleiden sent you, again, planning for another undercover  
23 operation. Correct?

24 **A.** Yes.

25 **Q.** And Mr. Daleiden lists top affiliate targets.



## LOPEZ - DIRECT / BOMSE

1 A. Correct.

2 Q. And these are the targets that we just spoke about,  
3 correct?

4 A. Yes.

5 Q. And you understood the affiliate targets to be Planned  
6 Parenthood affiliate targets, right?

7 A. Yes.

8 Q. So one of the targets was Dr. Mary Gatter?

9 A. Yes, correct.

10 Q. Another was Dr. Gindi?

11 A. Yes, ma'am.

12 Q. Okay. And, and on and on. Dr. Fine, correct?

13 A. Yes.

14 Q. And Mr. Daleiden identifies each of these individuals by  
15 the Planned Parenthood affiliate that they work for. Correct?

16 A. Yes.

17 Q. Okay. You see down there a few lines, it says:

18 "Arizona, Laura Dalton, approach very gingerly."

19 A. Yes.

20 Q. So these were Mr. Daleiden's notes, to your understanding,  
21 about how you would approach the various targets. Correct?

22 A. Yes. These -- when we discussed the prior exhibit over  
23 the phone, the scenarios, this is kind of the information that  
24 I received before that. This person, this person, this person.  
25 So on and so forth.

## LOPEZ - DIRECT / BOMSE

1 Q. Right. Okay, so he was telling you over the phone: These  
2 are the people we want to get on film. Right?

3 A. Correct.

4 Q. These are our targets.

5 And some of them had to be approached gingerly, right?

6 A. Yes.

7 Q. Okay. And below the target list, Mr. Daleiden has target  
8 lines. Right? You see that?

9 A. Yes.

10 Q. And this was also information that Mr. Daleiden wanted to  
11 provide you with before you went to the conference.

12 A. Yes.

13 Q. And these were things that you were hoping to get these  
14 targets, like Dr. Mary Gatter, to say on video. Correct?

15 A. Correct.

16 Q. Thank you. Okay. So one of them was:

17 "Haggling over price per specimen."

18 Do you see that there?

19 A. Uh-huh, I do.

20 Q. Okay. Another was:

21 "Doctors will pay attention to technique to ensure  
22 that specimens come out intact."

23 Right?

24 A. Correct. And in our conversations --

25 Q. Excuse me; I'll ask you questions. I know you have things

## LOPEZ - DIRECT / BOMSE

1 you want to say, and your counsel will, I'm sure, ask you the  
2 questions that let you address what you want to say.

3 **A.** Okay.

4 **Q.** Thank you. Okay.

5 **THE COURT:** Ms. Bomse, I'll give the instructions to  
6 the witness.

7 **MS. BOMSE:** I apologize, Your Honor. I did not mean  
8 to overstep.

9 **THE COURT:** Okay.

10 **Q.** Now, you personally didn't know anything -- I'm sorry.  
11 Can we go back up to the target list?

12 (Document displayed)

13 **Q.** You didn't know anything other than what Mr. Daleiden told  
14 you about these doctors who are listed here; correct?

15 **A.** By 2015 I had a little bit more of an understanding of who  
16 the medical director, the affiliate, what that was, and I had a  
17 little bit of an idea who some of these individuals were.

18 **Q.** Okay. All right. So you -- you --

19 **A.** By 2015, yes.

20 **Q.** All right. So you knew that some of them were medical  
21 directors, for example?

22 **A.** Correct.

23 **Q.** And you had an understanding of what a medical director  
24 was?

25 **A.** Yes.

## LOPEZ - DIRECT / BOMSE

1 Q. Okay. Now, when you went to the conferences, you had to  
2 register; correct?

3 A. I did. I did.

4 Q. And you had to show your identification; correct?

5 A. Yes.

6 Q. And after you showed your identification, you would  
7 receive a badge?

8 A. Yes.

9 Q. And the badge would have your name on it?

10 A. Yes.

11 Q. Okay. And the name on the badge would match the name on  
12 your identification; correct?

13 A. Mine did, yes.

14 Q. Yours did because you used your identification as Adrian  
15 Lopez; correct?

16 A. Full government name, yes, ma'am.

17 Q. Okay. And your badge said Adrian?

18 A. Correct.

19 Q. And it also said BioMax; correct?

20 A. Yes.

21 Q. Okay.

22 **MS. BOMSE:** If we could now show Exhibit 6119, which  
23 is a video. And I would ask first if we could just show it to  
24 the witness.

25 **THE COURT:** All right.

## LOPEZ - DIRECT / BOMSE

1           **MR. JONNA:** Your Honor, can I also see it?

2           **THE COURT:** Yes.

3           (Videotape played without audio for the witness and  
4           counsel only.)

5           **MS. BOMSE:** You can stop it.

6   **BY MS. BOMSE**

7   **Q.** Mr. Lopez, do you recognize what's in the video here?

8   **A.** It's an exhibit hall.

9   **Q.** And that's an exhibit hall that you have been in?

10 **A.** I believe so.

11 **Q.** Okay.

12           **MS. BOMSE:** At this time we would like to offer  
13 Exhibit 6119 into evidence.

14           **THE COURT:** All right. Is there any objection to  
15 this clip?

16           **MR. JONNA:** If the Court thinks she's adequately laid  
17 a foundation, it's fine; but it seems we haven't established  
18 that he was there, that he recorded anyone.

19 But I don't generally have any objections to --

20           **THE COURT:** Okay. So -- all right.

21           **MR. JONNA:** Sorry.

22           **THE COURT:** No objection, is that what I just heard?

23           **MR. JONNA:** Lacks foundation.

24           **THE COURT:** Overruled. Go ahead.

25           (Trial Exhibit 6119 received in evidence)

## LOPEZ - DIRECT / BOMSE

1           **MS. BOMSE:** All right. If we could begin the video  
2 over again and let the jury see.

3           Can we start it from the very beginning?

4           **MR. KOTARSKI:** That was the beginning.

5           **MS. BOMSE:** That was the beginning? Apologies.  
6 Okay. Go ahead.

7           (Videotape played in open court, not reported.)

8           **MS. BOMSE:** Is that it? Thanks.

9 **BY MS. BOMSE**

10 **Q.** So, Mr. Lopez, now that I've given you an opportunity to  
11 actually see it with sound and a little bit more, do you  
12 recognize that as video that actually was recorded by your  
13 camera?

14 **A.** It was -- if it was recorded by my camera, how am I in the  
15 frame?

16 **Q.** Ahh, good point.

17           Do you recognize it as video that was recorded by  
18 Mr. Daleiden's camera?

19 **A.** Yes.

20 **Q.** And the voice that you heard, you recognize that as  
21 Mr. Daleiden's voice?

22 **A.** Yes.

23 **Q.** All right. Mr. Lopez, who is the woman who was being  
24 filmed there giving you badges?

25 **A.** Don't remember.

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1 Q. Did you know who she was at some point?

2 A. The one giving us the badges, no, I don't.

3 Q. Okay. You didn't have any reason to believe that that  
4 woman was engaged in any wrongdoing; correct?

5 A. She was at the event and given that she was in charge of  
6 registration, I assume she had something to do with that event.

7 Q. So you knew she had something to do with that event?

8 A. She was working there.

9 Q. All right. And you didn't obviously tell that woman that  
10 you were recording her; correct?

11 A. No. Didn't see it on the camera.

12 Q. And so she didn't give her consent to be recorded, did  
13 she?

14 A. No, ma'am.

15 Q. All right. And we saw an example here of registration;  
16 correct?

17 A. Yes.

18 Q. And that's how it was at every conference; correct? You  
19 had to register?

20 A. Yes.

21 Q. And you had to show I.D.?

22 A. Yes.

23 Q. And you couldn't get in without showing I.D.?

24 A. In all of my experiences, there was a registration desk,  
25 went in there and was registered. So yes, as far as I know,

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1 you need an I.D. to get in.

2 **Q.** Right. And we heard Mr. Daleiden referring to himself as  
3 Robert; correct?

4 **A.** Correct.

5 **Q.** And that wasn't the name that you knew him as outside of  
6 the conferences; correct?

7 **A.** Correct.

8 **Q.** You knew him as David Daleiden?

9 **A.** Yes, ma'am.

10 **MS. BOMSE:** Okay. If we can play a little bit more  
11 of that clip?

12 **MR. KOTARSKI:** Do you want to start at the beginning  
13 or --

14 **MS. BOMSE:** From where we stopped.

15 (Videotape played in open court, not reported.)

16 **BY MS. BOMSE**

17 **Q.** So, Mr. Lopez, that's you and Mr. Daleiden setting up your  
18 BioMax booth; correct?

19 **A.** Yes, ma'am.

20 **Q.** And you believe that BioMax was a company that David  
21 Daleiden had; correct?

22 **A.** Correct.

23 **Q.** And you believed it was a real company; correct?

24 **A.** Correct. It's an LLC.

25 **Q.** And you weren't sure whether or not you worked for BioMax;



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1 correct?

2 **A.** It was an undercover operation. BioMax was already there.  
3 It was already a company that David had put together. So as to  
4 the validity of it? I'm not sure.

5 There was also times on several occasions where we  
6 discussed procuring adipose tissue for BioMax. So I don't  
7 know.

8 **Q.** Okay. So your understanding was that BioMax was an actual  
9 tissue procurement company; correct?

10 **A.** Correct.

11 **Q.** Thank you.

12 And you just didn't know one way or another whether  
13 Mr. Daleiden was actually looking to procure tissue; correct?

14 **A.** Correct.

15 **Q.** You didn't pay attention to whether or not BioMax was  
16 actually looking to procure tissue because you were, in your  
17 view, just there to make introductions; correct?

18 **A.** I don't understand the question.

19 **Q.** That's okay.

20 You -- at the conferences you told people that you were a  
21 BioMax procurement technician; correct?

22 **A.** Sometimes, yes.

23 **Q.** And that you were not actually a BioMax procurement  
24 technician; correct?

25 **A.** No, ma'am.

## LOPEZ - DIRECT / BOMSE

1           **MS. BOMSE:** Your Honor, I'd like to play from  
2 Mr. Lopez's deposition Page 99, Lines 4 to 19.

3           **MR. KOTARSKI:** Ms. Bomse, did you want to go through  
4 21, get the answer?

5           **MR. JONNA:** Your Honor, there is objections to the  
6 form of this question as well.

7           **THE COURT:** All right. And the objections, the  
8 colloquy between lawyers should not be in any of the videos --

9           **MS. BOMSE:** And it's not.

10           **THE COURT:** -- that we're going to be seeing over the  
11 course of the trial.

12           The objection is overruled. You can go ahead.

13           **MS. BOMSE:** Thank you, Your Honor.

14 **BY MS. BOMSE**

15 **Q.** Before we start, Mr. Lopez, the videos that we have been  
16 looking at of you, those are from a deposition that you gave in  
17 this case; correct?

18 **A.** Which ones?

19 **Q.** There have been several videos --

20 **A.** Yes.

21 **Q.** They are, okay.

22           And when you gave that deposition, you were under oath;  
23 correct?

24 **A.** Yes, ma'am.

25 **Q.** Just like you are today?

## LOPEZ - DIRECT / BOMSE

1     **A.**    Yes, ma'am.

2     **Q.**    Okay.  Thank you.

3                 **MS. BOMSE:**  Go ahead.

4                 (Videotape played in open court, not reported.)

5     **BY MS. BOMSE**

6     **Q.**    But, in fact, you did tell people that you were employed  
7     by BioMax; correct?

8     **A.**    Sometimes.

9     **Q.**    Okay.  And sometimes at the conferences; correct?

10    **A.**    Yes, ma'am.

11    **Q.**    All right.

12                 **MS. BOMSE:**  And I'd like to now play Exhibit 6106,  
13     first to the witness only.

14                 (Videotape played without audio for the witness and  
15     counsel only.)

16    **BY MS. BOMSE**

17    **Q.**    Mr. Lopez, are you able to recognize this footage?

18    **A.**    Yes.

19    **Q.**    And this, unlike the last one, is footage that you  
20     recorded; correct?

21    **A.**    Yes, ma'am.

22    **Q.**    Okay.

23                 **MS. BOMSE:**  We offer Exhibit 6106.

24                 **THE COURT:**  Okay.  Any objection?

25                 **MR. JONNA:**  No, Your Honor.

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1           **THE COURT:** All right. It's admitted.

2           (Trial Exhibit 6106 received in evidence)

3           (Videotape played in open court, not reported)

4           **BY MS. BOMSE**

5           **Q.** So in that clip, Mr. Lopez, you introduced yourself as a  
6 procurement technician for BioMax; correct?

7           **A.** That time, yes.

8           **Q.** And you were not actually a BioMax procurement technician;  
9 correct?

10          **A.** For the undercover operation, yes, I was.

11          **Q.** Understood. And, in fact, BioMax wasn't part of the  
12 University system, was it?

13          **A.** I don't know.

14          **Q.** Okay.

15          **A.** Can you define "University system"?

16          **Q.** No. I'm just asking you: Do you know whether BioMax was  
17 part of the University system at --

18          **A.** I don't know.

19          **Q.** Thank you.

20                 **MS. BOMSE:** And I'd like to now show Exhibit 6109.

21 Again, first show it to the witness.

22           (Videotape played without audio for the witness and  
23 counsel only.)

24           **BY MS. BOMSE**

25           **Q.** Mr. Lopez, do you recognize that video footage that you're

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1 looking at?

2 **A.** Yes, ma'am.

3 **Q.** Okay. And, again, this is a video recording that you  
4 recorded with a hidden camera on you; correct?

5 **A.** Yes.

6 **MS. BOMSE:** I'd like to offer Exhibit 6109 into  
7 evidence.

8 **MR. JONNA:** No objection.

9 **THE COURT:** It's admitted.

10 (Trial Exhibit 6109 received in evidence)

11 (Videotape played in open court, not reported)

12 **BY MS. BOMSE**

13 **Q.** Mr. Lopez, in that video clip that we just watched, you're  
14 telling this individual that you could come to her clinic and  
15 do the consenting; correct?

16 **A.** Yes, ma'am.

17 **Q.** In fact, you never did any consenting for fetal tissue  
18 donation; correct?

19 **A.** No, ma'am.

20 **Q.** And you never worked in a path lab with fetal tissue;  
21 correct?

22 **A.** No, ma'am.

23 **MS. BOMSE:** I'd like to now show Exhibit 6114, again,  
24 first to the witness.

25 (Videotape played without audio for the witness and

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1 counsel only.)

2 **BY MS. BOMSE**

3 **Q.** Mr. Lopez, do you recognize this video recording?

4 **A.** Yes.

5 **Q.** And this is another recording that you made with the  
6 hidden camera that you were wearing; correct?

7 **A.** Yes, ma'am.

8 **Q.** Okay.

9 **MS. BOMSE:** I'd like to offer 6114 into evidence.

10 **MR. JONNA:** No objection.

11 **THE COURT:** All right. It's admitted.

12 (Trial Exhibit 6114 received in evidence)

13 (Videotape played in open court, not reported)

14 **BY MS. BOMSE**

15 **Q.** Mr. Lopez, I observed while we were watching that clip  
16 that the transcript subtitles were reflecting that the speaker  
17 at the beginning, the male speaker, was David Daleiden, but, in  
18 fact, that was just an error; correct? That was your voice we  
19 were hearing?

20 **A.** No, ma'am. I heard David Daleiden's voice and he was in  
21 the right -- far right-hand corner of the frame talking to  
22 someone.

23 **Q.** Right. I'm talking about at the beginning of the video,  
24 when there is just -- before Mr. Daleiden walks into the frame.  
25 You didn't notice?

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1     **A.**    I did not.

2     **Q.**    Okay that's fine.

3     **A.**    And I transcribed it as such the way I heard it, as best I  
4     could.

5     **Q.**    Okay.  Mr. Lopez, you didn't ask Donna of Northern New  
6     England Planned Parenthood whether it was okay with her if you  
7     recorded your conversation with her; did you?

8     **A.**    No, ma'am.

9     **Q.**    And the medical director of Northern New England was  
10    disclosing to you information about the amount of abortions  
11    that that affiliate provides; correct?

12    **A.**    Yes, ma'am.

13    **Q.**    And you noticed that she was wearing a name tag?

14    **A.**    Yes.

15    **Q.**    Same kind of name tag that you got when you registered at  
16    a conference; correct?

17    **A.**    Yes.

18    **Q.**    And in that recording you are introducing David Daleiden  
19    as Robert Sarkis; correct?

20    **A.**    Yes.

21           **MS. BOMSE:**  Okay.  We can turn that off.  Thank you.

22    **BY MS. BOMSE**

23    **Q.**    Now, one of the conferences that you attended with  
24    Mr. Daleiden was the National Abortion Federation conference in  
25    Baltimore, Maryland; correct?

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1     **A.**    Yes.

2     **Q.**    And to enter the NAF conference you also had to show a  
3     photo I.D.; correct?

4     **A.**    Yes.

5     **Q.**    And to enter NAF you had to sign a Confidentiality  
6     Agreement; do you recall that?

7     **A.**    I do.

8     **Q.**    All right.  You recall that?

9     **A.**    I do.

10    **Q.**    And, in fact, you did sign a Confidentiality Agreement?

11    **A.**    Yes, ma'am.

12    **Q.**    If you could look in your binder at Exhibit 248?

13            **MS. BOMSE:**  And, Your Honor, the parties have  
14     stipulated to the admissibility of Exhibit 248, and I would  
15     like to offer it.

16            **THE COURT:**  All right.  It's admitted.

17            (Trial Exhibit 248 received in evidence)

18            (Document displayed)

19    **BY MS. BOMSE**

20    **Q.**    Mr. Lopez, do you recognize this as a Confidentiality  
21     Agreement for the National Abortion Federation Annual Meeting,  
22     April 18 through 21, 2015?

23    **A.**    Yes.

24    **Q.**    Okay.  And this is the Confidentiality Agreement that you  
25     signed; correct?



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1 A. Yes.

2 MS. BOMSE: If we could just show the bottom?

3 (Document displayed)

4 BY MS. BOMSE

5 Q. Is that is your signature?

6 A. Yes.

7 Q. And below it you've written "Name of Organization,  
8 BioMax;" correct?

9 A. Yes.

10 Q. And "Professional Title," half of it's blocked by the  
11 exhibit tag, but it says "Procurement Technician;" correct?

12 A. What I read there, yes. Correct.

13 Q. Okay. And that was part of the undercover operation;  
14 right?

15 A. Yes, ma'am.

16 Q. It wasn't true?

17 A. No, ma'am.

18 Q. And if we can look at the first term of this  
19 Confidentiality Agreement, that Confidentiality Agreement says:

20 "Videotaping or other recording is prohibited."

21 Right?

22 "Attendees are prohibited from making video,  
23 audio, photographic or other recordings of the  
24 meetings or discussions at this conference."

25 Correct?

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1 A. Yes.

2 Q. All right. It couldn't be clearer; right?

3 MR. JONNA: Objection. Argumentative.

4 THE COURT: Sustained.

5 BY MS. BOMSE

6 Q. You didn't intend to comply with this agreement?

7 A. I didn't think it was enforceable because I was going  
8 undercover to get evidence.

9 Q. Okay. My question is: You did not intend to comply with  
10 this agreement?

11 A. No, ma'am.

12 Q. You intended to record at the conference?

13 A. Correct.

14 Q. In fact, you did record at the conference?

15 A. Yes, ma'am, I did.

16 Q. And so you understood when you signed the Confidentiality  
17 Agreement that you were promising NAF to keep information  
18 confidential, just like you made the same promise to  
19 Mr. Daleiden; correct?

20 A. Yes, ma'am.

21 Q. Did you tell NAF that it was your view that their  
22 Confidentiality Agreement wasn't enforceable?

23 A. I did not.

24 Q. Did you ever consult with an attorney to find out whether  
25 it was true that you're free to disregard a Confidentiality

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1 Agreement if you're -- you think you're investigating a crime?

2 **MR. JONNA:** Objection --

3 **MR. KOZINA:** Objection.

4 **MR. JONNA:** -- attorney-client privilege.

5 **THE COURT:** Sustained.

6 **BY MS. BOMSE**

7 **Q.** Did you ever consult an attorney about the issue of  
8 whether the NAF agreement was enforceable?

9 **MR. JONNA:** Same objection.

10 **THE COURT:** Sustained.

11 **BY MS. BOMSE**

12 **Q.** And you recorded at the National Abortion Federation  
13 conference; correct?

14 **A.** Yes.

15 **Q.** All of the days that you were there, you were wearing a  
16 hidden camera; correct?

17 **A.** Yes.

18 **Q.** All right. Could we please turn to a new exhibit,  
19 Exhibit 246 in your binder?

20 (Witness complied.)

21 **Q.** Mr. Lopez, do you recognize Exhibit 246?

22 **A.** Yes.

23 **Q.** You do? You do recognize it?

24 **A.** Yes.

25 **MS. BOMSE:** And this is another exhibit that the

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1 parties have stipulated to admissibility and I'd offer it to  
2 into evidence.

3 **THE COURT:** It's admitted.

4 (Trial Exhibit 246 received in evidence)

5 **MS. BOMSE:** Okay.

6 (Document displayed)

7 **BY MS. BOMSE**

8 **Q.** Mr. Lopez, this is another email from Mr. Daleiden to you;  
9 correct?

10 **A.** Yes.

11 **Q.** The subject is "Super Confidential;" right?

12 **A.** Yes.

13 **Q.** So presumably this is something that would fall under the  
14 Confidentiality Agreement that you entered into with  
15 Mr. Daleiden?

16 **MR. JONNA:** Objection. Calls for a legal conclusion.

17 **A.** Yes.

18 **THE COURT:** Overruled.

19 **BY MS. BOMSE**

20 **Q.** Okay. And --

21 **THE COURT:** When there is an objection of your  
22 lawyer, you can wait for me to tell you to go ahead, but you  
23 did fine.

24 **THE WITNESS:** Sorry, Your Honor.

25 **THE COURT:** No problem.

1 **BY MS. BOMSE**

2 **Q.** All right. So the top email is Mr. Daleiden saying:

3 "His question 'proposed budget for samples  
4 collected' is basically asking how much we are going  
5 to pay."

6 Do you see that?

7 **A.** Yes, ma'am.

8 **Q.** And below Mr. Daleiden's email it appears that there is  
9 a -- another communication that's been cut and pasted. Do you  
10 see that? It starts with "Hey Robert."

11 **A.** I do.

12 **Q.** And is it your understanding that Mr. Daleiden has copied  
13 and pasted a communication that he has received from someone  
14 named J.R.?

15 **A.** Correct.

16 **Q.** All right. And Mr. Daleiden is asking you. He has a  
17 problem. He wants to answer J.R. in a way that gets J.R.  
18 talking about how much we pay versus how much the University  
19 paid before.

20 Do you see that?

21 **A.** I do.

22 **Q.** And "we" in that sentence that refers to BioMax; correct?

23 **A.** Correct.

24 **Q.** All right. Mr. Daleiden is asking you:

25 "Do you have any ideas about phrasing?"

1     **A.**    Correct.

2     **Q.**    And this is part of the undercover operation as well;  
3     correct?

4     **A.**    Yes, ma'am.

5     **Q.**    And the point was to show people that there were entities  
6     who were selling fetal tissue; correct?

7     **A.**    Yes.

8     **Q.**    And that was Mr. Daleiden's goal when he was asking you  
9     for help with phrasing?

10    **A.**    Okay.

11                 **MR. JONNA:**  Calls for speculation.

12                 **THE COURT:**  Overruled.

13    **BY MS. BOMSE**

14    **Q.**    But you saw this email and you didn't respond to it?

15    **A.**    No.

16    **Q.**    You thought -- the reason that you didn't respond to it is  
17    you thought "this has nothing to do with me;" correct?

18    **A.**    2014, 2015 I started taking -- began to distance myself  
19    from the project more and more.  So no, I don't remember.  I  
20    just didn't respond.

21    **Q.**    You didn't respond because you thought "this has nothing  
22    to do with me;" correct?

23    **A.**    Towards that time, yeah, that was the general idea.  It  
24    was how I was beginning to feel.

25    **Q.**    Okay.  And this is in late, 2014; correct?

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1 A. Yes, ma'am.

2 Q. That's after you've attended one conference and there are  
3 three more conferences that you're going to attend?

4 A. Correct.

5 Q. But even at this time you're beginning to feel like  
6 it's -- it has nothing to do with you; correct?

7 A. Correct.

8 Q. Mr. Daleiden told you that Planned Parenthood was engaged  
9 in illegal activity with fetal tissue; correct?

10 A. Yes, ma'am.

11 Q. And that's the reason that you agreed to go to conferences  
12 and record?

13 A. Part of the reason.

14 Q. The other part of the reason was you were getting paid;  
15 correct?

16 A. No. Well, I was getting paid.

17 Q. Okay.

18 A. I can explain that further.

19 Q. You're not a lawyer, Mr. Lopez, are you?

20 A. No, ma'am.

21 Q. And you have had no legal training; correct?

22 A. No, ma'am.

23 Q. And you didn't speak to any lawyers about whether the  
24 information you were being provided by Mr. Daleiden actually  
25 amounted to anything illegal?

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1           **MR. JONNA:** Objection. Attorney-client privilege.

2           **THE COURT:** Whether there was a discussion is one  
3 thing. What the content of the discussion is another.  
4 Overruled.

5           **A.** No. I never spoke to an attorney.

6           **BY MS. BOMSE**

7           **Q.** In fact, the only person you spoke to in formulating your  
8 view was Mr. Daleiden?

9           **A.** Yes, ma'am.

10          **Q.** And you can't actually recall what Mr. Daleiden said;  
11 correct?

12          **A.** During what time?

13          **Q.** When he was explaining to you the reason for the project.

14          **A.** The very beginning?

15          **Q.** When you had a conversation with him which caused you to  
16 believe that there was illegal activity that needed to be  
17 investigated.

18          **A.** I remember the big idea. Specifically what we discussed,  
19 no, I don't remember.

20          **Q.** Okay.

21                   **MS. BOMSE:** Your Honor, I'd like to play from  
22 Mr. Lopez's deposition Lines 40/19 to 40/25.

23                   **THE COURT:** All right.

24                   Mr. Jonna?

25                   **MR. JONNA:** Your Honor, there's additional context in



1 the following page.

2           **THE COURT:** So maybe we'll get to that in cross  
3 examination.

4           Why don't you go ahead?

5           **MS. BOMSE:** Thank you.

6           (Videotape played in open court, not reported)

7 **BY MS. BOMSE**

8 **Q.** And the only other thing that you did in coming to your  
9 conclusion that there was a reason to go undercover to  
10 investigate illegal conduct was Google research; correct?

11 **A.** One part of it, yes.

12 **Q.** You also took out a couple of books from the local school  
13 where you were attending; correct?

14 **A.** Correct.

15 **Q.** And you looked on a -- on another database that you had  
16 access to at school; correct?

17 **A.** Correct.

18 **Q.** And that's the total of everything you did; correct?

19 **A.** Correct.

20 **Q.** And you actually don't recall what websites you looked at  
21 in coming to your conclusion?

22 **A.** There are out there, PubMed, Google Scholar, things like  
23 that.

24 **Q.** Those are the search engines?

25 **A.** Correct.

1 Q. But you don't remember the specific websites that you  
2 looked at that helped you come to your conclusion that there  
3 was something illegal going on?

4 A. Well, PubMed is a database that is --

5 MR. KOZINA: I was going to say objection. It  
6 misstates the testimony of the witness, PubMed being a website.

7 THE COURT: Overruled. But you can explain.

8 A. PubMed is a website, but it also is a database that  
9 compiles a bunch of different research studies based on what  
10 you're looking for.

11 BY MS. BOMSE

12 Q. So you remember you looked at PubMed?

13 A. Correct.

14 Q. Other than that, you can't remember any websites that you  
15 looked at?

16 A. National Health Institute. Again, I utilized Google  
17 Scholar. A couple of other ones that I don't remember off the  
18 top of my head now either.

19 Q. So again, Google Scholar is a search engine; right? It's  
20 not a website?

21 A. Same as -- it's the same as Google. It's just for  
22 academic research and publications, medical journals and things  
23 like that.

24 Q. It's a search engine, not a website?

25 A. Correct.

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1 Q. And you do recall that none of the websites that you  
2 looked at had anything to do with Planned Parenthood; correct?

3 A. Correct.

4 Q. And after you had done your research, you went back and  
5 you spoke with Mr. Daleiden again; correct?

6 A. I did.

7 Q. And he gave you some more information?

8 A. Yes.

9 Q. But you don't remember what that information was; correct?

10 A. I don't remember what he -- again, I don't remember what  
11 he and I spoke about specifically --

12 Q. That's fine.

13 THE COURT: Well, maybe it's fine, maybe it's not.

14 MS. BOMSE: I'm sorry. I didn't mean to cut off the  
15 witness.

16 THE COURT: Did you have anything further that you  
17 wanted to add to that answer?

18 THE WITNESS: Yes, Your Honor. There's a couple of  
19 videos that I watched as well.

20 One, there was a lunch that David went to with Deborah  
21 Nucatola. And there was also another one with a woman, I don't  
22 remember her name, and she was going -- they were having a  
23 discussion about the practices and things like that.

24 BY MS. BOMSE

25 Q. So the one you recall was a lunch with Dr. Nucatola?

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1    **A.**    Yes.

2    **Q.**    And those also contributed to your understanding that --  
3    your belief that there was something illegal that had to be  
4    investigated; correct?

5    **A.**    Yes, ma'am.

6    **Q.**    All right.  But when you watched the Dr. Nucatola video  
7    and the other video that you just mentioned, you didn't take  
8    those videos to law enforcement?

9    **A.**    No, ma'am.

10   **Q.**    Even though the videos indicated to you that there was  
11   illegal activity going on; correct?

12   **A.**    Yes.

13   **Q.**    All right.  And you didn't tell Mr. Daleiden:  We need to  
14   take this to law enforcement?

15   **A.**    I was under the understanding already that it was to  
16   collect evidence in order to coordinate with law enforcement.

17   **Q.**    Okay.  My question was:  You didn't, after viewing those  
18   videotapes, say to Mr. Daleiden, "There is illegal activity  
19   going on.  We need to take this to law enforcement now"?

20   **A.**    No.

21   **Q.**    Okay.  You said it was your understanding that the purpose  
22   ultimately was to go to law enforcement; correct?

23   **A.**    Yes.

24   **Q.**    You never actually spoke to anyone in law enforcement;  
25   correct?

## LOPEZ - CROSS / JONNA

1   **A.**   No, ma'am.

2   **Q.**   And you don't recall hearing about anybody in CMP ever  
3   talking to any law enforcement; correct?

4   **A.**   I remember there was evidence sent out.  As far as what  
5   evidence was sent out, who spoke to who and where it went, no,  
6   I don't know about that.

7   **Q.**   All right.

8           **MS. BOMSE:**  If we could play from Mr. Lopez's  
9   videotaped deposition at Lines 133/6 to 133/22?

10           **MR. JONNA:**  Again, Your Honor, if you want to rule on  
11   the objections?

12           **THE COURT:**  I will overrule the objections.  You can  
13   proceed.

14           **MS. BOMSE:**  Thank you.

15           (Videotape played in open court, not reported)

16           **MS. BOMSE:**  Thank you.

17           No further questions at this time.

18           **THE COURT:**  All right.  Mr. Jonna.

19           **MR. JONNA:**  Thank you, Your Honor.

20                           **CROSS-EXAMINATION**

21   **BY MR. JONNA**

22   **Q.**   Good morning, Mr. Lopez.

23   **A.**   Good morning.

24   **Q.**   I want to take you back and start with your background.

25   Why don't you tell us how old you are, sir?

1    **A.**    Twenty-nine.

2    **Q.**    And where do you reside?

3    **A.**    I live in San Diego, California.

4    **Q.**    Tell us about your educational background.

5    **A.**    High school diploma.  Then for, like, three or four years  
6    I attended Cerritos College between full-time and part-time,  
7    between work and other responsibilities.

8    **Q.**    What's your current occupation, sir?

9    **A.**    I'm employed by the United States Navy, Department of  
10   Defense.  I'm a hospital corpsman working in the neonatal ICU,  
11   Balboa Hospital.

12                **THE COURT:**  Can you slow down just a little bit?

13                **THE WITNESS:**  Oh, yeah.  Sorry.

14    **BY MR. JONNA**

15    **Q.**    Can you please tell us what your responsibilities are in  
16   that position?

17    **A.**    Well, in that position as a hospital corpsman, I'm both a  
18   fieldman certified in tactical combat casualty care with the  
19   Marine Corps.  My duty station now, which is temporary, is  
20   patient care in the NICU.

21    **Q.**    And is that the reason why you can't be here for the  
22   duration of this trial, sir?

23    **A.**    Yes.  I'm having trouble getting leave.

24    **Q.**    Okay.  So can you please tell us how you met David  
25   Daleiden in some more detail?

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1   **A.**   I was working at Starbucks in Orange County, and he would  
2   come in from time to time. He came in enough times to where  
3   when I was on break, I wasn't off-put by his presence. And  
4   myself and a couple other individuals got to know him the way  
5   we do a lot of the customers at that community coffee shop.

6   **Q.**   And tell us the context of how he asked you to get  
7   involved with CMP?

8   **A.**   So I was renting a room at the time and my landlord asked  
9   me to do some landscaping for him for \$100 off the rent, and it  
10  was -- I was working all day to do it. And so I was  
11  frustrated. And a bunch of us were frustrated working at  
12  Starbucks, too. Just tired of working a bunch of odd jobs to  
13  make ends meet, take care of my granny. And so he offered me  
14  \$15 an hour to transcribe videos for him in my own time.

15  **Q.**   Okay. So your unusual tasks were transcribing videos?

16  **A.**   Correct.

17  **Q.**   Do you remember approximately how many videos you  
18  transcribed?

19  **A.**   Over how long? The entire time?

20  **Q.**   Initially. Before you went undercover.

21  **A.**   I don't remember. More than three.

22  **Q.**   You were asked about, in your -- in your examination by  
23  Ms. Bomse you were asked about whether you understood what you  
24  were transcribing at that time; do you recall that?

25  **A.**   I do.

1 Q. And you weren't given a chance to explain your answer, so  
2 I want to ask you that question --

3 THE COURT: Let's not have the preface. Just ask the  
4 question.

5 MR. JONNA: Sure.

6 BY MR. JONNA

7 Q. Did you understand what it was you were transcribing  
8 initially?

9 A. Not everything, no. And to this day I can tell you I  
10 still don't know what Dilapan is. That was a drug that was on  
11 the banner in one of the videos. I'm not exactly sure what  
12 Misoprostol is.

13 But over the time of being there just talking to abortion  
14 providers I learned a thing or two; correct.

15 Q. Did any of the videos that you transcribed initially stand  
16 out to you?

17 A. Yes. I remember there was a video that I transcribed by  
18 someone named Lisa Harris, who was discussing self-care after  
19 an abortion. And I had no idea what she was really talking  
20 about. And then that's when David and I -- I asked David  
21 eventually: What are these videos about?

22 Q. And were you eventually asked to view the video of Perrin  
23 Larton with ABR?

24 A. Larton, yes.

25 Q. And is that a video that you've reviewed and transcribed



1 before you went undercover?

2 **A.** Correct.

3 **Q.** What do you remember about that video?

4 **A.** I just remember he was someone -- it was a male on the  
5 thing. He was just talking to her. And the most -- it was  
6 kind of graphic. There was mention of a woman, a patient being  
7 so dilated that when they get in the stirrups, the fetus falls  
8 out. I thought that was -- I never heard anything like that  
9 before.

10 **Q.** Did you also view a video of a lunch meeting with  
11 Dr. Deborah Nucatola?

12 **A.** I did.

13 **Q.** And what do you remember about that video?

14 **A.** That video cleared a lot of things up for me. It was  
15 very, very precise and changing -- first of all, they were  
16 talking about fetal tissue sales and how people are looking for  
17 a lot of specifically lungs, thymus, things like that.

18 And then they were -- she discussed possibly changing a  
19 procedure, I believe it was under ultrasound guidance, so they  
20 would -- the provider would know the best way to perform the  
21 abortion in order to keep intact specimens.

22 I remember discussion of calvarium, how hard it is to get  
23 an intact calvarium, but it is possible to crush above or below  
24 certain parts to get those cores -- core specimens that people  
25 were looking for, such as lungs and liver.

1 Q. Do you remember if Dr. Nucatola talked about changing the  
2 presentation of the fetus in order to --

3 A. For vertex --

4 MS. BOMSE: Your Honor, I object to be 403.

5 MR. JONNA: Your Honor, we discussed this in the  
6 morning.

7 THE COURT: Yes. So overruled. You can proceed.

8 BY MR. JONNA

9 Q. Go ahead, sir.

10 A. There was a discussion of changing from vertex. Like I  
11 said, calvarium is hard to -- the head is hard to get out  
12 intact. So if you change the presentation, well, that kind of  
13 eliminates your problem to an extent. That's what I understood  
14 from that.

15 Q. So these were videos that you watched before you agreed to  
16 go undercover; is that right?

17 A. Yes.

18 Q. And how did these videos contribute to your ultimate  
19 decision to go undercover?

20 A. Well, first, I spoke with David about it and I didn't  
21 really believe it. It seemed kind of -- I don't know, it  
22 seemed kind of outrageous.

23 So then I looked through a couple studies, studies and  
24 materials used, fetal eyeballs, fetal hearts and livers. There  
25 was even one in regards to something called a Langendorff

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1 perfusion. It's basically using electrical impulses to keep a  
2 heart beating after a fetus is delivered.

3 So once I looked that up, it's very specific. So then I  
4 went to David and did my own -- and we talked about it some  
5 more, and then I saw the videos.

6 **MR. JONNA:** Your Honor, I would like to show the  
7 witness Exhibit 4012, which --

8 **THE COURT:** What is --

9 **MR. JONNA:** -- is a copy of one of the studies he's  
10 referencing.

11 I just want to ask him a question about one part of that  
12 that he specifically referenced in his testimony.

13 **THE COURT:** No. The -- well, let me look at it, but  
14 I think the answer is going to be no.

15 Why don't you show it to me at the break?

16 **MR. JONNA:** Sure.

17 **THE COURT:** So, ladies and gentlemen, I just want to  
18 remind you that this case is about the strategies that the  
19 defendants used in this matter and whether they were legal or  
20 not, whether there were damages that flowed from them or not,  
21 but -- and evidence of what the context was for the -- for  
22 people to go into this project is relevant.

23 So that's the line that I'm drawing. So a lot of stuff is  
24 not -- we're not going into the truth of whether those things  
25 occurred, whether they are good or bad. It is the strategies

1 that we're looking at.

2 Go ahead.

3 **MR. JONNA:** Thank you, Your Honor.

4 **BY MR. JONNA**

5 **Q.** Do you also recall looking at any websites for tissue  
6 procurement organizations before you went undercover?

7 **A.** Yes. There was a couple different ones. I remember most  
8 clearly one called StemExpress. You go in there and it's  
9 basically a custom order for fetal tissue. You put -- there is  
10 a drop-down member for gestational age. There is a drop-down  
11 menu for what type of tissues you want, quantities and so  
12 forth.

13 **Q.** And why was that significant to you?

14 **A.** I guess hearing it from someone once was enough to, I  
15 guess, get my mind thinking about it. Seeing that there's  
16 scholars that use tissues, seeing someone else talk about and  
17 how they would do it kind of affirmed it, but when I saw that  
18 there was a website where you can order it, I think that just  
19 -- that kind of did it for me. It was kind of a chain that  
20 seemed to fit together.

21 **MR. JONNA:** Your Honor, may I show the witness a  
22 screen shot of that website? It's a trial exhibit.

23 **THE COURT:** Not -- we can talk about it at the break,  
24 but tissue procurement organizations I've already made rulings  
25 on with respect to this and Motions in Limine.

1 Go ahead.

2 MR. JONNA: Okay.

3 BY MR. JONNA

4 Q. Did you see a document from StemExpress that had a bonus  
5 structure for how many specimens were collected?

6 THE COURT: Sustained. The objection that Ms. Bomse  
7 was about to make by standing up is sustained.

8 MR. JONNA: Without showing him the document, may I  
9 just ask if he saw that?

10 THE COURT: I think you've gone into StemExpress  
11 sufficiently for this witness. Thank you.

12 MR. JONNA: Okay. Thank you.

13 BY MR. JONNA

14 Q. Did you speak to Holly O'Donnell?

15 A. I never spoke with Holly O'Donnell. I --

16 THE COURT: That would answer the question.

17 BY MR. JONNA

18 Q. Did you review any of the statements, any of the videos  
19 that were made with Holly O'Donnell?

20 A. There was a video with Holly --

21 Q. I don't want you to talk about what was on the video. Did  
22 you review the video with Holly O'Donnell?

23 A. Yes.

24 Q. You reviewed that video before you went undercover?

25 A. Yes.

1 Q. Did that video also contribute to the reasons that caused  
2 you to go undercover?

3 A. Yes.

4 Q. And she worked for StemExpress; correct?

5 A. Correct.

6 Q. So just to recap for the jury. After you saw these videos  
7 and reviewed these materials, can you please tell us what  
8 concerns you had, if any?

9 A. I guess what I saw was just like a market. There was a  
10 market for these type of tissues. And once I heard Deborah  
11 Nucatola talk about changing things, it just -- to me it said  
12 profit motive.

13 And that that's why I agreed to help him go undercover, so  
14 that we could gather evidence and then coordinate with law  
15 enforcement, bring it to someone's attention. It was a gray  
16 area that nobody seemed to know about.

17 Q. And, in fact, you were also made aware that this gray area  
18 was also looked at before by other investigators?

19 MS. BOMSE: Your Honor, I have to object.  
20 Misleading.

21 THE COURT: That is leading. Sustained.

22 MR. JONNA: Okay.

23 BY MR. JONNA

24 Q. Were you ever made aware that Planned Parenthood's fetal  
25 tissue program was looked at before by prior undercover

1 investigators.

2           **THE COURT:** So you need to make the objection when  
3 you stand up.

4           **MS. BOMSE:** Oh. Thank you, your Honor.

5           **THE COURT:** Then I'll rule on the objection.

6           **MS. BOMSE:** Counsel is leading the witness.

7           **THE COURT:** I'm sorry?

8           **MS. BOMSE:** Counsel is leading the witness, and 403.

9           **THE COURT:** Yes. So for both of those grounds -- on  
10 both of those grounds, sustained.

11 **BY MR. JONNA**

12 **Q.** Did you have any concerns about whether infants were born  
13 alive?

14           **MS. BOMSE:** Your Honor, objection. 403.

15           **THE COURT:** Sustained.

16 (Interruption in the proceedings)

17           **THE COURT:** And what -- those church bells were very  
18 nice, but I really don't want them. So please be careful with  
19 that.

20 All right. Run by your question again. I was distracted.

21           **MR. JONNA:** So it was the last question as far as his  
22 motive. I just asked about whether he had any concerns whether  
23 infants were born alive.

24 I wasn't going to go into a lot of detail, just high level  
25 concerns.

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1           **THE COURT:** If that was a concern of his that you  
2 want to bring out, go ahead.

3 **BY MR. JONNA**

4 **Q.** Was that a concern of yours, Mr. Lopez?

5 **A.** When they discussed the technique for the Langendorff  
6 perfusion, that's when I began to think about it. And what  
7 Perrin Larton just said, that --

8           **THE COURT:** Okay. So "yes" or "no."

9           **THE WITNESS:** Yes.

10 **BY MR. JONNA**

11 **Q.** Okay. What was your understanding at the outset of what  
12 the CMP project would entail? Can you tell us in your own  
13 words?

14 **A.** The way it was told to me was just -- I remember a lot of  
15 citizen -- citizen journalists. That's how it started out when  
16 David explained it to me.

17           But the whole point would be to gather evidence, gather  
18 research and, again, coordinate with law enforcement with said  
19 research.

20 **Q.** And you said you were paid \$15 an hour?

21 **A.** I started out transcribing those videos and I was paid \$15  
22 an hour.

23 **Q.** Do you know how much you were paid over the course of the  
24 entire project?

25 **A.** Over the course of the entire project til I left, no, but



1 no more than ten grand.

2 **Q.** Did you have a political agenda?

3 **A.** No.

4 **Q.** Do you consider yourself pro-life?

5 **A.** No.

6 **Q.** Did you ever call for violence against Planned Parenthood?

7 **A.** Definitely not.

8 **Q.** Did you ever ask anyone to protest against Planned  
9 Parenthood?

10 **A.** No. I've been to Planned Parenthood before.

11 **Q.** What's that?

12 **A.** I have been to Planned Parenthood before.

13 **Q.** Did you ask anyone to harm Planned Parenthood?

14 **A.** No.

15 **Q.** And you said you attended four conferences with  
16 Mr. Daleiden?

17 **A.** Total, yes.

18 **Q.** And what was your understanding of your role in those  
19 conferences?

20 **A.** Well, initially it was -- my whole role was to facilitate  
21 conversation with David and the people that he wanted to  
22 discuss at each one. And so it started out like that, kind of  
23 arbitrarily walking around after the exhibitions let out.  
24 Everybody was drinking and talking.

25 And initially, again, I didn't really know everything that

1 they were talking about, and David was kind of the go-to. So I  
2 would meet people, start some small talk and then bring them  
3 over to chat with him.

4 Towards the end of the conference I -- I guess I wanted  
5 to -- I wanted to try and take on a more important role or I  
6 wanted to try to do more than I think, like I said, just  
7 arbitrarily drinking the entire time, making small talk, but it  
8 really didn't work out. We kind of butted heads a lot. It was  
9 very clear that this was not my project, so kind of stay in  
10 your lane, understood.

11 **Q.** You were asked earlier if you understood whether BioMax  
12 was an actual tissue procurement organization, and you wanted  
13 to explain the answer further. Can you please explain your  
14 understanding of that, sir?

15 **A.** BioMax was a part of the equation way before I got there.  
16 LLC to me, I had always thought meant limited liability  
17 company. So I'm pretty sure you can't just tack that onto  
18 whatever. Number one.

19 Number two. That was for the undercover project the  
20 business or the -- well, the company we represented, but we saw  
21 in one of those videos they talked about adipose tissue and  
22 another type of tissue as well. I spoke with David about that  
23 personally, if that would ever be a possibility, and it was  
24 kind of up in the air; maybe so, maybe not. So --

25 **Q.** Can I stop you? Can you please tell us what adipose

1 tissue is; your understanding?

2 **A.** Fat tissue. Like, belly fat tissue.

3 **Q.** What about that did you discuss with Mr. Daleiden?

4 **A.** Well, I was saying -- we discussed adipose tissue, and I  
5 was saying: Well, would you really ever procure it?

6 He said: Well, it could be possible. We could actually  
7 do some stuff like that.

8 I would say: Okay.

9 And then other than that, I mean, I wasn't really involved  
10 in his business model for BioMax.

11 **Q.** We saw some videos earlier where you said to Planned  
12 Parenthood personnel that there were things that you could do.

13 Did you ever make any promises that you actually would  
14 procure tissue or consent patients to Planned Parenthood folks?

15 **A.** No. When we were at the conferences, it was kind of a  
16 summary. Like, this is what we could do. This is how it could  
17 go down. But there were meetings that I, in fact, was not a  
18 part of to finalize all those logistics.

19 **Q.** You recall you were deposed in March of this year?

20 **A.** Yes.

21 **Q.** And you were shown some clips from your deposition and you  
22 provided answers that went into more detail today; do you  
23 recall that?

24 **A.** Yes.

25 **Q.** Do you want to explain for the jury why it was that you're

1 able to be more specific today?

2 **A.** Well, I'm -- I was a little bit frustrated at my  
3 deposition, to be blindsided, pulled away from duty to be asked  
4 questions, very specific questions about things that happened  
5 five, six years ago.

6 I was instructed never to guess. And I believe that the  
7 person that I had -- the person that was deposing me and I had  
8 a very -- we had a little conversation about how I felt  
9 pressured to answer questions a certain way because of the way  
10 the questions were being phrased; double negatives, kind of  
11 like the first line of questioning here today. And honestly,  
12 I -- that didn't sit well with me. I felt like I didn't do  
13 enough to prepare.

14 So in the time since then, once we agreed on the day that  
15 I would be here, I started looking at all the documents that we  
16 had put in so that I could fill in some of those holes and  
17 those gaps for us.

18 **Q.** I'd like to show you an Exhibit 5760, which is a video to  
19 which plaintiffs have no objection to showing.

20 **MR. JONNA:** Would you prefer, Your Honor, we show it  
21 to the witness first?

22 **THE COURT:** I'm not sure whether what you said is  
23 being remembered at the moment.

24 **MS. BOMSE:** I don't know what it is.

25 **MR. JONNA:** It's one of those video clips that you

1 guys had no objection to.

2 **MS. BOMSE:** Can you tell me which one it is?

3 **MR. JONNA:** 5760. If Your Honor would play it,  
4 please, for the witness.

5 **MS. BOMSE:** That's fine, Your Honor. I understand  
6 Mr. Jonna's representation and accept it; but my understanding  
7 is the video is a recording from the NAF conference, and so we  
8 would request that only certain monitors be on for this  
9 screening.

10 **THE COURT:** Okay. So is that --

11 **MR. JONNA:** Just so you know, Your Honor, I think  
12 there were other videos shown from the NAF conference that  
13 plaintiffs showed that didn't have that limitation. Of course,  
14 we'll defer to whatever the Court prefers.

15 **THE COURT:** All right. Well, since it wasn't raised  
16 before and it is being raised now, we will show this video on  
17 the monitors for the jury and for counsel and not on the big  
18 screen for the gallery.

19 Ms. Davis, can you make sure that happens? I think we can  
20 control it from here. I don't think that's necessary. Is that  
21 correct, Ms. Davis?

22 **THE CLERK:** Yes.

23 **THE COURT:** Okay. All right.

24 **MR. JONNA:** It's 5760-1.

25 **THE COURT:** So this will come from the defense

1 monitor.

2 (Brief pause.)

3 **THE COURT:** Why don't we take our morning break? I  
4 think this one, we'll take about 15 minutes.

5 Please remember the admonitions and we'll be back in about  
6 15 minutes.

7 (Jury exits the courtroom at 9:33 a.m.)

8 **MR. JONNA:** Your Honor, I have --

9 **THE COURT:** Please be seated everybody.

10 **MR. JONNA:** I have those transcripts now, if, Your  
11 Honor would like to --

12 **THE COURT:** Yes.

13 **MR. JONNA:** Okay. So the first recording is the one  
14 with Tram Nguyen. It's 5749.

15 (Whereupon document was tendered to the Court.)

16 **MS. BOMSE:** Do you have copies for me?

17 **MR. JONNA:** Yes, I do. We sent them to you last  
18 night.

19 (Whereupon document was tendered to counsel.)

20 **MR. JONNA:** Then the second one is 5220.

21 (Whereupon document was tendered to the Court.)

22 **MR. JONNA:** That's with Dr. DeShawn Taylor.

23 **MS. BOMSE:** Okay. These are going to be played  
24 without sound; correct?

25 **THE COURT:** This is what I said could be played

1 without sound, but I was going to review the transcripts to see  
2 what the sound was.

3 **MS. BOMSE:** Okay. Understood, Your Honor.

4 **THE COURT:** And then the only other thing that I  
5 wanted to do before -- so I'm going to look at this and I'll  
6 come back in ten minutes.

7 And then the -- this exhibit, the Rhomberg exhibit won't  
8 come in.

9 **MS. SHORT:** Is their motion going to be granted to  
10 any other extent beyond just excluding the exhibit?

11 **THE COURT:** You mean, discussing the exhibit?

12 **MS. SHORT:** Correct. Or not even discussing the  
13 exhibit, but they wanted to basically give him a script that he  
14 was limited to, which we only get last night.

15 **THE COURT:** I'm not sure that I paid attention to a  
16 script. Is that --

17 **MR. KAMRAS:** It's not what we intended, Your Honor.  
18 It wasn't intended to be a script. There were -- I understand  
19 that Ms. Short is going to want to elicit some testimony about  
20 Mr. Rhomberg having made this discovery that's part of his  
21 story about why he's -- what motivates him. And so we  
22 understand that there will be some degree of testimony about  
23 having the discovery and also that he took photos. We  
24 understand that.

25 But we do want to be clear that we're not going to go into

1 the details of what the discovery was. That was the point of  
2 the motion.

3 **THE COURT:** So stay at a high level and if -- if you  
4 stray, I'm sure you'll get an objection and then I'll rule on  
5 it. But this is not coming in.

6 **MS. SHORT:** Okay, Your Honor. I mean, just -- again,  
7 this is being sprung on us at the last minute. I haven't  
8 really even had a chance to talk to my client about -- I was --  
9 you know, about what they now want him to do. Just so you  
10 understand that.

11 **THE COURT:** Okay.

12 **MS. SHORT:** Okay.

13 **MR. JONNA:** Just out of an abundance of caution,  
14 would Your Honor like to see the three exhibits I tried to  
15 introduce or are you --

16 **THE COURT:** If you would like to show them to me, I  
17 would prefer to look at them and satisfy my --

18 (Whereupon document was tendered to the Court.)

19 **MR. JONNA:** Thank you, Your Honor.

20 I didn't print the whole 60-page study. I just printed  
21 three pages. It's only the bottom of Page 3 top of Page 4 that  
22 I care about.

23 **THE COURT:** Okay. Thank you.

24 Ms. Bomse.

25 **MS. BOMSE:** Thank you, Your Honor.



1           Just in terms of the transcripts of the videos that you're  
2 going to go back and have the pleasure of reading, we just want  
3 to be clear that one of them is a Dr. DeShawn Taylor. We don't  
4 have a claim with respect to Dr. Taylor. So just so the Court  
5 knows that.

6           **THE COURT:** When you say you don't have a claim, you  
7 don't have an objection to playing --

8           **MS. BOMSE:** We very much have an objection. I just  
9 wanted to clarify that in case there's any confusion, there is  
10 no claim that that particular doctor was --

11           **THE COURT:** At one of these conferences.

12           **MS. BOMSE:** Was one of ours, worked for --

13           **THE COURT:** Okay. I understand.

14           **MS. BOMSE:** Got it. Thank you.

15           **THE COURT:** All right. So I'll be back in ten  
16 minutes.

17           (Whereupon there was a recess in the proceedings  
18 from 9:38 a.m. until 9:50 a.m.)

19           **THE COURT:** So with respect to those exhibits, which  
20 were 4423, 4012, I'm not sure what the third one was, but it's  
21 the StemExpress.

22           **MR. JONNA:** 2215. It's on the bottom.

23           **THE COURT:** 2215. So my ruling will stand. They are  
24 not admitted. PPOs aren't on trial. Abortion procedures  
25 aren't on trial.

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1           And then with respect to the videos, for -- when you show  
2 them the first -- when you show them to Mr. Lopez the first  
3 time, do them without sound and I will rule from here. If I  
4 tell you that you can play them with sound, then go ahead.  
5 Otherwise, I'm going to defer my ruling and you can -- you may  
6 be able to play them later, if I determine that it's  
7 appropriate.

8           So the issue that I'm going to be looking at is whether  
9 there are people around at the time of the recording.

10           **MR. JONNA:** Sure. Can I make one small point about  
11 that?

12           **THE COURT:** Go ahead.

13           **MR. JONNA:** In one of them, Your Honor, it's pretty  
14 clear you see the people. In the other one, Mr. Lopez will  
15 testify there were people, but they are just not showing in  
16 that narrow camera lens angle that you have.

17           So I just want you to keep that in mind, please.

18           **MR. MIHET:** We were able to get the two videos on a  
19 flash drive for Your Honor. Is this a good time to give them  
20 to you?

21           **THE COURT:** You have to give them to Ms. Davis, but  
22 yes, perfect time.

23           **MR. MIHET:** Your Honor, I don't know if we'll have a  
24 further opportunity to discuss this with Your Honor or not, but  
25 there was some discussion already about whether and when other

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1 people are passers-by. The videos speak for themselves, but I  
2 highlighted the transcripts with all of the places where I saw  
3 people walking by and it's essentially all the way through on  
4 the longer video.

5 On the longer video especially there is a table of other  
6 diners that we would contend is within earshot of the dinner  
7 party in question. And so we think that's an additional reason  
8 why the video was appropriate.

9 **THE COURT:** Okay. I'm confident that I'll hear from  
10 you again at the time that I'm ruling.

11 **MR. MIHET:** Thank you.

12 (Whereupon a flash drive was tendered to the Clerk.)

13 (Jury enters the courtroom at 9:54 a.m.)

14 **THE COURT:** All right. Please be seated everybody.  
15 Mr. Jonna.

16 **MR. JONNA:** Thank you, your Honor.

17 **BY MR. JONNA**

18 **Q.** Mr. Lopez, before we look at some videos, I just want to  
19 clarify something you said earlier.

20 You said you work at the neonatal NICU. I don't know if  
21 anyone understands what that means. Can you please explain  
22 what that means?

23 **A.** No neonatal NICU, it's where we take as early as 21-week  
24 babies experiencing respiratory distress, hypoglycemia or any  
25 type of congenital deformity or abnormality. It's just a --

1 it's an intensive care unit for them, as opposed to one shared  
2 with adults.

3 **Q.** Thank you.

4 **MR. JONNA:** Let's take a look at Exhibit 5760-1,  
5 which is a clip from the NAF 2015 conference in Maryland.

6 **THE COURT:** So that one is going to be not shown to  
7 the gallery, but shown to everybody else.

8 **MR. JONNA:** With sound, please.

9 (Videotape played in open court, not reported)

10 **BY MR. JONNA**

11 **Q.** Do you recognize yourself in that video, sir?

12 **A.** Yes.

13 **Q.** And you were at a -- what conference were you at? Do you  
14 recall?

15 **A.** No.

16 **Q.** Does it look like it was the National Abortion Federation  
17 conference in Maryland?

18 **A.** That was 2015. That's how I remember it, yes.

19 **Q.** Can you tell us what you were discussing in that video  
20 clip we just watched?

21 **A.** We were trying to move through the exhibition hall. There  
22 was someone that David mentioned he wanted to meet, so I took  
23 him over to meet that person.

24 **Q.** Is that something you typically did at these conferences?

25 **A.** Correct.

1 Q. And is this an example of how crowded these exhibit halls  
2 typically were?

3 MS. BOMSE: Your Honor, counsel is leading the  
4 witness.

5 THE COURT: Sustained.

6 BY MR. JONNA

7 Q. When you were at these exhibit halls were they -- tell us  
8 what they looked like?

9 A. Well, while the sessions were in, it was pretty empty.  
10 Everybody was otherwise occupied during the day.

11 But once the sessions let out for the day, it was open bar  
12 sometimes and so the exhibition hall was just crowded with  
13 people. Everybody is drinking, talking.

14 Q. Do you remember if the people you spoke to spoke  
15 discreetly to you ever?

16 A. No. People were speaking in a regular tone.

17 Q. Did they ever ask you to keep your conversations  
18 confidential?

19 A. No.

20 Q. Did anyone make an effort to prevent others from listening  
21 in when you were speaking to them at these conferences?

22 A. No. People just spoke pretty freely.

23 Q. I want to show you Exhibit 5218-1, which is from a Planned  
24 Parenthood conference in Miami 2014.

25 MR. JONNA: Plaintiffs have not objected to this

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1 clip, Your Honor.

2 **THE COURT:** Okay.

3 (Videotape played in open court, not reported)

4 **THE COURT:** Hang on just a second.

5 So this -- this is not covered by the injunction; is that  
6 right?

7 **MS. TROTTER:** What is up on the screen right now  
8 seems to be something different than what we thought this  
9 exhibit was.

10 Okay.

11 **MR. JONNA:** That should --

12 **THE COURT:** So it can be shown to everybody?

13 **MS. BOMSE:** Yes.

14 **THE COURT:** Please. All right. Go ahead.

15 (Videotape played in open court, not reported)

16 **BY MR. JONNA**

17 **Q.** Do you recognize that clip, Mr. Lopez?

18 **A.** Yes.

19 **Q.** And where were you?

20 **A.** In Miami.

21 **Q.** How many people would you estimate were within a few feet  
22 of you during that conversation?

23 **A.** It was the outdoor patio. A couple hundred at least.

24 **Q.** Is that typical of many of the conversations that you had  
25 at these conferences?

1           **MS. BOMSE:** Objection, Your Honor. Counsel is  
2 leading the witness.

3           **THE COURT:** Overruled. You can answer that question.

4           **A.** Could you ask it again?

5           **BY MR. JONNA**

6           **Q.** You said there was a couple hundred people around you, and  
7 I'm just trying to get a sense if that was typical of many of  
8 the conversations you had at these conferences?

9           **A.** Yes. There was nowhere really to go. You are in session.  
10 Once session is out every day, you either leave or you hang  
11 around and socialize.

12           **Q.** Did the folks in this clip that we saw do anything to  
13 suggest to you that they thought their conversation was  
14 confidential?

15           **A.** No.

16           **Q.** During these conferences and events at these bars, did you  
17 ever speak to personnel about abortion and fetal tissue --  
18 their fetal tissue programs in the presence of others?

19           **A.** Yes, I did.

20           **Q.** Okay. And they spoke to you about those issues as well?

21           **A.** Yes.

22           **Q.** Did they change the tone of their voice when they started  
23 speaking about those issues?

24           **A.** No. Just to communicate. Sometimes you have to talk  
25 louder over everyone else.

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1 Q. Did they ever change the subject when other people were  
2 nearby?

3 A. No.

4 Q. Did you use a fake name in this project?

5 A. I did not.

6 Q. Why not?

7 A. Didn't think I had to.

8 Q. But you knew David Daleiden was going by the name Robert  
9 Sarkis; right?

10 A. For the purposes of the project, yes.

11 Q. Okay. And do you know why he was using a different name?

12 A. It was an undercover operation. That's all I really  
13 understood by it.

14 Q. I would ask you to speak into the microphone.

15 A. Let me get some water.

16 (Brief pause.)

17 A. I just figured it was an undercover operation, so that's  
18 why he had a fake name.

19 Q. And when you introduced yourself to people at these  
20 conferences, who did you tell them you were?

21 A. I was Adrian. Sometimes I said I was with BioMax.  
22 Sometimes I just introduced myself as I was just because I  
23 wasn't exactly 100 percent sure on how to approach.

24 Q. Why did you tell them you were with BioMax?

25 A. Pardon?



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1 Q. Why did you tell people you were with BioMax?

2 A. It's kind of how the training -- the training went.

3 Q. Did you ever use a fake I.D.?

4 A. No.

5 Q. Did anyone ever tell you they were using a fake I.D.?

6 A. No.

7 Q. Did David Daleiden tell you he was using a fake I.D.?

8 A. No.

9 Q. Did you ever produce a fake I.D.?

10 A. I did not.

11 Q. Did you ever transfer a fake I.D.?

12 A. I don't know transfer.

13 Q. Okay. So it's fair to say you had no knowledge anyone at  
14 the project was using a fake I.D.?

15 A. I didn't --

16 MS. BOMSE: Objection. Counsel still leading the  
17 witness.

18 THE COURT: Overruled.

19 BY MR. JONNA

20 Q. Did you ever forcibly enter any of the conferences?

21 A. No. Every conference I went to I just registered at the  
22 front desk. They gave me my materials.

23 Q. Tell us a little bit about the registration process?

24 A. Well, very similar to what we saw on the video last time.

25 A lot of times just an empty room. Somebody set up a booth.

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1 You give them your I.D., tell them your name, and they check  
2 you. They reference that with what they have in their records  
3 and they give you your packets and your badge. Everybody  
4 usually had a badge.

5 Q. Did they ever ask you for references?

6 A. No.

7 Q. Did you ever record conversations at these conferences  
8 that you weren't part of? Did you ever eavesdrop on other  
9 conversations?

10 A. No.

11 Q. Were you ever in private places when you recorded these  
12 conversations?

13 A. I was not.

14 Q. Did you ever record anyone in a Planned Parenthood clinic?

15 A. No.

16 Q. Did you ever record undercover in the Planned Parenthood  
17 Gulf Coast clinic?

18 A. No, I wasn't there. I wasn't a part of that.

19 Q. How about in Planned Parenthood's Colorado clinic?

20 A. No. I wasn't a part of that one either.

21 Q. Did you ever record anyone in a hotel room?

22 A. No.

23 Q. An office?

24 A. No.

25 Q. I'd like to show you Exhibit 5218-2.

1           **MR. JONNA:** Also from the conference in Miami, Your  
2 Honor, in 2014.

3           **THE COURT:** Is there any objection to that?

4           **MS. BOMSE:** No objection.

5           **THE COURT:** Okay. Go ahead.

6           (Videotape played in open court, not reported)

7           **BY MR. JONNA**

8           **Q.** Do you remember that conversation, sir?

9           **A.** Yes.

10          **Q.** And who -- do you recognize anyone in that video?

11          **A.** I recognize Deborah Nucatola.

12          **Q.** And you were speaking to her in that clip?

13          **A.** Yes.

14          **Q.** How many people would you estimate were around you when  
15 you were speaking to her?

16          **A.** A couple hundred.

17          **Q.** How many people were within just a few feet of your  
18 conversation?

19          **A.** At least ten or 15 people.

20          **Q.** And this --

21          **A.** Enough to have to speak over.

22          **Q.** This is an example of one of the recordings you're being  
23 sued for. We can't go through all of them, but I want to ask  
24 you some more about this one.

25                 Did you tell the people that you were recording -- did any

1 of the people that you were recording tell you this was a  
2 confidential conversation?

3 **A.** No.

4 **Q.** Did you get the impression that they thought it was  
5 confidential?

6 **A.** No.

7 **MR. JONNA:** Your Honor, I'd like to show the witness  
8 one of the clips that you've looked at, 5749. It's for --

9 **THE COURT:** Without the sound, go ahead.

10 **MR. JONNA:** Your Honor, hold on a second. This is  
11 from the NAF conference in Maryland in 2015.

12 **THE COURT:** Okay. So we should not publish it to the  
13 gallery, and it can be played without sound to everybody else.

14 (Videotape played in open court without sound.)

15 **THE COURT:** And without the transcript running. Stop  
16 it, please.

17 Thank you.

18 Do you have it without the transcript?

19 **MR. JONNA:** Is it possible to only have Your Honor  
20 look at it first with the transcript? I'm not sure if they can  
21 take the transcript out. It's synced.

22 **THE CLERK:** We can have just counsel without the  
23 witness, but we can't have just the judge.

24 (Brief pause.)

25 **THE COURT:** Mr. Jonna, what about this? Why don't we

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1 show it to the witness and counsel, not the jury. Then you can  
2 ask questions to him about what was -- what was shown on the  
3 video, and eventually we'll be able to show it to the jury once  
4 the technical difficulties are worked out.

5 **MR. JONNA:** Sure. Thank you.

6 **THE COURT:** Does that make sense?

7 **MR. JONNA:** Sure.

8 **THE COURT:** So not to the jury --

9 **THE CLERK:** Witness?

10 **THE COURT:** Witness and the parties.

11 **THE CLERK:** Counsel. No sound.

12 **THE COURT:** Yeah.

13 (Videotape played without audio for the witness and  
14 counsel only.)

15 **MR. JONNA:** Your Honor, I think that -- are you guys  
16 able to show that clip without the text scrolling? Yes?

17 **MR. MIHET:** Potentially, one second.

18 **THE COURT:** Do you have an objection, Ms. Bomse?

19 **MS. BOMSE:** I just want to make clear before the  
20 witness answers any question about this tape that the witness  
21 should not describe any of the words stated for the same  
22 reasons that --

23 **THE COURT:** We'll deal with it as the questions come  
24 up.

25 **MR. JONNA:** I think the issue has been resolved, Your

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1 Honor. If we can publish it for the Court, please, without the  
2 text rolling.

3 **THE COURT:** If you have no text, it's okay with me if  
4 you establish a foundation.

5 **MR. JONNA:** So I'd like to play the audio as well.  
6 So I thought the Court wanted to view --

7 **THE COURT:** Not right now.

8 **MR. JONNA:** Oh, okay.

9 **BY MR. JONNA**

10 **Q.** Did you get a chance to see this video clip, Mr. Lopez?

11 **A.** Yes.

12 **Q.** And do you recall where this conversation took place?

13 **A.** I believe this was NAF.

14 **Q.** Do you recall who you were speaking to in this  
15 conversation?

16 **A.** I remember Tram Nguyen and Dr. Ann -- I don't remember her  
17 last name.

18 **Q.** Do you recall approximately how many people were around  
19 you when you had this conversation?

20 **A.** There was at least 20 people. The exhibit hall was  
21 separated with those dividers so that people could put up their  
22 projects for, you know, research that they had done. So  
23 everybody kind of either pushed to the back or hung out in the  
24 middle or to the front.

25 **Q.** And who's Tram Nguyen?

1    **A.**    I remember her as a -- she was a provider, but I don't  
2    remember where specifically.

3    **Q.**    Was it Planned Parenthood Gulf Coast?

4    **A.**    Could be. I don't remember.

5    **Q.**    And what -- do you remember what you spoke about with  
6    Ms. Nguyen and Dr. Ann Schutt-Aine in then this conversation?

7    **A.**    We were discussing -- I met Tram before --

8            **THE COURT:** Just at a high level, Mr. Lopez. Don't  
9    go into the details of the discussion.

10           **THE WITNESS:** Okay.

11   **A.**    I remember meeting Tram Nguyen before, and so to come back  
12   and see her there, we discussed pretty much everything within  
13   my role; fetal tissue donation and, you know, how we would  
14   coordinate that and how we would meet with David to coordinate  
15   with that.

16   **BY MR. JONNA**

17   **Q.**    Was there anything in that conversation that you recall  
18   that sticks out at you as particularly concerning?

19           **THE COURT:** Sustained.

20   **BY MR. JONNA**

21   **Q.**    Can you tell us, you said there was about 20 people around  
22   you during this conversation?

23   **A.**    Correct.

24           **MR. JONNA:** Will the Court allow the witness to  
25   describe a little bit more about the content of the

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1 conversation so that --

2 **THE COURT:** He can describe where people were, but  
3 he's already described that they were discussing abortion  
4 procedures. So that's as far as I'm going to go at the moment.

5 **MR. JONNA:** Okay.

6 **BY MR. JONNA**

7 **Q.** Did Ms. Nguyen or Dr. Ann Schutt-Aine do anything to  
8 suggest to you that this was a confidential communication?

9 **A.** No. They were both visibly drunk, and it was -- they were  
10 kind of loud about it. There were people to our flank and  
11 behind.

12 And you can see that directly where I was facing, that's  
13 where a lot of exhibit booths were. So there was only a few  
14 people just standing right there. That's where people were  
15 walking.

16 **MR. JONNA:** Your Honor, since Mr. Lopez is only here  
17 for today, are we going to get a ruling today about whether we  
18 can play that with audio?

19 **THE COURT:** If you got a ruling today, it might not  
20 be what you want. So if you're able to play it, I'll allow you  
21 to -- later, I'll allow you to play it whether Mr. Lopez is  
22 here or not.

23 **MR. JONNA:** Okay.

24 **THE COURT:** I don't think he would add much to the  
25 video that's there.



1 **BY MR. JONNA**

2 **Q.** I would like to show you a clip from Exhibit 5220, which  
3 was a conference in Miami in 2014.

4 **MR. JONNA:** I understand this is one of the clips  
5 that plaintiffs have objected to.

6 **THE COURT:** Right.

7 **MS. BOMSE:** Yes.

8 **THE COURT:** And so, again, no audio, but you can play  
9 the video.

10 **THE CLERK:** To just the witness at this point?

11 **THE COURT:** I don't think there is an objection on  
12 foundational grounds, is there?

13 **MS. BOMSE:** No, Your Honor. The objection is on 403  
14 grounds.

15 **THE COURT:** Okay. So it can be displayed.

16 (Videotape played in open court without audio.)

17 **BY MR. JONNA**

18 **Q.** Okay. Mr. Lopez, do you recognize that clip?

19 **A.** Yes. That is that same patio in Miami.

20 **Q.** Patio, outside bar?

21 **A.** Correct.

22 **Q.** How many people were around you, would you estimate?

23 **A.** A couple hundred.

24 **Q.** How many people were within a few feet of you?

25 **A.** I remember we were closer to the bar, so there's people

1 moving around pretty constantly, but, like, ten or 15 people  
2 hanging out near us.

3 **Q.** Can you tell us what you remember about that conversation?

4 **A.** I remember --

5 **THE COURT:** Again, at a high level what you were  
6 discussing, not specifics.

7 **A.** We discussed -- it would be along the same lines of  
8 everything. This specific provider's opinion. Logistically  
9 how could it work. How could fetal tissue procurement work  
10 with their clinic and so forth.

11 **BY MR. JONNA**

12 **Q.** Did the doctor you spoke to in that clip do anything to  
13 suggest to you this was a confidential conversation?

14 **A.** No.

15 **Q.** Did she change her tone of voice at all --

16 **A.** No.

17 **Q.** -- when other people were around?

18 **A.** No.

19 **MR. JONNA:** Your Honor, you won't let him get into  
20 anything else but the conversation?

21 **THE COURT:** That's correct.

22 **MR. JONNA:** Okay.

23 **BY MR. JONNA**

24 **Q.** Did you sign any agreements over the course of this  
25 project with CMP? We saw one that you signed today; right?

1     **A.**    Correct.

2     **Q.**    And that was an agreement to enter the NAF conference;  
3     correct?

4     **A.**    Correct.

5     **Q.**    Did you sign any agreements with Planned Parenthood?

6     **A.**    No.

7     **Q.**    Was Planned Parenthood listed on that document that you  
8     signed to get into the NAF conference?

9     **A.**    No.

10    **Q.**    Were they a party to that contract?

11           **MS. BOMSE:**  Objection, Your Honor.  That was a legal  
12   question, not a question for the witness.

13           **THE COURT:**  Overruled.  You can -- to the extent that  
14   he understands, he can answer.

15   **BY MR. JONNA**

16   **Q.**    You signed a contract to get into the NAF conference;  
17   correct?

18   **A.**    Yes.

19   **Q.**    Was Planned Parenthood, the plaintiffs in this case, were  
20   they party to that contract?

21   **A.**    They weren't listed anywhere in that contract.

22           **THE COURT:**  Ladies and gentlemen, Mr. Lopez is not a  
23   legal expert, but he is giving his understanding of what that  
24   document said.

25

1 **BY MR. JONNA**

2 **Q.** When you signed that contract when you went into the NAF  
3 conference, you were with other folks from BioMax. Did anyone  
4 else from BioMax sign that contract?

5 **A.** Not that I'm aware.

6 **Q.** So --

7 **A.** We didn't check-in together though.

8 **Q.** So it's your understanding that other people were at --  
9 entering this conference having not signed that Confidentiality  
10 Agreement?

11 **MS. BOMSE:** Objection, Your Honor. The witness just  
12 testified that he wasn't with the other people.

13 **THE COURT:** And it's leading. Sustained.

14 **BY MR. JONNA**

15 **Q.** Do you have first-hand knowledge as to whether anyone else  
16 that attended the NAF conference with you actually signed that  
17 contract?

18 **A.** Yeah.

19 **Q.** And what's your understanding?

20 **A.** Well, I was -- when I came in, they asked me to sign it.  
21 I had never signed one before, so I mentioned it to David and  
22 he said, oh, I --

23 **MS. BOMSE:** Objection, Your Honor. This is hearsay.

24 **THE COURT:** Sustained.

25 **MR. JONNA:** Okay.

1           **THE COURT:** I'll strike anything that you heard about  
2 what Mr. Daleiden may or may not have said.

3 **BY MR. JONNA**

4 **Q.** So setting aside what Mr. Daleiden told you, I'm just  
5 trying to understand if you had any first-hand knowledge as to  
6 whether other people that entered this conference with you also  
7 signed that contract?

8 **A.** No.

9 **Q.** You don't have first-hand knowledge or --

10 **A.** Just what David told me what he said, and we thought that  
11 was weird.

12           **THE COURT:** And we'll strike that.

13           **THE WITNESS:** Okay.

14 **BY MR. JONNA**

15 **Q.** And why did you sign that agreement?

16 **A.** They gave it to me to sign.

17 **Q.** And you were trying to explain in your examination with  
18 opposing counsel why you didn't think that was enforceable.  
19 What was the reason, if you want to elaborate?

20 **A.** Well, by 2015 I had seen a lot and learned a lot more than  
21 I knew initially in 2013. And so I was absolutely convinced  
22 with the evidence that we had collected already that we had --  
23 I don't know, it was affirmed. This undercover operation was  
24 legitimate, and we would have -- be having evidence to send to  
25 the authorities. So when I finally had to sign one, I was

1 confident that it wouldn't matter.

2 **Q.** Evidence of crimes?

3 **A.** Correct.

4 **Q.** And, in fact, you knew that Mr. Daleiden was sending this  
5 evidence to law enforcement; right?

6 **A.** Correct.

7 **Q.** And tell us a little bit about that? How did you come to  
8 know that?

9 **A.** We had a conversation over -- vaguely at one point in  
10 time. I forget when. But I remember him saying that he had  
11 sent a package of some of our -- some of our initial evidence  
12 to -- I want to say it was El Dorado.

13 **MS. BOMSE:** Your Honor, I object belatedly. This is  
14 hearsay also.

15 **THE COURT:** Yes, it is. Sustained.

16 So the conversation of what Mr. Daleiden told Mr. Lopez  
17 will be struck. You should not consider it.

18 **BY MR. JONNA**

19 **Q.** Were you happy to know that this evidence was being sent  
20 to law enforcement?

21 **A.** Base on what I was told, yes. That was the whole point.

22 **Q.** That was the whole point of what?

23 **A.** That was the whole point of why I got in and assisted with  
24 this investigation.

25 **Q.** You were copied on some emails we saw. Mr. Daleiden

## LOPEZ - CROSS / JONNA

1 frequently copied you on emails; correct?

2 **A.** Correct.

3 **Q.** Did you ask to be copied?

4 **A.** No. In fact, I asked him -- once I separated from the  
5 project, he was sending me a lot of different things, updates,  
6 and I -- like I said, some things that I had no part of. And I  
7 even asked him to stop, but it didn't.

8 **Q.** Did you read all those emails?

9 **A.** Definitely not.

10 **Q.** Do you know Troy Newman, another defendant in this case?

11 **A.** Only by name.

12 **Q.** You never met him before this lawsuit?

13 **A.** Never.

14 **Q.** How about Albin Rhomberg? Had you met him before this  
15 lawsuit?

16 **A.** No.

17 **Q.** How about Susan Merritt?

18 **A.** No. Oh, before the lawsuit? Yes, I -- sorry. Yes, I  
19 went to Baltimore, Maryland with her.

20 **Q.** So how did you know who -- where to go and who to record?  
21 Can you explain a little bit about how that process worked?

22 **A.** Yeah. So there would be a little meeting before we  
23 actually went to the conference. Look out for these people.  
24 This is who we're looking for. And that all came from David.

25 And then we would at the nighttime discuss: How did it

1 go? Did you hear anything? Did you see anything? Who did you  
2 get to talk to? That type of thing.

3 Then the next day before we went down again, we would  
4 review it.

5 But it was all -- and it would change based on who David  
6 actually met, who he was able to talk to and who was actually  
7 there. Sometimes people were no-shows or sometimes there was a  
8 new person that was actually there. Like Deborah Nucatola  
9 stated, she was running around and she had five more  
10 introductions to make.

11 So it changed and it was flexible. That's how I knew what  
12 I was supposed to be doing.

13 **Q.** Were you part of any big picture planning meetings with  
14 Mr. Daleiden or anyone else about big picture aspects of this  
15 project?

16 **A.** No.

17 **Q.** Did you want to destroy Planned Parenthood?

18 **A.** No. Like I said, I have been to Planned Parenthood  
19 before.

20 **Q.** And what was your goal in doing all this work?

21 **A.** So the whole point of it was to --

22 **MS. BOMSE:** Your Honor, he's been asked this question  
23 at least twice.

24 **THE COURT:** Overruled. He can answer.

25 **A.** So the whole point of it was there was -- I felt like



## LOPEZ - CROSS / KOZINA

1 there was a crime being committed. I was sure that nobody was  
2 paying attention to it.

3 And just as easily if there was no evidence to obtain,  
4 then we wouldn't have been able to do anything with it.

5 But we were able to send that off and help -- well, I  
6 guess I'm not sure really what's going to happen, but we were  
7 able to get it together and get it to the authorities.

8 **BY MR. JONNA**

9 **Q.** Are you proud of the contributions that you made to the  
10 project?

11 **A.** I feel like my contributions were a success. I did what I  
12 needed to do when I needed to do it. And for the most part, it  
13 seems that it's -- there is an investigation now, so yes.

14 **MR. JONNA:** Okay. That's all I have at this time,  
15 Your Honor.

16 **THE COURT:** All right. Thank you.

17 Ms. Bomse?

18 **MR. KOZINA:** Excuse me. Should I go next?

19 **THE COURT:** I apologize, Mr. Kozina. Please.

20 **MR. KOZINA:** No problem. We'll let it go this time.

21 **THE COURT:** No jokes at the judge's expense.

22 **MR. KOZINA:** Always better than at my expense.

23 **CROSS-EXAMINATION**

24 **BY MR. KOZINA**

25 **Q.** Mr. Lopez, let me introduce myself. I'm Vladimir Kozina

## LOPEZ - CROSS / KOZINA

1 and I'm one of the attorneys for Mr. Newman, who you heard of  
2 but don't know; correct?

3 **A.** Correct.

4 **Q.** Now, you had mentioned a video that you saw of  
5 Dr. Nucatola; is that correct?

6 **A.** Correct.

7 **Q.** Okay. And were there others in the video, other people  
8 present around the conversation that you saw?

9 **A.** Yeah. They were having lunch at some restaurant. There  
10 was people, waitstaff. It wasn't exactly full, but there was  
11 people there.

12 **Q.** Okay. And what was it that the Dr. Nucatola was doing  
13 during the conversation, physically doing? Was she eating?  
14 Sitting there? Drinking?

15 **A.** They were having lunch. She was drinking a lot of wine.

16 **Q.** Okay. And did you develop any thoughts regarding what was  
17 being discussed in terms of any illegal activity that was going  
18 on?

19 **THE COURT:** I think we have been into this,  
20 Mr. Kozina.

21 **MR. KOZINA:** Okay. Withdraw.

22 **BY MR. KOZINA**

23 **Q.** You used some words in your testimony, maybe you can  
24 define it for us better. The word "vertex," what does that  
25 mean? Can you --

## LOPEZ - CROSS / KOZINA

1           **MS. BOMSE:** Your Honor.

2           **THE COURT:** Sustained.

3           **MR. KOZINA:** Can I ask him what his understanding of  
4 it is, Your Honor?

5           **THE COURT:** We're not going to go into it in the  
6 detail that you'd like to.

7           **MR. KOZINA:** I assume the same is true about the word  
8 "breach," your Honor.

9           **THE COURT:** Any of the words that you're going to be  
10 looking for a definition on.

11           **MR. KOZINA:** Thank you, Your Honor.

12 **BY MR. KOZINA**

13 **Q.** I want to clear one more thing up. You're with NIC ICU,  
14 or NICU as they call it. That is the Neonatal Intensive Care  
15 Unit; correct?

16 **A.** Yes, sir.

17 **Q.** All right. And you said that you take care of 21-week-old  
18 babies and older. Are you speaking 21 weeks after birth or 21  
19 weeks gestation?

20 **A.** My understanding right now, and this is going to change,  
21 but our facility will only take patients at 21 to 22 weeks.  
22 That's kind of the limit that we allow.

23 **Q.** Okay. I guess I'm trying to figure out, does this mean 21  
24 weeks gestation during the term of pregnancy or 21 weeks --

25 **A.** Correct.

## LOPEZ - REDIRECT / BOMSE

1 Q. Okay. Thank you very much.

2 A. Yes.

3 THE COURT: All right. Was there any other defense  
4 lawyer who wanted to ask a question of Mr. Lopez?

5 (No response.)

6 THE COURT: All right. Ms. Bomse.

7 MS. BOMSE: Thank you.

8 REDIRECT EXAMINATION

9 BY MS. BOMSE

10 Q. Mr. Lopez, when you were -- when did you begin working at  
11 the NICU?

12 A. I would say July of 2018.

13 Q. So that was long after you completed any of the work on  
14 the CMP project; correct?

15 A. Yes, ma'am.

16 Q. And prior to that, you didn't have any medical training  
17 other than maybe CPR; correct?

18 A. Correct.

19 Q. All right. You referenced a -- viewing a recording by  
20 Ms. O'Donnell, and you said that you reviewed it before you  
21 went undercover; is that correct?

22 A. Correct.

23 Q. Okay. You went undercover starting in October 2014; is  
24 that right?

25 A. I believe so.

## LOPEZ - REDIRECT / BOMSE

1 Q. Okay. Now, you testified -- your counsel, Mr. Jonna,  
2 asked you whether anyone at the NAF conference asked you to  
3 keep anything confidential that they were saying to you;  
4 correct?

5 A. Correct.

6 Q. But there was actually a Confidentiality Agreement that  
7 you had signed; correct?

8 A. Correct.

9 MR. JONNA: Objection. Asked and answered.

10 THE COURT: It's proper recross, so overruled.

11 BY MS. BOMSE

12 Q. And you testified that there were people who spoke to you  
13 and they were talking about abortion care; correct?

14 A. Abortion care?

15 Q. Abortion.

16 A. Yes. Mostly procedures.

17 Q. Okay. And you testified that no one changed their tone  
18 when they were talking about abortion; correct?

19 A. I said that no one changed their tone to indicate that it  
20 was private. People were -- not shouting, but you had to raise  
21 your voice to talk over people.

22 Q. Right. And they were talking about abortion?

23 A. Abortion amongst other things, yes.

24 Q. Yes. And it was a reproductive healthcare conference;  
25 correct?

## LOPEZ - REDIRECT / BOMSE

1 A. Correct.

2 Q. And these were conferences where everyone was wearing a  
3 badge; correct?

4 A. For the most part. I remember -- I don't remember anybody  
5 being a stickler around it.

6 Q. Okay. But generally people were wearing badges; correct?

7 A. Yeah.

8 Q. And when you checked in to get your badge, you gave your  
9 I.D.; right?

10 A. Yes, ma'am.

11 Q. And you got a badge with your name on it; correct?

12 A. Yes.

13 Q. And you saw Mr. Daleiden show his photo I.D.; correct?

14 A. Not every time, no.

15 Q. Okay. But at least in the video that we watched today  
16 together; right?

17 A. No. I was standing next to him, but I was talking to the  
18 lady. So whether -- I just assumed that he gave her a packet  
19 of information for her to confirm, and then give him his packet  
20 that would allow him entry, including his badge.

21 Q. And including giving her his I.D.; correct?

22 A. Correct.

23 Q. Okay. And he got a badge that said Robert Sarkis;  
24 correct?

25 A. Correct.

## LOPEZ - REDIRECT / BOMSE

1 Q. And you also testified in your deposition that you knew  
2 that Mr. Daleiden had to get a new I.D. before going to the  
3 conferences; correct?

4 A. Correct.

5 Q. Okay.

6 A. He told me he had to get a new I.D.

7 Q. Thank you, Mr. Lopez.

8 And he told you that; right?

9 A. Correct.

10 Q. Okay. You testified that you knew Mr. Daleiden was  
11 sending in information to law enforcement; correct?

12 A. He told me.

13 Q. He -- okay. That's different from what you said at your  
14 deposition; correct? Do you need me to refer you back to it?

15 A. Please.

16 Q. Okay.

17 MS. BOMSE: If we could play 133/6 to 133/22?

18 MR. LIMANDRI: Your Honor, they already played this  
19 clip she said.

20 THE COURT: I'm sorry?

21 MR. LIMANDRI: This clip was played.

22 MS. BOMSE: This clip was played, but the witness  
23 testified just now he doesn't recall it.

24 THE COURT: Hang on just a second.

25 (Brief pause.)

## LOPEZ - REDIRECT / BOMSE

1           **THE COURT:** I've succeeded in leaving that deposition  
2 back in my chambers, I think.

3           **MS. BOMSE:** One moment, Your Honor. We have another  
4 copy.

5           **MR. LIMANDRI:** We have a copy, Your Honor.  
6 (Whereupon document was tendered to the Court.)

7           **THE COURT:** Thank you.  
8 Where was it again, Ms. Bomse?

9           **MS. BOMSE:** 133/6 to 133/22.

10           **THE COURT:** That's okay in light of the witness's  
11 answer just now.

12           **MS. BOMSE:** Thank you.

13           **THE COURT:** Volume, please.  
14 (Videotape played in open court, not reported)

15 **BY MS. BOMSE**

16 **Q.** When you went to the conferences, you've testified today  
17 that your goal was to investigate what you believed was  
18 wrongful activity; correct?

19 **A.** Yes, ma'am.

20 **Q.** But, in fact, you were often not present for the  
21 communications Mr. Daleiden had concerning tissue procurement;  
22 correct?

23 **A.** Correct.

24 **Q.** After you brought over the -- someone to speak with  
25 Mr. Daleiden, you just left; right?



## LOPEZ - REDIRECT / BOMSE

1     **A.**    Correct.

2     **Q.**    Right.  And that's because you thought that it had nothing  
3     to do with you; correct?

4     **A.**    No.

5                 **MS. BOMSE:**  Your Honor, I'd like to play 105/6 to  
6     106/1.

7                 **THE WITNESS:**  Is it possible to explain that?

8                 **THE COURT:**  Hang on just a second, Mr. Lopez.

9                 **THE WITNESS:**  Okay.

10                **THE COURT:**  105?

11                **MS. BOMSE:**  105/6 to 106/1.

12                (Brief pause.)

13                **THE COURT:**  105/6?

14                **MS. BOMSE:**  Correct.

15                **THE COURT:**  I think you have to start with a  
16     question.

17                **MS. BOMSE:**  Okay.  In that case, Your Honor, we would  
18     start with 104/23.

19                **THE COURT:**  104/20 perhaps, where the question is?

20                **MS. BOMSE:**  104/20.

21                **THE COURT:**  And how far do you want to go?

22                **MS. BOMSE:**  To 106/4.

23                **THE COURT:**  All right.

24                **MR. JONNA:**  No objection.

25                **THE COURT:**  Okay.  Go ahead.

## LOPEZ - RECROSS / JONNA

1 (Portion of videotaped deposition played, not  
2 reported)

3 **MS. BOMSE:** I have no further questions.

4 **THE COURT:** All right.

5 **MR. JONNA:** I just have a couple of questions.

6 **THE COURT:** Yeah, go ahead, Mr. Jonna.

7 **RECROSS-EXAMINATION**

8 **BY MR. JONNA**

9 **Q.** Mr. Lopez, you testified that you knew Mr. Daleiden was  
10 getting a new ID.?

11 **A.** Correct.

12 **Q.** But did you know he was getting a fake ID?

13 **A.** No. He just said "I have to get a new ID."

14 **Q.** You also testified that you weren't always there when  
15 David Daleiden was discussing fetal tissue procurement. Do you  
16 remember that testimony?

17 **A.** Yes.

18 **Q.** But in fact, you did watch the CMP videos, including the  
19 ones we spoke about earlier, before you went undercover and  
20 during the project.

21 **A.** Correct.

22 **Q.** And those videos, did you ever watch any videos where  
23 Planned Parenthood personnel were haggling over the price of  
24 fetal tissue?

25 **A.** Um, I transcribed the meetings that he went to in, um,

1 Texas. And they were discussing prices during those meetings.  
2 I wasn't there, though. But I transcribed those videos.

3 **Q.** And you watched videos where Planned Parenthood personnel  
4 were talking about changing abortion procedures to get better  
5 tissue?

6 **MS. BOMSE:** Your Honor, objection. Leading and 403.

7 **THE COURT:** Yeah.

8 **MR. JONNA:** The point at issue, whether he was aware  
9 of cri- -- potential criminal conduct. And there's --

10 **THE COURT:** Mr. Jonna, it is true, but you are  
11 leading. So I'm going to sustain it on that grounds. And  
12 whether we go into 403 is another question.

13 **MR. JONNA:** Okay.

14 **BY MR. JONNA**

15 **Q.** Can you tell the jury, please, even though you didn't have  
16 firsthand discussions with David about everything that he was  
17 learning during the course of the project that led you to  
18 believe there was criminal conduct, can you tell us what you  
19 saw in the videos that led you to have that understanding?

20 **A.** Well, transcribing the videos of the sessions and the  
21 actual conferences, I learned that they were having these  
22 conversations in the open. And it was one of those things  
23 where it's: Let's set up logistics, let's talk about it, see  
24 how we can partner.

25 When David went to Colorado, when he went to Texas, they

1 were sitting in an office, and they were sitting there  
2 discussing how the best way to make it work would be. They  
3 were discussing things --

4 **MS. BOMSE:** Your Honor, I'm sorry, but this is long  
5 after the witness had begun going undercover. I don't  
6 understand the relevance.

7 **THE COURT:** Sustained.

8 **BY MR. JONNA**

9 **Q.** Okay, let's focus on videos you saw before you went  
10 undercover, and while you were undercover.

11 **A.** Okay. Well, technically, um -- well, I guess it would  
12 just be the Nucatola lunch video, saw that one. Again, Holly  
13 O'Donnell.

14 And I do get the dates mixed up, but there was at least  
15 one meeting while I was undercover during the time of the  
16 project, that I transcribed a meeting David had with one of the  
17 affiliates that I just did not go to.

18 **Q.** And just so your testimony is crystal clear, we already  
19 talked about this, but I want to give you a chance to explain  
20 one more time. You're under oath today. And tell the jury  
21 what your understanding was about David Daleiden working and  
22 coordinating with law enforcement.

23 You were shown a question and answer of your deposition.  
24 I want you to explain what knew during the project to the jury.

25 **MS. BOMSE:** Your Honor, asked and answered.

## LOPEZ - RECROSS / JONNA

1           **MR. JONNA:** Your Honor, they replayed the clip. It's  
2 confusing, because the question and answer was very limited. I  
3 think the jury should hear from Mr. Lopez.

4           **THE COURT:** I agree that this has been gone into a  
5 couple of times. You can answer this question.

6           **THE WITNESS:** Can you ask the question again?

7 **BY MR. JONNA**

8 **Q.** Tell us in your own words what you understood Mr. Daleiden  
9 was doing in coordinating with law enforcement during the  
10 project.

11 **A.** So during the project, we talked about a couple of  
12 different things. But one of things he said that he was --

13           **THE COURT:** Okay, so I don't want the -- what he told  
14 you is -- is hearsay. So what you understood had happened with  
15 respect to law enforcement, you can describe at a high level.

16           **THE WITNESS:** Okay. Um, and I'm not sure I was a  
17 part of those conversations.

18 **BY MR. JONNA**

19 **Q.** Can you describe what your understanding was -- without  
20 discussing the conversation with you and David Daleiden, what  
21 your understanding was about how he was working with law  
22 enforcement?

23 **A.** Well, that they -- my understanding was that there was a  
24 packet of evidence, which they had --

25 **Q.** Who's "they"?

## LOPEZ - RECROSS / JONNA

1   **A.**   The specific person that he sent to? I think it was in  
2   El Dorado. And they had it, and that was that.

3   **Q.**   Did you have any thoughts about whether that was  
4   progressing at the speed that you wanted it to?

5   **A.**   Well, I wondered about it. I wondered about: You have  
6   this information; what are you going to do with it, type of  
7   thing. But I never heard anything about it after that. I  
8   don't really think I asked after that. But it seemed to be at  
9   a standstill.

10           And it was just kind of frustrating. It was like: How  
11   many more -- how much more evidence do we need to have? How  
12   many more conferences do you want where we are submitting to  
13   you packets and packets of information and evidence?

14           **MR. JONNA:** Thank you.

15           No further questions.

16           **THE COURT:** All right. Mr. Lopez, you can step down.  
17   Thank you.

18           **THE WITNESS:** Thank you.

19           (Witness excused)

20           **MR. JONNA:** Your Honor, is Mr. Lopez excused?

21           **THE COURT:** Yes, Mr. Lopez is excused.

22           **MR. JONNA:** Thank you.

23           **MR. KAMRAS:** Your Honor, plaintiffs call defendant  
24   Albin Rhomberg.

25           **THE COURT:** Mr. Rhomberg, come on up.

## LOPEZ - RECROSS / JONNA

1           **THE WITNESS:** May I get a glass of water, please?

2           **THE COURT:** We'll get you some water. With a cup  
3 that does not have a hole in it.

4           **THE CLERK:** Do you swear or affirm --

5           **THE WITNESS:** No. I do not swear. My right to not  
6 swear. I will affirm, under penalty of perjury.

7           **THE CLERK:** So affirm?

8           **THE COURT:** Yeah.

9           **THE CLERK:** Do you swear or affirm that the testimony  
10 you are about to give in the matter now pending before this  
11 court shall be the truth, the whole truth, and nothing but the  
12 truth, so help you God?

13           **THE WITNESS:** No. I do not swear.

14           **THE COURT:** So, you were asked to affirm,  
15 Mr. Rhomberg.

16           **THE WITNESS:** She said "under God."

17           **THE CLERK:** Okay.

18           **THE WITNESS:** "So help you God." No.

19           **THE CLERK:** So, just -- just truth.

20           **THE COURT:** Okay.

21           **THE CLERK:** Do you affirm that the testimony you are  
22 about to give in the matter now pending before this Court shall  
23 be the truth, the whole truth, and nothing but the truth?

24           **THE WITNESS:** I do.

25

**RHOMBERG - DIRECT / KAMRAS**

1 **ALBIN RHOMBERG,**

2 called as a witness for the Plaintiffs, having duly affirmed to  
3 tell the truth under penalty of perjury, testified as follows:

4 **THE CLERK:** Please be seated. Adjust the mic as much  
5 as you need to, and then state your full name and spell it for  
6 the court reporter.

7 **THE WITNESS:** My full name is Albin Rhomberg. I will  
8 spell it. A-L-B-I-N, R-H-O-M-B-E-R-G.

9 **DIRECT EXAMINATION**

10 **BY MR. KAMRAS**

11 **Q.** Good morning, Mr. Rhomberg.

12 You have been involved in advocating against abortion for  
13 the last four decades. Is that right?

14 **A.** At least.

15 **Q.** In fact, it's been part of your life's work. Is that  
16 right?

17 **A.** Yes.

18 **Q.** You believe abortion to be "prenatal murder," in your  
19 words?

20 **A.** Yes. Prenatal murder of human beings.

21 **Q.** An "abominable crime," in your words?

22 **A.** An abominable crime in the words of the Roman Catholic  
23 Church, of which I'm a member.

24 **Q.** A "holocaust."

25 **A.** Official teaching.



## RHOMBERG - DIRECT / KAMRAS

1 Q. In your words.

2 A. A holocaust. In many people's words.

3 Q. And you want to end abortion. Correct?

4 A. I want to end mass prenatal murder of human beings.

5 Q. Which you consider abortion to be.

6 A. Abortion is a euphemism.

7 Q. You want to end all abortion.

8 A. All abortions, in the sense of anything -- elected to kill  
9 a human being without justification.

10 Q. Regardless of how early in the pregnancy?

11 A. From conception to natural death.

12 Q. Regardless of the circumstances of the pregnancy.

13 A. Regardless of the circumstances; however, there are  
14 certain medical conditions which inquire interventions to  
15 preserve preferably the life of both the mother and the child.  
16 Some people might call those abortions. I don't think -- those  
17 are not abortions. But those interventions are more than  
18 justified. Even though, in some cases, one party may die.  
19 They may not be able to save both.

20 Q. Beyond the limited exceptions, you seek to end all  
21 abortion. Correct?

22 A. I don't believe any innocent human being should be killed.

23 Q. You have been an informal advisor for Human Life  
24 International, correct?

25 A. Correct.

## RHOMBERG - DIRECT / KAMRAS

1 Q. That's an international pro-life group?

2 A. Correct.

3 Q. You have advised that group for about 25 years?

4 A. Well, off and on. Probably longer.

5 Q. You've advised them about how to get information about  
6 people and organizations in foreign countries that provide  
7 abortion services. Correct?

8 A. Correct.

9 Q. You tried to prevent abortion from becoming legal in  
10 foreign countries. Right?

11 A. Yes.

12 Q. Including Portugal?

13 A. Yes.

14 Q. You did so by publishing a list of people in Portugal that  
15 were trying to legalize or had been involved in legalizing  
16 abortion there?

17 A. Yes.

18 Q. You call that a *lista negra* or blacklist, right?

19 A. I didn't qualify -- I didn't publish it; the Portuguese  
20 people published it. The Portuguese people involved.

21 Q. You provided the information?

22 A. The information was public records. It was the result of  
23 votes and other actions in their government activities.

24 Q. Which you collected.

25 A. I -- I can't quite say I collected it. The Portuguese

## RHOMBERG - DIRECT / KAMRAS

1 people who were interested in the abortion issue, there were  
2 many of them, including attorneys and government officials and  
3 so on. Judicial people. Collectively, they collected them,  
4 yes.

5 Q. And you were involved in the same efforts in Mexico as  
6 well.

7 A. Somewhat similar, yes.

8 Q. And other countries as well.

9 A. Yes.

10 Q. Okay. You would publish the names of doctors that  
11 performed abortions.

12 A. And others.

13 Q. And you did that so that people would know the identities  
14 of those doctors.

15 A. That would be one of the possible reasons, but not --  
16 certainly that was not necessarily the main reason.

17 Q. You are aware of Californians for Parental Rights?

18 A. I am.

19 Q. And that was a committee to organize initiatives in  
20 California to require parental notification when minors are  
21 considering abortion, correct?

22 A. I would probably call it diff- -- it was to prevent  
23 abortionists from -- protected predators by doing secret  
24 abortions on children.

25 Q. And the requirements of the initiatives would have been

## RHOMBERG - DIRECT / KAMRAS

1 that when minors were seeking abortions, they were required to  
2 seek parental notification. Right?

3 **A.** With several alternatives. In case of an abusive family,  
4 there could be judicial bypass, child protective services or  
5 other considerations where the child was in a family situation  
6 in which it wasn't appropriate to notify a parent.

7 **Q.** You had a leadership role, in fact, in that organization.

8 **A.** I did, yes.

9 **Q.** You were the spokesperson.

10 **A.** One of the spokespersons, yes.

11 **Q.** And in fact, there were three separate initiatives in  
12 California along these same lines. Right?

13 **A.** No, there were about a dozen. Some of them didn't --  
14 three of them actually were on the ballot. But there were many  
15 other attempts.

16 **Q.** Those three, those were Proposition 4, 73 and 85, right?

17 **A.** Well, you haven't put them in the right order, but the  
18 first one was 73, if I may say so, in 2005, special election.  
19 85 was in the 2006 general election. And Prop 4 was in the  
20 2008 presidential election.

21 **Q.** None of those passed.

22 **A.** They all came within a few percentage points of passing.  
23 Planned Parenthood spent over \$20 million to deceive the  
24 voters.

25 **Q.** You've had informal relationships with the California

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1 Pro-Life Council?

2 **A.** Yes.

3 **Q.** The California Pro-Life Medical Association?

4 **A.** Yes.

5 **Q.** Californians for Life?

6 **A.** Yes.

7 **Q.** In fact, in the last three, four decades, you have  
8 dedicated your time to opposing abortion.

9 **A.** Not entirely, but substantially.

10 **Q.** Okay. And that's been unpaid work. Correct?

11 **A.** In general. Some expenses, perhaps, but in general,  
12 unpaid, yes.

13 **Q.** Now, you first met Mr. Daleiden at a meeting of the  
14 University Students for Life. Is that right?

15 **A.** I may have possibly met him before, because I think he may  
16 have had some minor role in collecting signatures for the  
17 initiatives that you spoke about, because that was a mass  
18 effort to collect the millions of signatures. I believe he may  
19 have had some role. I might possibly have met him.

20 **Q.** You did, however, meet him at a meeting of the University  
21 Students for Life.

22 **A.** Correct. At UC Berkeley, uh-huh.

23 **Q.** He was one of the organizers.

24 **A.** He was one of the organizers.

25 **Q.** This was in 2010?

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1   **A.**   I would think so.  It's a matter of record.

2   **Q.**   Okay, and you spoke to him there.

3   **A.**   I was more or less just an attendee.  I can't say for  
4 certain.  I know he was there; he was one of the organizers.  I  
5 don't specifically remember speaking to him beyond perhaps  
6 meeting him; I don't know.  But he was definitely there and I  
7 was there.

8           **MR. KAMRAS:**  Your Honor, I would like to play from  
9 Mr. Rhomberg's deposition at Page 85:22 through 86:22.

10           **MS. SHORT:**  I'm sorry, Your Honor; no objection.

11           **THE COURT:**  Okay.  Yeah, please go ahead.

12           (Portion of videotaped deposition played, not  
13           reported)

14   **BY MR. KAMRAS**

15   **Q.**   Now, after that first meeting in 2010, you -- or  
16 Mr. Daleiden first discussed the Center for Medical Progress  
17 with you in around February of 2013.  Is that right?

18   **A.**   Well, he discussed a concept he had.  I don't think it was  
19 called "Center for Medical Progress" at the time.  I think that  
20 came somewhat later.  I don't remember that it had a specific  
21 name at that time.

22   **Q.**   He discussed his project with you.

23   **A.**   Right.  Yes, he did.

24   **Q.**   Okay.  He called you?

25   **A.**   I believe he telephoned me first, uh-huh.

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1 Q. And he told you that he wanted to conduct an undercover  
2 operation. Right?

3 A. Yeah. In a general sort of way, yes, uh-huh.

4 Q. And that first call was then followed by a meeting.

5 A. Yes.

6 Q. And that was also in February of 2013.

7 A. Approximately, yes.

8 Q. And at that meeting, again, he discussed his proposed  
9 project.

10 A. Yes.

11 Q. And in fact, he sent you a project proposal that outlined  
12 the project, right?

13 A. I don't know if he sent it to me. I think maybe he had --  
14 he may have -- I think he had a copy of it at the meeting. He  
15 handed it to me, I believe.

16 **MR. KAMRAS:** I would like to introduce into evidence,  
17 Your Honor, Exhibit 67, which the parties have stipulated to  
18 the admissibility of.

19 **THE COURT:** All right. It's admitted.

20 (Trial Exhibit 67 received in evidence)

21 (Document displayed)

22 **BY MR. KAMRAS**

23 Q. Mr. Albin -- Mr. Rhomberg, excuse me. This is an email  
24 dated February 6, 2013. Do you see that?

25 (Witness examines document)

## RHOMBERG - DIRECT / KAMRAS

1 A. Yes, I see it, uh-huh.

2 Q. Okay. And it is entitled "Project Proposal Updated  
3 Draft." Do you see that?

4 A. Uh-huh, I see that, yes.

5 Q. From David Daleiden to you, Albin Rhomberg. And you see  
6 there is an email address next to "Albin Rhomberg"?

7 A. I do, uh-huh.

8 Q. Okay. The address is kolbe333@sbcglobal.net?

9 A. Yes.

10 Q. Is that, in fact, your email address?

11 A. Yes. I have more email addresses than one, but that is --  
12 yes.

13 Q. That's at least one of your email addresses?

14 A. It is.

15 Q. "kolbe" is a reference to Maximilian Kolbe, is that  
16 correct?

17 A. Motivation for the address, correct.

18 Q. Okay, patron saint of the pro-life movement?

19 A. Not the pro-life movement. Patron saint of  
20 communications, computers, printing, martyrdom, opposing the  
21 Holocaust of the Nazis of Jews. And others. He died in the  
22 Holocaust.

23 Q. And attached to that email, you will see below the two  
24 lines, it says (As read):

25 "Project Draft Version 1.0 PDF."



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1 Do you see that?

2 **A.** I do.

3 **Q.** Okay. And the message is:

4 "Hi Albin,

5 "I hope this message finds you well. I've attached  
6 an updated draft of my project proposal. I expect to  
7 add more revisions throughout the week. I will try  
8 to call you tomorrow."

9 "Thanks!

10 "David Daleiden."

11 Does this refresh your recollection as to whether  
12 Mr. Daleiden sent you the project proposal?

13 **A.** Well, the email is here. And I assume that I -- I assume  
14 it looks like an email. I don't think this was concocted.

15 I will have to say that I got a lot of email, and I did  
16 not always open email immediately, or download or read the  
17 materials. As you have already indicated, I have been involved  
18 with a very large number of organizations, and time is limited.  
19 Attention is limited.

20 So I think the email is genuine as to whether -- I don't  
21 doubt that there was a draft attached. So, other than that,  
22 whether I downloaded the draft or read it, I can't say.

23 **Q.** Well, Mr. Rhomberg, we have already established that your  
24 life's work has been ending abortion. Right?

25 **A.** Well, you keep using that term. I'd use different terms.

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1 Stopping prenatal mass murder.

2 Q. Okay. And here, Mr. Daleiden, who you had met earlier --

3 A. Uh-huh.

4 Q. -- and now who you were going to meet again had sent you  
5 this project proposal, the subject of which was an undercover  
6 operation regarding abortion practices. You didn't look at it?

7 A. Well, you're asking about this particular email, on the  
8 6th of February, 2013. I can't at this point say for certain  
9 whether I looked at it or not.

10 If he called me, frankly, I might be inclined to say I'll  
11 wait until I meet whoever -- I meet him, and see what he has in  
12 mind.

13 Q. At some point you looked at this project proposal. Is  
14 that correct?

15 A. I would say yes, correct.

16 Q. Okay. I want you to turn to Page 1 of the project  
17 proposal, which is the page behind the email, the cover email.

18 **THE COURT:** You do have it in paper, if that's  
19 easier, whatever is easiest for you.

20 **THE WITNESS:** Do you know where it is?

21 **THE COURT:** The first exhibit.

22 **THE WITNESS:** I see here. Yes, I see it.

23 (Document displayed)

24 **BY MR. KAMRAS**

25 Q. So turn to Page 1. And you'll see that there is, in

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1 roughly in the middle of the page, there is a section that is  
2 entitled "THE PROJECT:"

3 **A.** I do.

4 **Q.** Do you see that?

5 **A.** I do, uh-huh.

6 **Q.** And roughly in the middle of that paragraph, there is a  
7 sentence that reads (As read):

8 "The release will include a feature-length  
9 documentary film hosted on a central project website  
10 with interactive resources and promoted by  
11 traditional 'gotcha' undercover videos on YouTube."

12 Do you see that?

13 **A.** I do.

14 **Q.** What did you understand Mr. Daleiden to mean when he was  
15 referring to "'gotcha' undercover videos"?

16 **A.** Well, first of all, I have to tell you again, while he had  
17 this and we did talk, it would not be unusual if I did not read  
18 this proposal. I know -- as you notice, it's eight pages long.  
19 And at the time, as you just have already testified, I was very  
20 much engaged, and very heavy commitment of time to try to  
21 qualify another initiative. So, um, I can't say that I read  
22 that around that time.

23 I did have this proposal; he handed it to me. As to  
24 whether or not I sat down and read it through or not, I can't  
25 say at this point whether I did or not.

## RHOMBERG - DIRECT / KAMRAS

1 Q. You understood that Mr. Daleiden was intending to film  
2 "gotcha" undercover videos, didn't you?

3 A. Well, the term "gotcha," I don't know if I would subscribe  
4 to that. I knew what his general intention was, because there  
5 had been similar projects had already been done, 20/20 had done  
6 in the year 2000, which was -- I was well aware of that. It  
7 was on the networks. In fact, that was included in the  
8 opening. Chris Wallace. You saw Connie Chung. Even the  
9 president of Planned Parenthood at that time, Gloria Feldt,  
10 commented about it. That was all on national television news.  
11 There were Congressional investigations. I was aware of that.

12 So in the general sense that he intended to do a followup,  
13 the date again, this event, as you say, was 2013. This was  
14 about 13 or 12 years after the previous --

15 MR. KAMRAS: Your Honor, move to strike what's  
16 following.

17 THE COURT: Okay. I think the question was: You  
18 understood that Mr. Daleiden was going to -- was intending to  
19 show "gotcha" undercover videos, didn't you.

20 THE WITNESS: Well, presumably, if he was able to get  
21 any. I mean, he had to have them before he could show them.

22 BY MR. KAMRAS

23 Q. Okay. And in order to get them, he would have to be  
24 undercover. You understood that?

25 A. Obviously.

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1 Q. Now, if you would turn to Page 6 of this same document.  
2 There's a section that begins: "PRODUCTION AND RELEASE." Do  
3 you see that?

4 A. I do.

5 Q. And the second paragraph of that section reads (As read):

6 "A month before the documentary is released, the film  
7 and the project will be promoted using short, viral  
8 undercover 'Gotcha' videos posted to YouTube each  
9 week."

10 Do you see that?

11 A. I do.

12 Q. (As read)

13 "These 5 to 7 minute videos will highlight some of  
14 the most damning 'gotcha' undercover footage produced  
15 by the project, and will end with a promotion for the  
16 soon-to-be released documentary."

17 Do you see that?

18 A. I do.

19 Q. And those are the videos that ultimately were released,  
20 weekly, starting in July of 2015. Is that right?

21 A. That's right. But in 2013, I mean, I didn't -- not a  
22 prophet; I didn't know it was going to happen. But yeah,  
23 that's pretty much what happened.

24 Q. And you understood that to obtain these "gotcha" videos,  
25 that Mr. Daleiden intended to have people infiltrate

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1 conferences of abortion providers.

2 **A.** I don't know quite whether I could say he intended to.  
3 Obviously, he had to get undercover information from some  
4 location where the people would be who had the information.  
5 That could be a variety of opportunities. Could be bars,  
6 restaurants. Meetings. All sorts of potential sites where one  
7 might make contact with people who would have the information  
8 that you were trying to seek.

9 **Q.** All right. And the question was: You understood or came  
10 to understand that Mr. Daleiden intended to have undercover  
11 actors infiltrate conferences of abortion providers in order to  
12 obtain those videos. Isn't that correct?

13 **MS. SHORT:** Objection, asked and answered.

14 **THE COURT:** Overruled.

15 **THE WITNESS:** Well, you keep using terms like  
16 "infiltrate" and so on. I would tend to say: Maybe attended  
17 them. Some of the people that he recruited I would hope maybe  
18 would be in some cases people that were sympathetic to our  
19 point of view.

20 So if you want to call -- "infiltration" I think is a  
21 little bit propagandistic.

22 **MR. KAMRAS:** Your Honor, permission to play from  
23 Mr. Rhomberg's deposition testimony at Page 111, Lines 11  
24 through 17.

25 Or, excuse me, through 22.

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1           **THE COURT:** Through 22?

2           **MR. KAMRAS:** Yes.

3           **THE COURT:** You there, Ms. Short?

4           **MS. SHORT:** Oh, yes; I'm sorry.

5           **THE COURT:** Okay. Go ahead.

6           (Portion of videotaped deposition played, not  
7           reported)

8           **BY MR. KAMRAS**

9           **Q.** Mr. Rhomberg, I would have you turn back to Page 2, same  
10          document that we're in. This is the project proposal document  
11          that Mr. Daleiden provided you.

12          (Request complied with by the Witness)

13          **Q.** And here in the middle of the page, there's a section  
14          beginning "Level 1: The Abortion Industry." Do you see that?

15          **A.** I do.

16          **Q.** And in the second paragraph, Mr. Daleiden had written:

17                 "The abortion industry holds several conferences  
18                 throughout the year, the most prominent being the NAF  
19                 annual meeting and the annual meeting of the  
20                 Association of Reproductive Health Professionals  
21                 (ARHP), which is Planned Parenthood-affiliated."

22          Do you see that?

23          **A.** I do.

24          **Q.** Okay. And here, Mr. Daleiden is describing the very  
25          conferences that he later infiltrated. Correct?

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1 A. Yes.

2 Q. Okay. Turn to Page 8. Again, same document. And here  
3 you will see there are three appendices all on the same page.  
4 Right, Appendix I, Budget, Appendix II -- are you there yet?

5 A. Um --

6 Q. Page 8 of the same document we were in.

7 A. Page 8. Okay.

8 (Request complied with by the Witness)

9 A. I see Page 8.

10 Q. And you see that on the page, itself, there are three  
11 appendices?

12 A. Yes. I see.

13 Q. Appendix I, Budget?

14 A. I do.

15 Q. And below that, Appendix II, Preliminary Timeline?

16 A. Uh-huh.

17 Q. And then Appendix III, Need and Status. Do you see that?

18 A. I do.

19 Q. On Appendix I, the budget, this is for 2013, correct?

20 A. I don't know whether that means it's all for that year or  
21 whether that's the budget at the starting point, but I see  
22 that, yes, uh-huh.

23 Q. And the total is \$120,000.

24 Do you see where I am?

25 A. Yeah. My understanding, that was for the whole project.



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1 But it does say "2013," so I -- I don't think that was for the  
2 year 2013.

3 Q. Okay. We'll come back to that.

4 On that budget, you see there's a reference to "Undercover  
5 Equipment," for \$5,000. Right?

6 A. I do, yes. Uh-huh.

7 Q. And below that you see it says "Video Equipment," for  
8 \$5,000. Do you see that?

9 A. Yes, I do. Uh-huh.

10 Q. And then under Appendix III, Needs and Status, there is  
11 again a reference to video equipment. Do you see that third  
12 row?

13 A. I do, uh-huh.

14 Q. And it's described. Right?

15 A. Yeah. I see it.

16 Q. Described as:

17 "Undercover recording devices and broadcast-quality  
18 camcorder."

19 Right?

20 A. Yes, uh-huh.

21 Q. It says:

22 "Needed for spring 2013."

23 Right?

24 A. I see it, uh-huh.

25 Q. And these were the tools that Mr. Daleiden needed in order

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1 to conduct his undercover operation. Right?

2 **A.** Same tools anybody would have to have to do it, whether  
3 you work for network television or other journalistic efforts.

4 **Q.** Okay. And then, let's turn back to Page 6 of this  
5 document. Still -- same document, still the project proposal.

6 (Request complied with by the Witness)

7 **A.** I see it.

8 **Q.** Version 1.0. At the very bottom, Page 6 of 8, you see  
9 where I am? "THE TEAM"?

10 **A.** I see that, yes.

11 **Q.** All right. "David Daleiden" is listed first. Right?

12 **A.** Yes.

13 **Q.** And then on the next page you will see there are a handful  
14 of other people listed, including yourself. Do you see that?

15 **A.** Yes, I see.

16 **Q.** "Albin Rhomberg"?

17 **A.** I see, uh-huh.

18 **Q.** All right. Described as follows (As read):

19 "Albin is a veteran of the pro-life movement in  
20 California and is an expert at acquiring hidden and  
21 hard-to-access documentation about the abortion  
22 industry."

23 Right?

24 **A.** I see it, yes.

25 **Q.** And that's true, right? You were part of the team.

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1 A. Well, it says here "pro-life movement," in a broad sense.  
2 Not just California, the United States; it would be  
3 internationally.

4 Q. Yeah. I mean, it is true that you were part of the team,  
5 right? You are listed under the team.

6 A. Well, I didn't write this report. I mean, it was written  
7 by David Daleiden or others, I suppose. But he has my name  
8 there, and the factual information is pretty factual.

9 As I say, the significance of having it appear in this  
10 thing as far as some sort of a commitment from myself at that  
11 point, I would say would be rash to make some kind of a  
12 statement that I was part of some team at that point.

13 I don't know what you mean by "team," and to what extent I  
14 had been appointed to that role.

15 Q. Did you tell Mr. Daleiden to change that, ever?

16 A. As I told you, I really didn't pay a great deal of  
17 attention to this document.

18 Q. You didn't tell him to take your name out of this  
19 document.

20 A. No, I didn't.

21 Q. You didn't tell him that you weren't part of the team.

22 A. Well, I don't see where you're seeing the word "team"  
23 here.

24 Well, that is -- that's the heading, "THE TEAM." So there  
25 it is.

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1 No, I didn't tell him.

2 **Q.** And in fact, at this time, in around February of 2013,  
3 Mr. Daleiden asked you to become a board member and officer of  
4 the Center for Medical Progress. Isn't that right?

5 **A.** At that time, I don't know if the organization even  
6 existed or was incorporated. There was an idea -- he was going  
7 to have some sort of an organization, and you needed board  
8 members. I don't know when it was incorporated because I  
9 didn't have anything to do with incorporating or any of those  
10 papers or whatever. But he did ask me if I would be a board  
11 member and I told him I would.

12 But I don't remember whether the organization even had  
13 name at that point. Or had any legal structure. In fact, I  
14 presume he was recruiting people in order that he could set  
15 this organization up.

16 **Q.** And you agreed to serve as an officer, correct?

17 **A.** Yes. I agreed to serve on the board. And I understand  
18 there were going to be three people on the board. I believe  
19 you have to have a minimum of three officers.

20 **MR. KAMRAS:** Your Honor, I would like to offer into  
21 evidence Exhibit 338, which the parties have stipulated to the  
22 admissibility of.

23 **THE COURT:** All right. Admitted.

24 (Trial Exhibit 338 received in evidence)

25 (Document displayed)

## RHOMBERG - DIRECT / KAMRAS

1 **BY MR. KAMRAS**

2 **Q.** Mr. Rhomberg, I'm going to have you look at the next  
3 document, which is Document 338. It's a fairly lengthy  
4 document. And so what I have done or what we have done is we  
5 have inserted some flags with some numbers.

6 **A.** Uh-huh.

7 **Q.** And I can help you orient your way through the document.  
8 Do you see those?

9 **A.** I do.

10 **Q.** Okay. So first I'd like you to turn to the first flag,  
11 Flag No. 1, which is the third page of the document. Are you  
12 there?

13 **A.** I'm there. I see it, uh-huh.

14 **Q.** Okay. This is a document -- this is an IRS form, correct?

15 **A.** It is, uh-huh, I see.

16 **Q.** In fact, it is an IRS Form 1023 which is, as you can see  
17 from the title, an application for recognition of exemption  
18 under Section 501(c)(3) of the Internal Revenue Code. Do you  
19 see that?

20 **A.** I do.

21 **Q.** And you understand that this is a form which is submitted  
22 to the IRS, right?

23 **A.** Right.

24 **Q.** All right. It's a form intended to obtain nonprofit  
25 status for an organization. Right?

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1    **A.**    Yes, right.

2    **Q.**    Okay.  And here, you see the name of the -- of the  
3    application -- that is, the organization that is seeking  
4    nonprofit status, right at field No. 1, is the Center for  
5    Medical Progress.  Do you see that?

6    **A.**    I see that --

7            **MS. SHORT:**  Objection, Your Honor.  The document  
8    speaks for itself, and there's been no foundation laid that  
9    he's even ever seen this document before.

10           **THE COURT:**  Fair enough.

11           Why don't you lay a foundation.

12           **MR. KAMRAS:**  Okay.

13    **BY MR. KAMRAS**

14    **Q.**    Well, let me ask you this.  On -- go to Flag 2 of the  
15    document.

16           **MR. KOZINA:**  Your Honor, foundation hasn't been laid  
17    yet.  It's being published to the jury prior to doing that.  So  
18    I'm going to object on foundation.

19           **MR. KAMRAS:**  The document was admitted.

20           **THE COURT:**  I admitted it because I -- because  
21    there's a stipulation.  But there needs to be a basis for  
22    asking this witness this question, these questions.  So let's  
23    take it down for the jury at the moment, and see where we're  
24    going with this.

25           (Document taken off display)

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1 **BY MR. KAMRAS**

2 **Q.** Do you recognize the signature on this page?

3 **A.** That's on Page --

4 **Q.** It's on the flag -- it's on the page that's Flag No. 2.

5 **A.** With No. 2.

6 (Witness examines document)

7 **A.** No, I don't recognize that signature.

8 **Q.** Okay. And do you have any understanding of whether  
9 Mr. Daleiden ever completed and submitted an application to the  
10 IRS for nonprofit status?

11 **A.** Well, I certainly know that now, and as far as that  
12 signature, I'm not familiar with David Daleiden's signature in  
13 general, anyway. So I'm not making the comment specifically  
14 about, here, of whether he has different signatures.

15 But I do know that a nonprofit status, IRS nonprofit  
16 status was obtained. Yes, I know that. And this looks like  
17 this was dated April.

18 As far as I know, to tell you the truth, this is the first  
19 time I've ever seen this document in my life.

20 **Q.** Well, counsel -- or excuse me, Mr. Rhomberg, I'll  
21 represent that you saw it at your deposition, so you at least  
22 saw it then.

23 **A.** Okay. It's marked.

24 **Q.** Do you recall that?

25 **A.** The deposition lasted for seven hours the first time and

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1 another session. I have to admit, I don't have that level of a  
2 computer memory that can recall six months later every event  
3 for seven hours. So I don't particularly recall.

4 I'm sure you can bring it up on the screen, probably.

5 **Q.** Well, we'll move things along.

6 At the time of this document in April, 2013, you were, in  
7 fact, the chief financial officer of the Center for Medical  
8 Progress. Isn't that right?

9 **A.** Well, we had kind of an agreement there would be three of  
10 us. And with the three different functions, that would be my  
11 title.

12 **Q.** Your title was "Chief Financial Officer." Correct?

13 **A.** Right.

14 **Q.** And in fact, you were the chief financial officer for CMP  
15 for each of 2013, 2014, and 2015. Isn't that right?

16 **A.** If you -- I -- I don't know what you mean by that,  
17 exactly. I agreed to being on the board, and I agreed to have  
18 that title.

19 **Q.** For each of those years.

20 **A.** I don't think any particular years were specified. In  
21 perpetuity, if you'd like.

22 **Q.** And you received no compensation?

23 **A.** No compensation.

24 **Q.** And in your -- I would -- I'll have you turn to -- without  
25 publication to the jury at this point, I'll have you turn to



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1 Flag 4 in the document.

2 So this is Page 11, which is a table listing financial  
3 data.

4 (Request complied with by the Witness)

5 Q. Do you see that?

6 A. I do.

7 Q. Okay. And this table lists amounts of revenue and  
8 expenses for each of three years. Do you see that?

9 A. Uh-huh. I do, I see it.

10 Q. 2013, 2014, and 2015. Right?

11 A. Right.

12 Q. Okay. The total is \$280,000. Right?

13 A. I see that in the right column.

14 Q. Is this a table that you had -- that you have -- you had  
15 input in creating?

16 A. No.

17 Q. All right. Why don't we look at Flag 5, which is Page 24  
18 of the document. And -- I'll wait until you are there.

19 A. I'm there.

20 Q. Okay. You see this is the conflict-of-interest policy of  
21 the Center for Medical Progress. Right?

22 A. Right.

23 Q. And is that a document that you had seen in your capacity  
24 as officer of the Center for Medical Progress?

25 A. I don't think so.

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1 Q. Okay.

2 A. I don't think -- I don't think I saw this, no.

3 Q. At Tab 6 of the document, which is Page 31, you'll see  
4 there is a section beginning "Compensation and Other Financial  
5 Arrangements," with your "Officers, Directors, Trustees,  
6 Employees and Independent Contractors," towards the bottom. Do  
7 you see that?

8 A. Yes, I see that, uh-huh.

9 Q. Okay. And David Daleiden is listed first, correct?

10 A. Right.

11 Q. Okay. And then on the next page, you will see you're  
12 listed.

13 A. Yes, I see it there, uh-huh.

14 Q. Okay. And your duties -- well, first, your hours are  
15 described as five hours per week. Was that your understanding  
16 of the amount of time that you were expected to contribute in  
17 your work as an officer for the Center for Medical Progress?

18 A. No, that was not my -- that was not my understanding.

19 Q. Okay. So this statement was false?

20 (Witness examines document)

21 A. Well, I don't say it was false. I didn't -- I didn't -- I  
22 didn't make this statement.

23 Q. Okay. And below that, your duties are listed.

24 "As CFO, Albin is responsible for reviewing the  
25 finances of the organization, advising the

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1 development of educational projects, and  
2 participating in fundraising."

3 You did participate in fundraising, didn't you?

4 **A.** Well, I suggested a small number of names of people that I  
5 had known who might possibly be interested or be motivated to  
6 provide some funds for the project. The number of names were,  
7 I guess, maybe three or four names.

8 **Q.** And without -- without that fundraising, there would be no  
9 -- would have been no project. Right? Nothing to support the  
10 budget.

11 **MS. SHORT:** Objection. Calls for speculation.

12 **THE COURT:** To the extent that you know.

13 **THE WITNESS:** Well, I -- I think David had a lot more  
14 contacts than the few that I provided, so I don't think on the  
15 fundraising, the success of the project was at all dependent  
16 upon my participation in fundraising.

17 **BY MR. KAMRAS**

18 **Q.** In fact, Mr. Daleiden kept you apprised of his fundraising  
19 activities, didn't he?

20 **A.** Not very much. Very little. Very little.

21 **Q.** He did on occasion, did he not?

22 **A.** Occasionally there were some comments about perhaps an  
23 individual who either, you know, contributed or wouldn't  
24 contribute, or whatever.

25 **Q.** Who is Ray Ruddy, Mr. Rhomberg?

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1    **A.**    Ray Ruddy is a wealthy philanthropist.

2    **Q.**    Uh-huh.

3    **A.**    You want to know more?  Is that enough?

4    **Q.**    A philanthropist who donated money to pro-life  
5 organizations?  Correct?

6    **A.**    Yeah, in the past, he had a reputation for contributing  
7 money to pro-life.  Yes.

8    **Q.**    Very substantial contributions, in some cases.

9    **A.**    I would say very substantial.

10   **Q.**    And Mr. Daleiden requested funds from Mr. Ruddy.  Right?

11   **A.**    I believe he did.

12   **Q.**    And he would keep you apprised of those communications --  
13 send you communications that he was sending to Mr. Ruddy,  
14 correct?

15   **A.**    I am not sure.  There may have been some telephone, there  
16 may have been some email.  But I'm not sure about that.  I  
17 never met Mr. Ruddy, as far as I know, in my life.  And as far  
18 as I know, he never contributed anything to any projects that I  
19 was involved with except pertaining -- this one -- I don't know  
20 for certain whether he ever contributed to this project either,  
21 as we sit here.  Seemed to me he had objections.  But I can't  
22 remember in detail.

23           **MR. KAMRAS:**  Your Honor, I would like to refresh  
24 Mr. Rhomberg's recollection with Exhibit 70.

25           **THE COURT:**  You may approach him.

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1           **MR. KAMRAS:** Thank you. For Your Honor (Indicating).  
2           (Document handed up to the Court)

3           (Witness examines document)

4           **THE COURT:** Do you have a copy for --

5           **MR. KAMRAS:** I do.

6           (Document tendered)

7   **BY MR. KAMRAS**

8   **Q.** Mr. Rhomberg, do you see this exhibit, Exhibit No. 70?

9   **A.** I see it, yes, I do.

10 **Q.** Okay. I would like you to take a look at the -- really,  
11 just the first page, and see whether that refreshes your

12 recollection as to whether you were kept apprised of

13 Mr. Daleiden's fundraising efforts with respect to Mr. Ruddy.

14 **A.** Well, the date on this is 25 June, 2013. That's more than  
15 six years ago. But I see there was -- I was on this, on the  
16 cc, so an email was sent to me.

17           **THE COURT:** So Mr. Rhomberg, all you have to do is  
18 look at it and then say "Yes, this refreshes my recollection."

19 Or "No, it really doesn't."

20           **THE WITNESS:** Well, I don't have much recollection at  
21 all to refresh. Sorry.

22           I'm not trying to be facetious or silly about this. But I  
23 receive a tremendous volume of things, over 40 years. And this  
24 is six years ago. So --

25

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1 **BY MR. KAMRAS**

2 **Q.** You don't dispute that you were kept apprised of  
3 Mr. Daleiden's fundraising efforts, do you?

4 **A.** Well, to some extent, but a very limited extent.  
5 Actually, this is very interesting, I must say.

6 **THE COURT:** Well, you'd better put it down, because  
7 we're going to have --

8 (Laughter)

9 **THE COURT:** Ladies and gentlemen, why don't we take a  
10 break for ten minutes, and then we'll come back for the rest of  
11 the day.

12 (Jury excused)

13 **THE COURT:** All right, we will be in recess.

14 (Recess taken from 11:29 a.m. to 11:44 a.m.)

15 (The following proceedings were held outside of the  
16 presence of the Jury)

17 **THE CLERK:** Please come to order.

18 **THE COURT:** We're ready.

19 (The following proceedings were held in the presence  
20 of the Jury)

21 **THE COURT:** All right, please be seated, everybody.

22 Mr. Kamras, go ahead.

23 **MR. KAMRAS:** Thank you, Your Honor.

24 **BY MR. KAMRAS**

25 **Q.** Mr. Rhomberg, you knew that Troy Newman was one of the

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1 other officers of the Center for Medical Progress, right?

2 **A.** Yes, I did.

3 **Q.** Okay. And had you previously been an officer of a  
4 501(c)(3) organization?

5 **A.** I don't think so.

6 **Q.** And the -- the -- but the three members -- the three  
7 officers of CMP that you had referred to as having decided  
8 amongst yourselves to be the officers, those were Mr. Daleiden,  
9 yourself and Mr. Newman. Is that correct?

10 **MS. SHORT:** Objection, I would -- misstates his  
11 testimony.

12 **THE COURT:** I think, sustained. Try that question  
13 again.

14 **BY MR. KAMRAS**

15 **Q.** You had previously described -- well, let me try it this  
16 way. How many officers were there at the Center for Medical  
17 Progress?

18 **A.** As far as I know, there were just the minimum. Three.

19 **Q.** And those three were Mr. Daleiden, yourself and  
20 Mr. Newman. Correct?

21 **A.** Correct. Originally.

22 **Q.** All right. And from the onset of the CMP project, the  
23 Center for Medical Progress, you, you had spoken to Mr. Newman  
24 several dozen times.

25 **A.** Several thousand times?

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1 Q. Several dozen times.

2 A. Several dozen times. You say, before the project?

3 Q. No. From the beginning of the project, moving forward.

4 A. Moving forward from then. I'd say that's probably a bit  
5 of a high number, but -- "several dozen times." Sounds a  
6 little bit on the high side. But I did talk to him, but very  
7 occasionally.

8 Q. Certainly, some number of dozens of times.

9 A. Do you have -- can you specify what year range you are  
10 talking about here?

11 Q. 2013, forward.

12 A. That's --

13 MR. KOZINA: Your Honor, can we get clarification?  
14 He said "2013, forward." Does he mean through today? Or  
15 through a particular time period?

16 THE COURT: I have the same question.

17 MR. KAMRAS: Fair enough.

18 BY MR. KAMRAS

19 Q. Through the end of the project.

20 A. (Inaudible)

21 Q. Let me try it this way. From 2013 to, let's say, 2015.  
22 When, when the videos were first released.

23 A. I would say I spoke to -- we had -- about the only  
24 occasions I had to speak to him pretty much were when we had  
25 occasional telephonic board meetings, and we only had those on



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1 the average of every several months. So you are talking about,  
2 about, well, two and a half years, 30 months? If I were to  
3 guess, I would say not more than maybe ten or 20 times, not  
4 several dozen.

5 Q. Okay. Ten or 20 times.

6 A. Right.

7 Q. And you emailed him during that same period of time.  
8 Isn't that right?

9 A. There were, I think, relatively few emails coming from me,  
10 but yes, there would be some.

11 Q. Okay. And there were emails on which you were copied,  
12 also, during that same time, including with Mr. Newman and  
13 Mr. Daleiden. Right?

14 A. Right. Some of them may have been just announcing that we  
15 would have a telephone meeting or a -- a schedule or something.  
16 Yes.

17 Q. And there were -- you actually had board meetings, did you  
18 not, with Mr. Daleiden and Mr. Newman?

19 A. Well, I don't think, as far as I know, we ever had a  
20 single board meeting which the three of us were present, or  
21 that -- or that -- that either just myself or Troy Newman were  
22 present. All of the board meetings, as far as I can remember,  
23 were on the telephone.

24 Q. But nonetheless --

25 A. During that interval of time, yeah.

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1 Q. Excuse me. I didn't mean to interrupt you.

2 Nonetheless, there were board meetings, correct?

3 A. There were.

4 Q. Okay. With Mr. Daleiden and Mr. Newman and yourself.

5 A. Yes.

6 Q. Okay. And during these meetings, you discussed the  
7 operations of the Center for Medical Progress. Is that right?

8 A. Yeah. In a general sort of way. Not much particularity  
9 to it. Mostly just that -- the organization, itself.

10 Q. Well, you discussed the progress of the project, didn't  
11 you?

12 A. Quite limited, because the project was -- um -- I don't  
13 know what word you want to use. Was secret. So, so, we didn't  
14 -- we didn't get into the details of the project at the board  
15 meetings.

16 Q. You discussed its progress, didn't you?

17 A. I suppose in a limited sort of way, that the project was  
18 going forward, yeah, and there was some -- to a limited extent,  
19 yes.

20 Q. Yeah. You discussed obtaining the video footage, didn't  
21 you?

22 A. That was the project.

23 Q. And you knew that the Center for Medical Progress had  
24 established a front company by the name of "BioMax Procurement  
25 Services," didn't you?

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1   **A.**   No, I did not know that for quite a bit of time.  I did  
2   not know that.  Not that I -- not that I can remember at this  
3   time.  I -- eventually I found out about that, yes.

4   **Q.**   You received emails in which there was reference to BioMax  
5   Procurement Services, didn't you?

6   **A.**   Well, maybe I did; maybe I didn't.  I'm sorry, but right  
7   now I couldn't swear -- I couldn't -- couldn't state for  
8   certain.  You maybe have some documents that can show that I  
9   got emails, but --

10  **Q.**   I'll have you, Mr. Rhomberg, turn to Exhibit 72.

11           **MR. KAMRAS:**  Counsel, you have that in your binder.

12           **THE WITNESS:**  72.

13  **BY MR. KAMRAS**

14  **Q.**   And you can -- I'll have you look at the first page, which  
15  is a transmittal email from Mr. Daleiden to yourself, and then  
16  the second page, and focus you on the second paragraph of that  
17  second page.

18  **A.**   Uh-huh.

19  **Q.**   And see if that refreshes your recollection about whether  
20  you knew, in fact, that CMP had established a front  
21  organization called BioMax.

22           (Witness examines document)

23  **A.**   Well, this is dated, says 12 April, 2014.  I see it says  
24  this, and I see what it says here, yeah.  That doesn't  
25  necessarily indicate that I was aware of it.  That assumes that

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1 I read this and so on.

2 So, I can't say for certain. I might have, but, um -- it  
3 does say here (As read):

4 "Infiltration was successful and BioMax is now a  
5 known and trusted entity to many key individuals."

6 **Q.** Indeed, you knew that Mr. Daleiden and the other actors  
7 were using false names when they entered these conferences and  
8 these clinics. Right?

9 **A.** Well, I -- some of them were, and some of them weren't.  
10 We just had -- I just sat here in the courtroom and heard  
11 Adrian Lopez say that he did not use. He used his own name.  
12 So I -- some did and some didn't, I presume.

13 **Q.** Mr. Daleiden used a false name, right?

14 **THE COURT:** Are you asking what he knew at a  
15 particular time?

16 **MR. KAMRAS:** I am. Thank you. Thank you,  
17 Your Honor.

18 **THE WITNESS:** Yeah.

19 **BY MR. KAMRAS**

20 **Q.** You knew -- during the project, the CMP project, you knew  
21 that Mr. Daleiden was using a false name to gain access to  
22 conferences. Conferences. Correct?

23 **A.** Well, in the beginning of this project, you have to  
24 understand, to my mind, David Daleiden was a relatively unknown  
25 person, and had done nothing very -- and that was why this sort

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1 of newcomer would be able to do this, because it's not just a  
2 name, it's a persona. It's a face and so on. So the idea that  
3 he would even conceive of the idea of doing this was primarily  
4 because he was an unknown person.

5 So I can't say that I knew whether he was going to use a  
6 name or a mask or makeup or a wig. I don't know, you know.  
7 Because to my mind, he was a rather obscure,  
8 recently-arrived-on-the-scene person. So the kind of details  
9 of the tactics he was going to use as far as costume, makeup,  
10 wigs, um, names, identifications, I did not -- I was not very  
11 much aware or involved with that.

12 **Q.** Mr. Rhomberg, you know that one of the clinics that  
13 Mr. Daleiden infiltrated was Planned Parenthood Gulf Coast.  
14 Right?

15 **A.** Yes. I do, I know -- I didn't know that necessarily long  
16 in advance, but yes, that was one of the places, indeed, that  
17 he visited. Uh-huh.

18 **Q.** And isn't it true that Mr. Daleiden called you from the  
19 clinic during his infiltration?

20 **A.** It is true he did. Yes.

21 **Q.** And when he called you, he used his fake name, didn't he?

22 **A.** I can't remember that. He might have; I don't know. If  
23 you have a recording of the call, I guess we can listen to it  
24 and determine that. But I can't remember whether he did or  
25 not.

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1 Q. One of the benefits of this case.

2 MR. KAMRAS: Your Honor, I'm going to move to  
3 introduce Exhibit 6103. I'll have the transcript.

4 (A pause in the proceedings)

5 MR. KAMRAS: Apparently we don't have the transcript.  
6 So it's a short clip. But -- well, is there objection to  
7 playing it?

8 MS. SHORT: Your Honor, I have not seen the  
9 transcript or anything about this.

10 MR. KAMRAS: All right. So I'll have to -- I think  
11 I'm going to have to show it to counsel at some other point.

12 THE COURT: Okay.

13 MR. KAMRAS: And then see if we can introduce it at  
14 that point, because I don't have the transcript.

15 THE COURT: Okay.

16 BY MR. KAMRAS

17 Q. You do recall getting a phone call from Mr. Daleiden.

18 A. I do recall getting a phone call. I can't recall -- I  
19 couldn't try to give you a transcription of something, but I do  
20 recall getting a telephone call from him. Indeed.

21 Q. Okay. And when he called, how did he introduce himself to  
22 you?

23 A. Well, by that time I would have recognized his voice. I  
24 have no idea how he introduced himself to me on the phone. I  
25 mean, I -- I would -- I would have, at that point.

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1           You were talking about -- what date is this, roughly  
2 speaking? This is late on. Do you know what date this was? I  
3 think it was one of the last places, must be, was 2014 or maybe  
4 even 2015. I think it was 2015.

5           So I would have recognized his voice, but I don't know  
6 what name he used.

7 **Q.** Okay. You don't have a recollection one way or the other  
8 about --

9 **A.** No.

10 **Q.** -- how he introduced himself to you.

11 **A.** No, no.

12 **Q.** And whether or not he used his real name or his false  
13 name.

14 **A.** No, no. Or whether he used any name at all. I think he  
15 -- at that point, I would have recognized his voice.

16 **Q.** And Mr. Rhomberg, isn't it true that you knew that in  
17 order to infiltrate these conferences and these clinics,  
18 Mr. Daleiden and the other actors, or at least some of them,  
19 had to use false identification?

20 **A.** Well, I can't really say that for certain, because I  
21 didn't know who the other people were. I didn't know who they  
22 were. I only found out that after the release. Because --

23 **Q.** You knew who Mr. Daleiden was.

24 **A.** I knew Mr. Daleiden, yes. I did know him. And as I just  
25 told you, I didn't have a sense that he would have to use a

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1 false identity because he was an unknown, he was a newcomer.  
2 He was a person unknown.

3 And as far as I understand, some of the earlier things he  
4 went to, he did use his own name and his own -- he didn't use  
5 any undercover thing, as far as I know. These were some of the  
6 things maybe preliminary to the project, or the project  
7 starting.

8 **Q.** You knew that Mr. Daleiden was -- actually had been a  
9 member of Live Action.

10 **A.** I did know that, yes.

11 **Q.** Right. What is Live Action?

12 **A.** Live Action, as I understand it, it's -- it was an  
13 organization founded by a young woman named Lila Rose. And she  
14 lived in San Jose. And she founded it, I think, maybe while  
15 she was in high school. But then it became notable because she  
16 went to UCLA, and she did some undercover type work while she  
17 was a student at UCLA. And there was some videos, sort of -- I  
18 guess if you want to use that term, some "gotcha" videos. One  
19 or two.

20 **Q.** It was -- I'm sorry.

21 **A.** Yeah, yeah. So, and that was the organization. It had  
22 some structure. I think there were other people involved. I  
23 think they did fundraising. They became known. They did have  
24 quite a -- they acquired quite a -- I guess I'll say  
25 "notoriety."



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1 Q. It was a pro-life organization, wasn't it?

2 A. Yes.

3 Q. And Mr. Daleiden had been a member of this organization.

4 A. Yeah. I think he was actually employed by them.

5 Q. All right. You knew that. Correct?

6 A. I did know that.

7 Q. You knew that at the outset of the CMP project. Correct?

8 A. Right. Right.

9 Q. Okay. And in fact, we talked about how you also met him  
10 at a meeting of the University Students for Life. Correct?

11 A. Right, right.

12 Q. So Mr. Daleiden wasn't such a newcomer, was he?

13 A. Well, depends on what your time scale is. As far as being  
14 someone who had participated in previous, you know,  
15 high-profile, he was in Live Action. I believe he had some  
16 role as research director. He was doing behind-the-scenes  
17 things. I never heard that he did anything public. Never saw  
18 him in any videos or any news releases or anything of that  
19 sort.

20 The person that -- the visible presence there was Lila  
21 Rose and some other people that did undercover work. The  
22 videos were published; they were widely available to anybody  
23 who wanted to look at YouTube. But I never saw David Daleiden  
24 anywhere, or had any idea he had anything to do with any public  
25 presence there.

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1 Q. I want to have you turn back to Exhibit 67, which is the  
2 Project Proposal, Version 1.0. First document we talked about  
3 today.

4 (Document displayed)

5 (Request complied with by the Witness)

6 Q. And on Page 6 of the document, under "PRODUCTION AND  
7 RELEASE" -- are you there?

8 A. Um, "PRODUCTION AND RELEASE." I see that on Page 6,  
9 uh-huh.

10 Q. Okay. Second sentence, beginning "The documentary," do  
11 you see that?

12 A. Uh-huh, "documentary," I see it, uh-huh. The  
13 documentary --

14 MR. KOTARSKI: Ms. Davis, can you turn on the jury  
15 screens?

16 THE CLERK: Oh, thanks.

17 BY MR. KAMRAS

18 Q. (As read)

19 "The documentary will feature undercover footage from  
20 real-life moles and orchestrated stings."

21 Do you see that?

22 A. I do. Uh-huh.

23 Q. And then on the last page of the project proposal under  
24 Appendix III, there's a reference to "actors." Do you see  
25 that?

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1   **A.**   Uh-huh, uh-huh, uh-huh.

2   **Q.**   (As read)

3                "To pose as characters for stings on fetal  
4                traffickers."

5                Do you see that?

6   **A.**   I do.

7   **Q.**   So you understood that the actors were going to be  
8   undercover.   Right?

9                (Witness examines document)

10  **A.**   Well, I don't see the distinction between being an actor  
11  and being undercover.   If you are an actor, I presume that you  
12  are playing some kind of a role on the stage or a movie or  
13  something.   It's not your real-life persona.   I understand  
14  that's what an actor does.

15  **Q.**   And if you look on Page 6 of the project proposal, we  
16  looked at this earlier.   The section which is labeled "THE  
17  TEAM."

18  **A.**   "THE TEAM," yes.   I see that.

19  **Q.**   We spent some time earlier talk about your description.

20  **A.**   Uh-huh, yes.

21  **Q.**   Here is Mr. Daleiden's description.   Says:

22                "David has been active in the pro-life movement since  
23                he was 15."

24                Do you believe that to be true?

25  **A.**   Well, I don't have any reason to doubt it.   I don't have

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1 -- I don't have knowledge of that, my own knowledge of it. But  
2 I -- it's -- I presume it's true. But I don't know, I don't  
3 have any evidence of it, but -- anyway.

4 **Q.** (As read)

5 "From 2008 to 2013, David served as director of  
6 research for the new media investigative pro-life  
7 group Live Action."

8 That is what we were discussing, right?

9 **A.** Right.

10 **Q.** (As read)

11 "At Live Action David constructed and orchestrated 5  
12 major multi-state undercover investigations."

13 Do you see that?

14 **A.** I do.

15 **Q.** So when Mr. Daleiden was infiltrating conferences and  
16 clinics, you knew he was using a false name, didn't you?

17 **A.** No, I didn't, because again, what I just looked at, here,  
18 it said he was director of research. And this could be some  
19 obscure person sitting in an office someplace that was putting  
20 all these materials together, the logistics and so on and so  
21 forth. That doesn't mean that the people who were the subjects  
22 of these five major multi-state undercover investigations would  
23 have known anything about David Daleiden, ever seen him, had  
24 any idea what he looked like or whatever. I don't think that  
25 his name was put forward. I certainly wasn't aware of it.

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1 Lila Rose and the others was the principal character she was, I  
2 guess I'll say, the celebrity. Right?

3 **Q.** You knew that he was going to have to show identification  
4 when he accessed those clinics, didn't you?

5 **A.** Hm, not necessarily. If you win people's confidence, it  
6 would be, I don't think, necessary to require identification.  
7 It's not like a courthouse or an airline. I mean, the people  
8 that are there, the people who have their confidence, some,  
9 they are allowed to come in. So, no, I don't think -- I don't  
10 necessarily say he would have had to have shown ID, as long as  
11 he had won the confidence of the people that were here.

12 **Q.** Mr. Rhomberg, we show identification as part of our daily  
13 life, don't we?

14 **A.** That depends on what your daily life is like.

15 **Q.** You have to produce an ID any time you go to the airport,  
16 right?

17 **A.** A lot of people don't go to the airport.

18 **MS. SHORT:** Objection, Your Honor. This is getting  
19 rather argumentative.

20 **THE COURT:** Overruled.

21 **BY MR. KAMRAS**

22 **Q.** You have to produce an ID when you rent a car. Right?

23 **A.** A lot of people don't rent cars.

24 **Q.** You've got to produce an ID when you rent other types of  
25 equipment. Right?

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1   **A.**   A lot of people don't rent equipment.

2   **Q.**   You have to show ID if you work in transit.  Right?

3   **A.**   A lot of people don't work for transit.

4   **Q.**   Or when you stay at a hotel.

5   **A.**   A lot of people don't stay in hotels.

6   **Q.**   Including the very kinds of hotels where the conferences  
7 took place.  Right?

8   **A.**   Some of them.

9   **Q.**   You have to show ID when you go to a medical appointment.  
10 Right?

11  **A.**   Not if you're a known person.

12  **Q.**   Just like -- medical appointments at clinics just like the  
13 ones that Mr. Daleiden infiltrated.  Right?

14  **A.**   Almost every place that I've seen like there, and I've  
15 been familiar, there's a group of people that are familiars  
16 there.  And they walk right by; they never show anything.  
17 They're known.  They don't show any identification.  There's a  
18 group that are the strangers.  But by and large, all these  
19 places that you've mentioned to, there are a group of people  
20 that are known.

21  **Q.**   Mr. Daleiden wasn't an employee of any Planned Parenthood  
22 affiliate, was he?

23  **A.**   Not as far as I know.  However, as I just mentioned, he  
24 seemed to be very capable -- and the evidence shows it -- of  
25 winning the confidence of people.  And in that case, if he had

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1 the confidence of people, you could see that in some of the  
2 videos that have been shown here that those formalities are  
3 dispensed with.

4 **Q.** You have to show an ID when you access most office  
5 buildings. Right?

6 **A.** Not in a lot of the office buildings that I go to. I  
7 think -- I'd say relatively few, if you took the statistics of  
8 the whole nation, how many office buildings.

9 **Q.** You had to show ID when you entered the courthouse this  
10 morning, didn't you, Mr. Rhomberg?

11 **A.** Absolutely. Practically have to strip naked.

12 (Laughter)

13 **Q.** And that's because there's a security risk, isn't there?

14 **A.** Exactly.

15 **Q.** Right. And you know --

16 **A.** Probably exaggerated.

17 **Q.** And you know that -- you know that abortion providers are  
18 subject to security concerns. Correct?

19 **A.** It's mostly propaganda, to try to make them seem to be  
20 victims.

21 **Q.** But you know that abortion -- that clinics that have  
22 abortion -- that provision abortion services have security to  
23 protect the clinics. Right?

24 **A.** They do.

25 **Q.** Right. And so you knew that when Mr. Daleiden was going

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1 to access and infiltrate those clinics, that he was going to  
2 show some sign of identification, didn't you?

3 **A.** No, not necessarily. I keep saying: If he'd won the  
4 confidence of the people that were taking him there, that had  
5 invited him or were taking him there, I know this from my own  
6 background. If you're a known person and so on, and you know  
7 one of the people that's the director or somebody there, um,  
8 you just get waved by.

9 **Q.** Okay. It wouldn't have bothered you had Mr. Daleiden used  
10 false identification to gain access to those clinics, would it?

11 **MS. SHORT:** Objection. Calls for speculation. This  
12 is very argumentative, Your Honor.

13 **THE COURT:** Overruled.

14 **THE WITNESS:** I don't know what you mean by  
15 "bothered" me. What do you mean by "bothered" me?

16 **BY MR. KAMRAS**

17 **Q.** You were an officer of the Center for Medical Progress.

18 **A.** Yes.

19 **Q.** You had fiduciary duties and obligations with respect to  
20 the conduct and affairs of that entity, didn't you?

21 **A.** Well, in a formal sense of the word. I told you it was --  
22 the reality was it was extremely limited.

23 **Q.** And the Center for Medical Progress was the project that  
24 Mr. Daleiden was using in order to infiltrate these  
25 conferences. Right?



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1    **A.**    I believe so.

2    **Q.**    Okay.  So I'm asking you as an officer and board member of  
3    the Center for Medical Progress, it would have been okay with  
4    you had its principal, David Daleiden, been using false  
5    identification to gain access to those clinics?

6    **A.**    No, I wouldn't say it would have been okay.  It wasn't a  
7    -- it wasn't a concern of mine, honestly, as I saw my role  
8    there.  It wasn't a concern of mine.

9    **Q.**    You would have permitted it.

10           **MR. MIHET:**  Objection, lacks foundation.

11           **THE COURT:**  Overruled.

12           You may answer.

13           **THE WITNESS:**  The matter was -- in our few board  
14    meetings, the matter, as far as I know, was never discussed.

15    **BY MR. KAMRAS**

16    **Q.**    That wasn't my question.  You would have permitted it.

17           **MS. SHORT:**  Objection, calls for speculation.

18           **THE COURT:**  Overruled.

19           **THE WITNESS:**  That's -- I don't know whether I would  
20    or not.  It didn't come up; it wasn't -- wasn't -- wasn't a  
21    consideration.

22    **BY MR. KAMRAS**

23    **Q.**    And you never told him not to.

24    **A.**    He never asked me whether he was going to do it or not.

25    **Q.**    That wasn't my question.  You never told Mr. Daleiden:

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1 Don't use false identification.

2 **A.** I never told him not to rob banks, either.

3 **Q.** You never told him: Don't trespass.

4 **A.** I didn't have any idea he was going to trespass.

5 **Q.** You never told him: Don't breach any confidentiality  
6 agreements.

7 **A.** Didn't have any idea he was going to breach any.

8 **Q.** And you never told him: Don't make any undercover  
9 recordings.

10 **A.** Didn't come up.

11 **Q.** All right. One of the lunches that Mr. Daleiden  
12 surreptitiously videotaped was of Dr. Nucatola. Right? You  
13 know that?

14 **A.** I've seen the video.

15 **Q.** Okay. And Ms. Merritt was also at that lunch, right?

16 **A.** That's correct. At this time, I never knew who  
17 Ms. Merritt was. Never met her, didn't know her name.

18 **Q.** You understand, however, that she was there.

19 **A.** After the fact. I saw the video.

20 **Q.** Okay. But you knew that Mr. Daleiden would be at that  
21 lunch, before he videotaped it. Right?

22 **A.** In retrospect, I believe that was one of the first ones  
23 in, like, 2014. At the time, I really don't think I had any  
24 specific -- there wasn't -- I don't remember. I knew he was,  
25 of course, doing these projects, but I don't remember,

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1 specifically. I wasn't -- you know, I didn't make the  
2 reservations for the lunch, or agree to pay the bill, or have  
3 an invoice, or anything of that sort.

4 Q. Okay.

5 MR. KAMRAS: I want to offer Exhibit 380, which has  
6 been stipulated by the parties as to its admissibility.

7 THE COURT: All right. It's admitted.

8 (Trial Exhibit 380 received in evidence)

9 (Document displayed)

10 BY MR. KAMRAS

11 Q. Mr. Rhomberg, do you have that in front of you?

12 A. I do. I'm looking at it right now.

13 Q. Okay. And you see that is a two-page email exchange. And  
14 of course, the beginning of the exchange begins at the end,  
15 right on the second page? You see that?

16 A. I think I see it there. I do.

17 Q. And this is dated July 25th, 2014, at 9:00 p.m. Right?

18 A. Right.

19 Q. Okay. We are on the same place.

20 A. Right, I see it.

21 Q. And this is an email that says "David," and then it's  
22 signed "Albin." And that's you, correct?

23 A. That's me, uh-huh.

24 Q. And you say -- the subject -- well, actually, you can see  
25 the subject of the email on the first page as "Good lunch." Do

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1 you see that?

2 **A.** Yes, this indicates that: I hope that your luncheon went  
3 well today.

4 **Q.** Right. This is -- so now, turning back to the second page  
5 of the document, and exactly as you said, you said (As read)

6 "David,

7 "I hope that luncheon went well today."

8 Right?

9 **A.** I see it, uh-huh.

10 **Q.** And you are asking Mr. Daleiden about his luncheon with  
11 Dr. Nucatola, correct?

12 **A.** I assume so. Given the date and so on, yes, seems to be.

13 **Q.** Okay. So you knew beforehand that Mr. Daleiden was  
14 intending to meet with Dr. Nucatola at lunch. Right?

15 **A.** Well, I knew there was a luncheon. I can't say for  
16 certain who it was with and so on. I don't know if I knew  
17 that. Maybe I did. I don't know.

18 I don't see -- let's see, in my email it doesn't mention  
19 any names. It says "Luncheon," so there was some luncheon. I  
20 obviously knew that.

21 Hm. I'm making -- I don't see a name of a person. There  
22 was some -- some luncheon, I was aware of that. Must be  
23 someone -- talks about "she," so it was a woman, here.

24 I -- obviously I knew he was having a luncheon at that  
25 time because I was -- I comment afterwards that:

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1 "I hope your luncheon went well today."

2 It says:

3 "Let me know by email or phone about the next steps."

4 And I see here, he responded here. He -- he implied that  
5 the luncheon was successful.

6 **THE COURT:** Hang on. Wait for the question, and then  
7 you can give the next answer.

8 **THE WITNESS:** Okay.

9 **BY MR. KAMRAS**

10 **Q.** Exactly as you said; you are anticipating my question. So  
11 Mr. Daleiden then replies to your email. Right?

12 **A.** Yes, I see there.

13 **Q.** This is a Saturday, July 26th.

14 **A.** Right.

15 **Q.** It is time-stamped at 12:08 a.m. You see that?

16 **A.** Uh-huh, uh-huh.

17 **Q.** And Mr. Daleiden replies:

18 "Hi Albin! Yes, I'm completely exhausted and still  
19 processing everything. She bought it all, hook, line  
20 and sinker."

21 Do you see that?

22 **A.** I see that, uh-huh.

23 **Q.** And that is a reference to the fact that Mr. Daleiden was  
24 at the lunch, pretending to be someone he was not. Right?

25 **A.** Right.

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1 Q. He was pretending to work for a company that facilitated  
2 fetal tissue donation and research. Right?

3 A. Uh-huh.

4 Q. All right.

5 A. I think so, uh-huh.

6 Q. And then you reply to Mr. Daleiden's email. And your  
7 response begins:

8 "Delicious!"

9 Do you see that?

10 A. I see that.

11 Q. You are expressing here your excitement with  
12 Mr. Daleiden's report. Right?

13 A. I don't know if I would call it excitement. You might say  
14 satisfaction.

15 Q. You continue with:

16 "She appreciates and needs camaraderie, affirmation  
17 and collaboration in implementing..."

18 What you say is "her Orwellian world view." You're  
19 referring to Dr. Nucatola here by "she," correct?

20 A. Well, I don't know if I knew who it was. He said "she."  
21 It was some person involved. As I say, I didn't -- at that  
22 point, I don't think I knew who she was. I don't know if I --  
23 I hadn't seen any video or anything.

24 It was somebody that was obviously one of the persons that  
25 David Daleiden wanted to get information about. But I can't

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1 say that I knew who or would have any -- much idea who the  
2 person was. But anyway, yeah.

3 Q. You know now that it was Doctor --

4 A. I do know now, yes. I've seen the video.

5 Q. Okay.

6 A. It was the first --

7 Q. You continue --

8 A. Uh-huh.

9 Q. (As read)

10 "It's hard and sometimes gruesome work, but hey!

11 Somebody has to do it for the good of all!"

12 Here, you are projecting what you believe to be

13 Dr. Nucatola's world view.

14 A. No, I think what I'm -- I think I'm being sarcastic here,  
15 that their idea -- there would be people that would do that  
16 sort of work. So I think that's -- I would say that's sarcasm.

17 Q. And you continue:

18 "It's nice to have lunch once in a while with people  
19 who really understand and are doing their own part to  
20 achieve good results!"

21 Right? You understand that Dr. Nucatola thought she was  
22 having lunch with people who shared her views.

23 (Witness examines document)

24 A. Well, I mean, subsequently. I mean, we now know that she  
25 wasn't representing Planned Parenthood at the lunch. She was

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1 there -- she admitted that she was there on her own. She  
2 wasn't representing Planned Parenthood. She said -- she  
3 testified.

4 **MR. KAMRAS:** Move to strike.

5 **THE COURT:** Sustained.

6 Just stick with the question, Mr. Rhomberg, please.

7 **BY MR. KAMRAS**

8 **Q.** The question was that when you wrote this sentence:

9 "It's nice to have lunch once in a while with people  
10 who really understand and are doing their own part to  
11 achieve good results!"

12 What you were doing was projecting what you believe to  
13 have been Dr. Nucatola's views, right?

14 **A.** No, I would just say I was -- this is a sarcastic  
15 statement.

16 **Q.** Okay. You understood that Dr. Nucatola thought she was  
17 having lunch with people who shared her views.

18 (Witness examines document)

19 **A.** Well, in all these kind of operations there's stings and  
20 counter-stings and so on, so forth. Maybe she was getting  
21 information from David Daleiden. I mean, in retrospect, I  
22 can't say for certain.

23 **Q.** You continue, in the same paragraph:

24 "Good people and with whom you are confident that can  
25 talk freely!"



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1 Right? You understood that Dr. Nucatola thought she could  
2 talk freely because the people with whom she was having lunch  
3 were people who shared her views. Correct?

4 **A.** Well, I think that was the idea of the thing, exactly the  
5 idea that, um, as I say it's hard to know who's stinging who;  
6 it's a complicated world. But I think in retrospect, it was  
7 something mutual there. Especially, what we found out since.

8 **Q.** Now, in this period -- this is 2014, right? We saw that  
9 on the email?

10 **A.** Yeah, this is 7 -- 20 -- 26th of July, this email we're  
11 discussing, yes.

12 **Q.** 2014. Right?

13 **A.** 2014. Uh-huh.

14 **Q.** Okay. And during 2014, you were continuing to  
15 periodically speak with Mr. Daleiden. Right?

16 **A.** I would say occasionally, and emails. Like we're reading  
17 here, uh-huh.

18 **Q.** And as early as the same year, 2014, you were advising  
19 Mr. Daleiden about what footage he should make sure to capture.  
20 Right?

21 (Witness examines document)

22 **A.** I don't know if I could say that. I -- I think he didn't  
23 need any advice on that.

24 **Q.** Okay.

25 **A.** But -- you know, in a general sort of way --

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1           **THE COURT:** Just wait for the question, Mr. Rhomberg,  
2 please.

3 **BY MR. KAMRAS**

4 **Q.** Mr. Rhomberg, I'll ask you to turn to the third tab, which  
5 is labeled 79.

6           **MR. KAMRAS:** And this has been stipulated by the  
7 parties as to its admissibility, and I offer it into evidence.

8           **THE COURT:** All right, it is admitted.

9           (Trial Exhibit 79 received in evidence)

10           (Document displayed)

11 **BY MR. KAMRAS**

12 **Q.** Mr. Rhomberg, this is an email dated April 3, 2014. Do  
13 you see that at the top?

14 **A.** I do see it, uh-huh.

15 **Q.** And you see the "From" just has an email, there's no name?

16 **A.** Right.

17 **Q.** And it's your email, correct?

18 **A.** Yes, uh-huh.

19 **Q.** Okay. And the -- it's to Mr Daleiden, right?

20 **A.** Yes, to Mr. Daleiden, uh-huh.

21 **Q.** And the subject line is:

22           "Concerns about getting good 'context' material."

23 Do you see that?

24 **A.** I see that. Says in parentheses (As read):

25           "Examples from Wannsee conference, quote-unquote,

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1 videos."

2 Close parentheses. Correct.

3 Q. Those were docudramas about planning by Nazi German  
4 officials for the Holocaust. Correct?

5 A. There were some documentaries made after the fact, right.

6 Q. About Nazi German officials planning the Holocaust.

7 That's what you are referring to here.

8 A. Exactly.

9 Q. And if you look at the first --

10 A. By the way, they -- they didn't -- that wasn't the way  
11 they kind of -- you see it, it's what they called "The Final  
12 Solution." They used -- they used euphemisms. Yeah.

13 Q. If you look at the first paragraph of this email, you  
14 write (As read):

15 "I think it is important to realize the very fact  
16 that the National Abortion Federation (NAF) holds an  
17 annual conference in an iconic and historic luxury  
18 hotel."

19 And you continue. Do you see that?

20 A. I see it there, yes, uh-huh.

21 Q. Okay. And so you -- you understood that Mr. Daleiden was  
22 going to be and had recorded at the NAF conference. Correct?

23 A. Well, there's some indication that I knew that there was a  
24 conference planned. Um --

25 Q. Well, I'll direct you to the one, two, three, four, five,

1 sixth paragraph.

2 **A.** Okay.

3 **Q.** The one beginning with, "That in mind..."

4 **A.** Okay, I see that.

5 (Document displayed)

6 **Q.** And you say:

7 "With that in mind, be sure to get adequate 'context'  
8 video -- like the location, the hotel, the setting,  
9 the check-in procedure to the hotel itself, and to  
10 the conference..."

11 **A.** Uh-huh.

12 **Q.** (As read)

13 "...and at the end, the wrap-up, the exit, the check  
14 out, et cetera, the outside weather, the ambient,  
15 et cetera..."

16 **A.** Uh-huh.

17 **Q.** (As read)

18 "This will add context and reality to your ultimate  
19 report -- which we hope will shock and motivate at  
20 least some people -- perhaps some of the 'social  
21 work' pro-lifers and maybe some of the 'social  
22 justice' bishops."

23 You wrote that, correct?

24 **A.** I believe I did.

25 **Q.** So what you are doing here is you are directing

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1 Mr. Daleiden about material that he should capture when he was  
2 doing his undercover infiltration of the NAF conference.

3 Correct?

4 **A.** Yes.

5 **Q.** And later, as Mr. Daleiden was compiling his sort of  
6 finished products, he asked you for your feedback on those  
7 "gotcha" videos, didn't he?

8 **A.** Well, in some cases. There were quite a few of them; I  
9 don't know how many there were in the end. But yeah, in some  
10 cases he did ask for feedback, uh-huh.

11 **Q.** He would post the videos that he was creating on private  
12 sites that you could access with a password. Right?

13 **A.** In some cases.

14 **Q.** Okay. Now, ultimately, the first video in the Center for  
15 Medical Progress project was released in July of 2015. Right?

16 **A.** Yes.

17 **Q.** Okay. Specifically, July 14th, 2015. Right?

18 **A.** Tuesday, July 14th, 2015.

19 **Q.** Okay.

20 **MR. KAMRAS:** Your Honor, I offer into evidence  
21 Exhibit 83, to which the parties have stipulated as to its  
22 admissibility.

23 **THE COURT:** All right. It's admitted.

24 (Trial Exhibit 83 received in evidence)

25

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1 BY MR. KAMRAS

2 Q. Mr. Rhomberg, please, if you haven't already, turn to  
3 Exhibit 83.

4 (Document displayed)

5 Q. Are you there?

6 A. I'm there.

7 Q. Okay. So as we said, the first "gotcha" video was  
8 released July 14th. Tuesday, as you say. Tuesday, July 14th,  
9 2015. Right?

10 A. Uh-huh, yeah.

11 Q. And this email is dated Wednesday, July 15th. Right?

12 A. Right.

13 Q. Following day.

14 A. Right.

15 Q. Looks like early in the morning. About 5:23 in the  
16 morning?

17 A. Well, it's always a puzzle how the time gets put on,  
18 depending on time zones and where you are or where it's sent  
19 to. I don't know whether that would have been local California  
20 time or whatever. But it seems to be, it would be an early  
21 time for somebody.

22 Q. I want you to look at the roughly fifth line down that's  
23 in bold. You say:

24 "At 9:33..."

25 A. Uh-huh.

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1 Q. (As read)

2 "...there were 717,211 views on the 8 minute 52  
3 second Nucatola NUKE."

4 Is that your language?

5 A. I assume so.

6 Q. And that's how you referred to that first video, "The  
7 Nucatola NUKE"?

8 A. I don't think I -- I don't remember ever referring to it,  
9 in general. At this particular point when I was typing this  
10 email, but I don't remember using that in a general sense of  
11 the word.

12 Q. You begin the email by saying:

13 "Things are really going well -- overall!!!"  
14 Three exclamation points. Right?

15 A. Right.

16 Q. And you note here that by the morning following the first  
17 release, there were over 700,000 views. Right?

18 A. Right.

19 Q. And you were pleased, right? By the attention that the  
20 video had garnered.

21 A. Yes.

22 Q. Now, if you turn to the second page, you will see that  
23 this email exchange that had been -- which you had been a part  
24 of, there had actually been a lot of people on the earlier  
25 email exchange.

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1 Do you see that on Page 2?

2 (Document displayed)

3 **A.** Yes. I don't know; is this email before or after the one  
4 on the previous page? I don't know.

5 **Q.** It would be the email preceding yours.

6 **A.** Preceding, okay.

7 **Q.** Right.

8 **A.** So I guess my email might have been in some sense a  
9 response to this, except it doesn't look like my email went to  
10 all the people on the list. It might have. I don't know.

11 **Q.** And you see -- in that long list of names, you see there  
12 is someone named Greg Mueller. Do you know who that is?

13 **A.** Greg Mueller, where do you see that?

14 **Q.** In the "To" line, to Greg Mueller.

15 **A.** Oh yes, the first person, Greg Mueller, yes.

16 **Q.** The president of CRC Public Relations, right?

17 **A.** Well, I don't know what his title is, but he is one of the  
18 main people in that public relations firm.

19 **Q.** That was a public relations firm based in D.C., right?  
20 Washington, D.C.?

21 **A.** I think it was -- actually, if I am correct, I think it  
22 was actually located in northern Virginia, but the Washington,  
23 D.C. area.

24 **Q.** Fair enough. I think you're right.

25 And this was a public relations firm that was hired by



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1 Center for Medical Progress to manage its media campaign.

2 Correct?

3 **A.** Well, I didn't have anything to do with hiring, but I  
4 think you're correct.

5 **Q.** And then, continuing along that list, do you see someone  
6 named Charmaine Yoest?

7 **A.** Yes.

8 **Q.** And she's president and CEO of Americans United for Life,  
9 right?

10 **A.** I think, at some time. Perhaps at this time she was.

11 **Q.** You see also on this list is Marjorie Dannenfelser?

12 **A.** Where is that?

13 **Q.** Second line.

14 **A.** Second line?

15 **Q.** Just below Charmaine Yoest.

16 **A.** Yes, I see it there. Uh-huh.

17 **Q.** She's president of the Susan B. Anthony list; right?

18 **A.** Sometimes. She's one of the leaders of it, whatever her  
19 title was.

20 **Q.** Which is also a major pro-life advocacy group?

21 **A.** Yes.

22 **Q.** Okay. Now, the next video, the next "gotcha" video that  
23 was released after this first, the Nucatola NUKE as you put it,  
24 was a video of Dr. Gatter; correct?

25 **A.** Yeah. That was the second one.

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1 Q. And I'd like to have you turn, Mr. Rhomberg, to the  
2 document that is identified as 64-A in your binder.

3 A. I'm there.

4 Q. Again, this is an email this time dated July 20th, 2015;  
5 do you see that?

6 A. Yes. Uh-huh.

7 Q. Again, this is -- the "From" address is your email  
8 address, kolbe333?

9 A. Right.

10 Q. And it's to Mr. Daleiden?

11 A. Right.

12 Q. Okay. And you recognize this email?

13 A. Well, I wouldn't say recognize. I don't think it's  
14 fabricated. I would have to say four or five years later here,  
15 four years later, I hesitate to say I recognize -- yes, it  
16 looks like a genuine copy of an email that I presumably would  
17 have sent.

18 MR. KAMRAS: Your Honor, I move to introduce 64-A.

19 THE COURT: Any objection?

20 MS. SHORT: I'm sorry. No objection.

21 THE COURT: Admitted.

22 (Trial Exhibit 64-A received in evidence)

23 (Document displayed)

24 BY MR. KAMRAS

25 Q. So this -- we talked about how Dr. Nucatola's video was

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1 released on Tuesday, July 14th; right?

2 **A.** Uh-huh. Right.

3 **Q.** And you're aware that the emails were -- excuse me. The  
4 videos, the "gotcha" videos were released weekly; correct?

5 **A.** The first ones, yes, they were more or less weekly.  
6 Uh-huh.

7 **Q.** So you understand, this email dated July 20th concerning  
8 Dr. Gatter's video is actually an email that you received  
9 before Dr. Gatter's video was publicly released; right?

10 **A.** Looks like it.

11 **Q.** And as we discussed, Mr. Daleiden seems to have provided  
12 you a preview of the video; right?

13 **A.** Yes, it seems so.

14 **Q.** And, again, he's soliciting your input about the video;  
15 right?

16 **A.** Well, at this stage -- you mean, in the sense that he  
17 might have changed it or wanted me to edit it or something? I  
18 think -- "input"? I'm not quite sure what you mean by "input."

19 **Q.** Well, sent to it you before it was more broadly released;  
20 right?

21 **A.** Yes.

22 **Q.** Okay. And you say in your first sentence:

23 "I think your concerns that the Mary Gatter video  
24 is less potent than" -- I assume you mean than -- "the  
25 Deborah Nucatola lead video should be laid to rest."

## RHOMBERG - DIRECT / KAMRAS

1 Right? Do you see that?

2 **A.** I see that.

3 **Q.** All right. So you had had some discussions with  
4 Mr. Daleiden about the Dr. Gatter video; right?

5 **A.** There must have been something that prompted that sentence  
6 there. Whether it was some previous knowledge or phone call or  
7 maybe some previous email, I would assume there was some  
8 precedent for that statement.

9 **Q.** Okay. And your judgment is that the Dr. Gatter video was  
10 a thermonuclear bomb; right?

11 **A.** I would say that was rather hyperbole, but that's what it  
12 says. That's what was typed there.

13 **Q.** That's what you wrote?

14 **A.** Right.

15 **Q.** Okay. And at the end of this document, this email, you  
16 conclude:

17 "May the Holy Spirit guide and inspire us all to  
18 destroy the evil Planned Parenthood Empire."

19 Right?

20 **A.** Right.

21 **Q.** And that's what you understood this project to be?

22 **A.** Well, you could jump to a lot of conclusions. I'm just  
23 not -- I'm not implying that it implies any idea of any  
24 violence or any illegal activities.

25 I don't think you pray to God for -- to ask to do evil.

## RHOMBERG - DIRECT / KAMRAS

1 You pray to God to do good and to do virtue and to restore our  
2 proper place in God's creation. So I want to make that clear.

3 I consider Planned Parenthood to be a destructive,  
4 deceptive, dishonest organization that's done tremendous damage  
5 to our society and our culture.

6 **Q.** And your intent was to destroy what you consider to be the  
7 evil Planned Parenthood Empire?

8 **A.** Yeah, with the adjective "evil." An organization with a  
9 name like Planned Parenthood, you could hope would be a good  
10 organization. Not against planning. Certainly not against  
11 parenthood.

12 **Q.** Okay. I'm going to ask you to turn to Exhibit 65.

13 (Witness complied.)

14 **Q.** And you'll see, Mr. Rhomberg, that this also is an email  
15 dated the same day, July 20th, 2015. Same day as the document  
16 we just looked at; right?

17 **A.** Right.

18 **Q.** Okay. And, again, this is an email from you?

19 **A.** Yes. It seems to be from me, uh-huh.

20 **Q.** And it's sent to Mr. Daleiden; right?

21 **A.** Yeah. There might have been some bccs. I don't see here,  
22 but I see, yes, David Daleiden. Uh-huh.

23 **Q.** I'm sorry. You said you did not see David Daleiden?

24 **A.** I do see it. It says "To," as I commented. There may  
25 have been other recipients, but I see that he's on the "To"

## RHOMBERG - DIRECT / KAMRAS

1 line there, David Daleiden; right.

2 Q. Understood.

3 A. Uh-huh.

4 Q. Okay. And is this a document, an email that you  
5 recognize?

6 A. It looks to me like it's the genuine thing. I don't think  
7 it's been fabricated or whatever. I see it there.

8 MR. KAMRAS: Your Honor, I move into evidence  
9 Exhibit 65.

10 THE COURT: Any objection?

11 MS. SHORT: No, Your Honor.

12 THE COURT: All right. It's admitted.

13 (Trial Exhibit 65 received in evidence).

14 BY MR. KAMRAS

15 Q. Looking at the first page of this document, you reference  
16 in the second line the "Dick Cheney boys." Do you see that?

17 A. I do.

18 Q. Who were you referring to?

19 A. Well, at this moment I can't tell you who I was referring  
20 to. Cheney at that time, I guess historically speaking, I  
21 think he had been vice-president in the past. Let's see, this  
22 is 2015. So some group of people.

23 Q. Let me see if I can help you out. If you'd turn to the  
24 page which is indicated with Tab 1, which is Page 7 of the  
25 document?

## RHOMBERG - DIRECT / KAMRAS

1 A. This is the Tab 1.

2 Q. And at the bottom of that page you should see a time, date  
3 stamp that says on Monday July 20th, 2015 at 9:40 a.m. Do you  
4 see that?

5 A. I do.

6 Q. And it's followed by Neil Patel. Do you see that?

7 A. Right.

8 Q. Okay. If you look on the following page, you can see  
9 Mr. Patel's signature block. Do you see that?

10 A. Yeah.

11 Q. Co-founder and publisher of the *Daily Caller*; right?

12 A. Right.

13 Q. And does that refresh your recollection that the Dick  
14 Cheney boys that you were referring to were Neil Patel and  
15 Tucker Carlson, who were the co-founders of the *Daily Caller*?

16 A. Well, you can't refresh recollections that I don't have.  
17 I don't know Neil Patel.

18 I vaguely -- I think they were -- all kinds of news media  
19 were putting out information. So I'm not surprised that the  
20 *Daily Caller* was an internet thing. I don't follow them at  
21 all. But I don't know what their connection is with Dick  
22 Cheney.

23 Q. All right. Well, let's look at the page with Tab 1 again.  
24 And just above where we were there is an email from Troy Newman  
25 at 11:15 a.m. Do you see that?

## RHOMBERG - DIRECT / KAMRAS

1 (Document displayed)

2 **A.** This is the page that has a very narrow column?

3 **Q.** It is.

4 **A.** For some reason.

5 **Q.** So towards the bottom of the page, Monday July 20th, 2015  
6 at 11:15 a.m.?

7 **A.** Yes. I suppose that's from Troy Newman, I guess, or to  
8 him or... Hmm...

9 **Q.** Do you see that?

10 **A.** Yeah. I see that, uh-huh. Down on the lower part of the  
11 page, I see that.

12 **Q.** And he writes:

13 "Neil, et al. Thank you so much for reaching  
14 out. I know David and Albin want to get on a call.  
15 Right now I'm waiting to hear back from David."

16 Do you see that?

17 **A.** I see that. Uh-huh.

18 **Q.** And this was a call of the Board of the Center for Medical  
19 Progress to discuss an important opportunity; right?

20 **A.** Well, I don't see where it says anything about the Board.  
21 The people that are involved in it, the three people involved  
22 were, in fact, on the Board, but I don't see that this is an  
23 official Board action or something like that. But I do see  
24 that.

25 **Q.** Well, the -- as you say, the three members of the Board



## RHOMBERG - DIRECT / KAMRAS

1 were to be on this call, and the opportunity was -- was whether  
2 to grant the *Daily Caller* the exclusive right to distribute the  
3 Center for Medical Progress videos; right?

4 **A.** Well, as I sit here right now, I can't recall that's --  
5 that that was exactly as you describe it, what the idea was.

6 **Q.** Well, the call -- if you look same page right where we  
7 were, you'll see -- just above, you'll see that the call was --  
8 there was a call that was scheduled; right?

9 It says -- Troy Newman says:

10 "Okay everyone. We're on."

11 Do you see that?

12 **A.** Yes. I see that above there. Okay. Yes, I see that.  
13 Uh-huh.

14 **Q.** And the call was scheduled for 3:00 Eastern, 1:00  
15 Mountain, 12:00 Pacific?

16 **A.** Uh-huh.

17 **Q.** And then if you turn to the page which was -- which is  
18 indicated at Tab 2 in your document. Tab 2.

19 **A.** Two.

20 (Witness complied.)

21 **A.** Okay.

22 **Q.** Do you see now on July 20th, same day, at 2:47 p.m -- I'm  
23 sorry, 1:46 p.m. 1:46 p.m. Neil Patel writes:

24 "Great to speak with you guys."

25 Do you see that?

## RHOMBERG - DIRECT / KAMRAS

1 A. It's indented. 2:47 p.m., yes, I see that.

2 Q. I'm sorry, 1:46 p.m.

3 A. Well, what I see it says:

4 "On July 20th, 2015 at 2:47 p.m. David Daleiden  
5 wrote."

6 Q. And below that?

7 A. Yes. Below that I see, yeah, yeah, 1:46 p.m. Okay.

8 Q. And Neil Patel says:

9 "Great to speak with you guys."

10 Right?

11 A. Uh-huh. Right.

12 Q. So this was after the call; correct?

13 A. Well, I would assume so.

14 Q. And he outlines some of the terms that were discussed;  
15 right?

16 A. Well, I'm reading it here. As I say, I don't have a  
17 memory of it, but I'm reading here.

18 (Brief pause.)

19 A. Okay. I read it. There is one, two, three there.

20 Uh-huh.

21 Q. And term one is:

22 "Some period (negotiable) of exclusivity."

23 Right?

24 A. That's what it says here.

25 Q. Okay. And term two is:

## RHOMBERG - DIRECT / KAMRAS

1 "The chance to review all the materials before  
2 committing to anything."

3 Right?

4 **A.** That's what it says here.

5 **Q.** Okay. Now, I want you to turn to the third page of this  
6 same document. So we're on the same document, just the third  
7 page.

8 **A.** Okay.

9 **Q.** And at the bottom you should see an email from David,  
10 Mr. Daleiden, at -- on July 20th, 2015, still the same day, at  
11 2:36 p.m. Do you see that?

12 **A.** No, I don't see that. From David Daleiden to Sam Hassell.  
13 This is the page after --

14 **THE COURT:** Go back to the beginning of 65 and then  
15 go three pages in.

16 **MR. KAMRAS:** Exactly. Thank you.

17 **THE WITNESS:** Oh, back to the beginning. So Tab 65  
18 here and then go three pages?

19 **THE COURT:** Yeah.

20 **THE WITNESS:** Okay, okay. One, two, three. Okay.  
21 At the bottom I see Sam Hassell.

22 I don't know who Sam Hassell is. I have no idea who he  
23 is, but...

24 **BY MR. KAMRAS**

25 **Q.** But you see copied on this email from Mr. Daleiden is

## RHOMBERG - DIRECT / KAMRAS

1 Mr. Newman. Do you see that?

2 **A.** Yeah. Yes. Uh-huh.

3 **Q.** And Mr. Patel from the *Daily Caller*?

4 **A.** I do. And it has my email address on there, too. Yes, I  
5 see that. Uh-huh.

6 **Q.** And what Mr. Daleiden is doing in this email is he is  
7 sending the previews that Mr. Patel had requested in his prior  
8 email; right?

9 **A.** Uh-huh. Seems to be.

10 **Q.** And you didn't agree with this, did you?

11 **A.** Agree with what?

12 **Q.** You didn't agree with doing any sort of work with  
13 Mr. Patel of the *Daily Caller*?

14 **MS. SHORT:** Objection. Vague.

15 **THE COURT:** Overruled. Overruled. You can answer.

16 **THE WITNESS:** What's the objection? I didn't hear  
17 it.

18 **MS. SHORT:** Vague.

19 (Laughter.)

20 **THE WITNESS:** Vague, vague. Well, it is vague and --

21 **THE COURT:** Just answer the question.

22 **THE WITNESS:** Especially four years later, it's even  
23 more vague.

24 **A.** In general, I would comment that I thought that this  
25 project was -- should be -- you know, should continue according

## RHOMBERG - DIRECT / KAMRAS

1 to the general intentions that were -- that were -- the goals  
2 and so on that were there.

3 So in a sense if you're asking if there was some outside  
4 persons suddenly appeared that wanted to -- well, whatever  
5 their intention might be, enhance it, improve it, I don't know,  
6 whatever it might be, destroy it, embrace it, profit from it,  
7 use it for their own purposes. In general, I was -- I wanted  
8 to keep the project, I'll call it pure and clean and well  
9 intentioned and not a commercial project.

10 I didn't like the idea that there could be any commercial  
11 aspect of it or the idea that someone would -- and I'm not  
12 implying that the other people involved were concerned about  
13 that, but I didn't want -- I wanted the project to continue on  
14 its course.

15 **Q.** And so if you turn to the preceding page, which is the  
16 second page of the document, you will see you say "No, No, No."  
17 All bold, all caps; right?

18 **A.** Right.

19 **Q.** You were vehement in your disagreement about this issue?

20 **A.** I was what?

21 **Q.** Vehement.

22 **A.** Vehement, yes. I would say vehement. Uh-huh.

23 **Q.** And here you explain:

24 "If you throw yourself in with these Dick Cheney  
25 boys for a 'test' tomorrow, we will never recover."

1 Right?

2 **A.** I see that.

3 **Q.** And you continue for four or five paragraphs.

4 "You, we, must make crucial decisions about  
5 fighting PP and the video for tomorrow."

6 Do you see that?

7 **A.** I do.

8 **Q.** Do you agree with that statement?

9 **A.** Yeah, in general. I think it's -- it's a good statement.

10 **Q.** You were involved in these decisions; right?

11 **A.** Well --

12 **MS. SHORT:** Objection. Vague about --

13 **THE COURT:** Overruled.

14 **A.** Well, I could send emails. I don't know whether anybody  
15 was listening to them or it made any difference whether any  
16 decisions were being made about them, but, yes, there is emails  
17 here.

18 And so I -- these do look like emails that I was sending.  
19 Whether or not they were taken seriously or had much influence,  
20 I don't know.

21 **Q.** And you're telling Mr. Daleiden, you're telling him what  
22 he should do here; right? You say:

23 "Shut out this demonic temptation."

24 Right?

25 **A.** Yes.

1 Q. (As read:)

2 "This would give the Catholic establishment a  
3 sword to slaughter us and abort our baby."

4 That's what you say; right?

5 A. Right.

6 Q. And you continue, following the same email on the next  
7 page.

8 A. Right.

9 Q. You say, second paragraph:

10 "Doesn't confidence in my knowledge and good  
11 intentions over the past two and a half years exceed  
12 that for these Dick Cheney boys, just arrived on the  
13 scene."

14 You're referring to your advice and your participation,  
15 your direction of the Center for Medical Progress since  
16 Daleiden, Mr. Daleiden first contacted you two and a half years  
17 prior?

18 MR. KOZINA: Misstates the evidence. It does not  
19 have the word "participation" in it.

20 BY MR. KAMRAS

21 Q. Two and a half years prior, in February of 2013; isn't  
22 that right?

23 A. Well, I would have to say it's clearly -- it expresses  
24 some exasperation that my involvement has had very little  
25 effect and has very little influence up to that point.

## RHOMBERG - DIRECT / KAMRAS

1           Obviously, you could sense some sense there that I  
2 wasn't -- apparently, was not very involved or very -- taken  
3 very seriously about it, because I think that's pretty obvious.

4 **Q.** Well, let's look at the way this all resolves. Go to  
5 Page 2, same document.

6           This is now Monday, very top. Monday July 20th, 2015. Do  
7 you see that?

8 **A.** Umm...

9 **Q.** Second page of the document.

10 **A.** 65? Yes. Okay. At the very top I see Monday, 3:27 p.m.

11 **Q.** Exactly. And if you flip to the page just before, you'll  
12 see that this is an email from Mr. Daleiden. Do you see that?

13 Go to the very first page of the document at the very bottom.

14 **A.** Yes. Right.

15 **Q.** You see Mr. Daleiden; correct?

16 **A.** Uh-huh. Uh-huh. Uh-huh.

17 **Q.** To, again, your email address; correct?

18 **A.** Yeah. There could have been other people receiving it. I  
19 don't see the bccs. Yeah, I see there my email address.

20 **Q.** All right. No copies either; right? No ccs.

21 **A.** No ccs that I see here, no.

22 **Q.** The only people you see here are you and Mr. Daleiden;  
23 right?

24 **A.** It seems so.

25 **Q.** And Mr. Daleiden says in response to your email:



## RHOMBERG - DIRECT / KAMRAS

1 "I'm not making a decision about them right now."

2 Do you see that?

3 **A.** I see.

4 **Q.** (As read:)

5 "I put the full footage issue out there so we  
6 have an easy way to close the door on them and back  
7 away."

8 Do you see that?

9 **A.** I see that.

10 **Q.** All right.

11 "Trying to get good updated versions of EP1,"  
12 Episode 1, "and Gatter right now so we can make the  
13 final decision about that."

14 Do you see that?

15 **A.** Uh-huh.

16 **Q.** This is Mr. Daleiden writing this; right?

17 **A.** Right. Uh-huh.

18 **Q.** Mr. Daleiden saying that these decisions are made  
19 collectively; right?

20 **A.** Well, he doesn't say they are made collectively, but he  
21 says "we can make the final decision."

22 **Q.** And he continues:

23 "The four most intuitive people whose predictions  
24 tend to come through."

25 Then he lists four. The first one is you; right? You,

## RHOMBERG - DIRECT / KAMRAS

1 Mr. Rhomberg; right?

2 **A.** Well, that's not surprising. It's addressed to me. The  
3 email is addressed to me. Yeah. That's obvious.

4 I mean, obviously, if you're addressing it to somebody and  
5 you have a list of people, you presumably put -- if you're  
6 sending it to any other people, I presume you would put their  
7 name first.

8 It's addressed to me. Yes, that's true. I see that.

9 **Q.** And you were one of the four most intuitive people that  
10 Mr. Daleiden relied upon; right?

11 **A.** That's what he's stating here.

12 **Q.** You are a trusted advisor of Mr. Daleiden?

13 **A.** He doesn't really say that he relied on me. He says  
14 "whose predictions tend to come true." He doesn't say relies  
15 on. He says they tend to come true.

16 I suppose that could be kind of flattering. I don't claim  
17 to be a prophet, but, you know, sometimes, you know, I know  
18 water doesn't run uphill.

19 **Q.** You were a trusted advisor; correct?

20 **A.** Hmm... Through my experience I think that wasn't always  
21 the case.

22 **Q.** You were one of few advisors to Mr. Daleiden?

23 **A.** I think there was quite a few others. But anyway, there  
24 is -- yeah. There is four listed here.

25 **Q.** And you had earned that trust in your view; don't you

1 think?

2 **A.** Hmm... That would be kind of presumptuous to say that for  
3 sure.

4 **Q.** Now, following the release of at least some of the videos,  
5 CMP contracted for focus group sessions; is that right?

6 **A.** Yeah, long after. I think it was a full year afterwards.

7 **Q.** Okay. And some of those were in California; right?

8 **A.** Yeah -- no, I have to correct that. I think there was  
9 some ones that came in maybe some months afterwards. And then  
10 I think about a year afterwards there was another round of  
11 them.

12 But the ones that -- I think the first ones were in  
13 Colorado, but I didn't attend those. I don't know if I was  
14 even very much aware of them. But there were focus groups.

15 I think the ones that were in California were -- I think  
16 they were in September, 2015 I think.

17 **Q.** Some of these focus group sessions were conducted by a  
18 company owned by Kellyanne Conway; correct?

19 **MS. SHORT:** Objection, Your Honor, to this line of  
20 questioning.

21 I believe that you said several times that the trial is  
22 about the methods that the defendants chose to conduct the  
23 investigation. I'm not seeing where this whole focus group  
24 thing is going.

25 **THE COURT:** Sustained, I believe. What's the timing

## RHOMBERG - DIRECT / KAMRAS

1 on this?

2 **MR. KAMRAS:** It goes to the open-ended continuing  
3 nature.

4 **MS. SHORT:** I'm sorry. I couldn't hear what  
5 Mr. Kamras said.

6 **THE COURT:** The open-ended continuing nature.

7 **MR. KAMRAS:** It's only two or three questions.

8 **MS. SHORT:** Your Honor, I -- open-ended continuing  
9 danger.

10 **THE COURT:** All right. So let's -- we'll pass on  
11 this line of questioning and move on to the next thing and we  
12 can deal with that.

13 **MR. KAMRAS:** Well, with that, Your Honor, I will --  
14 if there is nothing further, then I will -- before I...

15 (Discussion held off the record between plaintiff's  
16 counsel.)

17 **MR. KAMRAS:** With that, your Honor. Nothing further.

18 **THE COURT:** All right. And I'll rule on whether you  
19 can come back and ask a few questions at the beginning of the  
20 next day.

21 Ms. Short, I assume that you would prefer to wait right  
22 now or would you like to ask a couple of questions before we  
23 adjourn?

24 **MS. SHORT:** Just for the sake of getting as much as  
25 we can, I would just go through his educational background.

**RHOMBERG - CROSS / SHORT**

1           **THE COURT:** Come on ahead.

2           **MS. SHORT:** Then we can start afresh tomorrow.

3           **THE COURT:** Great, great.

4           **THE WITNESS:** I don't think we have court tomorrow.

5           **THE COURT:** Not tomorrow, but on Thursday.

6                               **CROSS-EXAMINATION**

7           **BY MS. SHORT**

8           **Q.** Good afternoon, Mr. Rhomberg.

9                               Again, in these last few minutes of this session, could  
10 you please tell the jury about your educational background?

11                              I realize there is a phase one and phase two, so let's  
12 start with phase one starting with your college.

13           **A.** Yes. I graduated in 1958 -- that's 60-some years ago, I  
14 guess -- from a liberal arts college in the Midwest called  
15 Lawrence College with a degree in philosophy maxima cum laude.

16           **Q.** And what followed your undergraduate work?

17           **A.** I wanted to study -- I decided I wanted to study physics,  
18 so I went to the university of Iowa in Iowa City in the physics  
19 department at that time, and I studied there for one year.

20                              However, at that time the department was convulsed with  
21 the Van Ellen Belts in the early stages of the space program.  
22 The chairman was Van Ellen and the course work was more or less  
23 totally neglected. So I did not continue there.

24                              I left there and I enrolled in the University of Wisconsin  
25 Madison, which had, in fact, excellent course work. So I got a

## RHOMBERG - CROSS / SHORT

1 Master's degree there, and then I continued on to study for a  
2 PhD.

3         And I -- you have to pick a subject area. The subject  
4 area I had was particle or high energy nuclear physics. I took  
5 all the course work, the general course work that you needed  
6 for a PhD. I passed the written and oral exams and -- however,  
7 they did have a requirement which is -- also at that time it  
8 was much harder. You had to pass a German reading exam, French  
9 reading exam. I did all of those kinds of things along the  
10 way.

11         I did not receive the PhD. Instead I got a faculty  
12 position. I was an instructor in the University of Wisconsin  
13 satellite campus in Kenosha, Wisconsin. I taught the physics  
14 courses there for engineers and scientists and for the more  
15 popular courses for a few years.

16         And then I got a position as assistant professor of  
17 physics in the Wisconsin State University Superior. And I  
18 taught there for a number of years basically. At that location  
19 they had a graduate program to upgrade high school physics  
20 teaching. They had a grant from the National Science  
21 Foundation. And I taught most of the usual advanced courses  
22 there; mechanics, electricity, magnetism, quantum physics, wave  
23 phenomena and so on in that program.

24         However, there was a great deal of unrest at that time and  
25 these had a -- had a -- a major effect on what happened because

## RHOMBERG - CROSS / SHORT

1 at the University of Wisconsin Madison campus some of the  
2 students that were in the town there, they made a huge bomb and  
3 they put it outside the campus there. Right, in fact, it used  
4 to be where I parked my bicycle. It exploded. It killed one  
5 of my -- one of my acquaintances was killed by the bomb, and  
6 this caused a huge reaction.

7 Of course, the idea was that physics and math were, you  
8 know, the causes of, you know, world catastrophe and nuclear  
9 bombing. The physicist there actually had been very  
10 instrumental in making -- doing the Manhattan Project. Of  
11 course, I was familiar with that because the reports were in  
12 the library where I studied and you could see the horrible  
13 reports there of the people who were killed by the blast and  
14 the heat and radiation, children, babies, so on and so forth.

15 But anyway, the legislature responded very harshly to  
16 that. They claimed that most of the problems on the campus,  
17 including the bomb, were the cause from out-of-state students.  
18 So they had a solution. They raised the out-of-state tuition  
19 enormously.

20 So naturally, as you can imagine, the sharp drop in  
21 enrollment, particularly at the campus Superior, which is in  
22 the far north, it had a very high percentage of out-of-state  
23 students. So they had to lay off a good part of the  
24 non-tenured faculty. That bomb was the end of my job there.  
25 So --

## PROCEEDINGS

1           **THE COURT:** All right. So it will also be the end of  
2 your testimony today.

3           **THE WITNESS:** All right. That's good.

4           (Laughter.)

5           **THE COURT:** We'll pick up there on Thursday morning.  
6 So, again, tomorrow we're off, and then we'll be here on  
7 Thursday and Friday, and then the following Tuesday through  
8 Friday.

9           So, ladies and gentlemen, we are moving along well. We  
10 have a long way to go. You have to keep an open mind because  
11 you're going to hear a lot of evidence about a lot of the  
12 issues that are before you.

13           So please follow the admonitions. Don't do any research.  
14 Don't talk about the case, and come back tomorrow the same --  
15 or Thursday the same way that you did today.

16           Thanks very much. We're adjourned.

17           (Jury exits the courtroom at 1:01 p.m.)

18           **THE COURT:** Mr. Rhomberg, you can step down. We'll  
19 be back 7:30 on Thursday.

20           (Witness steps down.)

21           **THE COURT:** The one thing I wanted to emphasize,  
22 because of Mr. Millen's motion this morning, I looked at at the  
23 second break the 2006 Ninth Circuit opinion, which is totally  
24 bound up in criminal law.

25           So my previous ruling stands. So there should be no



## PROCEEDINGS

1 communication with Mr. Rhomberg about anything other than  
2 pleasantries while he's on the stand over this short break.

3 And I will -- I'll try and dig a little further and see  
4 whether there is more there, but I just wanted to reiterate  
5 that, and I'll look forward to seeing everybody on Thursday  
6 morning.

7 **MR. JONNA:** Your Honor, just really quick. Those  
8 three clips I showed, they were not disputed. There is no  
9 objection by plaintiffs. I wanted to move those into evidence.  
10 It's 5760-1 and 5218-1 and -2.

11 **THE COURT:** Yeah. What was shown in court today?

12 **MR. JONNA:** Yes.

13 **THE COURT:** It is fine.

14 And the audio -- are those the ones that the audio is  
15 still a question on? We'll deal with those as they come up.

16 **MR. JONNA:** Okay. Thank you.

17 **THE REPORTER:** Are those admitted, Your Honor?

18 **THE COURT:** What's admitted is the videos, but not  
19 the sound and not the transcription.

20 (Trial Exhibits 5760-1, 5218-1 and 5218-2 received in  
21 evidence, videos only.)

22 **MR. MIHET:** Your Honor.

23 **THE COURT:** Mr. Mihet, come to the microphone,  
24 please.

25 **MR. MIHET:** Out of an abundance of caution, I have

## PROCEEDINGS

1 been following Your Honor's order with respect to  
2 communications with clients because Ms. Merritt may return to  
3 the stand.

4 My understanding is she would only be returning to talk  
5 about those two videos, and in light of that may I discuss  
6 other aspects of the case?

7 **THE COURT:** Absolutely. My understanding of  
8 Ms. Merritt's testimony is that it is completed with the  
9 exception of those two things, and as long as you don't speak  
10 about those things.

11 **MR. MIHET:** I wish I had asked you on Friday, but  
12 better late than never. Thank you.

13 **THE COURT:** All right. Ms. Short.

14 **MS. SHORT:** I'm sorry, Your Honor. Those who keep  
15 track of these things tell me that Exhibit 72 has not been  
16 moved into evidence.

17 **MR. KAMRAS:** I don't think that I moved to admit it  
18 in evidence. I think I used it to refresh recollection.

19 **THE COURT:** Right. Yes. So that's --

20 **MR. KAMRAS:** Let me double check.

21 Maybe I'm wrong on that. We stipulate to its admission.  
22 So I take that back.

23 **THE COURT:** All right. So then it's admitted.

24 **MS. SHORT:** Thank you.

25 **MR. KAMRAS:** Thank you.

## PROCEEDINGS

1 (Trial Exhibit 72 received in evidence).

2 **THE COURT:** All right.

3 (Whereupon at 1:04 p.m. further proceedings  
4 were adjourned til Thursday, October 10, 2019  
5 at 7:30 a.m.)

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CERTIFICATE OF REPORTER

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

*Debra L. Pas*

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Debra L. Pas, CSR 11916, CRR, RMR, RPR

*Belle Ball*

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Belle Ball, CSR 8785, CRR, RMR, RPR

Tuesday, October 8, 2019