

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
)	Friday
Defendants.)	October 4, 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

Friday, October 4, 2019

7:30 a.m.

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(Proceedings were heard out of presence of the jury.)

THE COURT: All right. We have the letter from Ms. Bomse. Who is going to respond to it?

Mr. Jonna?

MR. JONNA: Yes. Good morning, Your Honor. Paul Jonna.

Just a couple of issues. So right now plaintiffs are asking for 48 hours' notice of clips we intend to use for witnesses, but they're giving us less than that -- less notice than that to let us know which witnesses they're actually calling so that's not workable. We're getting -- I guess the Court ordered at least 24 hours' notice.

Plus we don't know what clips we're going to be showing in cross-examination until the witness testifies so I'm not sure it makes sense for the Court to order us to exchange clips 48 hours in advance when we don't even know who the witnesses are.

THE COURT: Fair comment.

MS. BOMSE: Yeah, it is fair.

So, Your Honor, I guess, first I would say with respect to the direct on both sides, there should be some time advance. Perhaps 48 hours is too much, but what I want to avoid is something like yesterday.

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1 And maybe the defendants' view is it's not possible for
2 cross-examination. I'm not sure that's our view. I think we
3 probably feel that we'll know, or at least have a fairly good
4 idea, what we'll show on cross-examination, but let's start
5 with just direct.

6 If the parties were able to provide at the same time as
7 the 24-hour notice a list of -- the list of the clips intended
8 to use, and then we would ask that the other side get back to
9 us within -- I mean, it really shouldn't take more than a few
10 hours to look at the clips and tell us if there is objections.

11 **MR. JONNA:** So here is the problem with that. They
12 could tell us theoretically on Monday that they are going to
13 call, I don't know, a witness I guess 48 hours later, and we're
14 going to have to decide which clips we're going to show that
15 witness within -- I don't know. I'm not sure what counsel is
16 asking for.

17 But, for example, if they were to give us three days'
18 notice of who they plan to call and then we can give them two
19 days' advance notice perhaps of who -- of which clips we want
20 to use, but I think we should just probably do our best to work
21 together on this. I don't know if the Court can fashion an
22 order for what they are asking for.

23 **THE COURT:** So in general I agree with you,
24 Mr. Jonna, that it would be much better if everybody can agree
25 on this.

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1 This case is somewhat unusual in that there's a lot of
2 video that people might want to use, and what I don't want to
3 have happen is surprise so that people haven't been able to
4 look at the clips in advance because then we will do what we
5 did yesterday and that's going to bog everything down.

6 You know, I think the plaintiffs probably have a pretty
7 good idea of not only who they are going to call, but what
8 exhibits they are going to be using with the people that they
9 are going to be calling and should give as much advance notice.
10 There is not a ton of surprise.

11 **MS. TROTTER:** Yes, Your Honor, and I agree. And, in
12 fact, we actually did provide the first week of witnesses. I
13 mean, we provided that even last week or -- I mean, it's been
14 several days. All the days are running together now.

15 So we didn't provide the precise order and so that's been
16 a rolling process, so we said: Here are all of the witnesses
17 we're going to call in the first week of trial.

18 **THE COURT:** Okay. And if you're going to be using
19 clips, notify of the defendants of what the clips are going to
20 be so that they can make their objections, and then make sure
21 for the defense that you provide as good notice as you can of
22 what you're going to use in response if there is some different
23 clips that usually going to use.

24 **MR. JONNA:** Sure.

25 **MS. TROTTER:** And indeed, Your Honor, we did provide

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1 all the clips that we were planning to use on Tuesday.

2 **THE COURT:** Okay. Well, you know, trials are -- they
3 are difficult for everybody and it's really up to you to make
4 sure that this goes as smoothly as possible. And if I have
5 to -- so I won't make some uniform order right now, but I will
6 later if you can't work it out. So please sort it out.

7 **MR. JONNA:** Sure. I have a few questions,
8 Your Honor, if it's okay.

9 **THE COURT:** Okay. Let me -- let's go through the
10 rest of the letter.

11 **MR. JONNA:** Sure.

12 **THE COURT:** So the second thing is Ms. VanDerHeier,
13 and I think this request is appropriate and responses should be
14 made by 5:00 o'clock today.

15 **MR. JONNA:** 5:00 o'clock today?

16 **THE COURT:** Yes.

17 **MR. JONNA:** Do we know when -- do we know when you
18 plan to use that clip?

19 **MS. BOMSE:** That's addressed in the letter.

20 **THE COURT:** So it's on Tuesday --

21 **MR. JONNA:** On Tuesday.

22 **THE COURT:** -- which is the next trial day. I'm
23 pretty much out-of-pocket on Monday so I'm going to have to
24 look at these on Sunday to get any order out, or Saturday.
25 So --

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1 **MR. JONNA:** Is first thing tomorrow morning okay,
2 Your Honor?

3 **THE COURT:** The problem is that -- well, yeah, you
4 know, 8:00 o'clock. That would be fine on Saturday.

5 And then if you do whatever you do by the end of Saturday,
6 then I will pick it up on Sunday and look at it and try to get
7 something out if there is a problem.

8 **MS. BOMSE:** Appreciate it, Your Honor.

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

10 **THE COURT:** It looks like that's what I'm going to be
11 doing with Ms. Nguyen and Ms. Farrell tomorrow because I got
12 the -- received the amended responses from Mr. LiMandri, and so
13 I will look at those designations and deal with them.

14 And I'm not inclined -- but I'm not inclined to separate
15 out the depositions. I haven't looked at it, but I'm not
16 inclined to do that because you may have redirect that you want
17 to use.

18 Having the video twice I think is just a mistake, and if
19 the Defense thinks that these witnesses are important enough to
20 spend a lot of time on, that's their choice.

21 **MS. BOMSE:** Understood, Your Honor.

22 **THE COURT:** Okay. Mr. Jonna.

23 **MR. JONNA:** On that subject, I think, Your Honor,
24 it's still unclear to us which witnesses plaintiffs are
25 intending to use video clips for versus calling live. There is

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1 other witnesses like Palmer, Paul, Schifrin designations are
2 owed to them if they are, in fact, to be used by video, but we
3 don't know the answer to that still.

4 **MS. BOMSE:** I'm happy to work with counsel to provide
5 that information. I wasn't aware that they had that concern.

6 **THE COURT:** Okay. So would you, by the time you
7 leave the courthouse, tell them what your plan is so that they
8 can do it?

9 **MS. BOMSE:** Absolutely.

10 **MR. JONNA:** Also, Your Honor, how does the Court
11 prefer to handle sequestration? Will you -- is there going to
12 be an order that witnesses should --

13 **THE COURT:** Witnesses who are not parties should not
14 be in the courtroom.

15 **MR. JONNA:** Okay. As far as the issue of video
16 transcripts, I'm not aware of a federal rule that requires
17 this. We looked and there apparently is a state rule that
18 allows it. What it provides for and requires -- it allows for
19 uncertified copies. So it wasn't clear to us what the Court,
20 you know, is requiring.

21 For example, today we do intend to show a video to
22 Ms. Tosh, and we have a transcript. It's not a certified
23 transcript. I'm not aware of any rule that requires a
24 certified transcript so I wanted to get clarification from the
25 Court on that and get an idea what the Court is expecting.

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1 **THE COURT:** So I have not yet had a trial where there
2 wasn't -- where there was a considerable amount of video, or
3 actually any video, that didn't have a transcript. The
4 difficulty in not having it certified or agreed upon is using a
5 transcript that has -- where people disagree on what the words
6 are; and it's very helpful, I think, to have that. And so
7 that's why I was -- that's what I was asking you to do.

8 If you haven't done that --

9 **MR. JONNA:** Well, so just so I'm clear, we are in the
10 process of getting all the clips transcribed with certified
11 transcripts. But for purposes of today when this witness is
12 here, we want to show her the -- a clip of the video that she
13 reference in her testimony, and I don't think the substance of
14 the conversation in that clip is really in dispute. We do have
15 a transcript.

16 I assume plaintiffs have transcribed that video. If they
17 haven't, we're happy to show them our transcript. We have 15
18 minutes before the witness is set to testify.

19 But so I wanted to clear this up before she's here. I
20 mean, we want to show that lunch video clip. We have a
21 transcript of it. It's not a certified transcript. I don't
22 think that we should be precluded from using it just because
23 it's not certified. I don't even know if the contents of the
24 clip are in dispute.

25 **MS. BOMSE:** Just to clarify, through the Court I had

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1 asked Mr. Jonna is he referring to the same clip that was shown
2 in court yesterday.

3 **MR. JONNA:** No. I'm referring to the lunch video --

4 **THE COURT:** The Nucatola.

5 **MR. JONNA:** -- Dr. Nucatola that she referenced in
6 her testimony.

7 **MS. BOMSE:** Ahh. You know, I think our view is that
8 there are disputes, especially in the videos that were
9 published to --

10 **THE COURT:** Here is my suggestion. Why don't you --
11 we'll follow Mr. Jonna's suggestion. Look at the transcript
12 that he has of the clip that he's going to use. If there is a
13 problem with it, then let's talk about it in ten minutes.

14 **MR. JONNA:** Okay.

15 **MS. BOMSE:** And just to get some further clarity,
16 does counsel intend to use the version that was the YouTube
17 version or is it just going to be raw footage?

18 **MR. JONNA:** No. Raw footage.

19 **MS. BOMSE:** Okay. Thank you.

20 **MR. MIHET:** And on that same point, Your Honor --
21 Horatio Mihet -- in Ms. Merritt's direct examination, should we
22 get to it this afternoon, I have, I think, three short video
23 clips for which I have non-certified transcripts. I would
24 provide those to counsel as well and ask for the Court's
25 indulgence just for today. We expect the certified transcripts

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1 to come in, but we don't have them just yet.

2 **THE COURT:** Talk with the -- talk with the plaintiffs
3 and if there are issues with these, then I'll deal with them.

4 **MR. MIHET:** Thank you, your Honor.

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

6 **MS. BOMSE:** Your Honor, I have two small additional
7 matters.

8 **THE COURT:** Okay.

9 **MS. BOMSE:** So the first would be that I believe I
10 understood Ms. Dhillon to comment yesterday when she concluded
11 her cross-examination of Ms. Tosh that she was intending to
12 return once she found the additional video, and we object to
13 that.

14 In an ordinary case with just two parties, you don't --
15 counsel doesn't have the opportunity to say: Okay, I'm going
16 to sit down for awhile and review my notes and then get back up
17 again and continue my cross examination. I don't think that
18 there should be a different rule just by virtue of the fact
19 that in this case there are multiple defendants.

20 **MR. JONNA:** She's not going to do that, Your Honor.
21 Sorry to interrupt you.

22 **MS. BOMSE:** That's fine. Great.

23 **MR. JONNA:** Only Mr. Mihet is going to be examining
24 her.

25 **MS. BOMSE:** Okay. Thank you.

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1 And then the last thing would be I want to confirm that
2 with respect to each party, there is only going to be one
3 lawyer for that party making objections during a given
4 examination. Yesterday we had a little bit of doubling up.

5 **THE COURT:** It's a little unclear -- Mr. Mihet is
6 shaking his head. It certainly was unclear to me. There are a
7 lot of lawyers who are representing multiple parties. It would
8 help me to have some clarity on who is doing the examination
9 and then making the objection. I think maybe Mr. Millen
10 yesterday might have done that, if that's who you were thinking
11 of.

12 So it would be helpful for me to know who's going to be
13 doing the examinations for whom.

14 **MR. LIMANDRI:** It's our assumption that we'll proceed
15 on the basis, with regard to the corporate defendants, that
16 Ms. Dhillon would be representing, for the most part, BioMax
17 and Center for Medical Progress.

18 With regard to David Daleiden in his individual capacity,
19 I expect to be representing him primarily in that capacity.

20 Your Honor, and with regard to Adrian Lopez, Paul Jonna
21 will be representing Adrian Lopez primarily in that capacity.

22 So that's how we intend to divide up the parties that have
23 more than one attorney. In that regard, I would like to ask
24 three or four questions of Ms. Tosh this morning as well since
25 I did not yesterday do that; but going forward, I presume

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1 that's how we would proceed.

2 And then I would assume that Mr. Kozina will be
3 representing Mr. Troy Newman, and I assume that Katie Short
4 will be representing Mr. Rhomberg, and that Mr. Mihet will be
5 representing Ms. Merritt.

6 **THE COURT:** Okay. So I haven't heard Mr. Millen's
7 name. I don't want to leave Mr. Millen out of the game here.

8 Mr. Millen, are you -- what's your role with respect to
9 things?

10 **MR. MILLEN:** I am co-counsel with Ms. Short and
11 generally she would be making objections. I think today she's
12 actually going to be out of the courtroom but normally when
13 she's here, that's fine.

14 **THE COURT:** Okay. And anybody else that I should be
15 thinking about?

16 Mr. Breen are you going to be silently watching or --

17 **MR. BREEN:** I believe -- I represent Mr. Daleiden so
18 Mr. LiMandri and I will -- when he's not making the objections,
19 then I will make the objections.

20 **THE COURT:** All right. So okay. That's fine.

21 And I do -- I mentioned this yesterday. It was a little
22 distracting. You have a lot of people in the courtroom and I
23 recognize there is some need to communicate during examination,
24 but it was a little distracting. So if you just would be aware
25 of that and be passing notes, that would be helpful.

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1 **MR. LIMANDRI:** I apologize for that, Your Honor. I
2 didn't realize quite how sensitive the microphones were. I
3 wasn't used to that. I am aware now. It won't happen again.
4 Thank you.

5 **MR. KOZINA:** I just wanted to make sure each party
6 has a right to assert objections as they feel is appropriate.

7 **THE COURT:** Oh, absolutely, and one objection is for
8 everybody.

9 **MR. KOZINA:** Correct.

10 **THE COURT:** So when you are representing -- if you
11 make an objection, I'm going to assume that all the defendants
12 are objecting.

13 **MR. KOZINA:** Well, that's correct, Your Honor. But
14 suppose you have an objection from Mr. Daleiden's group and
15 then I also think an additional one is made, I feel it's
16 incumbent upon me to go ahead and speak to the Court about that
17 if that's okay.

18 **THE COURT:** Briefly, yes.

19 **MR. KOZINA:** Briefly, of course. Always briefly.

20 **THE COURT:** Mr. Millen, did you have something?

21 **MR. MILLEN:** Yeah, A small point, Your Honor.

22 I was thinking back on the admonitions the Court gave the
23 jury. One I didn't recall the Court giving that might be
24 helpful is the reasons we -- I passed a couple jurors on their
25 way to BART. I saw one here in the courtroom quite early,

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1 surprisingly early -- that the reason the attorneys don't
2 interact with you is not that they are mean and not friendly,
3 but I've asked them to please. So that, I would appreciate.

4 **THE COURT:** I did say something, but I will
5 definitely do that again.

6 **MR. MILLEN:** Yeah. I think you went the other way,
7 which is don't talk to them, but not the idea that "Why aren't
8 the attorneys saying hello to me?"

9 **THE COURT:** I'll say that when they come in. Thank
10 you.

11 **MS. BOMSE:** Your Honor, I'm looking at the transcript
12 that I've just been provided that is proposed to be shown, and
13 I have some concerns about it.

14 So, first of all, it essentially covers the same area that
15 Ms. Tosh was asked about yesterday. There was specific
16 language already quoted from that tape and, in fact, I made a
17 403 objection at the time. I can't recall. I believe you
18 overruled it; but, in any event, she's answered the question
19 about whether or not -- what her concern was, when she talked
20 about it, she had concerns and explained that it wasn't about
21 the content. So I'm not understanding what the relevance of
22 this is, and I do have a 403 concern.

23 **MR. JONNA:** Your Honor, if you recall, the witness
24 specifically said she couldn't specifically remember the quotes
25 that I mentioned. It's directly relevant to refresh her

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1 recollection to show her the video.

2 She made lots of statements about her reaction to that
3 video, and we believe it's highly relevant and, you know,
4 certainly within the scope of our cross-examination we should
5 be entitled to show her. It's not a long clip. The 403
6 objection was overruled.

7 **MS. BOMSE:** The 403 objection to yesterday's question
8 was overruled.

9 **THE COURT:** Yeah, so let's see the transcript.

10 **MS. BOMSE:** Thank you.

11 (Whereupon document was tendered to the Court.)

12 **THE COURT:** I'm going to sustain the objection on 403
13 grounds for a couple of reasons.

14 First, you asked the question -- the reason that I allowed
15 you to ask the question yesterday was that on direct the
16 witness didn't clarify the basis for what her concern is. You
17 clarified that yesterday. This clip is going into evidence
18 that I have excluded in pretrial and it is -- it's prejudicial,
19 it's time wasting, and I'm not going to allow it.

20 **MR. JONNA:** Your Honor, we only have a couple of
21 questions on the clip. We think it's prejudicial that the
22 witness was able to testify about her reaction to seeing this
23 video; and without us testing that further and finding out her
24 reaction to the statements that she actually saw in the video,
25 she wasn't able to confirm that she recalled the specific

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1 statements that I mentioned.

2 And, you know, I don't think -- she put the contents of
3 these statements on the video at issue by testifying about her
4 reaction to them, and I think it cuts off our cross-examination
5 and it's unfair for us to not be able to question her about the
6 video that she said she had a very negative reaction to.

7 **THE COURT:** For the reasons that I stated and the
8 order on the Motions in Limine and the order on the second
9 pretrial conference and what I just said, I'm going to exclude
10 it.

11 **MR. JONNA:** Okay.

12 **MS. TROTTER:** Your Honor, I just want to make it
13 clear. Apparently counsel has informed us that they intend to
14 use this very same clip and transcript with Ms. Merritt. We
15 have the same objection. I want to make sure it's not just for
16 Ms. Tosh.

17 **THE COURT:** I've just made by ruling.

18 Mr. Mihet, go ahead.

19 **MR. MIHET:** The reason that I would show it to
20 Ms. Merritt, Your Honor, is because the video shows in the
21 restaurant setting that while this discussion is taking place,
22 there are numerous strangers to the conversation passing by or
23 even at the table. And so it's -- it goes to the question of
24 whether or not this communication was confidential, whether it
25 could be reasonably expected to be overheard.

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1 And the content of the communication is important here
2 because the plaintiffs are contending that somehow the
3 participants managed to only discuss innocuous things when
4 waiters or others were there. This I think would show
5 otherwise, and so that's the issue that I would approach with
6 Ms. Merritt, not necessarily the one we would have approached
7 with Ms. Tosh.

8 **MS. TROTTER:** The clip can be played without sound as
9 clips were yesterday in terms of showing people passing. There
10 has been no evidence proffered by plaintiffs in this case, at
11 least to this point, with respect to saying that everything was
12 innocuous when there were other people present, and I did not
13 say that in my opening statement.

14 **MR. MIHET:** So if we can have a stipulation that they
15 will not make that argument, meaning that they only talked
16 about innocuous things when strangers were there, then I think,
17 you know, I would not show this.

18 But if they are going to make that argument in closing,
19 then I'm entitled to put in this evidence now so that we can
20 rebut that argument in closing. They can't spring that
21 argument on us down the road having deprived us of the
22 opportunity to get in the evidence that we need to rebut it.

23 **MS. TROTTER:** They are entitled to actually put a
24 witness on, bring Ms. Merritt back, whoever back, in order to
25 rebut.

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1 **THE COURT:** She's going to be testifying now.

2 **MS. TROTTER:** Understood.

3 **THE COURT:** And the issue of whether people were
4 discussing innocuous things in public places or things that
5 were not innocuous is an issue in this case. So I think you
6 need to make a determination of whether you're going to
7 continue with that particular argument or not, and otherwise I
8 think Mr. Mihet would be entitled to proceed.

9 **MS. TROTTER:** Your Honor, if you could give me just a
10 moment to confer with co-counsel.

11 **THE COURT:** I will. I'll be out in five minutes.

12 **MS. TROTTER:** Thank you, Your Honor.

13 **THE COURT:** Okay.

14 (Whereupon there was a recess in the proceedings
15 from 7:55 a.m. until 8:04 a.m.)

16 (Proceedings were heard out of presence of the jury.)

17 **THE COURT:** Do we have a resolution on that issue?

18 **MS. BOMSE:** I'm prepared to respond to the Court.

19 Your Honor, as I understand the issue, the issue is when
20 there are waiters present, the defendants want to be able to
21 show the sound to show that the participants and how witnesses
22 didn't lower their voices or make any effort not to be
23 overheard.

24 **THE COURT:** Oh, I think it's a little more than that.

25 **MS. BOMSE:** Okay.

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1 **THE COURT:** I think it's the significance of the
2 conversation that they were having, the sensitivity of it.

3 **MS. BOMSE:** During the time that --

4 **THE COURT:** During the time, that's what I understood
5 the defendants' point was.

6 **MS. BOMSE:** And I absolutely understand that.

7 I think what I was clarifying is it's about -- the points
8 of the video that they are interested in are the points at
9 which there are third parties nearby who could overhear.

10 **MR. MIHET:** Yes, but not -- obviously not just the
11 second -- I mean, for context, you have to show the
12 conversations. We're going to show a three- or four-minute
13 clip. We'll establish what the conversation was, and then
14 we'll count how many strangers to that conversation were within
15 earshot.

16 So I don't intend to just show the five seconds or the ten
17 seconds when somebody was there because you need to be able to
18 see the context and you need to be able to show that they
19 weren't changing the subject to something innocuous, that they
20 were continuing on the same path and trajectory.

21 **MS. BOMSE:** So we understand the principle. My
22 concern is that not all of this falls -- I could give the Court
23 one example, if I could hand this up to the Court.

24 (Whereupon document was tendered to the Court.)

25 **MS. BOMSE:** What I've just handed up to the Court is

PROCEEDINGS

1 a transcript from the lunch with Dr. Gatter, and it's clear to
2 me -- I haven't seen these clips so I generally can't respond
3 to what's on them, but you can see on the one that I have
4 marked with a pen that there is a waiter who comes in and takes
5 some food or something, and there is no problem with showing
6 that portion.

7 According to the transcript, what defendants want to show
8 is a continuation after -- it would seem that the waiter would
9 have left, given the amount of time that's passed, and there is
10 one of the more salacious statements that raise concerns.

11 And, you know, we don't need to pretend here that the
12 defendants are interested in getting in statements that are
13 particularly inflammatory, and I think that there is a way to
14 navigate this issue.

15 As long as we have an opportunity, and I think we will
16 before Mr. Mihet begins his examination, to look at the video
17 and understand where the points are where there generally are
18 third parties nearby and context around it, and then we can
19 work with counsel and probably come to an agreement.

20 We're not -- Your Honor, we do not wish to withdraw our
21 contention that these people had reasonable expectation of
22 confidentiality, nor that -- certainly Dr. Nucatola has
23 testified that she did not speak about sensitive topics, and
24 that we are going to put that evidence in.

25 We understand the defendants are entitled to probe that

PROCEEDINGS

1 and cross-examine it and we don't object to that, but I have no
2 evidence, for example, that the transcript that Mr. Jonna
3 showed you has any third parties coming through.

4 So I just ask the Court for an opportunity to actually
5 look at the video and understand whether it really is showing
6 what the defendants say they want to show it for.

7 **THE COURT:** Mr. Mihet.

8 **MR. MIHET:** Yeah. The problem with that is I'm not
9 sure which one she handed you; but the Gatter transcripts, I
10 believe they are all a minute or less, Your Honor. So if we're
11 going to pull and micromanage, you know, we may not agree on
12 when exactly the waiter left and that's beyond the point.

13 **THE COURT:** Yeah. I'm willing to listen at the next
14 break or, you know, at one of the breaks today on any issue
15 that you raise. This is not a barn door that is sort of swung
16 wide.

17 Mr. LiMandri -- I don't know why you're laughing at that,
18 Mr. LiMandri.

19 So I want to be careful about this, and so I will look at
20 that but I'm not going to preclude this defense to the claims
21 that the plaintiffs are making.

22 **MS. BOMSE:** Absolutely understood, Your Honor. Thank
23 you.

24 **THE COURT:** And I may provide some sort of a limiting
25 instruction before the videos if I need to do that.

PROCEEDINGS

1 **MS. BOMSE:** Okay. Does the Court want to give...

2 **THE COURT:** I don't want this transcript.

3 (Whereupon document was tendered to counsel.)

4 **THE COURT:** All right, then, Ms. Davis, do we have
5 the jurors?

6 **THE CLERK:** We do.

7 **THE COURT:** Okay, let's get going.

8 (Jury enters the courtroom at 8:11 a.m.)

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

10 Ladies and gentlemen, good morning. Thank you for being
11 here, being prompt. We're moving on to the further
12 cross-examination of Ms. Tosh.

13 There is one thing I wanted to tell you. I think I said
14 this during jury selection, but the idea about not talking with
15 anybody involved in the case, like the lawyers and the parties,
16 it is important for the appearance of impropriety. Everybody
17 just needs to know that there is no contact going on and that
18 all you learn about the case is what you learn in here.

19 And so if you see the lawyers in the case on BART or, you
20 know, in the cafeteria, or anything like that, and they don't
21 say hello, it's not because they are being discourteous or
22 anything like that. They would love to say hello. They would
23 normally say hello. They are not saying hello because I've
24 ordered them not to say hello. It's just the way that these
25 things proceed.

TOSH - CROSS / LIMANDRI

1 So with that, who is... Mr. LiMandri.

2 **MR. LIMANDRI:** Yes, Your Honor. Thank you.

3 **JENNA TOSH,**

4 called as a witness for the Plaintiffs, having been previously
5 duly sworn, testified further as follows:

6 **THE COURT:** And you're free to use either podium. I
7 just want you to know.

8 **MR. LIMANDRI:** Thank you, your Honor. I appreciate
9 that.

10 **CROSS-EXAMINATION**

11 **BY MR. LIMANDRI:**

12 **Q.** Good morning, Ms. Tosh.

13 **A.** Good morning.

14 **Q.** My name Charles LiMandri. I represent Mr. Daleiden and
15 several of the other defendants in this case.

16 Yesterday on direct examination you were shown a pie chart
17 which listed revenues for PCCCC. I wanted to ask you, a couple
18 of those categories reflected amounts that PCCCC had obtained
19 from public funding. Do you know what the percentage is of the
20 total amount that PCCCC does obtain from public funding?

21 **A.** The amount of our patient services revenue or total
22 revenue?

23 **Q.** Total revenue.

24 **A.** Not off the top of my head, no. I know it's a percentage
25 of patient services revenue.

TOSH - CROSS / LIMANDRI

1 Q. Well, even taking patient services revenue, it's something
2 like -- what is it? -- 45 percent of the total patient services
3 revenue? Would that be correct?

4 A. Family PACT plus MediCal?

5 Q. Yes.

6 A. I think it's more than that actually.

7 Q. Okay. At least half?

8 A. That's correct.

9 Q. That reflects millions of dollars, wouldn't you agree --

10 A. Yes.

11 Q. -- in public to funding?

12 Okay. Wouldn't you also agree, then, that if, in fact,
13 PPCCC was involved in any illegal activity, that the public
14 would have a right to know that?

15 A. I take issue with the implication that we are involved in
16 any illegal activity so it's challenging to answer that
17 question.

18 Q. Okay. I'm sure you to take issue with that, but be that
19 as it may, if, in fact, they were -- the Court has indicated
20 it's not necessarily an issue for the jury, but the question
21 still remains, if it were occurring, would that be something
22 the public would have a right to know since, in fact, PPCCC is
23 getting millions of dollars in public funding?

24 **THE COURT:** Ms. Bomse.

25 **MS. BOMSE:** Your Honor, I object to counsel's -- the

TOSH - CROSS / LIMANDRI

1 lead-up to counsel's question, which implied that the -- that
2 there is an issue as to whether PPCCC had done anything
3 illegal, but it's just not for the jury.

4 **THE COURT:** Sustained.

5 **BY MR. LIMANDRI**

6 **Q.** Also you were asked questions regarding security at
7 Planned Parenthood conferences. And you did say, if I'm
8 quoting you correctly, I believe I have the transcript, that
9 having attended Planned Parenthood conferences even before the
10 videos were released, that you found the security to be
11 extensive and impressive. You used words like "stringent" and
12 "tight." Do you remember that testimony?

13 **A.** Yes.

14 **Q.** Okay. Did you know that, in fact, Mr. Daleiden, when he
15 sought to gain access to the Planned Parenthood conferences, he
16 simply used a homemade driver's license with a picture that was
17 taken when he was only 15 years old? Did you know that?

18 **A.** No. I have no knowledge of how he made his --

19 **Q.** Okay. But you do know that he used the name Robert Sarkis
20 instead of his own name David Daleiden on the driver's license
21 to gain access. We saw that in opening statements. So you're
22 aware that; right?

23 **A.** Yes.

24 **Q.** Okay. As far as you know, were there any steps taken to
25 determine whether or not a person named Robert Sarkis even

TOSH - CROSS / LIMANDRI

1 existed?

2 **A.** I have no knowledge of that process.

3 **Q.** And as far as you know, was there anything that Planned
4 Parenthood did to find out if a company called BioMax even
5 existed?

6 **A.** Again, I have no knowledge of that process.

7 **Q.** Okay. So you're really not in a position to say that
8 Planned Parenthood had extensive and impressive security
9 procedures in place; correct?

10 **MS. BOMSE:** Objection. Argumentative.

11 **THE COURT:** Overruled.

12 You can answer.

13 **THE WITNESS:** Again, I don't have any knowledge of
14 that process. I think what I was answering yesterday was my
15 experience as an attendee of the conference, the training, the
16 assurances that I received, and my experience of attending
17 conferences and feeling secure in the confidentiality and the
18 security of the spaces that I have been in.

19 So I don't work for PPFA. I'm not in the security
20 division, and I don't think that I could answer specifics about
21 that process.

22 **BY MR. LIMANDRI:**

23 **Q.** Okay then.

24 Then one final question. Would you agree that -- well,
25 first I should ask a preliminary question.

TOSH - CROSS / LIMANDRI

1 How many of the actual videos that were taken undercover
2 at Planned Parenthood conferences have you actually seen? I
3 know you did indicate you saw at least the Dr. Nucatola one and
4 I believe you saw the one poolside yesterday that we saw some
5 clips. How many others did you see?

6 **A.** I don't -- I don't know that I could give a number. I've
7 seen probably at least five, five or six.

8 **Q.** Okay. You would agree, then, wouldn't you, that there is
9 nothing in any of those videos that you have seen that were
10 made public in which there was any attempt to call any type of
11 harm against anyone at Planned Parenthood? There was nothing
12 in trying to incite any type of violence or physical injury;
13 correct?

14 **A.** No, I don't agree with that.

15 **MR. LIMANDRI:** Your Honor, I would like to read from
16 the deposition of Ms. Tosh that was taken in this case on
17 March 5th, 2019, Page 114, Lines 20 through 24.

18 **THE COURT:** Do you have a copy it for me?

19 **MR. LIMANDRI:** I do, Your Honor.

20 **THE COURT:** Do I get my own copy or am I going to use
21 yours?

22 **MR. LIMANDRI:** I have a copy here as well,
23 Your Honor.

24 **THE COURT:** Okay.

25 (Whereupon document was tendered to the Court.)

TOSH - CROSS / LIMANDRI

1 **THE COURT:** Thank you.

2 **MR. LIMANDRI:** Should be Page 114, Lines 20 through
3 24.

4 **THE COURT:** Is there any objection to this?

5 **MS. BOMSE:** Just one second, Your Honor. Thank you.
6 (Brief pause.)

7 **MS. BOMSE:** No objection.

8 **THE COURT:** You can proceed.

9 **MR. LIMANDRI:** Thank you.

10 **BY MR. LIMANDRI**

11 **Q.** Before I read this, I should ask you: You recall having
12 your deposition taken in this case, I take it, Ms. Tosh?

13 **A.** I do.

14 **Q.** And you recall that you were told that a deposition is a
15 formal -- a legal proceeding and the testimony that you were
16 being asked to give was under oath just like the oath you would
17 be taking in court with the judge and jury present; correct?

18 **A.** That's correct.

19 **Q.** Okay. So you realize it was sworn testimony.

20 The question is:

21 **"QUESTION:** Was there a video that you could point to
22 in which anyone on the CMP video called for threats to
23 be made against Planned Parenthood?

24 **"ANSWER:** I think I said I do not recall a particular
25 direction to harm Planned Parenthood."

TOSH - CROSS / KOZINA

1 **MR. LIMANDRI:** That's all I have, Your Honor. Thank
2 you, Your Honor.

3 Thank you, Ms. Tosh.

4 **THE COURT:** Mr. Kozina.

5 **MR. KOZINA:** Thank you, Your Honor.

6 **CROSS-EXAMINATION**

7 **BY MR. KOZINA:**

8 **Q.** Just a couple questions Ms. Tosh.

9 If I understood your testimony yesterday correctly, you
10 referred to yourself as the leader of your particular
11 affiliate; is that correct?

12 **A.** Yes.

13 **Q.** And as a leader, if I understood your testimony, you were
14 very familiar if there were any types of harassment
15 communications directed at anyone in your organization; is that
16 correct?

17 **A.** I'm sorry. Could you restate the question?

18 **Q.** As a leader, you were aware if there were any types of
19 harassment communications directed toward any one of your
20 members and staff; is that correct?

21 **A.** I am aware of many. I don't know that it's fair to say
22 that I would be aware of every instance. Is that what I
23 understand you to be asking me?

24 **Q.** That is correct.

25 **A.** Then, no. I'm not sure that I could say I would be

TOSH - CROSS / KOZINA

1 familiar with every single instance.

2 Q. How about with Dr. Siegfried?

3 A. Again, there may very well be things she has experienced
4 that I don't have knowledge of.

5 Q. Were you in your position as leader on May 4th of 2015?

6 A. I'm sorry?

7 Q. Were you in charge of that affiliate --

8 A. Yes.

9 Q. -- on May 4th of 2015?

10 A. Yes.

11 Q. Okay. And are you aware that there was a report made,
12 that Dr. Siegfried received a letter with religious references
13 stating she should cease her medical procedures? Were you
14 aware of that, ma'am?

15 A. I cannot, off the top of my head, remember that.

16 Q. Isn't it true that Dr. Siegfried received communications
17 prior to the release of the videos that affected her work as a
18 staff member at Planned Parenthood?

19 A. It's not at all unusual for Dr. Siegfried to receive
20 messages at the affiliate.

21 MR. KOZINA: Thank you. That's all I wanted to know.

22 Thank you.

23 THE COURT: Anyone else? Are we done?

24 MR. LIMANDRI: Yes, Your Honor. Thank you.

25 THE COURT: All right. Any redirect?

TOSH - REDIRECT / BOMSE

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

2 REDIRECT EXAMINATION

3 **BY MS. BOMSE**

4 **Q.** Good morning, Ms. Tosh.

5 **A.** Good morning.

6 **Q.** Mr. LiMandri, counsel for David Daleiden and CMP, asked
7 you whether you agreed with the statement that there was --
8 that there wasn't any call to -- attempt to call for any type
9 of harm against Planned Parenthood in the videos that you've
10 seen, and you responded that you didn't agree with that and he
11 didn't give you an opportunity to explain your disagreement.
12 So can you explain why it is you disagree with his statement?

13 **A.** Yes. I'm happy to. I do agree that there was not a
14 direct call to harm anyone in the videos. However, given the
15 long history of anti-abortion violence in this country and the
16 fact that doctors have been targeted and murdered, I believe
17 there was, at minimum, recklessness and ambivalence about the
18 possibility that those in these videos could be harmed, and I
19 think that was done with a disregard for the safety of those
20 who were videotaped.

21 And so I'm happy to clarify that. I agree that there was
22 no direct direction in the videos that anyone viewing them
23 should harm the individuals who were seen, but certainly those
24 videos have put these individuals at risk.

25 **MS. BOMSE:** Thank you. No further questions.

RECROSS-EXAMINATION

1
2 **BY MR. LiMANDRI**

3 **Q.** So then the Nucatola lunch video, Dr. Nucatola lunch video
4 that you saw where you were shocked and confused, I take it
5 that's one of the videos that you are contending put people at
6 risk; correct?

7 **A.** Correct.

8 **MR. LiMANDRI:** Your Honor, I think we should be
9 entitled to show that video at an appropriate time.

10 **THE COURT:** Overruled.

11 **MR. LiMANDRI:** Okay.

12 **BY MR. LiMANDRI**

13 **Q.** What was it in the Nucatola video that you felt put people
14 at risk, specifically with regard to words that were spoken at
15 that luncheon that you saw in the video as opposed to your
16 characterizing the effect? What was it in the video itself
17 that you think put people at risk?

18 **A.** Dr. Nucatola's identity and her role as an abortion
19 provider presented with conversation that she was having with
20 what she believed to be a medical researcher. That was not
21 intended to be a public conversation. That was under false
22 pretenses, I believe was reckless, and put her identity at
23 risk. It put her safety at risk.

24 **Q.** She already had a public identity. She never concealed
25 the fact that she was an abortion doctor. In fact, she was

TOSH - RE CROSS / LiMANDRI

1 medical director of Planned Parenthood Federation of America;
2 correct?

3 **A.** Was that her title? I don't recall. I know she was a
4 leader at PPFA.

5 **Q.** Okay. And she drafted the medical standards and
6 guidelines; correct? You were aware of that?

7 **A.** She was involved with the development of the medical
8 standards and guidelines.

9 **Q.** Okay. And it was actually the statements that she made on
10 the videos that caused people to criticize her and Planned
11 Parenthood; isn't that true?

12 **A.** Again, I think certainly because a doctor chooses to take
13 a leadership position, I don't think that that implies that
14 they consent to have any conversation that they have in any
15 context made public.

16 **MR. LiMANDRI:** Your Honor, I'm going to move to
17 strike the answer as nonresponsive.

18 **THE COURT:** Well, I think the question calls for an
19 answer that's beyond the scope of this witness's knowledge
20 anyway. So I'll strike both the question and the answer.

21 **MR. LiMANDRI:** Okay.

22 **BY MR. LiMANDRI**

23 **Q.** There is nothing specifically you could point to after
24 words spoken on that Nucatola video where anyone was encouraged
25 by the words spoken to have any violent act against any person.

TOSH - CROSS / MILLEN

1 You would have to agree with that; would you not?

2 **A.** I agree that there was no direct call for violence.

3 **Q.** There was no call for violence in any words spoken at all;
4 correct?

5 **A.** Again, I will restate that I think that the videos put her
6 safety at risk, but I do agree that there was no direct call
7 for violence.

8 **MR. LIMANDRI:** No further questions. Thank you, Your
9 Honor.

10 **THE COURT:** All right. Thank you.

11 **MR. MILLEN:** Your Honor, I have a follow-up on what
12 the witness just said.

13 **THE COURT:** Okay.

14 **MR. MILLEN:** Thank you.

15 **THE COURT:** Mr. Millen is here because Ms. Short is
16 not.

17 **MR. MILLEN:** Yes, Your Honor.

18 **MS. BOMSE:** Understood.

19 **REXCROSS-EXAMINATION**

20 **BY MR. MILLEN:**

21 **Q.** My name is Michael Millen. I'm one of the attorneys for
22 Albin Rhomberg. Good morning.

23 So if I understood your testimony, Ms. Tosh, it's your
24 opinion that letting the public know about the candid, truthful
25 thoughts of one of your staff members is a reckless thing to

1 do?

2 **A.** I don't think that that's what I said, although certainly
3 I think doctors at Planned Parenthood, while they may engage
4 sometimes in public media or public appearances, they are
5 protective of their identity and they are certainly, I think,
6 entitled to -- to know that a conversation that they are having
7 is a public one. So -- I'm sorry...

8 **Q.** Maybe I'm not being clear. What I'm asking about is the
9 contents of the conversation and maybe you're talking about the
10 fact of it being -- facing being recorded without any reference
11 to the contents. So I'm kind of focusing on the actual audible
12 content.

13 So, again, to make sure -- I'm not sure I quite understood
14 your response in regards to my question. Is it your position
15 that the candid conversation, a truthful, candid conversation
16 from one of your staff members, that if the public hears about
17 that, it's a reckless thing that puts them in danger? Just the
18 conversation itself.

19 **A.** It certainly can be, sure. Yeah.

20 **Q.** In what sense would a truthful, candid conversation put a
21 staff member in danger?

22 **A.** A certain situation in which -- in which there is no
23 context presented. A situation in which, you know, perhaps
24 someone is -- is not talking with public consumption in mind.
25 Certainly, yes, I think that individuals are entitled to know

MERRITT - DIRECT / MAYO

1 whether or not what they are saying is for public consumption
2 or not.

3 **MR. MILLEN:** Thank you.

4 **THE COURT:** All right.

5 **MS. BOMSE:** No further questions, Your Honor.

6 **THE COURT:** All right. Thank you, Ms. Tosh. You can
7 step down.

8 (Witness excused.)

9 **MS. MAYO:** Plaintiffs call Sandra Susan Merritt to
10 the stand.

11 **THE COURT:** Okay. Ms. Merritt.

12 **SANDRA SUSAN MERRITT,**

13 called as a witness for the Plaintiffs, having been duly sworn,
14 testified as follows:

15 **THE WITNESS:** So help me God.

16 **THE CLERK:** Adjust the microphone as you feel you
17 need to. Then state your full name for the record and spell it
18 for the court reporter.

19 **THE WITNESS:** Sure. Sandra Susan Merritt,
20 M-E-R-R-I-T-T.

21 **THE COURT:** Hang on just a second.

22 (Brief pause.)

23 **THE COURT:** Ms. Mayo, go ahead.

24

25

MERRITT - DIRECT / MAYO

DIRECT EXAMINATION

1
2 **BY MS. MAYO**

3 **Q.** Mrs. Merritt, you just announced --

4 **A.** Could I have a cup without a hole in it?

5 (Laughter)

6 **THE COURT:** We're going to provide that for the rest
7 of the trial.

8 **THE WITNESS:** Thank you.

9 Sorry. I didn't bring my glasses. Could you provide
10 those, too?

11 **THE COURT:** I'm sorry?

12 **THE WITNESS:** Could you provide those, too?

13 **THE COURT:** Okay. So now let's go on with the
14 questions.

15 **THE WITNESS:** You know, I do need my glasses.
16 Please.

17 (Brief pause.)

18 **THE COURT:** All right. Ms. Mayo.

19 **BY MS. MAYO**

20 **Q.** Ms. Merritt, you announced your name to the jury as Sandra
21 Susan Merritt; correct?

22 **A.** Correct.

23 **Q.** Now, you used the name Susan Tennenbaum to go to
24 conferences of abortion providers; correct?

25 **A.** That is correct.

MERRITT - DIRECT / MAYO

1 Q. You post as Susan Tennenbaum when you're talking to
2 Planned Parenthood doctors; right?

3 A. That is right.

4 Q. And the name Susan Tennenbaum is not your real name?

5 A. That is correct.

6 Q. Okay. There is a binder in front you. Could you turn to
7 Exhibit 140?

8 A. (Witness complied.)

9 Q. The first page of Exhibit 140 is a copy of the
10 identification card that you use in posing as Susan Tennenbaum;
11 correct?

12 A. That is correct.

13 **MS. MAYO:** Your Honor, the parties have stipulated to
14 the admissibility of Exhibit 140, and I would like to move it
15 into evidence and publish it to the jury.

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

17 (Trial Exhibit 140 received in evidence).

18 (Document displayed)

19 **BY MS. MAYO**

20 Q. That's your picture on Exhibit 140; correct?

21 A. Yes, it is.

22 Q. And looking at Exhibit 140 you can see that it says
23 "California Driver's License"; correct?

24 A. Correct.

25 Q. And Exhibit 140 says "DMV" on it; correct?

MERRITT - DIRECT / MAYO

1 A. Correct.

2 Q. You did not get this identification card from the
3 California Department of Motor Vehicles, did you?

4 A. No, I did not.

5 Q. So this is a fake I.D.; right?

6 A. This is an item that we used in the undercover
7 investigation, the pretext and the tools, which there are many.
8 This is one of them, yes.

9 Q. Let me reask my question. This is a fake I.D.; right?

10 A. This is an I.D. that we used in order to do our
11 investigation, correct.

12 Q. You obtained this fake I.D. from defendant David Daleiden;
13 correct?

14 A. This tool was one of the tools that we used, yes; and
15 getting it from David, yes.

16 Q. So you got the identification card that's reflected in
17 Exhibit 140 from David Daleiden; correct?

18 A. That is correct.

19 Q. And Mr. Daleiden told you it was a fake I.D.; correct?

20 A. At what time?

21 Q. At any time.

22 A. I believe that he referred to it as a fake I.D., he might
23 have. It's been many years ago but possibly.

24 Q. All right.

25 MS. MAYO: Your Honor, I would like to play the video

MERRITT - DIRECT / MAYO

1 that is designated as Exhibit 6040. That's one of the videos
2 that was sent over and to which defendants did not have an
3 objection to.

4 **THE COURT:** And do you have a transcript for me?

5 **MS. MAYO:** I do have transcripts.

6 **MR. MIHET:** Do you have another copy for me, counsel?

7 **MS. MAYO:** Yes.

8 (Whereupon document was tendered to the Court and
9 counsel.)

10 **MR. MIHET:** Your Honor, in light of the witness's
11 testimony, I'm not sure this is relevant.

12 **THE COURT:** It's an admission. It's fine.

13 You have may proceed.

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

15 **BY MS. MAYO**

16 **Q.** Mrs. Merritt, that was a video clip of you and
17 Mr. Daleiden and Mr. -- and defendant Adrian Lopez; correct?

18 **A.** That is correct.

19 **Q.** And that video is from when you were getting ready to go
20 down to the NAF 2015 conference; is that correct?

21 **A.** I saw the year, four years ago. So thank you for
22 refreshing my memory, yes.

23 **MS. MAYO:** Your Honor I would like to move
24 Exhibit 6040 into evidence.

25 **THE COURT:** All right. It's admitted. No objection.

MERRITT - DIRECT / MAYO

1 (Trial Exhibit 6040 received in evidence).

2 **BY MS. MAYO**

3 **Q.** Mrs. Merritt, you've heard of the company BioMax, correct,
4 BioMax Procurement Services LLC?

5 **A.** I have.

6 **Q.** Could you turn in your binder to Exhibit 654?

7 **A.** I'm sorry, which one?

8 **Q.** 654.

9 **A.** Thank you.

10 (Brief pause.)

11 **A.** I'm there.

12 **Q.** I think you are now there.

13 **A.** I'm sorry?

14 **Q.** I think you are now, yes?

15 **A.** Yes. I didn't know whether you had it in front or in
16 back. Thank you.

17 **Q.** And the business card at the top reflected in 654 is a
18 BioMax business card for Susan Tennenbaum; correct?

19 **A.** That is correct.

20 **Q.** And that's the name that you were using in this project;
21 correct?

22 **A.** That is correct.

23 **MS. MAYO:** Your Honor, the parties have stipulated to
24 the admissibility of Exhibit 654 and I'd like to move it into
25 evidence and publish it to the jury.

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

2 (Trial Exhibit 654 received in evidence).

3 (Document displayed)

4 **BY MS. MAYO**

5 **Q.** Now, the other business card reflected in Exhibit 654 was
6 for Mr. Daleiden who was posing as Robert Sarkis; correct?

7 **A.** That is correct.

8 **Q.** Now, the business card for you at the top says that you
9 are the Founder and CEO of BioMax Procurement Services; right?

10 **A.** That's what it says, yes.

11 **Q.** You're not the founder of BioMax Procurement Services, are
12 you?

13 **A.** No, I am not.

14 **Q.** And you were pretending to be the CEO of BioMax
15 Procurement Services; is that correct?

16 **A.** In order to do our investigation, that is the role that I
17 played, that is correct.

18 **Q.** So you were pretending to be the CEO of BioMax; correct?

19 **MR. MIHET:** Objection. Asked and answered.

20 **THE COURT:** Sustained.

21 **BY MS. MAYO:**

22 **Q.** BioMax Procurement Services LLC has never engaged in any
23 procurement services to your knowledge; correct?

24 **A.** That is correct. To my knowledge, yes.

25 **Q.** Now, looking at the Susan Tennenbaum business card, there

MERRITT - DIRECT / MAYO

1 are telephone numbers listed on the card for you; correct?

2 **A.** Yes.

3 **Q.** The office telephone number wasn't your office telephone
4 number; correct?

5 **A.** That is correct.

6 **Q.** The cell phone number on the BioMax business card for
7 Susan Tennenbaum was not your cell phone number; is that right?

8 **A.** Also correct, yes.

9 **Q.** And you had no responsibilities as the CEO of BioMax
10 Procurement Services; is that right?

11 **A.** That is right.

12 **Q.** And you pretended to be the CEO of BioMax so that people
13 at conferences that you attended would talk to you; is that
14 right?

15 **A.** Umm, part of that is correct.

16 **Q.** Well, and you pretended to be the CEO of BioMax so that
17 people at the conferences you attended would trust you?

18 **A.** What I did was have a name Susan Tennenbaum, represent
19 myself as a fetal tissue procurement start-up company in order
20 to investigate criminal activity, yes.

21 **Q.** Let me reask my question, Mrs. Merritt. You pretended to
22 be the CEO of BioMax so that people at the conferences you
23 attended would trust you; correct?

24 **A.** Trust me? I would not agree with that. I pretended to be
25 Susan Tennenbaum in order to investigate what we suspected

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1 committing criminal activity.

2 **Q.** Mrs. Merritt, do you recall giving a deposition in a case
3 involving StemExpress in December of 2015?

4 **A.** Do I recall the --

5 **Q.** That you gave a deposition in the StemExpress case.

6 **A.** Yes.

7 **Q.** And you took an oath to tell the truth much as you did
8 here today; correct?

9 **A.** Correct.

10 **MS. MAYO:** Your Honor, I would like to read from the
11 StemExpress deposition of Mrs. Merritt from pages 48 -- on
12 Page 48, Lines 4 through 10. And I have copies of the
13 transcript.

14 (Whereupon document was tendered to the Court.)

15 **MR. MIHET:** May I have the page reference again,
16 Counsel?

17 **MS. MAYO:** I'm sorry?

18 **MR. MIHET:** The page reference?

19 **MS. MAYO:** 48, Lines 4 through 10.

20 **THE COURT:** This is a different deposition I think.

21 **MS. MAYO:** Oh. This is not the right one.

22 (Brief pause.)

23 **MS. MAYO:** Apologies, Your Honor.

24 **THE COURT:** That's okay.

25 (Whereupon document was tendered to the Court.)

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1 **MS. MAYO:** Is there any objection?

2 **THE COURT:** You may proceed. I ask that question.

3 **MS. MAYO:** Sorry, Your Honor.

4 **BY MS. MAYO**

5 **Q.** (As read)

6 **"QUESTION:** You've represented yourself as the CEO of
7 BioMax to multiple people, have you not?

8 **"ANSWER:** That is correct.

9 **"QUESTION:** Why did you do that?

10 **"ANSWER:** So that they would talk to me and trust me
11 honestly and tell me what they were doing that they
12 wouldn't tell the general public."

13 Now, if I refer to the Center for Medical Progress as CMP,
14 you'll know what I'm talking about; correct.

15 **A.** Yes, I will.

16 **Q.** Mr. Daleiden first discussed the CMP project at issue in
17 this case with you in 2013; correct?

18 **A.** Could you repeat that?

19 **Q.** Mr. Daleiden first discussed with you the CMP project, the
20 videotaping --

21 **A.** The year is what I'm --

22 **Q.** In 2013.

23 **A.** I believe that's correct, yes.

24 **Q.** All right. And someone gave Mr. Daleiden your contact
25 information and he reached out to you; correct?

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1 **A.** I wouldn't have knowledge of that, but I assumed it, and I
2 think I stated in a deposition that was my assumption.

3 **Q.** In fact, your first contact with him -- or your first
4 meeting with Mr. Daleiden was in your home; correct?

5 **A.** He was in a social circle that I was in. I didn't --
6 didn't meet him, know him; but I think what you're getting to,
7 the first formal meeting was in my home, yes.

8 **MS. MAYO:** Your Honor, permission to play the
9 videotape deposition of Mrs. Merritt in this case from
10 April 18th, 2019, Page 247, Line 16, through 248, Line 4.

11 **THE COURT:** Mr. Mihet, any objection?

12 **MR. MIHET:** I would ask to play through Line 9 on
13 Page 248 for context, Your Honor.

14 I take that back. I think through Line 21 on Page 248.

15 **MS. MAYO:** To line what?

16 **MR. MIHET:** To Line 21 on Page 248.

17 **THE COURT:** That's fine.

18 **MS. MAYO:** All right.

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

20 **BY MS. MAYO**

21 **Q.** Your first meeting with Mr. Daleiden in your home lasted
22 one to two hours long; correct?

23 **A.** I believe so.

24 **Q.** And Mr. Daleiden made you promise not to talk about
25 anything he told you in that meeting; right?

1 A. That is correct.

2 Q. In fact, he made you sign a Confidentiality Agreement so
3 that you would not reveal the details of what he told you;
4 correct?

5 A. That is correct.

6 Q. Now, please turn to Exhibit 411 in your binder.

7 (Witness complied.)

8 Q. Are you there?

9 A. I am. I'm reading it.

10 (Brief pause.)

11 Q. Mrs. Merritt, directing your attention to the email in the
12 middle of the page, that's from Mr. Daleiden to you on
13 July 9th, 2013; correct?

14 A. Yes.

15 Q. And that's your email address, and I'll spell it out
16 because I'm not certain of the correct pronunciation.
17 Sunumommy@sbcglobal.net; correct?

18 A. That is correct.

19 Q. How do you announce that?

20 A. Sunumommy.

21 Q. Sunumommy. Okay.

22 A. My nickname given to me by my three-year-old.

23 MS. MAYO: Your Honor, the parties have stipulated to
24 the admissibility of Exhibit 411. I would like to move it into
25 evidence --

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1 **THE COURT:** All right.

2 **MS. MAYO:** -- and publish it to the jury.

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

4 (Trial Exhibit 411 received in evidence).

5 (Document displayed)

6 **BY MS. MAYO**

7 **Q.** Now, in the email Mr. Daleiden says he would like to meet
8 with you; correct?

9 **A.** That is correct.

10 **Q.** And the purpose of the meeting was to tell you a little
11 bit more about the things Mr. Daleiden was working on; correct?

12 **A.** That's what it states, yes.

13 **Q.** And you had a meeting with Mr. Daleiden to discuss the
14 things that he was working on; correct?

15 **A.** I'm going to assume so. And based on the deposition that
16 you and I did, you know I'm not a linear and dates are not my
17 thing. So I'm going to be -- based on what you're presenting
18 to me, I'm going to assume that that's correct.

19 **Q.** You have no reason to believe that you broke off contact
20 with Mr. Daleiden after this email; correct?

21 **A.** No. Absolutely not. You're right.

22 **Q.** So your first discussions with Mr. Daleiden regarding the
23 CMP project were sometime around July 2013; is that correct?

24 **A.** That is correct.

25 **Q.** And you and Mr. Daleiden continued to talk about his plans

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1 over the next couple of months; right?

2 **A.** Correct.

3 **Q.** And at some point Mr. Daleiden told you he wanted you to
4 go undercover at a conference of abortion providers; correct?

5 **A.** The first part of your statement?

6 **Q.** At some point Mr. Daleiden told you that he wanted you to
7 go undercover at a conference of abortion providers?

8 **A.** At some point, yes.

9 **Q.** Okay. And I think you've used this term already this
10 morning, but Mr. Daleiden provided you with certain tools to go
11 undercover; correct?

12 **A.** Tools? Yes.

13 **Q.** All right. And those tools included cameras that could be
14 concealed in your clothing; correct?

15 **A.** That is correct.

16 **Q.** And you agreed to wear the hidden cameras as you went to
17 abortion conferences; correct?

18 **A.** That is correct.

19 **Q.** And another of the tools that Mr. Daleiden provided to you
20 was the fake I.D. that you looked at, Exhibit 140; correct?

21 **A.** One of many, correct.

22 **Q.** All right. Now, Mrs. Merritt, over the course of your
23 involvement with CMP, you taped people at the ARHP conference
24 in Denver, Colorado; correct?

25 **A.** That is right.

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1 Q. And at the NAF annual meeting in San Francisco,
2 California; correct?

3 A. That is correct.

4 Q. And at the NAF annual meeting in 2015 in Baltimore,
5 Maryland; correct?

6 A. That is correct.

7 Q. You also taped your conversations with Planned Parenthood
8 doctors while at the Planned Parenthood Rocky Mountain facility
9 in Colorado; correct?

10 A. Is this Dr. Gindi that's doing --

11 Q. Yes.

12 A. -- the talks about her involvement? Is that --

13 Q. Did you go to Colorado to the Planned Parenthood facility
14 and tape people?

15 A. That's Dr. Gindi?

16 Q. Yes.

17 A. Yes.

18 Q. And you also went to the Planned Parenthood Gulf Coast
19 Conference in Texas and taped people?

20 A. Conference?

21 MR. MIHET: Objection.

22 BY MS. MAYO:

23 Q. Office. Sorry. Planned Parenthood Gulf Coast office --

24 A. Yes.

25 Q. -- facility.

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1 A. Yes.

2 Q. And you also taped a lunch with Dr. Deborah Nucatola?

3 A. That is correct.

4 Q. And you taped a lunch with Dr. Mary Gatter; correct?

5 A. That is correct.

6 Q. Okay. I'm going to go through them one by one.

7 The first conference you attended as part of the CMP
8 project was put on by the Association of Reproductive Health
9 Professionals; correct?

10 A. The first?

11 Q. Yes.

12 A. Colorado?

13 Q. Yes.

14 A. Yes.

15 Q. It took place in Denver, Colorado?

16 A. Correct.

17 Q. In 2013?

18 A. Correct.

19 Q. And you attended the RFP conference posing at Susan
20 Tennenbaum; correct?

21 A. That is correct.

22 Q. You went to the ARHP conference with Brianna Baxter; is
23 that correct?

24 A. That is not correct. She was there, but I'm listening to
25 you carefully. Did I go there with her?

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1 Q. Did you attend the ARHP conference in Denver, Colorado,
2 with Brianna Baxter?

3 A. Thank you. Yes, I did.

4 Q. And Brianna Baxter attended the conference posing as
5 Brianna Allen; correct?

6 A. That is correct.

7 Q. And you wore a hidden video camera at the ARHP conference;
8 is that correct?

9 A. That is correct.

10 Q. And you wore the recording equipment hidden in your bra;
11 is that correct?

12 A. That is correct.

13 Q. You recorded conversations with the people that you met at
14 the ARHP conference; is that right?

15 A. That's right.

16 Q. And Brianna Baxter also wore a hidden camera at the ARHP
17 conference; correct?

18 A. I'm going to assume so, but I -- I'm going to assume so,
19 yes.

20 Q. And what is your assumption based on?

21 A. Good question. What am I basing that on? We wanted to --

22 Q. Let me ask it another way.

23 Have you --

24 **THE COURT:** Let her finish. She was going to --

25 **THE WITNESS:** Thank you.

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1 **A.** We wanted to capture evidence of any criminal activity.

2 **BY MS. MAYO**

3 **Q.** Okay. What particular criminal activity?

4 **A.** Well, that's a big one to unwrap. We wanted to see if in
5 order to profit from the sale of human body parts that people
6 were willing to alter the procedure. I believe that's known as
7 partial-birth abortion.

8 We wanted to know if any medical ethics were being
9 violated, changing procedures without patient's consent,
10 administering medication that would cause overdilation for a
11 woman who is being induced when having an abortion.

12 We wanted to see if those laws were being followed. If
13 there was, among other things, the aiding and abetting of child
14 sex trafficking.

15 Do you want me to go on? Do you want me to go on?

16 **Q.** No.

17 **A.** I mean, there's is more, but...

18 **Q.** Mrs. Merritt, your defense to why you went into these
19 places to record is that you thought that each of the persons
20 you were filming had committed or were intending to commit a
21 violent felony against a person.

22 **MR. MIHET:** Objection.

23 **BY MS. MAYO**

24 **Q.** So my question you to is: What violent felonies did you
25 believe the people at the ARHP conference that you came into

1 contact with were committing?

2 **THE COURT:** Hang on just a second.

3 Mr. Mihet.

4 **MR. MIHET:** Objection. Move to strike the preamble
5 of the question as to the extent it calls for a legal
6 conclusion and also asked and answered.

7 **THE COURT:** I will sustain the first part.

8 Can you reask the question?

9 **MS. MAYO:** Certainly.

10 **BY MS. MAYO**

11 **Q.** When you attended the ARHP conference and wore the hidden
12 camera, were you intending to capture -- did you believe that
13 you would capture evidence of persons committing or who were
14 intending to commit a violent felony against a person?

15 **A.** Such a long preamble, to use Mr. Mihet's word. A direct
16 question just straight to the point would be easier for me to
17 answer.

18 **THE COURT:** You need to answer the question that you
19 were asked.

20 **THE WITNESS:** Sorry.

21 Okay. Could you unwrap it a bit? Just be clear. If you
22 could ask it again? Sorry.

23 **BY MS. MAYO**

24 **Q.** When you went to the ARHP conference in Denver, Colorado,
25 what violent crimes -- violent felonies against a person did

1 you believe the people that you were recording committed or
2 intended to commit?

3 **MR. MIHET:** Your Honor, I object based on relevance.
4 This is a Colorado conference subject to a different legal
5 standard than I believe that counsel has in mind.

6 **THE COURT:** Overruled.

7 You can answer.

8 **A.** As I previously stated, battery, medical ethics being
9 violated, laws not being followed, partial-birth abortion
10 procedure, changing protocol without a patient's consent in
11 order to profit from the sale of human body parts.

12 **BY MS. MAYO**

13 **Q.** And what persons did you believe were committing those
14 crimes?

15 **A.** What persons individually or organizations?

16 **Q.** What persons individually did you believe were committing
17 those crimes when you were recording them at the ARHP
18 conference in Denver, Colorado?

19 **A.** Well, that was the purpose of the investigation, is to
20 uncover, discover if criminal activity was being committed.

21 **Q.** So you did not go there with the intention of recording
22 any particular specific person who you believed was committing
23 violent felonies?

24 **A.** I would not have had knowledge before entering what
25 individual was there; but being an organization that was

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1 associated with Planned Parenthood, it was a reasonable belief
2 that I would meet people that were committing criminal
3 offenses, yes.

4 **Q.** You've mentioned Planned Parenthood. What specific
5 Planned Parenthood entities, if any, did you believe were
6 committing violent felonies against a person when you
7 videotaped at the ARHP conference?

8 **A.** Again, you're saying specifically --

9 **Q.** Yes.

10 **A.** -- at that time? And could you remind me of the year
11 again? 2000 --

12 **Q.** 2013.

13 **A.** 2013. So at that time that was the beginning of trying to
14 uncover, investigate. So to give you a specific individual, I
15 couldn't do that.

16 **Q.** Any specific affiliate of Planned Parenthood?

17 **A.** Again at that point in time, a specific -- it was the
18 starting of the investigation.

19 **Q.** Who did you tape at the ARHP conference?

20 **A.** The only one that stands out that I'll remember her name,
21 Dr. Katharine Sheehan. I believe there was a young woman. I'm
22 not going to be able to draw up her name. Erin, I believe.
23 That's the only person -- people that I can name by name right
24 now.

25 **Q.** All right. Now, before you attended the ARHP conference,

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1 Mr. Daleiden provided you with information to help you succeed
2 in going undetected; correct?

3 A. An overabundance of information, that is correct.

4 Q. And that included a backstory for your character, Susan
5 Tennenbaum; correct?

6 A. That is correct, yes.

7 Q. Could you turn in your binder to Exhibit 426?

8 A. I'm sorry, which one?

9 Q. 426.

10 A. Thank you.

11 (Witness complied.)

12 Q. So, Mrs. Merritt, before we go to Exhibit 426, let me ask
13 you a couple of follow-up questions.

14 Approximately how many people did you tape while you were
15 at the Association of Reproductive Health Professionals
16 conference?

17 A. I'm sorry. I was concerned, distracted. Sorry.

18 Q. Approximately how many people did you record at the ARHP
19 conference in 2013?

20 A. I'm not able to answer that. Sorry.

21 Q. Could you give me an estimate?

22 A. I love how you attorneys do this. No, I can't.

23 Q. Was it more than ten?

24 MR. MIHET: Objection. Asked and answered.

25 THE COURT: Overruled.

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1 **THE WITNESS:** Do what you do, I know how you guys get
2 to numbering and it's very helpful.

3 **THE COURT:** If you would not do the preamble, but
4 just answer. Do you remember whether there was more than ten
5 or not?

6 **THE WITNESS:** Oh, thank you.
7 I'm going to assume there was.

8 **BY MS. MAYO**

9 **Q.** Do you remember, was it more than 20 people?

10 **A.** Let's try and shorten this up. It might have been 100.

11 **Q.** In fact, you never turned the equipment off while you were
12 in attendance in the conference space; is that correct?

13 **A.** It was not my intention to turn it off so I don't know
14 what year, where we were, but we discovered that perhaps the
15 equipment had malfunctioned; but whether it was there, I'm not
16 sure.

17 **Q.** But it was your intent to keep it running the whole time?

18 **A.** That was my intent, yes.

19 **Q.** All right. And, in fact, at the end of the day you
20 brought the video footage, the camera and the video footage, up
21 to Mr. Daleiden, who was also present at the conference;
22 correct?

23 **A.** Are we talking Colorado?

24 **Q.** Colorado, 2013.

25 **A.** So I'll correct some of your assumptions there. He was

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1 not at the conference. I think you said, correct me if I'm
2 wrong, that I brought the tape up to him at the end of the day.

3 Q. Correct.

4 A. That is not correct.

5 Q. Which did you bring him the tape?

6 A. Several times during the day.

7 Q. So you and Brianna Allen were in the conference space
8 talking to people and taking place them, correct, during the
9 day?

10 A. Any space that was there, public space, conference space,
11 hallways, elevators.

12 Q. And you had the camera rolling?

13 A. Had the camera rolling, correct.

14 Q. And then at certain points during the day you would bring
15 the video back to Mr. Daleiden to review; correct?

16 A. That is correct.

17 Q. Approximately how many times per day would you do that?

18 A. Approximately -- I'm trying to remember how many,
19 breakout. I'll say approximately a half dozen. Might be less.

20 Q. Okay. And Ms. Baxter was also taping; correct?

21 A. My assumption.

22 Q. Did she --

23 A. That was -- go ahead. Sorry.

24 Q. Did she, likewise, bring the videotape back to
25 Mr. Daleiden for his review?

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1 **A.** Because we were not together the entire day, I can't
2 assume that I know that for sure, but I would think that's a
3 reasonable belief.

4 **Q.** It was your expectation that she would report back to
5 Mr. Daleiden with the video footage that she had been taking;
6 correct?

7 **A.** I think that's a reasonable belief to hold.

8 **Q.** Now let's go to Exhibit 426.

9 **A.** Yeah, that's where we are; correct?

10 **Q.** Yes.

11 **A.** Okay.

12 (Witness complied.)

13 **Q.** And, Mrs. Merritt, Exhibit 426 is some information that
14 Mr. Daleiden provided to you that you needed to understand
15 before you went undercover at the ARHP conference; is that
16 correct?

17 **A.** It's quite a lengthy document that you've handed me. May
18 I have a little time to go over it.

19 **Q.** Yes.

20 **A.** Thank you.

21 (Brief pause.)

22 **A.** I assume you don't want me to read every line. Is there
23 specific questions?

24 **Q.** The question pending is: Is that the information that
25 Mr. Daleiden presented to you, gave to you, to help you go

1 undercover at the ARHP conference? And review it with that
2 question in mind.

3 **A.** I believe so, yes.

4 **Q.** All right.

5 **MS. MAYO:** Your Honor, I'd like to move 426 into
6 evidence. The parties have previously stipulated to its
7 admissibility.

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

9 (Trial Exhibit 426 received in evidence)

10 (Document displayed)

11 **BY MS. MAYO**

12 **Q.** Now, the first part of Exhibit 426 at the top there,
13 that's the backstory on Susan Tennenbaum's character; right?
14 The first paragraph there.

15 **A.** First paragraph?

16 **Q.** Yes.

17 (Brief pause.)

18 **A.** Yes.

19 **Q.** And so your character was setting up a tissue procurement
20 company; correct?

21 **A.** Fetal tissue procurement, yes.

22 **Q.** Okay. And you see where it says:

23 "You and your team member are business partners in a
24 new venture to start up your own fetal tissue procurement
25 corporation."

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1 That was the story that you were to give to people that
2 you met at ARHP; correct?

3 **A.** I see that sentence, yes.

4 **Q.** And was that the story that you were to give to people
5 that you met with at the ARHP conference?

6 **A.** That is correct.

7 **Q.** All right. And Mr. Daleiden also instructed you to
8 network with abortion providers, clinic directors, and Planned
9 Parenthood executives at the ARHP annual meeting; correct?

10 **A.** If memory serves me well, which it doesn't, but to the
11 best of my memory, yes. That would have been --

12 **Q.** In fact, it says that right here. It says:

13 "You are hoping to network with abortion
14 providers, clinic directors and Planned Parenthood
15 executives at the Association of Reproductive Health
16 Professionals (ARHP) annual meeting."

17 Correct?

18 **A.** That's what it says, yes.

19 **Q.** So your instruction was to go to the ARHP meeting and find
20 abortion providers, Planned Parenthood executives, and talk to
21 them; correct?

22 **A.** Specific instructions were: Let's uncover criminal
23 activity if there be any.

24 **Q.** Were you told -- were you given the names of any
25 particular people to go and talk to and record?

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1 A. In advance?

2 Q. Yes.

3 A. Yes.

4 Q. Who?

5 A. Hmm... Late-term abortion doctors and, I believe,
6 Dr. Carhart, Dr. Warren Hern. I believe based on documents
7 that I had read, scholarly articles, I think another person
8 that we believed was conducting criminal activity was Dr. Lisa
9 Harris, I believe.

10 Q. And did you -- are you finished?

11 A. No.

12 I know that some companies that were -- we knew were
13 harvesting human body parts, ABR, which is a fetal tissue
14 procurement company. So it's ABR. People that worked there
15 that we -- David had had conversations and he had made me aware
16 of Perrin Larton, Linda Tracy, both of ABR.

17 Another fetal tissue procurement company that the founder
18 of -- had worked at ABR, a woman named Kate Dyer. She was
19 the -- is the -- as far as I know, still is the founder of
20 StemExpress, a fetal tissue procurement company.

21 Let's see, who else? Did I mention Dr. Warren Hern,
22 Dr. Hern? Oh, sorry. I can't ask you questions.

23 I think Dr. Warren Hern, if I didn't already mention him.
24 That's all I can recall at this time.

25 Q. Now, you mentioned some -- at least one other tissue

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1 procurement organization, or two of them. This Exhibit 426
2 provided you with information about your competition. Was that
3 competition for the tissue procurement organization that you
4 were starting up?

5 **A.** Competition? Where are you looking?

6 **Q.** Bottom of the first page of 426.

7 **A.** Oh, yes. Yes. Uh-huh.

8 **Q.** Okay. And so two of the companies that you mentioned, ABR
9 and StemExpress, they are identified as your competition;
10 correct?

11 **A.** They are.

12 **Q.** All right. Now, Mr. Daleiden also provided you with a
13 full page of vocabulary that you were instructed to use so that
14 you would go undetected; is that correct?

15 **A.** I'm sorry. You trailed off.

16 **Q.** Mr. Daleiden provided with you a full page of vocabulary
17 that you were to use so that you would go undetected at the
18 conference; correct?

19 **A.** Mr. Daleiden was very aware of euphemisms that Planned
20 Parenthood uses in order not to talk about things directly. So
21 I had to learn that vocabulary, yes.

22 **Q.** Let me reask my question. Mr. Daleiden provided you with
23 the full page of vocabulary terms, Page 2 of Exhibit 426 --

24 **A.** Uh-huh.

25 **Q.** -- so that you would go undetected; correct?

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1 A. He provided me with the vocabulary that is familiar within
2 the abortion industry, yes.

3 Q. And that included the vocabulary listed on Page 2 of 426?

4 A. I'll look over it. Yes.

5 Q. And so that included words that abortion providers use;
6 correct?

7 A. That was my assumption, yes.

8 Q. And that also included words that would raise red flags
9 that you are an anti. Did you understand that to mean an
10 anti-abortion person, someone with anti-abortion views?

11 A. I came to learn that, yes.

12 Q. Okay. But that was your understanding, that some of these
13 words would raise a red flag to the person with whom you were
14 speaking that you held anti-abortion views; correct?

15 A. I came to learn that, yes.

16 Q. All right. And that included words like "abortionist" or
17 "preborn child"; correct?

18 A. That's what's listed, yes.

19 Q. So you knew if you used those terms, then the people with
20 whom you were speaking would be suspicious and think there
21 was -- that you weren't part of their community; correct?

22 A. I came to learn that, yes. Yes.

23 Q. Now, while you were at the ARHP conference, you met with
24 people from the National Abortion Federation; correct?

25 A. That is correct.

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1 **Q.** All right. And while you were providing Mr. Daleiden with
2 the video that you had taken from the conference floor, you
3 also gave him the business cards that you were collecting from
4 the people that you spoke with; correct?

5 **A.** I have no memory of that.

6 **Q.** Let's go to Exhibit -- actually, before we go there, you
7 were paid for your work on going to the ARHP conference;
8 correct?

9 **A.** I was compensated for the money I lost because I ran a
10 home business. I also had to take time off of my teaching
11 position, get a substitute. So I was compensated for the funds
12 that I lost there, yes.

13 **Q.** So you were paid for attending the ARHP conference?

14 **MR. MIHET:** Objection. Asked and answered.

15 **THE COURT:** Sustained.

16 **BY MS. MAYO**

17 **Q.** All right. And Mr. Daleiden sometimes had difficulty or
18 delayed in making payments to you; correct?

19 **A.** That is correct.

20 **Q.** If you turn in your binder to Exhibit 412?

21 **A.** (Witness complied.)

22 **Q.** Now, Exhibit 412 is an email exchange between you and
23 Mr. Daleiden from October 2013; correct?

24 **A.** That is correct.

25 **Q.** And attached to that email correspondence is a letter to

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1 David that you wrote; correct?

2 **A.** I see that, yes.

3 **Q.** All right.

4 **MS. MAYO:** Your Honor, I move Exhibit 412 into
5 evidence.

6 **THE COURT:** Any objection?

7 **MR. MIHET:** No.

8 **THE COURT:** Okay. It's admitted.

9 (Trial Exhibit 412 received in evidence)

10 (Document displayed)

11 **BY MS. MAYO**

12 **Q.** Now, your email to Mr. Daleiden says:

13 "It's been nearly a month since the project
14 ended. I have had to pay my bills but have not been
15 paid by you."

16 Correct?

17 **A.** You're back to the first page?

18 **Q.** First page.

19 **A.** Sorry. Uh-huh.

20 I'm sorry. Go ahead. I didn't know what page you were
21 on.

22 **Q.** You wrote to Mr. Daleiden:

23 "It's been nearly a month since the project
24 ended. I have had to pay my bills but have not been
25 paid by you."

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1 You had not been paid by Mr. Daleiden as of the date of
2 this email; correct?

3 **A.** That is correct.

4 **Q.** All right. And your letter on the same -- on the next
5 page details some of your expenses from going undercover as
6 Susan Tennenbaum; correct?

7 **A.** Yes.

8 **Q.** And you were upset by the fact that Mr. Daleiden hadn't
9 paid you for your work; correct?

10 **A.** I was very upset, yes.

11 **Q.** Did he ultimately pay you?

12 **A.** Yes, he did.

13 **Q.** And you thought the matter left you feeling "disrespected,
14 unappreciated, undervalued, and I won't use the last descriptor
15 to save me a trip to confession." So you were pretty angry
16 with him?

17 **A.** To say the least.

18 **Q.** Okay. Now, the next conference that you attended after
19 the ARHP conference was the National Abortion Federation annual
20 meeting in 2014; correct?

21 **A.** San Francisco -- or I'm sorry. Repeat that.

22 **Q.** The next conference you attended after the ARHP conference
23 was the National Abortion Federation annual meeting in
24 San Francisco?

25 **A.** Correct.

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1 Q. And that was in 2014?

2 A. Correct.

3 Q. And you attended the 2014 NAF conference posing at Susan
4 Tennenbaum from BioMax; correct?

5 A. That is correct.

6 Q. And to enter the NAF conference you had to check in at the
7 check-in table; right?

8 A. In San Francisco -- well, all attendees were required to
9 check in. I can put it that way.

10 Q. And in order to receive the badge that the conference
11 attendees wear; right?

12 A. That is correct.

13 Q. And that was the badge that would allow you to go into the
14 conference space; correct?

15 A. It was a badge with our name on it. I saw people going in
16 and out without badges, so I don't know if at that time I --
17 I'm trying to recall whether that was required. I think that
18 was their intent, but...

19 Q. You picked up your badge; right?

20 A. I don't know whether I picked it up or David picked it up
21 or someone else did. I'm not sure.

22 Q. When you checked in to receive your badge, the NAF
23 conference personnel made you sign a Confidentiality Agreement;
24 right?

25 A. Based on recent depositions and documents that I have had

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1 to look at, I believe that's true.

2 Q. Could you take a look at Exhibit 416 in your binder?

3 A. Yes. Thank you.

4 (Witness complied.)

5 Q. And that's the Confidentiality Agreement for the NAF 2014
6 annual meeting; correct?

7 A. I believe so.

8 Q. And you've seen this before?

9 A. I have.

10 Q. All right.

11 MS. MAYO: Your Honor, I'd like to move Exhibit 416
12 into evidence. The parties have stipulated to its
13 admissibility.

14 THE COURT: It's admitted.

15 (Trial Exhibit 416 received in evidence)

16 (Document displayed)

17 BY MS. MAYO

18 Q. You signed this NAF Confidentiality Agreement posing as
19 Susan Tennenbaum; correct?

20 A. I signed it as posing as Susan Tennenbaum, was that --

21 Q. Yes.

22 A. Yes.

23 Q. From BioMax Procurement Services; right?

24 A. Correct.

25 Q. Now, you wore a hidden video camera when you attended the

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1 2014 NAF conference; correct?

2 A. Yes.

3 Q. And at the 2014 NAF conference, BioMax actually had a
4 table set up; right?

5 A. That is correct.

6 Q. And also accompanying you at the NAF 2014 conference was
7 Brianna Baxter again; right?

8 A. That is right.

9 Q. And she was posing at Brianna Allen?

10 A. Yes.

11 Q. All right. Could you turn to Exhibit 554 in your binder?

12 A. Did you say Baxter Allen or Allen Baxter? What order
13 did --

14 Q. It doesn't matter.

15 A. It doesn't? Okay.

16 Q. The person that you knew as Brianna attended; correct?

17 A. That is correct.

18 Q. And she was not using her real name when she attended the
19 conference; correct?

20 A. That is correct.

21 Q. All right. If you could turn to Exhibit 554.

22 A. (Witness complied.)

23 Q. And that's a picture of you on the left posing as Susan
24 Tennenbaum; correct?

25 A. That is correct.

1 Q. And that's a picture of Brianna Baxter sitting next to
2 you; correct?

3 A. That is correct.

4 MS. MAYO: Your Honor, I move Exhibit 554 into
5 evidence.

6 THE COURT: Any objection?

7 MR. MIHET: No objection.

8 THE COURT: It's admitted.

9 (Trial Exhibit 554 received in evidence)

10 (Document displayed)

11 BY MS. MAYO:

12 Q. So that's you and Ms. Baxter sitting at the BioMax table
13 at the NAF 2014 conference; correct?

14 A. That is correct.

15 Q. And looking at Exhibit 554, those are BioMax brochures and
16 business cards set up on the table; correct?

17 A. Yes.

18 Q. And at the BioMax table when you were attending the 2014
19 conference you also had recording equipment in water bottles?

20 A. I don't see any water bottles.

21 Q. I don't think they're reflected in this particular
22 picture, but you had water bottles at the table with recording
23 equipment at the 2014 NAF conference?

24 A. I can't answer that, except to say that water bottles were
25 part of the group of tools that we used in order to do the

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1 undercover investigative pretext. That was one of the tools,
2 yes.

3 **Q.** And those water bottles had recording equipment in them;
4 correct?

5 **A.** That's right.

6 **Q.** And you used them at conferences? You can't recall
7 specifically which one right now, but you used them at
8 conferences?

9 **A.** That is correct.

10 **Q.** To record people?

11 **A.** That's right.

12 **Q.** And you recorded attendees at the NAF conference without
13 telling them that you were doing so; correct?

14 **A.** Telling people that we were trying to uncover --

15 **Q.** My question, Mrs. Merritt, was: You recorded attendees at
16 the NAF conference without telling them that you were recording
17 them; is that correct?

18 **A.** We did not tell people that we suspected of doing criminal
19 activities that we were recording them, that is correct.

20 **MS. MAYO:** Your Honor, move to strike the answer as
21 nonresponsive.

22 **THE COURT:** The answer was responsive, that she was
23 using the recording device; and the rest of it -- if you could
24 leave out all of the descriptive characterization and just
25 answer the question, that would be great.

1 **THE WITNESS:** Sure.

2 **THE COURT:** Just go straight at the question.

3 **THE WITNESS:** Thank you.

4 **BY MS. MAYO**

5 **Q.** And you recorded everyone that you came into contact with
6 while you were attending the conference, the 2014 NAF
7 conference; correct?

8 **A.** If the equipment was working, yes.

9 **Q.** All right. Now, these people that were recording, how
10 many people do you think you recorded at the NAF 2014
11 conference?

12 **A.** My best guess, 100.

13 **Q.** And can you identify for me of those 100, what crimes,
14 violent felonies, you believed those persons were recording --
15 or were committing?

16 **A.** As I stated earlier, battery, aiding, abetting in child
17 sex trafficking, being willing to alter the normal procedures
18 of an abortion in order to harvest human body parts, which
19 short version of that is partial-birth abortion, administering
20 drugs to overdilate a patient without their consent, not
21 following federal law, not following normal procedures in an
22 abortion.

23 **Q.** Identify for me the specific persons out of the hundred or
24 so people that you recorded that you believed to be committing
25 those violent felonies?

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1 **A.** That's why we were investigating. Specific people I
2 cannot name, but anyone associated -- anyone so broadly
3 associated with Planned Parenthood, which would be their
4 abortionists, which would be companies that they worked with
5 that were procuring fetal tissue. So narrowing it down to
6 specific people, I couldn't do that. It was under
7 investigation. That's what we were trying to discover.

8 **Q.** All right. Mr. Daleiden also attended the NAF 2014
9 conference with you; correct?

10 **A.** He did.

11 **Q.** And Mr. Daleiden held himself out as Robert Sarkis from
12 BioMax; correct?

13 **A.** That is correct.

14 **Q.** Now, shortly before you attended the 2014 conference
15 Mr. Daleiden sent you a draft of the BioMax brochure; correct?

16 **A.** I believe that's true.

17 **Q.** Could you turn to Exhibit 360 in your binder?

18 **A.** Which one?

19 **Q.** 360.

20 **A.** '60.

21 (Witness complied.)

22 **Q.** Mrs. Merritt, Exhibit 360 is an email exchange between you
23 and Mr. Daleiden from March 2014; is that correct?

24 **A.** That is correct.

25 **Q.** And it attaches a BioMax Procurement Services document to

1 it; correct?

2 **A.** That is correct.

3 **MS. MAYO:** Your Honor, the parties have stipulated to
4 the admissibility of Exhibit 360, and I'd like to move it into
5 evidence.

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

7 (Trial Exhibit 360 received in evidence).

8 (Document displayed)

9 **BY MS. MAYO**

10 **Q.** Now, taking a look at the brochure, do you see in the
11 center top of the first page of that brochure --

12 **A.** Yes.

13 **Q.** -- where it says about BioMax?

14 **A.** Yes.

15 **Q.** It says:

16 "BioMax is a biological specimen procurement
17 organization headquartered in Norwalk, California."

18 You have never been to a BioMax headquarters in Norwalk,
19 have you, because there is none?

20 **MR. MIHET:** Objection. Compound.

21 **THE COURT:** Sustained.

22 **BY MS. MAYO:**

23 **Q.** You've never been to a BioMax headquarters in Norwalk,
24 California; correct?

25 **A.** That is correct.

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1 Q. All right.

2 Below that it says:

3 "BioMax provides tissue and specimen procurement
4 for academic and private bioscience researchers."

5 Do you see that?

6 A. I do.

7 Q. That's a false statement; correct?

8 A. That is the statement on the brochure that we used in
9 order to do the undercover investigative research so the
10 pretext that we were using, that is what this is.

11 Q. That's a false statement; correct?

12 A. This is the equipment -- part of the equipment that we
13 used in order to go undercover and investigate.

14 Q. Mrs. Merritt, BioMax Procurement Services LLC has never
15 engaged in any procurement services to your knowledge; correct?

16 A. To my knowledge?

17 Q. Yes.

18 A. I hope not.

19 Q. In fact, to your knowledge, BioMax procurement services
20 has never engaged in any procurement services; correct?

21 A. That is correct.

22 Q. Under the heading "About Susan Tennenbaum," the same
23 column --

24 A. Yes.

25 Q. -- it says:

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1 "She's worked in surgical offices and in patient
2 advocacy."

3 You've never worked in surgical offices; correct?

4 **A.** Only a veterinarian office.

5 **Q.** A veterinarian office isn't what this BioMax brochure is
6 referring to; right?

7 **A.** It's referring to human, not puppies, correct.

8 **Q.** And so you've never worked in surgical offices that deal
9 with humans?

10 **A.** A dentist's office, some surgery was done; but to your
11 point, this was used as a pretext for undercover. So a direct
12 question -- this was a -- well, I'll let you ask a question.
13 Sorry.

14 **Q.** So this was a false statement; correct?

15 **A.** This was the pretext that we used in order to identify as
16 people that were interested in purchasing human body parts,
17 yes.

18 **Q.** The brochure goes on to say --

19 **A.** Oh, sorry. Same page?

20 **Q.** Same page.

21 "She founded BioMax Procurement Services to
22 provide patients and providers an opportunity to give
23 back and to connect medical researchers with critical
24 biospecimens."

25 That's a false statement; correct?

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1 **A.** As I've stated, this was the pretext that we used in order
2 to investigate criminal activity.

3 **Q.** To your knowledge BioMax Procurement Services never
4 connected medical researchers with critical biospecimens;
5 correct?

6 **A.** To my knowledge, correct.

7 **Q.** And you had no intention of providing medical researchers
8 with any biospecimens; is that correct?

9 **A.** I do not, that is correct.

10 **Q.** You have no training or background in collecting
11 biospecimens for research, human biospecimens; correct?

12 **A.** That is correct.

13 **Q.** So BioMax was founded to be the front organization so that
14 you and Mr. Daleiden could get into conferences and clinics and
15 tape abortion providers; correct?

16 **MR. MIHET:** Objection. Compound. Argumentative.

17 **THE COURT:** Overruled.

18 You can answer.

19 **THE WITNESS:** Could you restate, please.

20 **BY MS. MAYO**

21 **Q.** BioMax was founded to be a front organization so that you
22 and Mr. Daleiden could get into conferences and tape abortion
23 providers; correct?

24 **A.** As I've stated many times, this was the undercover
25 investigative -- the pretext that we use to be able to uncover

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1 what we suspected the criminal activity.

2 **Q.** Now, you were paid for your work going undercover at the
3 NAF 2014 conference; correct?

4 **A.** Again, as I previously stated, the compensation that I
5 received covered what I lost in my own home business and my
6 teaching position.

7 **THE COURT:** I think the question was whether you were
8 paid. Were you paid?

9 **THE WITNESS:** I was compensated, yes.

10 **THE COURT:** So let's, ladies and gentlemen, take a
11 break and we'll come back at 10:00 o'clock. Please remember
12 the admonitions that I've given you before.

13 (Jury exits the courtroom at 9:43 a.m.)

14 **MS. MAYO:** Your Honor?

15 **THE COURT:** All right. Please quiet down for a
16 moment. Be seated.

17 **MR. KOZINA:** Housekeeping matter, Your Honor.

18 **MS. MAYO:** Get in line.

19 Your Honor, I may have missed this, but I assume that the
20 rule applies that witnesses who are under examination are not
21 allowed to consult or confer with their counsel during breaks.

22 **THE COURT:** Yes. I should have made that clear.
23 Once a witness is on the stand, there is no -- there should be
24 no further discussion about the testimony until they have
25 completed their testimony.

1 And speaking about a housekeeping matter, I'm going to
2 jump in line ahead of you, Mr. Kozina.

3 **MR. KOZINA:** Always last.

4 **THE COURT:** If you start a cross-examination with
5 somebody, unless there's a compelling reason, you need to
6 finish it.

7 And so today when Mr. Millen -- I allowed Mr. Millen to
8 ask questions. I didn't realize that Ms. Short was actually in
9 the courtroom, and so we don't -- so please avoid that in the
10 future.

11 **MS. SHORT:** I'm sorry, Your Honor. I --

12 **MR. MILLEN:** I thought she was not here. I
13 apologize. I thought she left.

14 **THE COURT:** I let you do it and it's fine, but don't
15 do it again.

16 **MR. KOZINA:** Another housekeeping matter. I hadn't
17 heard if Ms. Tosh had been excused as a witness. She's been
18 sitting in the courtroom for this entire testimony, and we
19 would ask for an exclusion and the Court had ordered exclusion.
20 So if she hasn't been excused, she needs to be asked to leave
21 the courtroom, Your Honor.

22 **THE COURT:** So what is the -- is she ever going to be
23 called back?

24 **MS. TROTTER:** Certainly not by the plaintiffs,
25 Your Honor. Her testimony was completed.

PROCEEDINGS

1 **MR. KOZINA:** I might have missed her being excused.

2 **THE COURT:** So any witness who has finished
3 testifying who wants to say here, that's fine, but they won't
4 be able allowed to come back in rebuttal or any other way.

5 **MR. KOZINA:** I appreciate. Could we have a marker
6 that they have been excused as a witness?

7 **THE COURT:** Yeah, I think that would be a useful
8 thing to do. Thank you Mr. Kozina.

9 Ms. Short.

10 **MS. SHORT:** The clarification about once a witness is
11 on the stand, and I can foresee throughout this trial,
12 including maybe even this afternoon, that there would be a
13 witness on the stand who then we break for three or four days.

14 **THE COURT:** No further conversation about the
15 testimony once somebody starts.

16 **MS. SHORT:** Okay. So just even over days?

17 **THE COURT:** Even over days, over long days. It's
18 just not appropriate.

19 **MS. SHORT:** Okay. Thank you, Your Honor.

20 **THE COURT:** All right. We're in recess until
21 10:00 o'clock.

22 (Whereupon there was a recess in the proceedings
23 from 9:47 a.m. until 10:01 a.m.)

24 **MR. LIMANDRI:** Could I get a clarification of one
25 matter that was discussed this morning?

PROCEEDINGS

1 Your Honor, I haven't had the situation arise before in
2 the course of a trial, if I understand the Court correctly,
3 where the attorney can't even consult, if I understand you
4 correctly, with his own client about questions they may have
5 been asked, that the witness may have further testimony on or
6 they have a question about or whatever, that the attorney can't
7 consult with his own client.

8 I have had that come up in other jurisdictions, not
9 California, with respect to depositions.

10 I understand federal courts. Some cases apply that rule
11 once there is questioning that a -- in a deposition, that
12 you're not supposed to speak with your witness, even if it's
13 your client, during a deposition. So that's not the rule in
14 California state court. But I've never had it come up in state
15 or federal court, unless there is a new rule I'm not aware of.

16 Particularly, the concern here is as well is because of
17 Penal Code Section 632 claim, that's also a claim being made in
18 a parallel criminal proceeding that's ongoing.

19 So it would seem to me the client's Sixth Amendment right
20 to effective representation of counsel would entitle them to be
21 able to consult with their attorney about potential
22 incriminating testimony.

23 So I can understand where -- if the Court is saying we
24 shouldn't be able to consult with other witnesses we don't have
25 an attorney-client relationship with, but it seems to me we're

PROCEEDINGS

1 not doing our job.

2 And I don't have anything in particular in mind because my
3 client hasn't testified yet, but I don't want to run afoul of
4 your rule and --

5 **THE COURT:** I'll let you make a further record later
6 on if you want to.

7 **MR. LiMANDRI:** Okay.

8 **THE COURT:** But my rule, which is -- that you will
9 not find it in the Federal Rules, but the Orrick Rules are no
10 coaching once the witness is on. Then it's the witness's
11 testimony. It's not the lawyer -- it's not the lawyer
12 coaching.

13 **MR. LiMANDRI:** Even if it's your client?

14 **THE COURT:** Even if it's your client.

15 **MR. LiMANDRI:** Okay.

16 **MR. MIHET:** One quick question on that, Your Honor.
17 Does your rule usually apply to both cross examination and
18 direct?

19 **THE COURT:** Yes.

20 **MR. MIHET:** It does?

21 **THE COURT:** Once the person is on, they are on.

22 **MR. MIHET:** And it applies to short breaks and
23 weekend breaks as well?

24 **THE COURT:** It does. And it applies to plaintiffs
25 and defendants. It just applies.

PROCEEDINGS

1 Let's get the jury.

2 **MR. LiMANDRI:** If you have rebuttal later, certainly
3 you talk to your client in the meantime.

4 **THE COURT:** Yes. That is certainly true,
5 Mr. LiMandri.

6 **MR. LiMANDRI:** Okay. Thank you.

7 (Jury enters the courtroom at 10:04 a.m.)

8 **THE COURT:** All right. Please be seated everybody.
9 Ms. Mayo, go ahead.

10 **BY MS. MAYO**

11 **Q.** Mrs. Merritt, just before we broke I think I asked you to
12 turn to Exhibit 429. If you could reopen your binder and turn
13 to Exhibit 429?

14 (Witness complied.)

15 **Q.** Mrs. Merritt, that is an email exchange between you and
16 Mr. Daleiden in 2014 regarding payment; correct?

17 **A.** Let me look it over.

18 (Brief pause.)

19 **A.** Yes.

20 **MS. MAYO:** Your Honor, I'd like to move Exhibit 429
21 into evidence.

22 **THE COURT:** Any objection?

23 **MR. MIHET:** No objection.

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

25 (Trial Exhibit 429 received in evidence).

PROCEEDINGS

1 (Document displayed)

2 **BY MS. MAYO**

3 **Q.** All right. And the first email, which is at the bottom of
4 the page, you're reminding Mr. Daleiden that he promised to
5 have your payment by the last week of April; correct?

6 **A.** Yes.

7 **Q.** And you had not yet received the payment as of May 11th;
8 correct?

9 **A.** I'm going to assume so, since I'm asking.

10 **Q.** All right. And, in fact, the top email of the page, which
11 is the last one in the chain, is in June. So as of June 2014
12 Mr. Daleiden still hadn't paid you for your work on the
13 project; correct?

14 **A.** That's what it looks like, yes.

15 **Q.** All right. Now, after the 2014 NAF conference in
16 San Francisco, moving on from there, you attended a lunch
17 meeting with Dr. Deborah Nucatola; correct?

18 **A.** That is correct.

19 **Q.** And that was in 2014.

20 **A.** Thank you. Yes.

21 **Q.** And at the lunch with Dr. Nucatola, you posed as Susan
22 Tennenbaum from BioMax; correct?

23 **A.** That's correct.

24 **Q.** And you wore a hidden video camera for the lunch with
25 Dr. Nucatola; correct?

PROCEEDINGS

1 **A.** Correct.

2 **Q.** And you never told Dr. Nucatola that you were taping her;
3 correct?

4 **A.** Correct.

5 **Q.** And before you went to the lunch, Mr. Daleiden provided
6 you with some information about Dr. Nucatola; correct?

7 **A.** When he provided me information about Dr. Deborah
8 Nucatola, I cannot say for sure; but to the point that I was
9 provided information before I met with her, yes.

10 **Q.** Okay. So before you had lunch with her and met with her,
11 he provided you with some information about Dr. Nucatola;
12 correct?

13 **A.** Correct.

14 **Q.** Now, why don't you turn to Exhibit 432 in your binder?
15 (Witness complied.)

16 **Q.** And, Mrs. Merritt, Exhibit 432 is an email that you
17 received from David Daleiden dated July 13, 2014, correct?

18 **A.** Correct.

19 **Q.** And it has attached -- there are some photos attached to
20 it; correct?

21 **A.** Yes.

22 **MS. MAYO:** Your Honor, Your Honor, the parties have
23 stipulated to the admissibility of Exhibit 432, so I would move
24 it into evidence and publish to the jury.

25 **THE COURT:** Okay. It's admitted.

PROCEEDINGS

1 (Trial Exhibit 432 received in evidence)

2 (Document displayed)

3 **BY MS. MAYO**

4 **Q.** Mrs. Merritt, the subject line of this email says "The
5 Target." You understood Dr. Nucatola to be the target this
6 email was about; correct?

7 **A.** I understood that we wanted to talk to Deborah Nucatola
8 because it was becoming increasingly -- the information about
9 the criminal activity that we expected and -- not expected, but
10 were investigating, that she would be a key person to talk to.

11 **MS. MAYO:** Your Honor, I move to strike the answer as
12 nonresponsive.

13 **THE COURT:** I think the question is: Was she the
14 target of this email?

15 **THE WITNESS:** She was a person that we wanted to talk
16 to, yes.

17 **THE COURT:** The target? The email says --

18 **THE WITNESS:** Oh, oh, the subject matter. That would
19 be the person that we were talking about.

20 **MS. MAYO:** Thank you, Your Honor.

21 **BY MS. MAYO**

22 **Q.** Now, the email references some links to various articles.
23 Did you review those articles to familiarize yourself with
24 Dr. Nucatola?

25 **A.** I'm going to assume that I did, yes.

PROCEEDINGS

1 Q. And attached to the email are two photos?

2 A. Yes.

3 Q. Correct?

4 A. Yes.

5 Q. And the first one is a photo of Dr. Nucatola with a young
6 girl; is that correct?

7 A. It is, yes.

8 Q. And the second photo is of Dr. Nucatola and the famous
9 singer Elton John; correct?

10 A. It is.

11 Q. Before you attended the lunch with Dr. Nucatola,
12 Mr. Daleiden emailed you and asked you to order a bottle of
13 wine for the lunch; correct?

14 A. I believe so.

15 Q. Could you turn to Exhibit 431 in the binder?

16 (Witness complied.)

17 Q. Mrs. Merritt, Exhibit 431 is an email you received from
18 David Daleiden dated July 17, 2014; correct?

19 A. Correct.

20 MS. MAYO: Your Honor, since the parties have
21 stipulated to the admissibility of Exhibit 431, I would like to
22 move it into evidence.

23 THE COURT: It's admitted.

24 (Trial Exhibit 431 received in evidence)

25 Document displayed)

PROCEEDINGS

1 BY MS. MAYO

2 Q. Now, on this email Mr. Daleiden sent you links to the wine
3 list and the menu at the restaurant you were going to with
4 Dr. Nucatola so you could order a bottle of wine; correct?

5 A. I see the link to the restaurant, yes.

6 Q. And below the links it says:

7 "If you could pre-select a bottle that you think
8 would be good, that would be great."

9 Is that correct?

10 A. That is what it says, yes.

11 Q. And so you ordered some wine for the lunch; right?

12 A. We did, yes.

13 Q. Now, Mr. Daleiden also sent you a list of themes for the
14 lunch with Dr. Nucatola; correct?

15 A. Do you have a document?

16 Q. I can show you, but first I'd like your testimony.

17 Did Mr. Daleiden send you a list of themes for your lunch
18 with Dr. Nucatola?

19 A. I'll assume so.

20 Q. Okay. Could you turn to Exhibit 434?

21 A. Thank you.

22 (Witness complied.)

23 Q. Mrs. Merritt, Exhibit 434 is an email dated July 23rd,
24 2019 that you received from Mr. Daleiden; correct?

25 A. Correct.

PROCEEDINGS

1 **MS. MAYO:** Your Honor, I'd like to move Exhibit 434
2 into evidence.

3 **THE COURT:** Any objection?

4 **MR. MIHET:** No, Your Honor.

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

6 (Trial Exhibit 434 received in evidence)

7 (Document displayed)

8 **BY MS. MAYO**

9 **Q.** Now, this email from Mr. Daleiden, the subject line is
10 "Three Themes." Do you see that?

11 **A.** I do.

12 **Q.** Those were the themes that you understood Mr. Daleiden
13 wanted to discuss at the lunch with Dr. Nucatola; correct?

14 **A.** Correct.

15 **Q.** All right. Focusing on the first theme, it says "Naming
16 Names." Mr. Daleiden was telling you that one purpose of the
17 lunch was to identify specific Planned Parenthood doctors and
18 administrators to connect with; correct?

19 **A.** Yes.

20 **MS. MAYO:** Your Honor, I'd like to play a video clip
21 designated as Exhibit 6104. It's a short clip from the
22 Nucatola lunch, and I do have a copy of the certified
23 transcript of the clip.

24 **THE COURT:** All right.

25

PROCEEDINGS

1 (Whereupon document was tendered to the Court.)

2 **THE COURT:** Mr. Mihet, is there any objection to the
3 clip?

4 **MR. MIHET:** No.

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

6 (Trial Exhibit 5104 received in evidence)

7 **THE COURT:** Go ahead.

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

9 **BY MS. MAYO**

10 **Q.** Mrs. Merritt, that's a video taken from the hidden camera
11 that you wore to the lunch with Dr. Nucatola; correct?

12 **A.** I assume it would have been one of our cameras, yes.

13 **Q.** Well, to your knowledge, it was only you and Mr. Daleiden
14 that attended the lunch with Dr. Nucatola; correct?

15 **A.** I'm sorry. Say that again?

16 **Q.** It was only you and Mr. Daleiden that attended the lunch
17 with Dr. Nucatola; correct?

18 **A.** Yes.

19 **Q.** And you can see Mr. Daleiden and Dr. Nucatola in the
20 video; correct?

21 **A.** Correct.

22 **Q.** You saw them?

23 **A.** Yes.

24 **Q.** So by process of elimination, if nothing else, that was
25 the video camera that you were wearing; correct?

PROCEEDINGS

1 **A.** Correct, correct.

2 **Q.** Okay. And you were walking Dr. Nucatola through the
3 restaurant to a table where Mr. Daleiden was waiting for you;
4 correct?

5 **A.** Correct.

6 **Q.** And you introduced Mr. Daleiden as Robby; is that correct?

7 **A.** Correct.

8 **Q.** And that was short for Robert Sarkis?

9 **A.** Yes.

10 **Q.** After the lunch with Dr. Nucatola, Mr. Daleiden asked you
11 to sign an independent contractor agreement; is that correct?

12 **A.** I don't remember.

13 **Q.** Let's take a look at Exhibit 352 in your binder.

14 (Witness complied.)

15 **Q.** Mrs. Merritt, Exhibit 352 is an email that you sent to
16 Mr. Daleiden on July 31st, 2014; correct?

17 **A.** Correct.

18 **Q.** And attached to it is an independent contractor agreement
19 between the Center for Medical Progress and Susan Merritt;
20 correct?

21 **A.** Correct.

22 **MS. MAYO:** Your Honor, I'd like to move Exhibit 352
23 into evidence.

24 **THE COURT:** Any objection?

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

PROCEEDINGS

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

2 (Trial Exhibit 352 received in evidence)

3 (Document displayed)

4 **BY MS. MAYO**

5 **Q.** If you would turn to Paragraph 9 of the independent
6 contractor agreement?

7 (Witness complied.)

8 **Q.** That's a paragraph of the independent contractor agreement
9 on "Confidential Information;" correct?

10 **A.** Yes.

11 **Q.** You understood that Mr. Daleiden was asking you to keep
12 confidential all the information listed in this paragraph;
13 right?

14 **A.** At this time if I even read it, I would say that that's
15 correct.

16 **Q.** Well, your understanding was that he wanted you to keep
17 confidential the information that he was sharing with you for
18 the Center for Medical Progress project; right?

19 **A.** That was my understanding from the very beginning of
20 our -- from the very beginning. So, yes.

21 **Q.** And turning to the next page, at the top it says:

22 "The contractor," meaning you, "will not for any
23 reason, directly or indirectly, reveal confidential
24 information to any other person, corporation or entity
25 or otherwise use the confidential information for

PROCEEDINGS

1 contractor's own benefit."

2 You understood Mr. Daleiden to be requiring you to keep
3 confidential all the information about the project; correct?

4 **A.** From the beginning of the project to -- I understood that
5 things needed to be kept confidential.

6 **Q.** And you electronically signed this contract; correct?

7 **A.** I don't know. I -- if I did or not. My technical skills
8 are less than stellar. So I -- I don't know.

9 I would assume so by what I wrote, "I did it!!" I
10 think -- I think that's true.

11 **Q.** And what you're referring to is the cover email where
12 you're returning this contract to Mr. Daleiden that says "I did
13 it!!"

14 **A.** Exactly. And then "I think."

15 **Q.** Because you weren't sure if you had done it correctly?

16 **A.** Correct.

17 **Q.** Could you turn to Exhibit 438?

18 (Witness complied.)

19 **Q.** Mrs. Merritt, Exhibit 438 is an email exchange that you
20 had with Mr. Daleiden in January of 2015; correct?

21 **A.** Correct.

22 **MS. MAYO:** Your Honor, I'd like to move Exhibit 438
23 into evidence.

24 **THE COURT:** Any objection?

25 **MR. MIHET:** No.

PROCEEDINGS

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

2 (Trial Exhibit 438 received in evidence)

3 (Document displayed)

4 **BY MS. MAYO**

5 **Q.** And, Mrs. Merritt, if you look right in the middle of the
6 document, at Mr. Daleiden's email to you from 1:59 p.m., he
7 says at the end of that paragraph:

8 "Would 750 as last time be okay?"

9 Do you see that?

10 **A.** Not yet. Sorry.

11 (Brief pause.)

12 **A.** Yes.

13 **Q.** So you understood Mr. Daleiden to be asking you whether he
14 could compensate you at \$750; correct?

15 **A.** I believe so.

16 **Q.** And in your top email your response to Mr. Daleiden, you
17 wrote:

18 "We've agreed to \$1,200 -- or 1200."

19 You meant \$1,200; correct?

20 **A.** Yes.

21 **Q.** All right. Do you recall any discussion with Mr. Daleiden
22 about the difference between those numbers? Were you haggling
23 with Mr. Daleiden over how much you were going to be
24 compensated?

25 **A.** Was I what?

PROCEEDINGS

1 Q. Haggling with Mr. Daleiden over how much you would be
2 compensated?

3 A. No.

4 Q. Was Mr. Daleiden, to your impression, haggling with you?

5 A. No, but --

6 Q. You've answered the question.

7 A. Thank you.

8 Q. Your next taping was at a lunch with Dr. Mary Gatter;
9 correct?

10 A. Yes.

11 Q. That was in February of 2015?

12 A. I would assume so.

13 Q. That was a lunch meeting that you had with Dr. Gatter and
14 a colleague of hers, Laurel Felczer; correct?

15 A. Correct.

16 Q. All right. And at the lunch with Dr. Gatter and
17 Ms. Felczer, you posed as Susan Tennenbaum from BioMax;
18 correct?

19 A. Correct.

20 Q. And you wore a hidden video camera for the lunch; correct?

21 A. Correct.

22 Q. You never told Dr. Gatter or Ms. Felczer that you were
23 recording your conversation; correct?

24 A. Suspecting that we were going to be uncovering criminal
25 activity and conversation about that, no, we did not tell her.

PROCEEDINGS

1 **MS. MAYO:** Your Honor, move to strike the preamble as
2 nonresponsive.

3 **THE COURT:** Sustained.

4 **MS. MAYO:** Your Honor, I would like to play the video
5 designated as Exhibit 6082, which is a short clip of walking
6 into this restaurant.

7 **THE COURT:** Okay. No sound?

8 **MS. MAYO:** I don't think they actually say anything
9 because I don't have a transcript for 6082.

10 **THE COURT:** Okay. Mr. Mihet? 6082, do you know
11 what's coming?

12 **MR. MIHET:** Yes. No objection.

13 **THE COURT:** Please go ahead.

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

15 **BY MS. MAYO**

16 **Q.** Mrs. Merritt, that is video from the camera that you were
17 wearing as you walked into the restaurant in Pasadena where you
18 were having lunch with Dr. Gatter; correct?

19 **A.** Correct.

20 **Q.** And that was Dr. Gatter that you saw greeting you at the
21 booth there; correct?

22 **A.** Correct.

23 **Q.** And Mr. Daleiden, who is posing as Robert Sarkis; correct?

24 **A.** Correct.

25 **MS. MAYO:** Your Honor, I'd like to move Exhibit 6082

PROCEEDINGS

1 into evidence.

2 **MR. MIHET:** No objection.

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

4 (Trial Exhibit 6082 received in evidence).

5 **MS. MAYO:** And, Your Honor, I would now like to play
6 the video that's designated as 6083, and I do have the
7 transcript for that.

8 (Whereupon document was tendered to the Court.)

9 **MR. MIHET:** Just a point of clarification. When this
10 video was provided to us, it was identified as 6084. So I just
11 want to make sure that we're not --

12 **MS. MAYO:** There was a duplicate in there, I think.
13 6084 and 6083 were identical. If you look at the transcript, I
14 think you can...

15 **MR. MIHET:** Okay.

16 **THE COURT:** All right. And with that, no objection?

17 **MR. MIHET:** No objection.

18 **THE COURT:** Okay. You may proceed.

19 (Trial Exhibit 6083 received in evidence)

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

21 **MS. MAYO:** If you can pause there?

22 **BY MS. MAYO**

23 **Q.** So, Mrs. Merritt, that's you speaking with Dr. Gatter;
24 correct?

25 **A.** Correct.

PROCEEDINGS

1 Q. And you were posing as Susan Tennenbaum from BioMax;
2 correct?

3 A. Correct.

4 Q. And you told Dr. Gatter that your start-up was coming up
5 on its one year anniversary; right?

6 A. That's what I said.

7 Q. And that was not true?

8 A. No. Or correct, that's not true.

9 MS. MAYO: Okay. Let's start again.

10 (Videotape resumed, not reported.)

11 BY MS. MAYO

12 Q. All right. And just before the waiter arrived, you were
13 talking. Dr. Gatter asked how you got into this business;
14 correct?

15 A. Correct.

16 Q. And talking about BioMax; right?

17 A. We were, yes.

18 Q. Yes. And you told her that you got into the business in
19 the 80's counseling women about stigma; right?

20 A. That's what I told her, yes.

21 Q. And that wasn't true?

22 A. That was the pretext that we used for the undercover
23 investigation.

24 Q. So that was, say, a false statement; correct?

25 A. That was the pretext that we used, yes.

PROCEEDINGS

1 **MS. MAYO:** All right. Let's continue.

2 (Videotape resumed, not reported.)

3 **BY MS. MAYO**

4 **Q.** All right. And in that portion of the clip you told
5 Dr. Gatter that you had gotten your start in a clinic in that
6 area that had closed down; correct?

7 **A.** That's what I said, yes.

8 **Q.** And that was a false statement; correct?

9 **A.** Again, more of the pretext, continuing that, yes.

10 **MS. MAYO:** All right. Let's continue.

11 (Videotape resumed, not reported.)

12 **BY MS. MAYO**

13 **Q.** And, Mrs. Merritt, in that last portion of the clip you
14 were talking about your niece who works in research; correct?

15 **A.** That's what I stated, yes.

16 **Q.** Yeah. And that your niece knew Robert Sarkis; correct?

17 **A.** That's what I stated.

18 **Q.** And you don't actually have a niece who works in research
19 who knows Robert Sarkis; correct?

20 **A.** Again, part of the pretext that we used, yes.

21 **Q.** So that was more of your back story as Susan Tennenbaum;
22 correct?

23 **A.** Correct.

24 **Q.** Now, to prepare for your meeting with Dr. Gatter,
25 Mr. Daleiden gave you some goals for that meeting; correct?

PROCEEDINGS

1 **A.** I'm going to assume so.

2 **Q.** Could you take a look at Exhibit 372?

3 **A.** Sure.

4 (Witness complied.)

5 **Q.** And, Mrs. Merritt, you understood that Dr. Gatter was from
6 the Planned Parenthood Pasadena/San Gabriel Valley affiliate;
7 correct?

8 **A.** At the time of the meeting?

9 **Q.** Yes.

10 **A.** I don't think that that's a correct statement. I think --

11 **Q.** You didn't know what affiliate Dr. Gatter was from?

12 **A.** I may have, but, hmm, what is this? Almost five years
13 later.

14 What I -- at that time what I understood and even looking
15 at this document, I'm not sure.

16 **Q.** All right. This is an email -- Exhibit 372 is an email
17 that you received from David Daleiden dated February 3rd, 2015;
18 correct?

19 **A.** That is correct.

20 **MS. MAYO:** Your Honor, I'd like to move Exhibit 372
21 into evidence.

22 **THE COURT:** Any objection?

23 **MR. MIHET:** No.

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

25 (Trial Exhibit 372 received in evidence)

PROCEEDINGS

1 (Document displayed)

2 **BY MS. MAYO**

3 **Q.** And the subject line for this email is "Goals For
4 Meeting;" correct?

5 **A.** That is correct.

6 **Q.** And you understood this to be an email about the goals for
7 your meeting with Dr. Gatter; correct?

8 **A.** What I understood in the -- trying to find out and
9 investigate whether there was criminal activity, these -- what
10 is listed here, the six goals, would be -- would seem to fit
11 that assumption, yes.

12 **MS. MAYO:** Your Honor, move to strike as
13 nonresponsive the portion before "what is listed here" or "what
14 is described here."

15 **THE COURT:** I'm not going to strike it this time, but
16 it would be really helpful if you would just focus on the
17 question and give the answer to the question.

18 **THE WITNESS:** Sorry. Thank you.

19 **BY MS. MAYO**

20 **Q.** All right. So looking at the first goal for the meeting
21 with Dr. Gatter, it says:

22 "First, what price Planned Parenthood
23 Pasadena/San Gabriel Valley expects per fetal
24 specimen."

25 You understood that to be a directive to find out what

PROCEEDINGS

1 price Dr. Gatter or Planned Parenthood Pasadena/San Gabriel
2 Valley expected per fetal specimen; correct?

3 **A.** Correct.

4 **Q.** And the second sentence says:

5 "Haggle to arrive at it."

6 That was a directive to you to haggle with Dr. Gatter to
7 arrive at what price PPSGV would pay per fetal specimen;
8 correct?

9 **A.** I'm sorry. Again?

10 **Q.** Where it says "Haggle to arrive at it," you understood
11 that to be a directive to haggle with Dr. Gatter to arrive at
12 the price that Pasadena/San Gabriel Valley Planned Parenthood
13 would pay for -- or wanted per fetal specimen?

14 **A.** No.

15 **Q.** That was not your understanding?

16 **A.** No.

17 **Q.** Now, you testified this morning that you also went
18 undercover at a couple of Planned Parenthood affiliate clinics;
19 correct?

20 **A.** Yes.

21 **Q.** So your next taping was at the Planned Parenthood Rocky
22 Mountain affiliate; correct?

23 **A.** We went to Rocky Mountain, yes.

24 **Q.** That was in April of 2015; correct?

25 **A.** I will assume so.

PROCEEDINGS

1 Q. And when you went to the PPRM Health Clinic, you posed as
2 Susan Tennenbaum; correct?

3 A. That is correct.

4 Q. And Mr. Daleiden posed as Robert Sarkis; correct?

5 A. That is correct.

6 Q. And you met with Dr. Savita Gindi and some of her
7 colleagues from Planned Parenthood Rocky Mountain; correct?

8 A. Yes.

9 Q. And you were wearing your undercover camera during that
10 clinic visit; correct?

11 A. Correct.

12 Q. You had it on the whole time; right?

13 A. I believe so.

14 Q. And you videotaped your conversations with Dr. Gindi and
15 everyone else that you encountered in the clinic; correct?

16 A. That is correct.

17 Q. And you didn't tell Dr. Gindi or anyone at Planned
18 Parenthood Rocky Mountain that you were taping them; correct?

19 A. Suspecting that we were going to uncover criminal
20 activity, absolutely not.

21 **MS. MAYO:** Your Honor, move to strike the first
22 portion before "absolutely not" as nonresponsive.

23 **THE COURT:** I think we've heard the -- your
24 perspective on this, so just hit the question --

25 **THE WITNESS:** "Yes" or "no"?

PROCEEDINGS

1 **THE COURT:** -- directly. That would be helpful to
2 move things along.

3 **THE WITNESS:** Sorry.

4 **BY MS. MAYO**

5 **Q.** After you went to the Planned Parenthood Rocky Mountain
6 clinic and taped Dr. Gindi and her colleagues, your next
7 undercover taping was at the Planned Parenthood Gulf Coast
8 facility, correct, in Texas?

9 **A.** I believe that was the order, yes.

10 **Q.** And that was within a few days of your visit to the Rocky
11 Mountain clinic; correct?

12 **A.** Yes.

13 **Q.** All right. And you presented your fake California
14 driver's license with Susan Tennenbaum on it to get into the
15 facility; correct?

16 **A.** We presented the Susan Tennenbaum, Robert Sarkis, yes.
17 Those names, yes.

18 **Q.** You presented the fake IDs to get in; correct?

19 **A.** We had to, yes.

20 **Q.** Okay.

21 **MS. MAYO:** Your Honor, I'd like to play the video
22 that's designated as 6102. It's a very short clip. And I have
23 the transcript here.

24 (Whereupon document was tendered to the Court.)

25 **THE COURT:** Any objection, Mr. Mihet?

PROCEEDINGS

1 **MR. MIHET:** No, Your Honor.

2 **THE COURT:** Okay. Go ahead. It's admitted.

3 (Trial Exhibit 6102 received in evidence).

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

5 **BY MS. MAYO**

6 **Q.** Mrs. Merritt, that video reflects you presenting your fake
7 I.D., the Susan Tennenbaum I.D., to the receptionist there and
8 then getting your Susan Tennenbaum name tag; correct?

9 **A.** Yes.

10 **Q.** And while you were at the Planned Parenthood Gulf Coast
11 facility, you taped your meetings with Missy Farrell and Tram
12 Nguyen; correct?

13 **A.** Yes.

14 **Q.** And you had the recording equipment on the entire time you
15 were at the clinic; correct?

16 **A.** Correct.

17 **Q.** So you taped everyone that you came into contact with?

18 **A.** Correct.

19 **Q.** And you didn't tell Ms. Farrell or Ms. Nguyen that you
20 were taping them?

21 **A.** No.

22 **Q.** You didn't tell any of the other people that you came into
23 contact with that you were taping them; correct?

24 **A.** No.

25 **Q.** Now, your final taping appearance at issue in this case

PROCEEDINGS

1 was at the NAF 2015 annual meeting; correct?

2 **A.** In San Francisco?

3 **Q.** The 2015 meeting in Baltimore.

4 **A.** Oh, Baltimore. Yes.

5 **Q.** All right. And you attended the 2015 NAF annual meeting
6 in Baltimore, Maryland; correct?

7 **A.** I did, yes.

8 **Q.** And you attended the conference with Mr. Daleiden;
9 correct?

10 **A.** Correct.

11 **Q.** And Defendant Adrian Lopez; correct?

12 **A.** Correct.

13 **Q.** And Anna Bettisworth Davin; correct?

14 **A.** Correct.

15 **Q.** And you attended the 2015 NAF meeting posing as Susan
16 Tennenbaum from BioMax; correct?

17 **A.** Correct.

18 **Q.** And you wore a hidden video camera at the 2015 NAF
19 conference; correct?

20 **A.** Correct.

21 **Q.** And earlier today we played Exhibit 6040, which was
22 Mr. Daleiden instructing you to bring your fake I.D. Do you
23 recall that exhibit, that video clip?

24 **A.** Watching it, yes.

25 **Q.** Okay. If you need it, I can play it again, if you want to

PROCEEDINGS

1 see it. No? You remember it?

2 A. I do. Thank you.

3 Q. Okay. And we saw Mr. Daleiden in that video; right?

4 A. Yes.

5 Q. And Mr. Lopez?

6 A. Yes.

7 Q. And you?

8 A. Did we see me? Yes. That was -- yes.

9 Q. Well, you were there?

10 A. Yes.

11 Q. Okay.

12 A. I'm just trying to answer your question to the best --

13 Q. And in that video clip you were all getting ready to go
14 downstairs and participate in the conference; correct?

15 A. That's right.

16 Q. And you recorded the people that you met at the 2015 NAF
17 conference; correct?

18 A. Yes.

19 Q. And you had your recording equipment turned on all the
20 time when you attended the 2015 NAF conference; correct?

21 A. Yes.

22 Q. And you didn't tell any of the people that you taped that
23 they were being videotaped by you; correct?

24 A. No, I did not.

25 Q. Now, you mentioned the fourth person in your group that

PROCEEDINGS

1 attended the 2015 NAF conference, Ms. Anna Bettisworth Davin;
2 do you recall that?

3 **A.** I do.

4 **Q.** And she attended; correct?

5 **A.** She did.

6 **Q.** And she was posing as Rebecca Wagner from BioMax; correct?

7 **A.** That's correct.

8 **Q.** Mrs. Merritt, could you turn to Exhibit 443 in your
9 binder?

10 (Witness complied.)

11 **Q.** Mrs. Merritt, Exhibit 443 is an email exchange between you
12 and Mr. Daleiden from June 2015; is that correct?

13 **A.** Yes.

14 **MS. MAYO:** Your Honor, I would move Exhibit 443 into
15 evidence.

16 **THE COURT:** Any objection?

17 **MR. MIHET:** No, Your Honor.

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

19 (Trial Exhibit 443 received in evidence)

20 (Document displayed)

21 **BY MS. MAYO**

22 **Q.** Now, focusing on your email to Mr. Daleiden, the bottom
23 half of the page, I see you're asking him for payment again.

24 You said:

25 "Even though you said the check was in the mail

PROCEEDINGS

1 per your June 2nd email, I'm again enclosing the
2 amounts just in case you have misplaced them. Grand
3 total is \$1,415."

4 Correct?

5 **A.** Yes.

6 **Q.** And the line that's in between, that's wedged in between
7 your sentence there, says:

8 "Thanks. I'll send everything as a big check
9 later this afternoon."

10 That was what you were referring to from Mr. Daleiden's
11 June 2nd email; correct?

12 **A.** I don't remember.

13 **Q.** Okay. So at that point in time Mr. Daleiden owed you
14 \$1,415; correct?

15 **A.** It looks like it, yes.

16 **Q.** And that -- the itemized list there lists the Denver
17 Renaissance and Houston. Was that for the PPRM and PPGC clinic
18 visits?

19 **A.** I'm not sure.

20 **Q.** Mr. Daleiden ultimately paid you; correct?

21 **A.** Yes.

22 **Q.** Mrs. Merritt, the project that you did for CMP was not the
23 first time that you went undercover to target Planned
24 Parenthood; is that correct?

25 **A.** That's correct.

PROCEEDINGS

1 **MR. MIHET:** Objection. Argumentative.

2 **THE COURT:** Overruled.

3 **BY MS. MAYO**

4 **Q.** You're familiar with the organization Live Action;
5 correct?

6 **A.** I am.

7 **Q.** And you worked on a project with Live Action prior to your
8 work on the Human Capital Project with CMP; correct?

9 **A.** That's correct.

10 **Q.** The Live Action project you worked on focused on Planned
11 Parenthood; right?

12 **A.** That is correct.

13 **Q.** The Live Action project you worked on was called
14 Mammo-sham; correct?

15 **A.** That is correct.

16 **Q.** And your work in the Mammo-sham project for Live Action
17 was to call up Planned Parenthood health centers; correct?

18 **A.** That is correct.

19 **Q.** You called up Planned Parenthood health centers in
20 Indiana; correct?

21 **A.** Yes.

22 **Q.** You were given a list of Planned Parenthood phone numbers
23 to call; correct?

24 **A.** I would assume so. I didn't know their phone numbers.

25 **Q.** And you didn't tell any of the people that you spoke to

PROCEEDINGS

1 that you were calling on behalf of Live Action, did you?

2 **A.** I asked questions to see if they did mammograms.

3 **Q.** And you did not tell any of the people that you spoke to
4 that you were calling on behalf of Live Action; correct?

5 **A.** Correct.

6 **Q.** And you understand that Live Action is an organization
7 dedicated to ending abortion; correct?

8 **A.** I don't think I would agree with that. I think they are
9 more about educating people with truth about the abortion
10 issue.

11 **MS. MAYO:** Let me see if I can refresh your
12 recollection.

13 (Whereupon document was tendered to the Court.)

14 **MS. MAYO:** Your Honor, may I approach the witness?

15 **THE COURT:** Yes, please.

16 (Whereupon document was tendered to the witness.)

17 **THE WITNESS:** Thank you.

18 **BY MS. MAYO**

19 **Q.** Mrs. Merritt, I'm showing you a printout from the Live
20 Action website. And if you turn to the page with the picture
21 on it, the Lila Rose picture?

22 **A.** The picture of Lila Rose?

23 **Q.** Yes, yes.

24 It says --

25 **MR. MIHET:** Your Honor, I object on foundation

PROCEEDINGS

1 grounds.

2 **THE COURT:** Sustained.

3 **BY MS. MAYO**

4 **Q.** You're familiar with Live Action; correct?

5 **A.** I am.

6 **Q.** And you've seen their website; correct?

7 **A.** Yes.

8 **Q.** And you have met Lila Rose; correct?

9 **A.** Yes, I have.

10 **Q.** You worked for her?

11 **A.** Yes, I did.

12 **Q.** And you understand the mission of Live Action; correct?

13 **A.** Umm, I don't know that I can answer for Lila and her
14 mission. I am familiar with the body -- well, not the entire
15 body of work that she has done, but --

16 **Q.** You understand that Live Action is dedicated to ending
17 abortion and inspiring a culture that respects and defends
18 life; is that correct?

19 **MR. MIHET:** Objection. Asked and answered.

20 **THE COURT:** Overruled. You can answer that question.

21 **A.** I understand Lila to be a young woman who has dedicated
22 her life since, she was eight years old and found out the --
23 I'm going to need some tissue.

24 **THE COURT:** Jean, can you get some tissues?

25 (Brief pause.)

PROCEEDINGS

1 **THE COURT:** Thank you, Ms. Dhillon.

2 **A.** Lila is a young woman who has a vast amount of information
3 about the horrors of abortion and has dedicated her life to
4 exposing that.

5 **BY MS. MAYO**

6 **Q.** And you feel very passionate about that; correct?

7 **A.** I think that's apparent, yes. And "that" meaning Lila.

8 **Q.** You feel very passionate about ending abortion; correct?

9 **A.** I feel very passionate about Lila.

10 **Q.** And my question to you is: You feel very passionate about
11 ending abortion; is that correct?

12 **A.** I wouldn't agree with that.

13 **Q.** In fact, you attended your first protest against abortion
14 in 1989; correct?

15 **A.** Yes.

16 **Q.** All right. And that was a protest against -- the protest
17 outside of the shopping mall on Stevens Creek Boulevard;
18 correct?

19 **A.** That is correct.

20 **Q.** Let me go back. I had a question to ask you.

21 Mr. Daleiden worked with you at Live Action; correct -- or
22 he worked at Live Action at the time period that you did that
23 Mammo-sham project; correct?

24 **A.** I was not aware that he was employed by Live Action.

25 That, in fact, the characterization of me as an abortion

PROCEEDINGS

1 activist, if you can consider two telephone calls, three or
2 four telephone calls, walking into an office, making a few
3 phone calls as an activist; and the one time, perhaps twice,
4 standing on a street as an activist. So, yes, I would.

5 **Q.** First, let me get back to my question, which was:
6 Mr. Daleiden worked with you -- or worked at Live Action at the
7 same time you worked there; correct?

8 **A.** I wasn't aware of that at the time. I've come to learn
9 that, yes.

10 **Q.** All right. Now, going back to your anti-abortion views
11 and activities, you took your daughter to that protest against
12 abortion; right?

13 **A.** I did.

14 **Q.** And you were holding signs at the protest against
15 abortion; correct?

16 **A.** I held a sign that says "Abortion Kills Children," yes.

17 **Q.** And when you were in your 30s you committed to do what you
18 could to stop abortion; correct?

19 **A.** In my 30s? Almost 40 years ago? I'm not sure.

20 **Q.** Mrs. Merritt, you gave an interview to the Life Legal
21 Defense Foundation in August of 2017; do you recall that?

22 **A.** An interview -- yes.

23 **Q.** And in that interview you told the interviewer:

24 "It wasn't until she became a Christian in her
25 30s that she came out of the fog of rhetoric and lies.

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1 She realized what abortion was and committed to doing
2 what she could do to stop it."

3 You told that to the Life Legal Defense Foundation
4 interviewer; correct?

5 **A.** I'm going to assume I said that in 2017.

6 **Q.** And you also said:

7 "Simply standing on the sidelines and believing
8 abortion is wrong is not enough."

9 You made that statement?

10 **A.** That sounds, right.

11 **Q.** So rather than sitting on the sidelines, you joined with
12 Mr. Daleiden and other defendants to attack Planned Parenthood;
13 correct?

14 **MR. MIHET:** Objection. Argumentative.

15 **THE COURT:** Sustained.

16 **MS. MAYO:** I will pass the witness to Mr. Mihet.

17 **THE COURT:** All right.

18 **CROSS-EXAMINATION**

19 **BY MR. MIHET**

20 **Q.** Good morning, Ms. Merritt.

21 I would like to start by telling the jury a little bit
22 more about your background. Can you tell us what you currently
23 do for a living?

24 **A.** I'm retired.

25 **Q.** And how long have you been retired?

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1 **A.** About five years.

2 **Q.** And I know it's rude to ask, but how old are you?

3 **A.** I'm close to 70. I know you like to be precise. I'm 66.

4 I round up.

5 (Laughter.)

6 **Q.** What did you do before you became retired?

7 **A.** Do you want my lifetime story?

8 **Q.** No, for a living generally.

9 **A.** Okay. So I taught children in a private school. I ran a
10 home business helping other parents that were -- that needed
11 help in academics for their children. I live coached.

12 **Q.** How long were you a teacher for, approximately?

13 **A.** Fifteen years.

14 **Q.** And what subjects did you teach?

15 **A.** Literature, phonics, spelling, English, fine arts,
16 history. I think that covers it.

17 **Q.** What do you do to stay busy in retirement?

18 **A.** I sit on a couch and crochet.

19 **Q.** Do you have any grandchildren?

20 **A.** I do.

21 **Q.** How many?

22 **A.** Living? Two.

23 **Q.** And are you involved as a grandmother in their lives?

24 **A.** You bet I am.

25 **Q.** So, Ms. Merritt, why did you decide to leave your

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1 comfortable couch and your crochet kit to be an undercover
2 investigator for the Center for Medical Progress?

3 **A.** After learning -- well, after three -- four decades of
4 doing what I felt was responsible as a mother, and part of that
5 responsibility was being very aware of organizations like
6 Planned Parenthood -- I don't want to get into this personal
7 stuff, but I know I have to.

8 Could you repeat your question? I want to stay on track.

9 **Q.** Yeah. Why did you decide to become an undercover
10 investigator for the Center for Medical Progress? What were
11 you trying to do?

12 **A.** So I had decades of information about Planned Parenthood,
13 their history; the founder, a eugenist Margaret Sanger.

14 I had been aware of books by Bernard Nathanson, who was an
15 abortionist that wrote a book about his involvement in ushering
16 in legalized abortion by telling lies. So I kept very current
17 on that information.

18 Fast forward to when Mr. Daleiden came to me with the
19 overabundance of information about perhaps criminal activity by
20 this organization. Having two daughters and caring about how
21 young women were being treated, used, abused, lied to, and
22 criminal activity was -- seemed apparent by the information
23 that he was giving to me, there was nothing else that I could
24 do.

25 **Q.** So we'll get into the information that Mr. Daleiden shared

1 with you, but before we do that, what crimes were you
2 suspecting Planned Parenthood of being involved in?

3 **A.** Again, based upon knowing this organization to lie
4 about -- well, what was mentioned before, offering mammograms
5 and scaring young women in Indiana that if they didn't have
6 Planned Parenthood around, that medical treatment would be
7 available to them [sic].

8 Having that background and then learning from the studies
9 that David provided me with, the doctors that he had talked to,
10 just an overabundance.

11 And, also, Live Action's information that was readily
12 available; the partial-birth abortion, the willingness to
13 manipulate procedures without a patient's consent,
14 overmedicating a patient, babies born alive, and then all for
15 profit, big money.

16 **Q.** What about babies born alive were you suspecting Planned
17 Parenthood of doing?

18 **A.** Again, based on information that David had, had
19 conversations with and he had shared those conversations
20 with -- and specifically I'm talking about fetal tissue
21 procurement technicians that talked to him about hovering
22 around in the hallway waiting to harvest those human body
23 parts. And babies just falling out, which any reasonable
24 person would know that's a baby born alive, and then taking
25 those body parts --

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1 **MS. MAYO:** Your Honor, objection. Hearsay. 403.

2 And I would like a standing objection to this.

3 **THE COURT:** You can have a standing objection to it,
4 but what is in Mrs. Merritt's mind at the outset until the
5 initial taping in California is relevant.

6 There will be a time perhaps when that objection might be
7 sustained, but certainly not now.

8 Go ahead.

9 **THE WITNESS:** I'm sorry. Where was I?

10 **BY MR. MIHET**

11 **Q.** I think you were finishing your response about what you
12 suspected Planned Parenthood of doing with babies that were
13 born alive.

14 Did you finish that response or did you wish to add
15 anything to it?

16 **A.** This was a conversation with Perrin Larton --

17 **Q.** I'm sorry to interrupt, but we'll get into the specifics
18 of how you got the information. Right now I was just trying to
19 get a general overview of the crimes that you suspected Planned
20 Parenthood of being engaged in. Have we covered them?

21 **A.** No, but we can go on.

22 **Q.** Okay. So you mentioned that you had some involvement with
23 Live Action, and I'd like to briefly talk about that.

24 How many calls did you make on their behalf in this
25 Mammo-sham project?

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1 **A.** I'm going to estimate between two, three, up to perhaps
2 ten.

3 **Q.** And was that the extent of your involvement with Live
4 Action then?

5 **A.** Yes.

6 **Q.** And what did you uncover during that project?

7 **A.** I recall Cecile Richards, the former president of Planned
8 Parenthood, stating that young women would be denied medical
9 help, and one of the things that she said was mammograms, to
10 which she later testified before Congress they don't do
11 mammograms.

12 **Q.** And so during the Mammo-sham project, did you have a
13 chance to determine whether or not the affiliates that you
14 called were doing mammograms?

15 **A.** Absolutely. That was the purpose, to show that clinic
16 after clinic that was asked: May I get a mammogram? Or
17 something to that effect: You do mammograms. May I make an
18 appointment for a mammogram? One after another the answer was:
19 No, we don't do that. No, we don't do that.

20 **Q.** So when you were calling these affiliates, did you tell
21 them on the phone: Hey, my name is Sandra Merritt. I work for
22 Live Action. We suspect that you may be lying to the public
23 about the provision of mammograms and I'd like to catch you in
24 the act. Did you say anything like that to them?

25 **A.** I did not.

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1 Q. Why not?

2 A. I just asked questions to ascertain whether or not they
3 were telling the truth.

4 Q. Had you said something like that to them, do you have a
5 belief as to whether or not they would have told you the truth?

6 A. I'm sorry. Could you repeat that?

7 Q. Had you said something like what I just posed to the
8 Planned Parenthood affiliates, do you have a belief as to
9 whether or not they would have told you the truth?

10 A. I don't think they would have told me the truth.

11 Q. Okay. Now, moving a little bit forward. I think you
12 testified that sometime in 2013 you began discussing with
13 Mr. Daleiden more specifically the crimes that you believed
14 Planned Parenthood was engaged in?

15 A. That's correct.

16 Q. And during those discussions, did Mr. Daleiden have an
17 opportunity to share with you the information and the research
18 and the evidence that he had gathered regarding suspected
19 criminal conduct by Planned Parenthood?

20 A. Yes, he did.

21 Q. Did Mr. Daleiden share with you anything about a 20/20
22 production?

23 A. He did.

24 Q. And what did he share about that or what did you learn
25 from that?

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1 **A.** He showed me the ABC -- I think it was Chris Wallace, Mike
2 Wallace -- 20/20 expose that they had conducted showing the
3 very thing that our videos have since shown; that Planned
4 Parenthood was in the business of profiting from harvesting
5 human body parts, and that there was quite a market, and there
6 was big money to be made.

7 **MS. MAYO:** Objection. 403 --

8 (Court reporter clarification.)

9 **MS. MAYO:** 403 and (inaudible).

10 **MR. MIHET:** State of mind.

11 **THE COURT:** At this point I'm going to overrule the
12 objection because it refers to state of mind of Ms. Merritt.

13 I will remind the jury of the instruction that I gave you
14 in the beginning. This case is not about whether abortion is
15 good or bad. And certainly this evidence is not being offered
16 for the truth of the matter. That's hotly disputed throughout
17 the world outside of this courtroom.

18 In this courtroom we're focusing on the strategies that
19 were employed by the defendant. The state of mind of the
20 defendants going into this though is relevant to one of the
21 defenses, and to a certain degree I'm going to allow this
22 testimony.

23 **BY MR. MIHET**

24 **Q.** Was the 20/20 production an undercover investigation?

25 **A.** It was undercover. It was -- I won't say exactly as,

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1 like, the undercover of CMP, but -- I won't say exactly, but
2 they had hidden cameras. They did not identify themselves as
3 we're here to see if you're conducting criminal activity.

4 I don't know the person's real name, but I'm assuming, so
5 that they didn't come in and say -- announce: Here we are to
6 see if you are selling human body parts to make a profit.

7 So it was -- with minor exceptions, as I stated, it was
8 exactly like what -- Mr. Daleiden's project.

9 **Q.** 20/20 met with those in the fetal tissue procurement
10 business under false pretext in order to uncover the truth; is
11 that your understanding?

12 **THE COURT:** I'm going to strike that and sustain the
13 objection that's about to be made.

14 **MS. MAYO:** Thank you, Your Honor.

15 **MR. MIHET:** Okay.

16 **THE COURT:** If you want to have a witness who is
17 going to compare what ABC did to Mr. Daleiden, it's going to
18 have to be somebody different than Ms. Merritt.

19 **MR. MIHET:** Fair enough, Your Honor.

20 **BY MR. MIHET**

21 **Q.** To your knowledge, from the time that the 20/20 production
22 was published and until the time that you learned about it from
23 Mr. Daleiden, had anything been done to try to further
24 investigate or prosecute those who were shown to profit in the
25 fetal tissue procurement world?

1 **MS. MAYO:** Objection, Your Honor. 402 and lacks
2 foundation.

3 **THE COURT:** Sustained.

4 **BY MR. MIHET**

5 **Q.** To your knowledge, were any of the people involved in the
6 undercover investigation prosecuted criminally for --

7 **THE COURT:** Sustained.

8 **MS. MAYO:** Same objection.

9 **BY MR. MIHET**

10 **Q.** In addition to the 20/20 undercover production, did
11 Mr. Daleiden speak with you about one Dean Alberty?

12 **A.** Yes. If I can remember the specifics, Dean Alberty
13 testified before Congress, and I believe it's perhaps 20 years
14 ago, and his testimony as a whistleblower having worked with
15 the abortionist, watching them with twins, born alive twins
16 that he saw drowned in a pan and then used for body parts.

17 **Q.** And where did Mr. Alberty make these revelations, to your
18 understanding?

19 **A.** It was Congressional testimony.

20 **Q.** Did Mr. Daleiden and you discuss the situation involving
21 one Kermit Gosnell?

22 **A.** Yes. I was aware of that, and I --

23 **THE COURT:** I think I've ruled on that on the Motions
24 in Limine. So that's -- that will be struck and you'll move on
25 to the next thing.

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1 **MR. MIHET:** Even as to state of mind?

2 **THE COURT:** Even as to state of mind.

3 **BY MR. MIHET**

4 **Q.** Did Mr. Daleiden discuss with you the information that he
5 learned from one Perrin Larton?

6 **A.** Yes. Perrin Larton again, as I stated, was a fetal tissue
7 procurement technician who discussed with Mr. Daleiden that she
8 was standing out in the hallway waiting to harvest human body
9 parts and that it was so quick, much faster. I think three
10 minutes that -- where she's strapped in and ready for the
11 abortion, but the baby just fell out. And since the baby was
12 born alive with no Digoxin -- which was the medicine that was
13 used to kill a baby, which would make the baby valueless to
14 fetal tissue procurement. So this baby was alive, having not
15 received any medication prior to being born alive to kill it.
16 So the value to Perrin Larton was for fetal tissue procurement.

17 **Q.** Who did you understand Perrin Larton to work for?

18 **A.** ABR. ABR is the fetal tissue procurement company that
19 employed -- and I don't know the time frame. This was just the
20 information that I was gathering before the investigation.

21 Perrin Larton worked for ABR, Advanced Bioscience
22 Resources I believe, who also employed at one time Kate Dyer,
23 who went on to form her own fetal tissue procurement company
24 StemExpress. StemExpress -- should I --

25 **Q.** I think that's good.

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1 **A.** Okay.

2 **Q.** Did you come to an understanding as to which abortion
3 providers ABR was procuring fetal tissue from?

4 **A.** Yes. ABR -- well, one of the doctors that I spoke to,
5 Dr. Katharine Sheehan, Sheehan, not sure, when I spoke directly
6 to her she stated that --

7 **THE COURT:** Could you lay a foundation for this
8 testimony?

9 **MR. MIHET:** Yes.

10 **BY MR. MIHET**

11 **Q.** Who is Dr. Katharine Sheehan?

12 **A.** She is an abortionist with Planned Parenthood.

13 **Q.** And when did you speak with her?

14 **A.** I spoke with her in Colorado, 2013.

15 **Q.** Did you speak with her prior to the first video recording
16 that you made in California in 2014?

17 **A.** Correct.

18 **Q.** And so if you can continue the things you were relating to
19 us about your conversations with Dr. Sheehan?

20 **A.** Yes. So Dr. Sheehan, in our conversation that she and I
21 had, stated that she had been working with ABR, the fetal
22 tissue procurement company, for I believe it was about a
23 decade, about ten years, and that she had just renegotiated
24 that contract so she would continue as a Planned Parenthood
25 doctor supplying ABR with human body parts.

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1 Q. Did Mr. Daleiden share with you anything that he might
2 have learned from one Holly O'Donnell?

3 A. He did. Holly O'Donnell is --

4 THE COURT: I would be very careful here, Mr. Mihet.

5 MR. MIHET: Okay. State of mind prior to the 2015
6 videos.

7 THE COURT: This, I think, we have been -- I was
8 abundantly clear about, so don't, please, try to do that.

9 (Brief pause.)

10 THE COURT: Why don't we take a break, ladies and
11 gentlemen?

12 We'll take our second recess and we'll be back in about 15
13 minutes.

14 (Jury exits the courtroom at 11:21 a.m.)

15 THE COURT: And you can step down.

16 THE WITNESS: Thank you.

17 (Witness steps down.)

18 MR. MIHET: Your Honor, my understanding of Your
19 Honor's rulings is we're not permitted to show any of the
20 videos, but that the --

21 THE COURT: I thought I -- and maybe you were
22 elsewhere when we were having these discussions.

23 MR. MIHET: I apologize.

24 THE COURT: But with respect to Ms. O'Donnell -- and
25 I think it's also in my Motion in Limine order -- the only

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1 thing that can be referenced is by Mr. Daleiden when he says
2 that what Ms. O'Donnell told him confirmed what he had learned
3 from other sources. That's it.

4 **MR. MIHET:** Okay.

5 **THE COURT:** And I do not want -- and I think I was
6 pretty clear in the written orders, but this is not coming in
7 for 403.

8 I want to just be very clear that I want these witnesses
9 to be able to testify as to what their reasonable state of mind
10 was with respect to the specific defense, and I also am
11 allowing them to testify about their explanation that they are
12 journalists.

13 But we're not going into the truth of abortion procedures.
14 I've excluded that. We're not going into the many disputes
15 that the parties have outside of this.

16 So I'm -- I'm trying to draw a line to allow the
17 defendants to lay out at a high level what their concerns were,
18 but we're not going to go into detail with all of these -- with
19 the studies and all of that, which Mr. LiMandri did in his
20 opening to some degree. That's not what this trial is going to
21 be.

22 And I may be drawing the line in the wrong place.
23 Somebody may correct me about it. But I think what I'm doing
24 is appropriate to the issues that are in this case.

25 **MR. LiMANDRI:** Your Honor, as to that specific point.

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1 I tried to frame my opening statement around my understanding
2 of His Honor's rulings, having read the Motions in Limine.

3 So as to Holly O'Donnell, it's very clear that just
4 confirmed her understanding based upon what other things
5 Mr. Daleiden had learned.

6 I didn't mention the names Abby Johnson. I didn't mention
7 Kristen Lew because of your orders.

8 I never had the understanding -- in fact, I had the
9 opposite understanding -- that I could get into a discussion,
10 for example, of what Dr. Deisher told him. It's not the
11 gruesome details because it was a more scientific thing. But
12 the fact that there are -- fetal hearts had to be beating,
13 that's a large part of his reasonable belief that babies are
14 born alive.

15 So I never understood your precluding us from getting into
16 that. It would almost preclude the defense entirely, because
17 part of showing what someone's reasonable belief is that
18 reasonableness of the information they relied on and the
19 source. So the jury has to know the source and they have to
20 know the basis.

21 Now, as to Holly O'Donnell, if I understood Your Honor's
22 distinction, it was because she was deceased, not available for
23 a deposition. And her testimony was more inflammatory because
24 she talked about having to cut through the baby's face to get
25 to the brain --

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1 **MS. MAYO:** Your Honor --

2 **MR. LiMANDRI:** -- but I never understood that was the
3 case as to the other sources of information. And it would
4 deprive the defendants of the use of the defense.

5 I mean, again, in the criminal case with the same statute
6 at issue they showed the video of Holly O'Donnell. Dr. Deisher
7 testified. All of that came in, as one would expect, with the
8 proper limiting instruction, that it goes to the mental state
9 of the witness.

10 So without that type of evidence, it seems to me that we
11 would be deprived of a proper use of the defense. Sanitizing
12 the case to the point where the defendants would be, with due
13 respect to the Court, completely deprived of a fair trial.

14 **MS. MAYO:** Your Honor, the witness is still here and
15 I really object to Mr. LiMandri reciting a laundry list of
16 evidence that he's going to put in through another witness
17 while the witness is present.

18 **THE COURT:** We're about to end this conversation.
19 You've made your record. You've actually made the record a few
20 times, Mr. LiMandri. And I appreciate it, but I'm just letting
21 you know that what the -- what the road map is; that testifying
22 at a high level is one thing. And we're not getting into the
23 nitty gritty of these issues with your client when he testifies
24 or with this witness.

25 And with that, I'm going to leave the bench.

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1 **MR. MIHET:** I'm sorry, Your Honor.

2 **THE COURT:** Mr. Mihet.

3 **MR. MIHET:** I don't want to run afoul of Your Honor's
4 ruling, so I just want to let the Court know that I only have
5 one other subject in this line of questioning, which is the
6 Stanford study and Dr. Deisher's --

7 **THE COURT:** Well, I'm delighted and -- when you say
8 that. That's exactly what I'm looking at. We're talking about
9 a paragraph, not a novel with respect to all of this. Okay?

10 **MR. MIHET:** That's what I had intended. I apologize
11 for not being as clear as I should have been about the Court's
12 Holly O'Donnell instruction.

13 And just for the record, I do share the concerns and the
14 objections of Mr. LiMandri.

15 **THE COURT:** Mr. LiMandri, I think, speaks for all of
16 the defendants.

17 **MR. MIHET:** Thank you. But I wanted to let you know,
18 so. I will comply with Your Honor's rulings.

19 **THE COURT:** All right. Ms. Bomse, were you coming up
20 to do something?

21 **MS. BOMSE:** No.

22 (Whereupon there was a recess in the proceedings
23 from 11:27 a.m. until 11:40 a.m.)

24 **MR. MIHET:** Your Honor, given the inquiry by the
25 plaintiffs into the StemExpress lawsuit and the transcript,

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1 would the Court permit me to ask the witness what that lawsuit
2 was about and what the outcome was?

3 **THE COURT:** No.

4 **MR. MIHET:** Okay. Thank you.

5 **THE COURT:** Let's get the jury.

6 (Jury enters the courtroom at 11:41 a.m.)

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

8 Mr. Mihet.

9 **BY MR. MIHET**

10 **Q.** Ms. Merritt, prior to the first video that you recorded in
11 California, did you and Mr. Daleiden discuss a Stanford study?

12 **A.** We did discuss that study. It was a little over my head
13 scientifically. David had to break it down after. Even he had
14 talked to other doctors and --

15 **Q.** Just give us a 15-second snapshot of what your
16 understanding was of that study?

17 **A.** That study showed the supplier of fetal hearts, human
18 hearts, in order to be hooked up to a Langendorff machine that
19 would flush the nutrients through, keeping the heart alive so
20 that it could be used in experimentation, and the heart had to
21 be from a human who was alive with a beating heart. The cavity
22 had to be opened up --

23 **THE COURT:** All right. Thank you.

24 **THE WITNESS:** Mm-hmm.

25

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1 **BY MR. MIHET**

2 **Q.** Did you come to an understanding as to who the supplier of
3 fetal hearts was for that particular study?

4 **A.** I did.

5 **Q.** Who was that?

6 **A.** The -- as I mentioned, ABR's former employee, and then the
7 woman who started her own fetal tissue procurement company,
8 Kate Dyer of StemExpress supplied that heart.

9 **Q.** And prior to your first video recorded in California, did
10 you come to any understanding as to whether or not there was a
11 connection between StemExpress and Planned Parenthood
12 affiliates?

13 **A.** I did. I looked at the website of StemExpress that had a
14 drop-down menu of different gestational ages of humans and
15 their body parts that you could order, and it also stated that
16 they were affiliated, a supplier, with Planned Parenthood.

17 **Q.** Did Mr. Daleiden tell you whether or not he had the
18 opportunity to confirm the -- his understanding of the Stanford
19 study with any doctors?

20 **A.** Yes. He had spoken with, I believe, several doctors. I
21 could be wrong there. But the doctor that stands out in my
22 mind is Dr. Deisher.

23 **Q.** Now, having gotten all of that information and evidence
24 regarding Planned Parenthood, what was your -- what did you
25 think about it?

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1 **A.** I thought it was horrific. I thought it needed to come to
2 the light and for people to know the truth in order to make an
3 informed choice.

4 **Q.** Why didn't you just put it out of your mind and ignore
5 this information that you were presented with?

6 **A.** It was too horrific in my mind to be continued to be
7 covered up and to no follow-through, as the 20/20 videos showed
8 the same money making process. And there was no follow-through
9 on that and here it's still happening. I thought the truth
10 needed to be told.

11 **Q.** So as a result of that, did you agree to become an
12 undercover investigator for the Center for Medical Progress?

13 **A.** I did.

14 **Q.** And prior to recording the first video in California, did
15 you have an opportunity to educate yourself as to what
16 California law provided with respect to the recording of
17 conversations?

18 **A.** These are conversations that I also --

19 **MS. MAYO:** Objection. Leading.

20 **THE COURT:** Overruled.

21 **THE WITNESS:** Could you repeat, please?

22 **MR. MIHET:** Madam Reporter, can you repeat the
23 question?

24 (Record read as requested.)

25 **A.** Yes. As I understood it, and correct me if I'm wrong,

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1 that California was -- had different laws as far as recording
2 people. It needed to be public places.

3 We were very careful to follow the laws, as I understood
4 them. I'm not an attorney, but David had spoken with people
5 and assured me that in certain states this had to be out in the
6 public, couldn't be in private secluded places -- in California
7 I'm speaking -- and that's why we made sure that we were
8 following the law there, as I understood it.

9 And that, in fact, there was an opportunity, I believe,
10 invitation so to speak, from one of the Planned Parenthood
11 people, I'll say that in general, to meet in a more private
12 place and David declined that opportunity.

13 **BY MR. MIHET**

14 **Q.** So did you intend to make any recordings in California in
15 situations that were private and where the conversations could
16 not be expected to be overheard by others?

17 **A.** No.

18 **MR. MIHET:** I'd like to show the witness a video,
19 Your Honor. It's Trial Exhibit 5402.

20 I would like to ask Steven to play just maybe the first 20
21 seconds of that for identification purposes first.

22 **THE COURT:** So let's figure out what it is. Show it
23 to, Ms. Mayo.

24 (Document was shown to the counsel.)

25 **THE COURT:** Is there any objection to showing this

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1 video?

2 **MS. MAYO:** That's fine, Your Honor.

3 **THE COURT:** So no objection. It's admitted, so go
4 ahead.

5 (Trial Exhibit 5402 received in evidence)

6 **THE CLERK:** With or without audio?

7 **THE COURT:** With audio.

8 **MR. MIHET:** In that case, would you would play
9 19:15:55?

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

11 **MR. MIHET:** So for the record, we have played from
12 the video that we have identified from time stamp 19:15:55
13 until?

14 **MR. NEILSEN:** 19:15:56.

15 **MR. MIHET:** Is it 19:16:20?

16 **MR. NEILSEN:** Yes, thereabouts.

17 **BY MR. MIHET**

18 **Q.** Ms. Merritt, do you recognize the video that we just
19 watched?

20 **A.** It looks like San Francisco, the hotel where we visited.

21 **Q.** Is this a video that you recorded at NAF's annual
22 conference in 2014 in San Francisco?

23 **A.** That is correct.

24 **Q.** Did you recognize the area of -- of that hotel where you
25 were in where the clip we just watched was recorded?

MERRITT - CROSS / MIHET

1 **A.** I believe that was the mezzanine hallway. I am not sure
2 whether -- I can't orient it any better than that. It was out
3 in a public, I can tell by the sounds.

4 **Q.** Did you notice an object being handed to you in the clip
5 that we just watched?

6 **A.** Yes.

7 **Q.** And what was that object?

8 **A.** That was the name tag -- I think people are referring to
9 them as lanyards -- we were provided.

10 **Q.** A conference badge?

11 **A.** Yes.

12 **Q.** The fact that you were just being handed that badge in
13 that particular clip, does that give you an understanding as to
14 whether or not you were required to have a badge in that
15 mezzanine lobby where you were?

16 **A.** I would assume not. I was sticking it in my purse.

17 **Q.** That was going to be my next question, and you anticipated
18 it. Did you put the badge around your neck?

19 **A.** I stuck it in my purse.

20 **Q.** Okay.

21 **MR. MIHET:** Steven, if you would play from that same
22 clip until we get to 19:17:15, please?

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

24 **MR. MIHET:** And for the record, we stopped play at
25 time stamp 19:17:15.

MERRITT - CROSS / MIHET

1 **BY MR. MIHET**

2 **Q.** Ms. Merritt, where were you walking to in this particular
3 clip?

4 **A.** I'm walking to where we had -- BioMax had our table set up
5 in the exhibitor hall of the NAF.

6 **Q.** So you walked from the mezzanine lobby area all the way to
7 the exhibitor hall where you had the BioMax booth?

8 **A.** Correct.

9 **Q.** And during that entire time, where was the conference
10 badge?

11 **A.** In my purse.

12 **Q.** Did anyone stop you to check your badge or your
13 credentials during that particular trip?

14 **A.** No.

15 **Q.** Okay. And how -- how -- is that consistent with your
16 general experience that you had at the NAF 2014 conference?

17 **A.** Very much so. In fact, as the days progressed -- this
18 was, I think, three days. I could be wrong. But what I
19 noticed is that I couldn't tell whether it was public or
20 whether it was attendees because many people were in and out;
21 some with the badges, some with not.

22 **Q.** I'd like to show you a couple of video clips from your
23 lunch meeting with Dr. Nucatola. We'd start with Exhibit 6104
24 that was already admitted and played by the plaintiffs.

25 **MR. MIHET:** Are you able to pull up 6104?

MERRITT - CROSS / MIHET

1 **MR. NEILSEN:** Yes.

2 **MR. MIHET:** And, Steven, if you would play that video
3 and try to pause when the table behind them is shown.

4 (Brief pause.)

5 **MR. MIHET:** Your Honor, I think we'll have to pass on
6 this one and maybe try to come back to resolve the issue that
7 we're having.

8 **BY MR. MIHET**

9 **Q.** Let me try to ask you this way: Do you recall the clip
10 that you were shown in plaintiffs' examination where you and
11 Dr. Nucatola walked from the entrance of the restaurant to the
12 booth where you were seated at?

13 **A.** I remember walking to the -- with Dr. Nucatola to the
14 booth, yes.

15 **Q.** And do you recall in that video whether the video showed
16 the booth that was immediately behind the one that you were
17 sitting in?

18 **A.** I remember that, yes.

19 **Q.** And do you recall whether or not in that video there was
20 an occupant in that booth immediately behind you?

21 **A.** I remember the man behind -- it looked like a wall. It's
22 a color of these walls. It's open weave screen. I think
23 metal. And he was seated right behind us, yes.

24 **Q.** Okay. How far would you say he was when you say that he
25 was right behind you?

MERRITT - CROSS / MIHET

1 **A.** I think David could have reached back and touched him. So
2 6 inches? 12 inches?

3 **Q.** And that divider between the two booths, was it a solid,
4 you know, soundproof divider? What kind of divider was it?

5 **A.** As I said, it was an open screen.

6 **Q.** Okay. Do you have a belief or an understanding as to
7 whether or not that gentlemen sitting behind your table could
8 overhear the discussion at your table?

9 **MS. MAYO:** Objection. Calls for speculation.

10 **THE COURT:** Sustained.

11 **BY MR. MIHET**

12 **Q.** Was the gentleman behind you within the line of sight of
13 Dr. Nucatola, given her position at the table?

14 **MS. MAYO:** Objection. Calls for speculation.

15 **THE COURT:** Overruled.

16 **A.** I'm trying to remember where each of us sat right now. I
17 would -- hold on. Let me try and get back there.

18 (Brief pause.)

19 **A.** I believe he was.

20 **BY MR. MIHET**

21 **Q.** And did Dr. Nucatola at any point in time during that
22 lunch meeting say that she didn't want the conversation to be
23 overheard by that gentleman?

24 **A.** Well, there he is. She never said anything about not
25 wanting anyone to hear the conversation.

MERRITT - CROSS / MIHET

1 Q. And for the record, when you say "there he is," I think we
2 have been able to have a freeze frame of --

3 A. The man behind the screen.

4 Q. Okay. And for the record, it seems to be inverted. Are
5 you able to tell what time stamp that is in the video?

6 MR. NEILSEN: It looks like --

7 A. It's backwards, 25/7/2013. Stamp, I believe, 5:13:21?
8 But that's backwards.

9 BY MR. MIHET

10 Q. I'm not sure that's right.

11 A. 420750? Down at the bottom? Which one are you --

12 Q. Well, I wasn't really asking you. I was asking --

13 A. Oh, sorry.

14 (Laughter.)

15 Q. This isn't that kind of an examination.

16 THE WITNESS: He could have warned me.

17 (Brief pause.)

18 MR. MIHET: We will maybe try to determine that and
19 reach a stipulation with the plaintiffs of where we were for
20 the record on that frame.

21 THE COURT: That's fine.

22 MR. MIHET: I'd like to show the witness another
23 video, Your Honor. This is also one that we provided
24 transcripts to this morning. It's Trial Exhibit 5068.

25 (Discussion held off the record amongst counsel.)

MERRITT - CROSS / MIHET

1 **MR. MIHET:** I'm going to try to lay a foundation with
2 the witness for the video first. So if we could just play the
3 first 20 seconds or so?

4 **THE COURT:** Okay. So let's turn off the camera for
5 the jury and then we'll play it for the witness.

6 (Videotape played for counsel and the witness, not
7 reported.)

8 **MR. MIHET:** For the record, we started playing at
9 12:23:30.

10 (Videotape resumed, not reported.)

11 **MR. MIHET:** Okay. We can pause it there for now. We
12 paused at 12:23:48.

13 **BY MR. MIHET**

14 **Q.** Ms. Merritt, do you recognize the video clip that we've
15 just shown?

16 **A.** I do.

17 **Q.** Is this a video that was recorded during your lunch with
18 Dr. Deborah Nucatola?

19 **A.** It is.

20 **Q.** And you were present at that lunch?

21 **A.** I was.

22 **Q.** Is that portion of the video a true and accurate
23 representation of the lunch?

24 **A.** It is.

25 **MR. MIHET:** Okay.

MERRITT - CROSS / MIHET

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

2 (Trial Exhibit 5068 received in evidence)

3 **MR. MIHET:** Thank you.

4 So let's start playback again at 12:23:30, and we'll play
5 until 12:25:40.

6 **BY MR. MIHET**

7 **Q.** And, Ms. Merritt, I would like to ask you to pay attention
8 generally to the subject being discussed and, also, at the
9 presence of others around the table because I'll be asking you
10 questions about that.

11 **A.** Okay.

12 (Brief pause.)

13 **MR. NEILSEN:** Is the audio on?

14 **THE CLERK:** Sorry.

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

16 **MR. MIHET:** Thank you.

17 And for the record, we've stopped the playback at time
18 stamp 12:25:40.

19 **BY MR. MIHET**

20 **Q.** Ms. Merritt, generally what were you discussing in that
21 particular portion of your lunch conversation?

22 **A.** I believe this portion of the three-hour luncheon was --
23 Dr. Deborah Nucatola was helping us understand -- it felt like
24 she was coaching us with information that Planned Parenthood
25 wants to look reasonable and the cost that we would be giving

MERRITT - CROSS / MIHET

1 to her for these -- or we would be gathering and then passing
2 on the money exchange. She's helping us understand how much
3 those human body parts, how much money, the value. How not to
4 make it look bad.

5 And, also, I think the language of "that we don't want to
6 appear," so what cost would there be associated with this
7 and --

8 **MS. MAYO:** Objection, Your Honor.

9 **THE COURT:** Sustained. The record speaks for itself.

10 **MR. MIHET:** Okay.

11 **THE COURT:** So the witness's interpretation is not of
12 interest in this case.

13 **BY MR. MIHET**

14 **Q.** So during that -- that entire discussion, did you happen
15 to notice whether restaurant waitstaff were passing near your
16 table?

17 **A.** I did. I noticed that it was, I think, the beginning of
18 the busiest time. There was a lot of staff. They passed by
19 frequently.

20 **Q.** Did they also come to the table itself to service the
21 table during that clip?

22 **A.** Our table, yes.

23 **Q.** Yes. And it seemed like the restaurant staff were going
24 somewhere behind the curtain or the table. Do you have any
25 understanding of what was behind the table where Dr. Nucatola

MERRITT - CROSS / MIHET

1 was sitting?

2 **A.** I don't know whether that was the -- I think the man was
3 probably behind David, but the other booth I can't recall right
4 now.

5 **Q.** Okay. During that entire exchange, when you were talking
6 about the subject that you just mentioned and while there was
7 various waitstaff passing by the table or stopping at the
8 table, did Dr. Nucatola ever do anything to suggest that she
9 didn't want the waitstaff to overhear the subject that you were
10 discussing?

11 **A.** No, not at any time. In fact, as the restaurant filled up
12 with more people, more noise, her volume got a little louder.

13 **Q.** Did she change the subject abruptly when waitstaff were
14 coming to service the table?

15 **A.** She never changed the topic that we were discussing.

16 **Q.** Did she lower her voice or whisper or act in any way that
17 indicated to you that she did not want to be overheard?

18 **A.** She did not.

19 **Q.** And did the fact that she continued to speak on the same
20 subject and with the same tone of voice give you an
21 understanding as to whether or not she expected that lunch
22 conversation to remain private or confidential?

23 **A.** Based on the subject never changing, based on the volume
24 of our conversation getting louder, multiple times the staff
25 came to the table, others were -- "others" meaning other

MERRITT - CROSS / MIHET

1 patrons at the restaurant coming in, I did not get the
2 impression that she felt it was to be confidential.

3 **Q.** And we -- could you overhear from where you were at that
4 table ambient discussion and other discussions around you?

5 **A.** Yes.

6 **Q.** Okay.

7 **MR. MIHET:** Your Honor, I have one last video to show
8 regarding the lunch with Dr. Nucatola. This is Trial
9 Exhibit 5070.

10 **MS. BOMSE:** Your Honor, I'm sorry, but we have
11 significant objections to this one. I think it's probably
12 cumulative to the video that we just agreed to admit. It's, as
13 I understand it, the same issue --

14 **THE COURT:** I don't want to hear talking objections.

15 **MS. BOMSE:** I'm sorry.

16 **THE COURT:** Let me see the transcript, please.

17 (Whereupon document was tendered to the Court.)

18 **THE COURT:** So since Ms. Merritt is going to be here,
19 let's pass this for now and we'll take it up later.

20 **MR. MIHET:** Okay.

21 (Whereupon document was returned to counsel.)

22 **MR. MIHET:** Thank you.

23 **BY MR. MIHET**

24 **Q.** Ms. Merritt, I'd like to show you a video clip from your
25 lunch conversation with Dr. Gatter.

MERRITT - CROSS / MIHET

1 **MR. MIHET:** This is Trial Exhibit 5106.

2 **MS. BOMSE:** We have no objection.

3 **THE COURT:** All right. So 5106 is admitted.

4 (Trial Exhibit 5106 received in evidence)

5 **THE COURT:** Go ahead.

6 **MR. MIHET:** Steven, if you would play starting at
7 12:26:45 until 12:27:50?

8 **BY MR. MIHET**

9 **Q.** Ms. Merritt, same general instruction. Please pay
10 attention to the general subject matter being discussed and the
11 presence or absence of others around the table.

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

13 **BY MR. MIHET**

14 **Q.** So, Ms. Merritt, just in ten seconds or so what was the
15 general subject matter that you were discussing in this
16 particular video?

17 **A.** Ten seconds?

18 **Q.** Yeah. Just a quick understanding, please.

19 **A.** Protocol, forms, tissue procurement, a little bit of
20 history.

21 **Q.** And tissue procurement being human tissue?

22 **A.** Correct.

23 **Q.** Now, in this particular video clip that we watched, did
24 you happen to notice the presence of others around the table
25 that were not participants to the conversation?

MERRITT - CROSS / MIHET

1 A. I did.

2 Q. What did you notice?

3 A. I noticed that the waitstaff was pouring water in our
4 glasses as we were continuing to talk about human tissue
5 procurement and protocol of Planned Parenthood.

6 Q. And how close was the waitperson to your lunch time
7 companions?

8 A. Ten inches.

9 Q. During that discussion when the waitperson arrived at the
10 table, did either Dr. Gatter or her companion Laurel Felczer
11 take any action that would indicate to you that they didn't
12 want to be overheard by that waitstaff person?

13 A. No. The conversation continued --

14 Q. On the same subject matter?

15 A. As I was going to say, on the same subject matter.

16 Q. In the same tone of voice?

17 A. In the same tone of voice.

18 Q. Okay.

19 A. Can I add something?

20 THE COURT: Not yet. Wait for the question.

21 BY MR. MIHET

22 Q. Is there anything you would like to add?

23 (Laughter.)

24 A. Yes, there is.

25 Q. Go ahead. Briefly.

MERRITT - CROSS / MIHET

1 **THE COURT:** Go ahead.

2 **A.** Discreet, discretion. I remember her using the word we
3 need to be "discreet" in context of how she was going to convey
4 to the person who would be doing the abortion to change the
5 procedure and "maybe a less crunchy method," I think her words
6 were.

7 **THE COURT:** Okay. Now, okay. That --

8 **THE WITNESS:** Discreet.

9 **THE COURT:** The witness's testimony will be stricken
10 and you will disregard it.

11 Move on to the next thing, please, Mr. Mihet.

12 **MR. MIHET:** Trial Exhibit 5107, also from the lunch
13 with Dr. Gatter. This is the -- there's two very short clips
14 from here. The first one begins at 12:48:01.

15 **MS. BOMSE:** We don't object to the first clip 01. We
16 do have an objection to 02, number two.

17 **MR. MIHET:** So let's do the 01 first.

18 **THE COURT:** Let's do that.

19 **MR. MIHET:** Okay.

20 **THE COURT:** It's admitted. That is admitted.

21 (Trial Exhibit 5107 received in evidence)

22 **MR. MIHET:** Thank you.

23 **BY MR. MIHET**

24 **Q.** Same instruction, Ms. Merritt. Pay attention to the
25 general subject and the presence or absence of bystanders.

MERRITT - CROSS / MIHET

1 **MR. MIHET:** Steven.

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

3 **MR. MIHET:** So for the record, we've stopped the play
4 back at 12:48:52.

5 **BY MR. MIHET**

6 **Q.** Briefly and generally what was the subject matter being
7 discussed in this portion of the conversation?

8 **A.** It was the same subject matter. The Planned Parenthood's
9 protocol and Mrs. Felczer?

10 **Q.** Felczer.

11 **A.** Was helping us understand more of the climate and how they
12 did it.

13 **Q.** And did you notice during that portion of the conversation
14 a waitperson or waitstaff come to service the table?

15 **A.** I noticed twice, yes.

16 **Q.** And in the first visit did you notice the waitstaff person
17 reaching over the table?

18 **A.** I did.

19 **Q.** And in your estimation how far were his ears from the
20 mouths of Ms. Felczer or Dr. Nucatola?

21 **A.** I would say about the same, 10 inches.

22 **Q.** Okay. While the waitperson was there either the first
23 time or the second time, did either Dr. Gatter or Ms. Felczer
24 stop the conversation abruptly?

25 **A.** Never.

MERRITT - CROSS / MIHET

1 Q. Did they change the subject?

2 A. They did not.

3 Q. Lower their voice?

4 A. No.

5 Q. Did they take any action to indicate to you that they did
6 not want to be overheard by the waitstaff?

7 A. They did not.

8 MR. MIHET: One last clip, Your Honor, and then we're
9 done with the show-and-tell for today.

10 This is the same exhibit, starting at 13:09:40 and going
11 for one minute and 20 seconds.

12 MS. BOMSE: This is the one we object to.

13 THE COURT: So let's take this -- we'll take them up
14 after today. Ms. Merritt will be around and you can call her
15 later, if necessary.

16 MR. MIHET: Okay.

17 BY MR. MIHET

18 Q. Ms. Merritt, did any of the people that you recorded as
19 part of the CMP undercover investigation tell you that they did
20 not want to be recorded?

21 A. They did not.

22 Q. Did they tell you that -- did any of them tell you that
23 they desired the conversation to be confined to just you and
24 them?

25 A. They did not. The atmosphere was one of colleagues

MERRITT - CROSS / MIHET

1 exchanging information and presumably sharing information with
2 other colleagues outside of where we were.

3 **Q.** Did they caution you not to share with anyone else at
4 BioMax, or anyone else for that matter, the things that they
5 were sharing with you?

6 **A.** They did not.

7 **Q.** I know I asked you these questions about the lunch time
8 videos, but generally with respect to all the videos that you
9 recorded, did any of the subjects that you were recording
10 indicate to you through their words or their conduct that they
11 did not want to be overheard by others that were nearby?

12 **A.** They did not.

13 **Q.** Based on their words and their conduct, their continuing
14 of the discussion when bystanders were around, did you form a
15 belief as to whether or not these persons objected to being
16 overheard by others?

17 **A.** Quite the contrary.

18 **MS. MAYO:** Objection. Calls for speculation, Your
19 Honor.

20 **THE COURT:** Sustained.

21 You've gotten all of the underlying facts that you need,
22 but that calls for speculation.

23 **MR. MIHET:** Okay.

24 **BY MR. MIHET**

25 **Q.** Now, I think you already testified earlier when my

MERRITT - CROSS / MIHET

1 colleague Ms. Mayo was questioning you that you didn't tell any
2 of these people that you were recording them; is that fair?

3 **A.** That's fair.

4 **Q.** And why didn't you tell them that you were recording them,
5 Ms. Merritt?

6 **A.** It has been my experience that when people are doing
7 things that are considered illegal, they are not willing to
8 speak freely.

9 **Q.** Okay. Do you believe that you would have been able to get
10 the same information and the same evidence from these persons
11 had you told them that you were recording them?

12 **A.** Absolutely not.

13 **Q.** Okay. When was the -- let me ask you this: Had you ever
14 met Troy Newman?

15 **A.** I have now.

16 **Q.** And when was the first time that you met him?

17 **A.** Sometime after the lawsuits began, I met him.

18 **Q.** Not while the undercover investigation was in progress?

19 **A.** I didn't know who had Troy Newman was.

20 **Q.** Okay.

21 **A.** At that time.

22 **Q.** And, also, not prior to the release of the videos?

23 **A.** Correct.

24 **Q.** Okay. Do you still have the exhibit binder in front of
25 you that you were shown?

MERRITT - CROSS / MIHET

1 **A.** I do.

2 **MR. MIHET:** Steven, 426, please.

3 This has already been admitted, Your Honor.

4 **THE WITNESS:** 426?

5 **MR. MIHET:** May we display that?

6 **THE COURT:** Yes.

7 (Document displayed)

8 **BY MR. MIHET**

9 **Q.** You were asked some questions about this "Field Worker
10 Vocabulary" and particularly about the section that comes under
11 >Your Competition." Do you recall that?

12 **A.** I do.

13 **Q.** And I think you were asked about both ABR, or Advanced
14 Bioscience Resources, and StemExpress.

15 In the information that you were provided about those,
16 those two entities, were you provided any connection or link
17 between those entities and Planned Parenthood?

18 **A.** Yes. In conversations that I had had with David, he
19 connected -- we connected -- he connected the dots between the
20 fetal tissue procurement companies that were supplying Planned
21 Parenthood, that being ABR, Advanced Bioscience Resources, and
22 StemExpress.

23 **Q.** Okay. And you see -- is that information displayed here
24 in the bottom section?

25 **A.** Yes, it is.

MERRITT - CROSS / MIHET

1 Q. Okay. You were asked some questions about when you
2 registered for the 2014 NAF conference in San Francisco, about
3 whether you picked up the badge or whether somebody else picked
4 up the badge; do you recall that?

5 A. I do.

6 Q. Now, in the video that we watched, the first video that we
7 watched during our time together this afternoon, did you see
8 someone handing you that -- a badge?

9 A. I did.

10 Q. And does seeing that refresh your recollection as to
11 whether or not you picked up the badge or whether somebody else
12 had picked it up for you?

13 A. It does. Brianna is handing it to me, so she would have
14 picked them up and handed them out.

15 Q. And was Brianna able to pick up your badge then?

16 A. Yes.

17 Q. Okay. You were asked some questions in one of the
18 exhibits about whether or not you had encouraged or engaged in
19 any haggling with Dr. Gatter. Do you remember those questions?

20 A. I remember, yes.

21 Q. In fact, during your lunch time conversations with
22 Dr. Gatter, did she display any willingness to engage in
23 haggling with you over the price or prices of fetal tissue?

24 A. She told me that the person who threw out the number first
25 was at a loss.

MERRITT - CROSS / MIHET

1 Q. And did she tell you what kind of a deal she wanted or
2 what she was looking for?

3 A. What kind of a deal? I'm not -- I'm not clear.

4 MS. MAYO: Objection. Relevance.

5 BY MR. MIHET

6 Q. And what --

7 THE COURT: I'm sorry.

8 MS. MAYO: Objection. I know where, I think, he's
9 going.

10 MR. MIHET: Your Honor, the door was opened -- oh,
11 sorry. May I be heard?

12 THE COURT: This is 403, Mr. Mihet.

13 MR. MIHET: Okay.

14 BY MR. MIHET

15 Q. You were asked some questions about the various
16 reimbursements or compensations that Mr. Daleiden provided you
17 with eventually?

18 A. Yes.

19 Q. I think one of them was for \$1,200. There was some
20 suggestion of haggling. Do you recall that testimony?

21 A. I do.

22 Q. That particular trip -- I believe it was Dr. Gatter, if
23 I'm not mistaken -- was it a day trip or an overnight trip? Do
24 you recall?

25 A. I believe it was an overnight trip.

MERRITT - CROSS / MIHET

1 Q. Okay. It took place somewhere in Southern California?

2 A. That is correct.

3 Q. And so did that trip require you to be gone from your home
4 and your home-based business for at least a couple of days?

5 A. It did.

6 Q. Did you make a financial profit by taking these various
7 engagements with Mr. Daleiden?

8 A. No, I did not.

9 Q. Were you motivated by financial profit in the undercover
10 investigation that you did?

11 A. Not at all.

12 Q. You were asked about various protesting activity that you
13 have may have done, and I think counsel went all the way back
14 to 1989 for an example.

15 From 1989 on about how many pro-life demonstrations or
16 protests were you engaged in?

17 A. Two.

18 Q. Two in the span of 30 years?

19 A. Correct.

20 Q. And these -- these protests, I think was the word that was
21 used, what did they generally consist of?

22 A. As I stated earlier, I stood on a corner with a sign
23 saying "Abortion Kills Children." I made a few phone calls --

24 Q. I was just talking about the protest, the so-called
25 protest activity.

MERRITT - REDIRECT / MAYO

1 **A.** Oh, okay.

2 **Q.** Were you arrested or charged with any crimes based on your
3 protesting activity?

4 **A.** I was not.

5 **Q.** Were you on a public street corner?

6 **A.** Yes.

7 **Q.** Okay.

8 **MR. MIHET:** Your Honor, those are all the questions
9 that I have.

10 **THE COURT:** All right. Any other defendant want to
11 question Ms. Merritt before we move on to the plaintiffs'
12 redirect?

13 (Brief pause.)

14 **THE COURT:** Looks like a no.

15 Okay. Ms. Mayo.

16 **MS. MAYO:** Thank you, Your Honor.

17 REDIRECT EXAMINATION

18 **BY MS. MAYO**

19 **Q.** Mrs. Merritt, I've shown you a number of documents today;
20 correct?

21 **A.** Yes.

22 **Q.** A number of communications that you had back and forth
23 with David Daleiden?

24 **A.** Yes.

25 **Q.** And we looked at 426, which Mr. Mihet just showed you.

MERRITT - REDIRECT / MAYO

1 That was the "Field Workers Vocabulary"?

2 **A.** Yes.

3 (Document displayed)

4 **Q.** So there's no evidence of any crime by Planned Parenthood
5 in this document? Do you see any evidence of any crime in this
6 document?

7 **A.** Well, it's a three-page document. I'd have to refresh and
8 read it over. Would you like me to do that?

9 **Q.** Yes.

10 **A.** Okay.

11 (Brief pause.)

12 **A.** I'll go to Digoxin, the poison injected into the baby to
13 induce fetal demise.

14 **Q.** Where are you reading?

15 **A.** I'm sorry. I'm under "Key Terms."

16 "Digoxin - Poison injected into the baby to
17 induce fetal demise during a later abortion. Fetal
18 tissue for research cannot have Digoxin in it. A
19 fetus killed with Digoxin has been ditched."

20 **Q.** Do you see Planned Parenthood anywhere in that sentence,
21 that description?

22 **A.** In that sentence? No.

23 **Q.** Are there any other crimes, any crimes that you see in
24 this document?

25 **A.** Crimes in this document. This document provided the

MERRITT - REDIRECT / MAYO

1 language that was used -- that I needed to understand to
2 understand the crimes that were being committed. Babies born
3 alive without Digoxin in induced abortions, that were born
4 alive so that they could be -- their body parts could be
5 harvested.

6 So Planned Parenthood crimes in this document? No.

7 **Q.** All right. And you also were provided by Mr. Daleiden
8 themes for your conversations with Planned Parenthood
9 documents -- or Planned Parenthood doctors? Sorry.

10 **A.** I was.

11 **MS. MAYO:** Let's go to Exhibit 434.

12 **MR. MIHET:** Your Honor, I would object to this as
13 being beyond the scope of direct.

14 **MS. MAYO:** Okay.

15 **THE COURT:** What's your response to that?

16 **MS. MAYO:** I'll move on.

17 **THE COURT:** Okay. Sustained.

18 **BY MS. MAYO**

19 **Q.** Let's look at the Exhibit 432.

20 **MR. MIHET:** Your Honor, same objection.

21 **THE COURT:** Wait for a question.

22 **BY MS. MAYO**

23 **Q.** Mrs. Merritt, you testified how David Daleiden provided
24 you with information regarding crimes that he believed Planned
25 Parenthood was committing; is that correct?

MERRITT - REDIRECT / MAYO

1 **A.** That's correct.

2 **Q.** And looking at this document, Exhibit 432, do you see any
3 evidence of crimes being committed by Planned Parenthood?

4 **A.** Well, this document only shows the links to further
5 information. So on this document, no.

6 **Q.** Okay. And you said, when I asked you about this document,
7 that you had actually gone to these links and read those
8 documents; is that correct?

9 **A.** I would have assumed that I did, yes.

10 **Q.** Let's take a look at the document that is referenced "The
11 Recent Commentary on Miscarriage and Grief." And that in your
12 binder is Exhibit 999.

13 **MR. MIHET:** Your Honor, I object. Beyond the scope
14 of direct.

15 **THE COURT:** I believe she's trying to tie this to the
16 questions that were asked by both parties with respect to
17 crimes. So overruled.

18 (Brief pause.)

19 **MR. MIHET:** Counsel, what exhibit is this?

20 **MS. MAYO:** I'm sorry?

21 **MR. MIHET:** What exhibit number?

22 **MS. MAYO:** 999.

23 **BY MS. MAYO**

24 **Q.** Mrs. Merritt, Exhibit 999 is the document referenced in
25 Exhibit 432, "The Recent Commentary on Miscarriage and Grief."

MERRITT - REDIRECT / MAYO

1 You can see the internet address there on Exhibit 432, and
2 it's the same internet address on the bottom of 499.

3 **A.** All right. I'll check that.

4 (Brief pause.)

5 **A.** Yes.

6 **Q.** So this is one of the articles that you read when you were
7 doing background research on Dr. Nucatola; correct?

8 **A.** It would have been, yes.

9 **MS. MAYO:** Your Honor, I'd like to move 999 into
10 evidence.

11 **THE COURT:** Any objection?

12 **MR. MIHET:** No, Your Honor.

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

14 (Trial Exhibit 999 received in evidence).

15 (Document displayed)

16 **BY MS. MAYO**

17 **Q.** And if you go to the second page of Exhibit 999, there is
18 a quote from Dr. Nucatola that says:

19 "In reality, for every ten pregnancies one or two
20 end in miscarriage, according to Deborah Nucatola,
21 M.D., OB/Gyn" --

22 **A.** I'm sorry. Where are you on the page?

23 **Q.** It's the paragraph at the bottom half of the page.

24 **A.** Okay.

25 **MR. MIHET:** I object to the mischaracterization as a

MERRITT - REDIRECT / MAYO

1 quote.

2 **THE COURT:** I have a different objection. I'm going
3 to go back to your earlier one.

4 **MR. MIHET:** Foundation and beyond the scope of
5 direct.

6 **THE COURT:** Yes. Better.

7 (Laughter.)

8 **MR. MIHET:** Thank you, Your Honor.

9 **THE COURT:** Ms. Mayo --

10 **MS. MAYO:** I'll change my question.

11 **THE COURT:** Okay.

12 **BY MS. MAYO**

13 **Q.** Mrs. Merritt, this article does not provide any evidence
14 of any crimes being committed by Dr. Nucatola; is that correct?

15 **A.** I'd have to read the article again. It's been four or
16 five years.

17 **Q.** Please.

18 **A.** Would you like me to read it?

19 **Q.** Please take a look, yes.

20 **A.** And your question was?

21 **Q.** Is there any evidence of any crimes being committed by
22 Dr. Nucatola evidenced in this article?

23 **A.** Okay. Thank you.

24 (Brief pause.)

25 **MR. MIHET:** Your Honor, I'm sorry. I object. I

MERRITT - REDIRECT / MAYO

1 think the article speaks for itself. It's in evidence and
2 counsel can argue from it as necessary and appropriate.

3 **THE COURT:** I think it's also going to take too much
4 time for Ms. Merritt to go through it. So if she doesn't
5 remember anything with respect to it, I would move on. I agree
6 with Mr. Mihet.

7 **MS. MAYO:** Okay.

8 **BY MS. MAYO**

9 **Q.** The first link referenced in Exhibit 432 is an Op-ed piece
10 by the Hill. And that is -- and that is Exhibit 997 in your
11 binder.

12 Mrs. Merritt, the Exhibit 997 is the Op-ed that
13 Dr. Nucatola wrote for the Hill that was attached to
14 Mr. Daleiden's email, correct --

15 **A.** That's what it says, yes.

16 **Q.** -- if you compare the links?

17 **A.** I'm sorry. I'm sorry.

18 **Q.** Was your answer "yes" to my question?

19 **A.** That's what it is, yes.

20 **Q.** Okay. And you read this article at the time Mister -- or
21 soon after Mr. Daleiden sent you this email; correct?

22 **A.** I'm going to assume that I did.

23 **Q.** Okay.

24 **MS. MAYO:** Your Honor, I would move 997 into
25 evidence.

MERRITT - REDIRECT / MAYO

1 **MR. MIHET:** I'm not sure the foundation is
2 sufficient, but okay.

3 **THE COURT:** All right. Then I'll admit it. 997 is
4 in.

5 (Trial Exhibit 997 received in evidence)

6 (Document displayed)

7 **BY MS. MAYO**

8 **Q.** And then in Exhibit 432 there is another article, a 2011
9 NPR interview, and that is at Exhibit 998 in your binder.

10 **A.** And do you want me to look at it and read it?

11 **Q.** Please look at it, and then I'll ask you a question.

12 **A.** The 998?

13 **Q.** 998.

14 **A.** Okay.

15 **MR. MIHET:** Same objections, Your Honor. Beyond the
16 scope and cumulative and --

17 **THE COURT:** Let's lay the foundation and then ask the
18 specific question.

19 **BY MS. MAYO**

20 **Q.** Mrs. Merritt, is this one of the articles that you read
21 when you received Mr. Daleiden's email, Exhibit 432?

22 **A.** Again, I believe it is, yes.

23 **Q.** All right. And this was part of the research that you did
24 on Dr. Nucatola before meeting with her; correct?

25 **A.** This would have been a small part of it, yes.

MERRITT - REDIRECT / MAYO

1 Q. All right.

2 MS. MAYO: Your Honor, I move Exhibit 998 into
3 evidence?

4 THE COURT: Do you have a question about this
5 document that would make it not cumulative and relevant to the
6 cross examination -- or the direct examination that Mr. Mihet
7 made?

8 MS. MAYO: Yes.

9 BY MS. MAYO

10 Q. Is there any evidence -- did you get -- glean any evidence
11 that Dr. Nucatola was committing a crime based on this article
12 about birth control in which Dr. Nucatola is quoted?

13 A. I'll have to read it to refresh my memory. It's, like I
14 said, four or five years ago.

15 Q. If you turn to page -- I can help you find where
16 Dr. Nucatola is quoted. That's on Page 3 of the article.

17 A. But you're asking me about the entire article, what I
18 gleaned from it. So it would only be fair to read the entire
19 article.

20 Q. I don't think it would take that long.

21 THE COURT: I agree with her. So if you want her to
22 read the article, then -- I don't want you to have her read the
23 article. I think we need to move on from this.

24 MS. MAYO: Okay.

25 MR. MIHET: And, Your Honor, just to clarify. The

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1 various articles that have been admitted, I didn't object
2 because I assume they are being admitted for non-hearsay state
3 of mind purposes, not for the truth of the matter asserted in
4 them.

5 **MS. MAYO:** Correct, Your Honor.

6 **THE COURT:** So, yes.

7 So, ladies and gentlemen, these articles, like so much of
8 what has happened today, is admitted not for the truth of the
9 matter asserted, but for what was the state of mind of the
10 witness as she was doing the things that she did.

11 **BY MS. MAYO**

12 **Q.** So, Mrs. Merritt, in addition to these articles and the
13 "Field Worker Vocabulary" --

14 **A.** I'm sorry?

15 **Q.** In addition to these articles and the "Field Worker
16 Vocabulary" that Mr. Daleiden provided to you that we looked at
17 today, he also sent you a copy of a draft brochure for BioMax;
18 correct?

19 **A.** That is correct.

20 **Q.** And he sent you questions to ask during your lunch with
21 Dr. Gatter, the themes?

22 **A.** The themes, yes.

23 **Q.** He identified Dr. Nucatola as a target for you; correct?

24 **MR. MIHET:** Objection, Your Honor. Asked and
25 answered and beyond the scope of direct.

MERRITT - REDIRECT / MAYO

1 **THE COURT:** Sustained.

2 **MS. MAYO:** All right.

3 **BY MS. MAYO**

4 **Q.** Mrs. Merritt, there was nothing in the exhibits that I
5 went with over with you today that provided any evidence that
6 Planned Parenthood or any of its doctors were committing
7 crimes, was there?

8 **A.** I'd have to go back and read them, which documents did we
9 look at, are we including these, to answer that.

10 **Q.** That's fine. We don't need to do that today.

11 **A.** Okay. Thank you.

12 **MS. MAYO:** I'm done.

13 **THE COURT:** Thank you.

14 Mr. Mihet?

15 **MR. MIHET:** May I have permission to publish
16 Exhibit 432 again? It's the same one that she was just asked
17 about.

18 **THE COURT:** Yes.

19 **MR. MIHET:** 432.

20 **MR. NEILSEN:** Page 1?

21 **MR. MIHET:** Page 1, 432.

22 **THE COURT:** Jean, do they have the...

23 (Brief pause.)

24 **MR. MIHET:** I can use the Elmo if...

25 **THE COURT:** Great idea. Go to the Elmo.

1 (Document displayed)

2 RECROSS-EXAMINATION

3 **BY MR. MIHET**

4 **Q.** Ms. Merritt, I'm showing you the same exhibit that you
5 were just questioned about, which is 432, the email from
6 Mr. Daleiden to you.

7 What did Mr. Daleiden tell you that he was sending you in
8 the first line of this email?

9 **A.** I'm sorry. Could you say that again?

10 **Q.** Yeah. What did Mr. Daleiden tell you that he was sending
11 you in the first line of this email?

12 **A.** (As read)

13 "Here is some preliminary information to start to
14 familiarize yourself with our friend."

15 **Q.** Okay. By the time that this email was sent to you on July
16 the 13th, 2014, had you already attended the 2014 NAF
17 conference in San Francisco?

18 **A.** That's correct.

19 **Q.** And did you have an opportunity to meet Dr. Nucatola at
20 that conference?

21 **A.** I don't know whether or not I met her at that conference.

22 **Q.** Do you know whether or not Mr. Daleiden had met her?

23 **A.** I believe he did.

24 **Q.** And do you know whether or not Dr. Nucatola had shared
25 with Mr. Daleiden anything about her participation in

MERRITT - RECROSS / MIHET

1 partial-birth abortion?

2 **MS. MAYO:** Objection, Your Honor.

3 **THE COURT:** Hearsay?

4 **MS. MAYO:** Yes.

5 **THE COURT:** Yes, okay. Sustained.

6 **MR. MIHET:** State of mind.

7 **THE COURT:** Not for this one.

8 **BY MR. MIHET**

9 **Q.** All right. Thank you. No further questions.

10 **THE COURT:** All right.

11 Ms. Mayo, anything further?

12 **MS. MAYO:** Nothing further.

13 **THE COURT:** All right. So, Ms. Merritt, you may step
14 down. You may be called back to deal with the two video issues
15 that I will be looking at later.

16 **THE WITNESS:** Today?

17 **THE COURT:** Not today.

18 **THE WITNESS:** Okay.

19 **THE COURT:** Thank you.

20 (Witness excused.)

21 **MR. KAMRAS:** Good afternoon, Your Honor.

22 We're prepared to proceed with the next witness, which
23 would be Mr. Rhomberg. The only issue is that Mr. Lopez, who
24 would be appearing on Tuesday, can only testify on Tuesday.

25 So the question is whether we should begin with

PROCEEDINGS

1 Mr. Rhomberg and then do Mr. Lopez out of order.

2 **THE COURT:** I think we should -- Ms. Short?

3 **MS. SHORT:** Well, your Honor, in light of the rule
4 that you discussed over the break about communication with the
5 client party over the long break, I think --

6 **THE COURT:** You prefer to have two days.

7 **MS. SHORT:** Yeah.

8 **THE COURT:** Okay. That's fine.

9 So, ladies and gentlemen, a gift for the weekend.

10 (Laughter.)

11 **THE COURT:** We're going to break ten minutes early.

12 So two things.

13 One, I want to remind you we're not going to be here on
14 Monday. We will be here on Tuesday. Then we won't be here on
15 Wednesday, but we will be on Thursday and Friday.

16 So over the weekend, first, have a good weekend.

17 Second, remember the admonitions. Don't do any research.
18 Don't talk with anybody about this. You have other things to
19 do in your lives, but stay away from this subject so that all
20 that you learn about this case comes right from here, right
21 from the witness stand. We're a long way from having all the
22 information, so you need to keep an open mind.

23 I hope you have a great weekend.

24 (Jury exits the courtroom at 12:50 p.m.)

25 **THE COURT:** All right. Please be seated everybody.

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1 So we could use this remaining time to look at those two
2 clips and so that I can make a determination on the objections.

3 So if I could have the transcripts?

4 **MS. BOMSE:** Just a moment to get organized, Your
5 Honor.

6 Would the -- with the Court's indulgence, I would just
7 explain the basis for the objection?

8 **THE COURT:** Okay.

9 **MS. BOMSE:** So starting with Exhibit 5070, this is a
10 lengthy clip from the -- it's a five-minute, approximately,
11 clip from the lunch with Dr. Nucatola. There is a section in
12 the middle in which there is waitstaff, and we don't --
13 wouldn't object to that portion being played. I think it's
14 relevant for the issue that counsel was addressing with the
15 witness, but --

16 **THE COURT:** Have you identified that section for
17 Mr. Mihet?

18 **MS. BOMSE:** I would be happy to. I haven't had an
19 opportunity.

20 **THE COURT:** Okay. Let's start there.

21 **MS. BOMSE:** I'm sorry? Start -- okay.

22 **MR. MIHET:** Your Honor, unfortunately, I haven't
23 memorized the entire clip. My recollection is that there is
24 waitstaff.

25 I'm not prepared to concede --

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1 **THE COURT:** So we'll do the -- we will play the video
2 so that I can take a look at it and you can look at it at the
3 same time. I just wanted you to know what was not going to be
4 in dispute.

5 **MR. MIHET:** Okay.

6 **MS. BOMSE:** Sure. And should I explain to counsel
7 the other issue?

8 **THE COURT:** Sure. Would you?

9 (Discussion held off the record between counsel.)

10 **MS. BOMSE:** So we have a disagreement. So maybe the
11 Court should see the clips?

12 **THE COURT:** I would like to do that.

13 **MS. BOMSE:** Thanks.

14 **THE COURT:** Do you have a transcript that I can look
15 at?

16 **MS. BOMSE:** Do you have a clean one? I'm happy to
17 give you mine. It's rather marked up.

18 **THE COURT:** I prefer not.

19 (Brief pause.)

20 **MS. BOMSE:** While we're waiting, Your Honor, I want
21 to confirm unless the transcript is certified, the transcript
22 is not being admitted as an exhibit, just the video.

23 **THE COURT:** The transcript may never be admitted,
24 because it's the recording that is the evidence.

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

PROCEEDINGS

1 **MR. MIHET:** May I approach?

2 **THE COURT:** Yes.

3 (Whereupon document was tendered to the Court.)

4 **THE COURT:** Ms. Bomse, just so that I know, where is
5 it that -- with the first one that you are --

6 **MS. BOMSE:** We're starting with 5070.

7 **THE COURT:** Yes. At what point do you have no
8 dispute that it should come in?

9 **MS. BOMSE:** We believe that starting at 00:36:20 and
10 continuing --

11 **THE COURT:** Okay.

12 **MS. BOMSE:** -- to 00:46:00 is appropriate.

13 **THE COURT:** Okay. Whenever you're ready.

14 **THE CLERK:** Which team is going to play the clip?

15 **MR. MIHET:** The defense.

16 **THE CLERK:** Okay.

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

18 **MR. MIHET:** We're not at the right spot. 12:45:33.

19 **MS. BOMSE:** Your Honor, we also have a lot of
20 non-counsel in the courtroom. I don't know what the Court's
21 view is on that.

22 **MR. MIHET:** Your Honor, this video has been published
23 online for years now.

24 **MS. BOMSE:** Fair enough.

25 **THE COURT:** That's fine.

PROCEEDINGS

1 Let me say if there is anybody here who is here for the
2 sentencing that I'm doing at 1:30, I'm going to be in Judge
3 Chhabria's courtroom, which is down the hall to the right about
4 three courtrooms.

5 (Brief pause.)

6 **THE COURT:** Actually, given this delay and I'm going
7 to start up at 1:30 on something else that is important, so I
8 would like -- if those clips could be delivered to Chambers,
9 I'll look at them and make a ruling on them so that --
10 Ms. Merritt is going to be around. So I'll let you know on
11 Tuesday morning.

12 **MR. MIHET:** Okay, Your Honor.

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

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

15 **THE COURT:** Thank you. Have a good weekend
16 everybody.

17 (Whereupon at 12:58 p.m. further proceedings were
18 adjourned til Tuesday, October 8, 2019 at 7:30 a.m.)
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24
25

I N D E X

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I N D E XE X H I B I T S

<u>TRIAL EXHIBITS</u>	<u>IDEN</u>	<u>EVID</u>	<u>VOL.</u>
140		414	3
352		470	3
360		452	3
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411		424	3
412		443	3
416		446	3
426		437	3
429		461	3
431		465	3
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434		467	3
438		472	3
443		486	3
554		448	3
654		418	3
997		543	3
999		540	3
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I N D E XE X H I B I T S

<u>TRIAL EXHIBITS</u>	<u>IDEN</u>	<u>EVID</u>	<u>VOL.</u>
5107		527	3
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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Debra L. Pas

Debra L. Pas, CSR 11916, CRR, RMR, RPR

Friday, October 4, 2019