

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
)	Thursday
Defendants.)	October 3, 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

October 3, 2019

7:40 a.m.

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

THE COURT: Please come to order. Good morning, everybody. You can be seated.

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

THE COURT: All right. A couple of things, and then we had the motion in limine.

First, the jury binder, everybody's seen it. It's all fine. I'm going to describe it to the jury before I give the preliminary instructions, and give it to them at the end of the day so they don't spend their day flipping through it and trying to see what's there.

One thing I hadn't mentioned to people, unless there's some reason not to, if one of the defendants makes an objection, I'm going to assume that it goes for everybody so that you don't all have to say "Join." So that will be my assumption. If there's ever a reason why somebody doesn't want to join, we can deal with it at a break.

While you're examining witnesses, the only objections that I want to hear will come from the person who's doing the examining or cross-examining. So it's not a free-for-all for

PROCEEDINGS

1 any plaintiffs' lawyer who wants to object. That doesn't work
2 for me. Okay?

3 And the objections are -- I don't want to hear speaking
4 objections. One word or two to make clear why it is you are
5 objecting is great, and helpful. But I don't want a speech.

6 So, those were things that I wanted to mention to
7 everybody.

8 Defendant Newman's motion in limine?

9 **MR. KOZINA:** Yes, Your Honor. I just --

10 **THE COURT:** Wait until you get up to the mic.

11 **MR. KOZINA:** Yeah.

12 Your Honor, in reviewing Ms. Tosh's deposition testimony,
13 we know that she had a rather long set of responses that talked
14 about violence by Mr. Newman that she believed occurred.

15 First, there's a foundational issue. Number two,
16 consistent with the Court's earlier determination with regard
17 Mr. Cohen, I believe that she should not be allowed to make any
18 comment upon that. Okay?

19 And one other issue. May the Court clarify this for us?
20 Since the Court is going to rule later on the inferences, would
21 it be appropriate that no mention of the Fifth Amendment be
22 made during openings?

23 **THE COURT:** Yeah. So, who is going to speak to this?

24 **MS. BOMSE:** I will, Your Honor.

25 **THE COURT:** Ms. Bomse.

PROCEEDINGS

1 **MS. BOMSE:** Yes. So, I -- Ms. Tosh will not offer
2 any testimony about anything she doesn't have personal
3 knowledge of. And I'm not -- the second comment was "no
4 comment upon that." I'm not sure what the "that" was. I mean,
5 she will discuss her experiences with -- with abortion
6 opponents.

7 And she -- you know, Mr. Newman is a defendant in this
8 case. His name may come up. But again, she's not going to be
9 speculating about things that she doesn't have personal
10 knowledge of.

11 **THE COURT:** Okay. I dealt with this in the motions
12 in limine. And with respect to Dr. Tiller, I said there could
13 be limited testimony with respect to that. And I would give a
14 limiting instruction to the extent that -- so that it was clear
15 that there was no link to any of -- to any evidence that the
16 defendant was involved.

17 **MR. KOZINA:** I appreciate that, Your Honor.

18 **THE COURT:** So I think that's the case. And
19 certainly, there should be no reference to the Fifth Amendment.

20 **MS. BOMSE:** Oh, of course.

21 **MR. KOZINA:** Thank you, Your Honor. Appreciate that.

22 **THE COURT:** Okay. Mr. Millen?

23 **MR. MILLEN:** Yes, Your Honor. I have a slightly
24 different take on the motion in limine for Ms. Tosh.

25 What counsel just said to -- Ms. Bomse just said to me is

PROCEEDINGS

1 very troubling as to the sort of testimony that I'm concerned
2 about Ms. Tosh giving. What I mean is this: Ms. Tosh, she has
3 no direct personal knowledge of the alleged recording, so she's
4 not here for that; she is not a witness in the room.

5 Ms. Tosh -- um, not only that, she is -- she, her -- her
6 corporation's not claiming any damages, apart from statutory.
7 Which doesn't need a particular offer of proof to get statutory
8 damages. It has nothing to do with the her experience.

9 So the deep concern I have is that we're going to have
10 someone who is, yes, a plaintiffs' representative, fair enough,
11 but a plaintiffs' representative who has nothing to add to the
12 issues in the case except to share generalized statements about
13 interactions with abortion opponents, or interactions after
14 publication of what happened.

15 And what's so difficult is, having gone through her
16 deposition, she has a lot to say about: Oh, after this was
17 published, we were afraid of this and that.

18 All of it's very prejudicial, and it's probative to
19 nothing, because they're not even asking for any damages,
20 outside statutory.

21 **THE COURT:** So, if it's difficult for you, think
22 about for me. If you had these concerns about Ms. Tosh, you
23 should have raised them in a motion in limine so that I could
24 have looked at her deposition in advance and said: Oh, well,
25 you know, here are the lines. You didn't.

PROCEEDINGS

1 I'm not going to preclude testimony, and we'll just -- you
2 know, if there are problems that -- and you want to make
3 objections during the course of the testimony, I'm sure you
4 will.

5 **MR. MILLEN:** So if I were to stand up, just as an
6 example, if she were to say, "Oh, you know, here's how afraid
7 our staff was," and I said "Objection, 403," or "irrelevant,"
8 would that be --

9 **THE COURT:** That is a perfect objection.

10 **MR. MILLEN:** Okay.

11 **THE COURT:** And when I say "perfect," that is exactly
12 the way you should make it. I'm not saying that's --

13 **MR. MILLEN:** One out of two is not bad. The form is
14 good, even if the substance isn't.

15 **THE COURT:** And I can't -- I'll just -- I'll wait for
16 the testimony and see.

17 **MR. MILLEN:** Thank you.

18 **MS. BOMSE:** Your Honor, I believe we also have an
19 objection to one of the exhibits I plan to use with Ms. Tosh,
20 although I confess I don't know what the substance of the
21 objection is.

22 **THE COURT:** Okay.

23 **MS. DHILLON:** So Your Honor, the objection is to the
24 second of three exhibits that counsel just shared with us,
25 Trial Exhibit 871. And it is -- if I may show it to the Court

PROCEEDINGS

1 (Indicating), it is a visual demonstration of the types of
2 services Planned Parenthood offers.

3 And I believe Your Honor's rulings on demonstrative
4 exhibits said this type -- this is irrelevant, this type of
5 evidence.

6 **THE COURT:** Do you want to pass this up to me?

7 **MS. BOMSE:** We may have a copy for the Court.

8 **THE COURT:** I can just take a quick look here.

9 **MS. BOMSE:** Okay.

10 (Document handed up to the Court)

11 **MS. DHILLON:** The second page is similar. It's a
12 short exhibit.

13 (The Court examines document)

14 **MS. BOMSE:** Just to -- just to be clear, those are
15 the services provided by Ms. Tosh's organization. So she has
16 personal knowledge of all that.

17 **THE COURT:** And, and the concern, Ms. Dhillon?

18 **MS. DHILLON:** It's relevance.

19 **THE COURT:** You know, I think for background
20 information, I -- I would overrule that objection.

21 (Document handed down)

22 **MS. DHILLON:** That is our obviously, objection, with
23 respect --

24 **THE COURT:** Okay. Unless there's no foundation.
25 Once the foundation is laid, I would not overrule.

PROCEEDINGS

1 **MS. BOMSE:** Thank you.

2 **MS. DHILLON:** Thank you.

3 **MS. MAYO:** Sharon Mayo.

4 Your Honor, we have a situation with the video clips. A
5 couple of days ago, we sent over to defense counsel the short
6 clips -- most of them are five minutes or so -- that we
7 intended to use with the first three witnesses to hash out any
8 issues.

9 We have heard nothing. And we sent a reminder yesterday
10 and still nothing. And we do have Ms. Merritt, for example,
11 who may testify at the end of the day, depending on how quickly
12 things move. We do intend to show some video clips there.

13 And we would like Your Honor's guidance on how we deal
14 with that, because I can't seem to get a response from defense
15 counsel.

16 **THE COURT:** What is the story on that? Is that
17 Mr. Jonna?

18 **MR. JONNA:** Good morning. Paul Jonna, Your Honor.

19 I can tell that you we have looked at some of the clips.
20 I haven't looked at all of the clips. And we don't have any
21 objections. I can't speak for Ms. Merritt's counsel. But if
22 we had objections, we would raise them with counsel promptly.

23 **THE COURT:** Okay. Mister -- Mr. Mihet, you're
24 nodding, so you don't have a problem with these clips either.
25 Is that correct?

PROCEEDINGS

1 **MR. MIHET:** No, I wouldn't say that yet, Your Honor.
2 We've been quite occupied, and I haven't had a chance to review
3 all of the clips just yet. If we do, we'll object to them as
4 we go along.

5 **THE COURT:** Okay. So there's no problem with playing
6 them, and then we'll just deal with them as they come up.

7 **MR. MIHET:** Yeah.

8 **THE COURT:** Okay.

9 **MS. MAYO:** Thank you, Your Honor.

10 **THE COURT:** Ms. Short.

11 **MS. SHORT:** Your Honor, just in defense of the
12 defense team, we did raise -- we had -- one of our motions
13 in limine was a general motion concerning the admission of
14 evidence of damages that weren't being sought and the harms and
15 emotional distress and things like that. We did bring that
16 motion in limine before you. And it was denied. But we
17 interpreted that to be: Okay, why don't we wait and see
18 specifically what's going to come in.

19 And so our thought was in renewing that in regard to
20 Ms. Tosh in particular, you know, that we could look at it one
21 at a time here. And, you know, you look at Ms. Tosh's
22 testimony. That's all --

23 **THE COURT:** And that's -- it's perfectly fine to
24 object. My rulings will have preserved -- to the extent that
25 they were specific enough, will preserve your rights going

PROCEEDINGS

1 forward. But I think it's an appropriate thing to object when
2 you think you need to make an objection. And I'll rule then.

3 **MS. SHORT:** Okay. Actually, I have one other
4 housekeeping matter, which is with regard to the redaction of
5 exhibits.

6 As you know, the parties worked through with a lot of
7 redactions. However, what has not been dealt with is
8 redactions on exhibits that will be used solely for
9 impeachment. And this may be simply an insoluble problem,
10 given -- for the defense, given the situation, which is that it
11 appears that our choices are to either tell the other side what
12 we're going to be using for impeachment in order to get it
13 unredacted, or present redacted copies to the jury.

14 I think that's tremendously unfair to the defense. But if
15 there's any solution to that, I would love to know if there is.
16 Because that seems to me the choice we are presented with.

17 **THE COURT:** Well, I -- I don't know how -- I don't
18 know whether you have a good idea how to resolve that. If
19 there are -- I'm just, I'm just not sure how to resolve that.

20 If you know -- if there is a small set of documents that
21 you think you're going to want to use, and -- and there have
22 been decisions that you've come to cooperatively that are
23 consistent with, you know, with some unredaction of some of the
24 information, and you wanted to show that to me in advance of
25 using it, I suppose I may be able to look at it. But I don't

PROCEEDINGS

1 know what your discussions have been specifically on that, and
2 I don't know if that is a workable solution either.

3 So I think the solution that you have described, imperfect
4 as it is, is the one that you probably ought to use, unless you
5 can work with the plaintiffs to figure something out.

6 **MS. SHORT:** As I say, it is imperfect. And I guess
7 I'm just reiterating our objection that the process of
8 over-redaction which we have addressed over and over and over
9 again has now led us to this point where those are our choices.

10 **THE COURT:** Well, I guess another way of dealing with
11 that problem is without identifying the document, to discuss
12 with the plaintiffs the specific -- the specific person that
13 might have been named or what -- I don't know what the
14 redactions will be. But you might be able to have a generic
15 discussion without discussing the document that would be of --
16 that could solve that problem.

17 **MS. SHORT:** Thank Your Honor.

18 **THE COURT:** Okay. All right. I will look forward to
19 seeing you once the jury is here.

20 (Recess taken from 7:53 a.m. to 8:06 a.m.)

21 (The following proceedings were held outside of the
22 presence of the Jury)

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

24 **THE COURT:** Please be seated, everybody, for a
25 moment, because I think we're ready for the jury.

PROCEEDINGS

1 (The following proceedings were held in the presence
2 of the Jury)

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

4 Ladies and gentlemen, good morning. Welcome. Thank you
5 all for being here promptly so that we can get going.

6 I want to tell you that the reason people stand up when
7 you come into the courtroom is to honor your service as jurors.
8 So you can come in and sit down, if you want to. You can
9 stand. You can do either one. But, but the purpose of this is
10 to recognize the duty that you will -- that you are fulfilling
11 here, and to honor that service.

12 So in a moment, I'm going to go through the preliminary
13 instructions with you, and then the lawyers will give their
14 opening statements, and the evidence will start.

15 I want to tell you that at the end of the day, you are
16 each going to get a binder. And that binder will contain the
17 preliminary instructions in the case. It's going to include a
18 timeline of some of the events that happened in the case.
19 There will be a chart of who's claiming what against whom.
20 Because as you'll see, there are a number of -- of plaintiffs;
21 there are a number of defendants.

22 Your obligation is going to be to look at each of the
23 claims and look at each of the parties separately, as I
24 describe them to you. And so the purpose of having these
25 things in the binder is just to help you during the course of

JURY INSTRUCTIONS

1 the trial sort out who's claiming what. And the binder will be
2 yours. You will need to leave it here every day, but you can
3 use it for reference.

4 And then the final thing that it will have is the trial
5 calendar, which is also more complicated than it should be,
6 because of my schedule. So you'll have that to refer to, also.

7 So with that, I'm now going to give you the preliminary
8 instructions.

JURY INSTRUCTIONS**BY THE COURT**

11 Members of the jury, you are now the jury in this case.
12 It is my duty to instruct you on the law. These instructions
13 are preliminary instructions, to help you understand the
14 principles that apply to civil trials and to help you
15 understand the evidence as you listen to it. You will be
16 allowed to keep this set of instructions to refer to throughout
17 the trial. These instructions are not to be taken home, and
18 must remain in the jury room when you leave in the evenings.
19 At the end of the trial, these instructions will be collected
20 and I will give you a final set of instructions. It's the
21 final set of instructions that will govern your deliberations.

22 It's your duty to find the facts from all of the evidence
23 in the case. To those facts you will apply the law as I give
24 it to you. You must follow the law as I give it to you,
25 whether you agree with it or not. And you must not be

JURY INSTRUCTIONS

1 influenced by any personal likes or dislikes, opinions,
2 prejudices, implicit biases or sympathy. That means that you
3 must decide the case solely on the evidence before you. You
4 will recall that you took an oath to do so.

5 Please do not read into these instructions or anything I
6 may say or do that I have an opinion regarding the evidence or
7 what your verdict should be.

8 To help you follow the evidence, I will identify the
9 parties and give you a brief summary of the positions of the
10 parties.

11 Plaintiffs are Planned Parenthood Federation of America,
12 (PPFA); Planned Parenthood: Shasta-Diablo Inc. doing business
13 as Planned Parenthood Northern California, PP NorCal; Planned
14 Parenthood Mar Monte Inc. (PPMM); Planned Parenthood of the
15 Pacific Southwest (PPPSW); Planned Parenthood Los Angeles
16 (PPLA); Planned Parenthood/Orange and San Bernardino Counties
17 (PPOSBC); Planned Parenthood California Central Coast (PPCCC);
18 Planned Parenthood Pasadena and San Gabriel Valley, Inc.
19 (PPPSGV); Planned Parenthood of the Rocky Mountains (PPRM); and
20 Planned Parenthood Gulf Coast (PPGC); and Planned Parenthood
21 Center for Choice (PPCFC).

22 Defendants are the Center for Medical Progress (CMP);
23 BioMax Procurement Services, LLC (BioMax); David Daleiden; Troy
24 Newman; Albin Rhomberg; Sandra Susan Merritt; and Gerardo
25 Adrian Lopez.

JURY INSTRUCTIONS

1 Plaintiffs assert claims for fraud, trespass, breach of
2 contract, illegal recording, civil conspiracy, and violation of
3 the Racketeer Influenced And Corrupt Organizations Act, RICO.
4 Defendants deny that they are liable to plaintiffs on any of
5 plaintiffs' claims.

6 I will now give you an overview of what the law requires
7 plaintiffs to prove in order to establish their claims. At the
8 end of the case I will give you more detailed instructions on
9 the law. This overview is intended to help you digest the
10 evidence as you hear it before you receive my more detailed
11 instructions -- instructions at the end of the case.

12 Some issues have already been determined in this case.
13 You should not speculate about those issues, and instead,
14 simply focus on the evidence presented to you and the matters
15 you are asked to decide.

16 Plaintiffs assert that defendants are liable for fraud.
17 There are three different forms of fraud: Intentional
18 misrepresentation, concealment, and false promise.

19 In an intentional misrepresentation claim, a plaintiff
20 must prove that a defendant made a factual statement to a
21 plaintiff despite knowing that the statement was false.

22 In a concealment claim, a plaintiff must prove that a
23 defendant disclosed some facts to a plaintiff but intentionally
24 failed to disclose other facts that the plaintiff did not know
25 and that made the defendant's disclosure deceptive.

JURY INSTRUCTIONS

1 In a false promise claim, a plaintiff must prove that a
2 defendant made a promise to a plaintiff but did not intend to
3 perform the promise when the defendant made it.

4 In all three types of fraud claims, a plaintiff must also
5 prove that a defendant intended for the plaintiff to rely on
6 the intentional misrepresentation, concealment, or false
7 promise; that the plaintiff actually relied; that the
8 plaintiff's reliance was reasonable; and that the plaintiff's
9 reliance harmed the plaintiff.

10 You will be asked to determine whether defendant CMP is
11 liable for trespass. To establish a claim for trespass, a
12 plaintiff must prove that it owned, leased, occupied or
13 controlled property; that a defendant intentionally entered the
14 property; and that the relevant plaintiff did not give the
15 defendant permission to enter the property or that the
16 defendant exceeded the scope of the plaintiff's permission.

17 If a defendant obtained permission to enter because of a
18 misrepresentation, the law treats the defendant's entry as if
19 it was made without permission.

20 In pretrial proceedings, it has been determined that
21 defendants BioMax, Daleiden, Lopez, and Merritt are directly
22 liable for trespass. You will be required to determine whether
23 plaintiffs were damaged by those trespasses, and if so, the
24 amount of damages. If a plaintiffs proves that a trespass
25 occurred, you may award nominal damages even if a plaintiff was

JURY INSTRUCTIONS

1 not harmed by the trespass.

2 A plaintiff may prove a breach-of-contract claim if the
3 plaintiff is a party to a contract were a defendant, or, if the
4 plaintiff is not a party to the contract, the plaintiff is a
5 third-party beneficiary of the contract.

6 The parties to a contract are the people who have made
7 promises directly to one another.

8 A third-party beneficiary is someone who the parties to
9 the contract intended would receive a benefit from the
10 contract. Plaintiffs allege they are third-party beneficiaries
11 of contracts between the National Abortion Foundation (NAF),
12 and defendants that relate to two NAF annual meetings.
13 Defendants deny that plaintiffs are third-party beneficiaries
14 of the NAF contracts. If plaintiffs prove the contracts were
15 intended to benefit plaintiffs, they are third-party
16 beneficiaries of the contract.

17 Once a plaintiff proves it is a party to a contract or a
18 third-party beneficiary to a contract, it must prove that a
19 defendant breached the contract by doing something that the
20 contract prohibited the defendant from doing, or by failing to
21 do something the contract required the defendant to do. If a
22 plaintiff proves breach, you may award nominal damages, even if
23 a plaintiff was not harmed by the breach. If a plaintiff also
24 proves that a defendant's breach harmed the plaintiff, the
25 plaintiff is entitled to compensation for all the harm

JURY INSTRUCTIONS

1 foreseeably caused by the defendant's breach.

2 In pretrial proceedings, it has been determined that
3 defendants Daleiden and BioMax breached the PPFA exhibitor
4 agreements. As to these defendants and contracts, you will be
5 required to determine whether plaintiffs were damaged by those
6 breaches, and, if so, the amount of damages.

7 You will be asked to determine whether defendants BioMax
8 and Daleiden breached the PPGC non-disclosure agreement, and if
9 so, the amount of damages.

10 If you find plaintiffs are third-party beneficiaries of
11 the NAF contracts, you will be asked to determine whether
12 certain defendants breached the NAF contracts, and if so,
13 whether plaintiffs were damaged by those breaches, and if so,
14 the amount of damages.

15 California, Florida, Maryland and federal law prohibit
16 recording a person without consent in certain situations.

17 California law.

18 To establish a claim under California law, a plaintiff
19 must prove that a defendant intentionally recorded a
20 confidential communication without the consent of all the
21 parties to the conversation. A confidential communication is
22 one where the party asserting it is confidential had a
23 reasonable expectation that others are not listening into the
24 conversation or recording it. California law also prohibits
25 trespassing on property for the purpose of recording another in

JURY INSTRUCTIONS

1 violation of California law.

2 Defendants contend their recording of plaintiffs was
3 permitted under California law because they sought to obtain
4 evidence of a violent felony against a person. To establish
5 this defense, defendants must prove that before the first time
6 they recorded in California, they had a reasonable belief the
7 persons being recorded committed or intended to commit a
8 violent felony against a person, and that was their purpose in
9 making the recording. California law only applies to
10 recordings that occurred in California.

11 Florida and Maryland law.

12 To establish a claim under Florida or Maryland law, a
13 plaintiff must prove that a defendant intentionally recorded or
14 procured another person to record an oral communication in
15 which the parties had a reasonable expectation of privacy
16 without the consent of all the parties to the communication.
17 Florida and Maryland law also prohibit disclosing the contents
18 of any oral communication by anyone who knows or should know
19 the contents were obtained through a recording in violation of
20 Florida or Maryland law. Florida law applies only to
21 recordings that occurred in Florida. Maryland law applies only
22 to recordings that occurred in Maryland.

23 Federal law.

24 To establish a claim under federal law, a plaintiff must
25 prove that a defendant intentionally recorded an oral

JURY INSTRUCTIONS

1 communication where the parties had a reasonable expectation of
2 privacy, and that one of the defendant's purposes in doing so
3 was to violate RICO.

4 Plaintiffs claim that defendants engaged in acts that
5 violate the Racketeer Influenced and Corrupt Organizations Act,
6 often called "RICO." A RICO claim can be made in a civil case.
7 It allows the members of a formal or informal enterprise to be
8 held responsible for the actions of the other members of the
9 enterprise. To recover under RICO, a plaintiff must prove
10 conduct, of an enterprise, through a pattern, of racketeering
11 activity known as "predicate acts," directly causing (sic) to
12 the plaintiff's business or property by the conduct
13 constituting the violation.

14 The (1) conduct element requires that the defendant have
15 some part in directing the affairs of the enterprise.

16 And (2) "enterprise" includes any individual, partnership,
17 corporation, association or other legal entity and any union or
18 group of individuals associated in fact.

19 A (3) pattern is defined as "At least two acts of
20 racketeering activity" within ten years of each other. And
21 plaintiffs must prove that past conduct that by its nature
22 projects into the future with a threat of repetition (known as
23 open-ended continuity).

24 (4) racketeering activity means commission of certain
25 crimes, including producing a fake identification document or

JURY INSTRUCTIONS

1 transferring a fake identification document, and using the mail
2 or wires in a scheme or plan to defraud.

3 Plaintiffs also allege that defendants participated in a
4 RICO conspiracy, which requires plaintiff to prove that
5 defendants agreed to commit a substantive violation of RICO.

6 For plaintiffs' claims, other than breach of contract,
7 plaintiffs assert that certain defendants are liable as civil
8 conspirators. A conspiracy is an agreement by two or more
9 persons to commit a wrongful act. If one member of a
10 conspiracy commits a wrongful act, then all members of the
11 conspiracy, including those that, themselves, did not
12 personally commit the wrongful act, are responsible for
13 compensating the plaintiff for the harm caused by the wrongful
14 act. When a party has the burden of proving any claim or
15 affirmative defense by a preponderance of the evidence, it
16 means you must be persuaded by the evidence that the claim or
17 affirmative defense is more probably true than not true.

18 You should base your decision on all of the evidence,
19 regardless of which party presented it.

20 You should decide the case as to each party separately.
21 Unless otherwise stated, the instructions apply to all parties.

22 Under the law, a corporation is considered to be a person.
23 It can only act through its employees, agents, directors, or
24 officers. Therefore, a corporation (including a limited
25 liability corporation) is responsible for the acts of its

JURY INSTRUCTIONS

1 employees, agents, directors, and officers performed within the
2 scope of authority.

3 All parties are equal before the law and a corporation is
4 entitled to the same fair and conscientious consideration by
5 you as any party.

6 The evidence you are to consider in deciding what the
7 facts are consists of:

8 The sworn testimony of any witness;

9 The exhibits that are admitted into evidence;

10 Any facts to which the lawyers have agreed; and

11 Any facts that I may instruct you to accept is proved.

12 In reaching your verdict, you may consider only the
13 testimony and exhibits received into evidence. Certain things
14 are not evidence, and you may not consider them in deciding
15 what the facts are. I will list them for you:

16 No. 1. Arguments and statements by lawyers are not
17 evidence. I will repeat that. Arguments and statements by
18 lawyers are not evidence. The lawyers are not witnesses. What
19 they may say in their opening statements, closing arguments and
20 at other times is intended to help you interpret the evidence,
21 but it is not evidence. If the facts as you remember them
22 differ from the way the lawyers have stated them, your memory
23 of them controls.

24 No. 2. Questions and objections by lawyers are not
25 evidence. Attorneys have a duty to their clients to object

JURY INSTRUCTIONS

1 when they believe a question is improper under the rules of
2 evidence. You should not be influenced by the objection or by
3 the Court's ruling on it.

4 No. 3. Testimony that is excluded or stricken, or that
5 you are instructed to disregard, is not evidence and must not
6 be considered. In addition, some evidence may be received only
7 for a limited purpose; when I instruct you to consider certain
8 evidence only for a limited purpose, you must do so and you may
9 not consider that evidence for any other purpose.

10 No. 4. Anything you may see or hear when court is not in
11 session is not evidence. You're to decide the case solely on
12 the evidence received at the trial.

13 Some evidence may be admitted only for a limited purpose.
14 When I instruct you that an item of evidence has been admitted
15 only for a limited purpose, you must consider it only for that
16 limited purpose, and not for any other purpose.

17 Evidence may be direct or circumstantial. Direct evidence
18 is direct proof of a fact, such as testimony by a witness about
19 what that witness personally saw or heard or did.

20 Circumstantial evidence is proof of one or more facts from
21 which you could find another fact. You should consider both
22 kinds of evidence. The law makes no distinction between the
23 weight to be given to either direct or circumstantial evidence.
24 It is for you to decide how much weight to give to any
25 evidence.

JURY INSTRUCTIONS

1 There are rules of evidence that control what can be
2 received into evidence. When a lawyer asks a question or
3 offers an exhibit into evidence and lawyer on the other side
4 thinks that it is not permitted by the rules of evidence, that
5 lawyer may object. If I overrule the objection, the question
6 may be answered or the exhibit received. If I sustain the
7 objection, the question cannot be answered, and the exhibit
8 cannot be received. Whenever I sustain an objection to a
9 question, you must ignore the question and must not guess what
10 the answer might have been.

11 Sometimes I may order that evidence be stricken from the
12 record and that you disregard or ignore that evidence. That
13 means when you are deciding the case, you must not consider the
14 stricken evidence for any purpose.

15 In deciding the facts in this case, you may have to decide
16 which testimony to believe and which testimony not to believe.
17 You may believe everything a witness says, or part of it, or
18 none of it.

19 In considering the testimony of any witness, you may take
20 into account:

21 The opportunity and ability of the witness to see or hear
22 or know the things testified to;

23 The witness's memory;

24 The witness's meanwhile testifying;

25 The witness's interest in the outcome of the case, if any;

JURY INSTRUCTIONS

1 The witness's bias or prejudice, if any;

2 Whether other evidence contradicted the witness's
3 testimony;

4 The reasonableness of the witness's testimony in light of
5 all the evidence; and

6 Any other factors that bear on believability.

7 Sometimes a witness may say something that is not
8 consistent with something else he or she said. Sometimes
9 different witnesses will give different versions of what
10 happened. People often forget things or make mistakes in what
11 they remember. Also, two people may see the same event but
12 remember it differently. You may consider these differences,
13 but do not decide that testimony is untrue just because it
14 differs from other testimony.

15 However, if you decide that a witness has deliberately
16 testified untruthfully about something important, you may
17 choose not to believe anything that witness said. On the other
18 hand, if you think the witness testified untruthfully about
19 some things but told the truth about others, you may accept the
20 part you think is true and ignore the rest.

21 The weight of the evidence as to a fact does not
22 necessarily depend on the number of witnesses who testify.
23 What is important is how believable the witnesses were, and how
24 much weight you think their testimony deserves.

25 The claims and defenses in this case concern the

JURY INSTRUCTIONS

1 strategies chosen and employed by the defendants. I need to
2 emphasize what this case is not about. It is not about the
3 truth of whether the plaintiffs profited from the sale of fetal
4 tissue or otherwise violated the law in securing tissue for
5 those programs. It's not about whether any plaintiff actually
6 engaged in illegal conduct. Those issues are a matter of
7 dispute between the parties in the world outside this
8 courtroom. In this courtroom your job is to consider the
9 evidence related to the claims and defenses in the case in
10 accordance with the instructions that I give you.

11 I will now say a few words about your conduct as jurors.

12 First, keep an open mind throughout trial, and do not
13 decide what the verdict should be until you and your fellow
14 jurors have completed your deliberations the end of case.

15 Second, because you must decide this case based only on
16 the evidence received in the case and on my instructions as to
17 the law that applies, you must not be exposed to any other
18 information about the case or to the issues it involves during
19 the course of your jury duty.

20 Thus, until the end of the case or unless I tell you
21 otherwise: Do not communicate with anyone in any way and do
22 not let anyone else communicate with you in any way about the
23 merits of the case or anything to do with it. This includes
24 discussing the case in person, in writing, by phone or
25 electronic means, via email, text messaging, or any internet

JURY INSTRUCTIONS

1 chatroom, blog, website or application, including but not
2 limited to Facebook, YouTube, Twitter, Instagram, LinkedIn,
3 Snapchat, or any other forms of social media. This applies to
4 communicating with your fellow jurors until I give you the case
5 for deliberation, and it applies to communicating with everyone
6 else including your family members, your employer, the media or
7 press and the people involved in the trial, although you may
8 notify your family and your employer that you have been seated
9 as a juror in the case, and how long you expect the trial to
10 last. But, if you are asked or approached in any way about
11 your jury service or anything about this case, you must respond
12 that you have been ordered not to discuss the matter and report
13 the contact to the Court.

14 Because you will receive all the evidence and legal
15 instruction you may properly consider to return a verdict: Do
16 not read, watch or listen to any news or media accounts or
17 commentary about the case or anything to do with it; do not do
18 any research, such as consulting dictionaries, searching the
19 internet, or using other reference materials; and do not make
20 any investigation in any other way try to learn about the case
21 on your own. Do not visit or view any place discussed in the
22 case, and do not use internet programs or other devices to
23 search for or view any place discussed during the trial. Also,
24 do not do any research about this case, the law, or the people
25 involved -- including the parties, the witnesses or the lawyers

JURY INSTRUCTIONS

1 -- until you have been excused as jurors. If you happen to
2 read or hear anything touching on this case in the media, turn
3 away and report it to me as soon as possible.

4 These rules protect each party's right to have this case
5 decided only on evidence that has been presented here in court.
6 Witnesses here in court take an oath to tell the truth, and the
7 accuracy of their testimony is tested through the trial
8 process. If you do any research or investigation outside the
9 courtroom, or gain any information through improper
10 communications, then your verdict may be influenced by
11 inaccurate, incomplete or misleading information that has not
12 been tested by the trial process. Each of the parties is
13 entitled to a fair trial by an impartial jury, and if you
14 decide the case based on information not presented in court,
15 you will have denied the parties a fair trial. Remember, you
16 have taken an oath to follow the rules, and it is very
17 important that you follow these rules.

18 A juror who violates these restrictions jeopardizes the
19 fairness of these proceedings, and a mistrial could result that
20 would require the entire trial process to start over. If any
21 juror is exposed to any outside information, please notify the
22 Court immediately.

23 If there is any news media account or commentary about the
24 case or anything to do with it, you must ignore it. You must
25 not read, watch or listen to any news media account or

JURY INSTRUCTIONS

1 commentary about the case or anything to do with it. The case
2 must be decided by you solely and exclusively on the evidence
3 that will be received in the case and on my instructions as to
4 the law that applies. If any juror is exposed to any outside
5 information, please notify me immediately.

6 If you wish, you may take notes to help you remember the
7 evidence. If you do take notes, please keep them to yourself
8 until you go to the jury room to decide the case. Do not let
9 notetaking distract you. When you leave, your notes should be
10 left in the jury room. No one will read your notes.

11 Whether or not you take notes, you should rely on your own
12 memory of the evidence. Notes are only to assist your memory.
13 You should not be overly influenced by your notes or those of
14 other jurors.

15 From time to time during the trial, it may become
16 necessary for me to talk with the lawyers out of the hearing of
17 the jury, either by having a conference at the bench when the
18 jury is present in the courtroom, or by calling a recess.
19 Please understand that while you are waiting, we are working.
20 The purpose of these conferences is not to keep relevant
21 information from you, but to decide how certain evidence is to
22 be treated under the rules of evidence and to avoid confusion
23 and error.

24 Of course, we will do what we can to keep the number and
25 length of these conferences to a minimum. I may not always

OPENING STATEMENT / TROTTER

1 grant an attorney's request for a conference. Do not consider
2 my granting or denying a request for a conference as any
3 indication of my opinion of the case or of what your verdict
4 should be.

5 Trials proceed in the following way: First, each side may
6 make an opening statement. An opening statement is not
7 evidence. It is simply an outline to help you understand what
8 that party expects the evidence will show. A party is not
9 required to make an opening statement.

10 The plaintiff will then present evidence, and counsel for
11 the defendant may cross-examine. Then the defendant may
12 present evidence, and counsel for the plaintiff may
13 cross-examine.

14 After the evidence has been presented, I will instruct you
15 on the law that applies to the case and the attorneys will make
16 closing arguments.

17 After that, you will go to the jury room to deliberate on
18 your verdict.

19 So ladies and gentlemen, those are the preliminary
20 instructions. And now, if the plaintiffs are ready to proceed?

21 **MS. TROTTER:** Yes. Thank you, Your Honor.

22 **OPENING STATEMENT**

23 **BY MS. TROTTER**

24 Members of the jury, good morning.

25 This case is about the defendants' plan to use any means,

OPENING STATEMENT / TROTTER

1 including illegal means, a to try to destroy Planned
2 Parenthood.

3 These are the defendants' goals in their very own words.

4 (Document displayed)

5 **MS. TROTTER:** Defendant Troy Newman wants to finish
6 off Planned Parenthood and end abortion.

7 Defendant Albin Rhomberg wants to destroy the evil Planned
8 Parenthood Empire.

9 Defendant David Daleiden wants to permanently destroy
10 Planned Parenthood's brand. Prompt defunding of Planned
11 Parenthood. Ignite public outrage at Planned Parenthood. And
12 cause public outrage at Planned Parenthood and liberal
13 university professors.

14 Members of the jury, I introduced myself to you yesterday
15 when we had a much larger group here. My name is Rhonda
16 Trotter. I represent the plaintiffs in this case, planned
17 Parenthood Federation of America, also known as PPFa, and
18 various Planned Parenthood affiliates.

19 You may hear myself and my co-counsel here for Planned
20 Parenthood refer to somebody by the name of Ken during the
21 time. We will be referring to Mr. Ken Kotarski, who is sitting
22 here at counsel table at the end. Mr. Kotarski is very, very
23 important to all of here as he is the trial technology
24 specialist who will be pulling up the evidence for you on those
25 wonderful screens you have in front of you in the jury box. So

OPENING STATEMENT / TROTTER

1 if you hear us referring to "Ken," that's who we are referring
2 to.

3 Now, who is Planned Parenthood?

4 (Document displayed)

5 **MS. TROTTER:** Who is this organization that the
6 defendants planned to destroy?

7 Many of you may be familiar with Planned Parenthood. It
8 was formed over a hundred years ago. And Planned Parenthood is
9 a healthcare provider which provides healthcare services to
10 millions of women, men, and young people worldwide.

11 Planned Parenthood has a national organization known as
12 PPFA or Planned Parenthood Federation of America. And it
13 currently has 53 locally-governed affiliates. Although, at the
14 time of the relevant events in this case, there were 59
15 locally-governed affiliates of Planned Parenthood. And you
16 will hear reference to those affiliates during the trial.

17 The Planned Parenthood affiliates at the local level
18 operate more than 600 healthcare centers spread in communities
19 across this country. And those healthcare centers provide a
20 variety of services. Reproductive healthcare services,
21 including preventative care services such as providing
22 contraception to prevent unintended pregnancy, testing and
23 treating sexually-transmitted infections, providing screening
24 for certain types of cancer like cervical cancer, and providing
25 abortion services.

OPENING STATEMENT / TROTTER

1 Planned Parenthood also through its health centers
2 provides educational services in local communities, both at its
3 clinics and in community centers and schools in the local
4 community. Educational services on reproductive health.
5 Things like conception, and preventing sexually-transmitted
6 infections.

7 Now, you will hear some evidence in this trial about
8 something called fetal tissue donation programs. Fetal tissue
9 donation programs are programs that some providers of abortion
10 services offer to their patients who want to donate fetal
11 tissue for medical research. And they do these donations of
12 fetal tissue through what are called tissue procurement
13 organizations.

14 You will hear evidence during the trial that the defendant
15 focused on fetal tissue donation programs as part of their plan
16 to destroy Planned Parenthood. You will also hear evidence
17 during the trial that of the 59 Planned Parenthood local
18 affiliates throughout the country, only five of them during the
19 relevant period of time had fetal tissue donation programs.

20 So who are the defendants?

21 (Document displayed)

22 **MS. TROTTER:** David Daleiden is the ringleader of the
23 defendants. Mr. Daleiden is 30 years old. Mr. Daleiden has
24 never had a full-time job or employment outside of his work
25 with anti-abortion organizations. Organizations that he began

OPENING STATEMENT / TROTTER

1 working with at the age of 15.

2 Defendant Albin Rhomberg describes himself as, quote, "a
3 veteran of the pro-life movement in California." Mr. Rhomberg
4 has spent decades picketing abortion clinics across the state
5 of California. And in his own words he views abortion as,
6 quote, a holocaust (Indicating quotation marks).

7 Defendant Troy Newman has decades of history in the
8 anti-abortion world. He is the president of an anti-abortion
9 organization called Operation Rescue. And Mr. Newman claims
10 responsibility for closing dozens of abortion clinics across
11 the country.

12 Defendant Sandra Merritt was involved in abortion
13 activities for years, including abortion activity --
14 anti-abortion activities by a group called Live Action that
15 conducted operations against Planned Parenthood. And in fact,
16 Mr. Daleiden also worked for that same organization, Live
17 Action.

18 And finally, Mr. Lopez. Now, Mr. Lopez, unlike the other
19 individual defendants in this case, actually didn't have, prior
20 to this case, any involvement in anti-abortion activities or
21 groups or -- or organizations. He was in fact simply a friend
22 of Mr. Daleiden, someone that Mr. Daleiden actually met at a
23 Starbucks.

24 The evidence will show, members of the jury, that each of
25 the defendants, Mr. Newman, Mr. Rhomberg, Ms. Merritt,

OPENING STATEMENT / TROTTER

1 Mr. Daleiden and Mr. Lopez, were active participants in the
2 conspiracy to lie and to make surreptitious recordings of
3 Planned Parenthood staff without their knowledge and without
4 their consent.

5 So what did the defendants do? Well, the defendants went
6 to great length in order to defraud Planned Parenthood and its
7 staff by, one, creating fake driver's licenses, fake California
8 driver's licenses, with fake names. Creating and incorporating
9 what the defendants themselves refer to as a front company
10 called BioMax Procurement Services, that was purportedly a
11 legitimate tissue procurement organization that was interested
12 in obtaining fetal tissue for medical research purposes.

13 The defendant used these fake California driver's licenses
14 and this front organization or company, BioMax, to access
15 private professional conferences and meetings and even Planned
16 Parenthood clinics. And they used these fake identities and
17 this fake company in order to interact with Planned Parenthood
18 staff at these conferences and at meetings, and at clinics, all
19 the while having hidden cameras and hidden microphones -- they
20 were hidden in clothing, on purses, even on water bottles --
21 and secretly taping all of their communications with Planned
22 Parenthood staff and others who were in attendance at these
23 conferences, meetings, and clinics. And all of those
24 recordings were made without the other parties' knowledge or
25 consent.

OPENING STATEMENT / TROTTER

1 So let's dig in a bit deeper into what the defendants did,
2 and describe sort of the sequence of events over time.

3 (Document displayed)

4 **MS. TROTTER:** It was early 2013 when Mr. Daleiden
5 first hatched his plan against Planned Parenthood. He
6 recruited Mr. Rhomberg and Mr. Newman. And all of them, all
7 three of them, engaged in activity in order to raise money from
8 anti-abortion donors throughout the country to fund this plan
9 that they had. Mr. Daleiden, in fact, drafted up a multi-page
10 written plan that included the goals, it included the methods,
11 and it included the specific plans that he proposed to take to
12 record and release that surreptitiously-taken videos, taken
13 from conferences, from meetings and from clinics. And he
14 shared those written plans with Mr. Rhomberg and with
15 Mr. Newman before the activities actually began.

16 So in March of 2013, Mr. Rhomberg, Mr. Newman and
17 Mr. Daleiden set up a nonprofit organization called the Center
18 for Medical Progress. They actually registered it. They
19 filled out the paperwork necessary to send to both the federal
20 and state governments, to get nonprofit status for this
21 organization.

22 The name, the Center for Medical Progress, was actually
23 chosen by the defendants in order to hide what their real
24 purpose was. They chose a name that no one would suspect was
25 an anti-abortion-directed organization. But their own purpose,

OPENING STATEMENT / TROTTER

1 said in their own words that I showed you at the beginning, was
2 to destroy Planned Parenthood. And Mr. Daleiden and Mr. Newman
3 and Mr. Rhomberg were the officers of the Center for Medical
4 Progress. You'll hear it also referred to during the trial as
5 "CMP."

6 Mr. Daleiden later recruited Ms. Merritt and Mr. Lopez to
7 help him actually carry out the activities of the plan.

8 So what happened next?

9 (Document displayed)

10 **MS. TROTTER:** Well, after setting up the Center for
11 Medical Progress, the next part of the plan was to try to gain
12 access to professionals within the abortion services community.
13 And they decided that they would target an organization called
14 the Association of Reproductive Health Professionals. You may
15 hear it referred to during the trial by its acronym, AHRP.

16 And the Association of Reproductive Health Professionals
17 actually was having a conference in September of 2013. And so,
18 Mr. Daleiden and Ms. Merritt decided that what they would do is
19 have Ms. Merritt and a woman named Brianna Baxter to attend
20 this conference.

21 But before they would actually go to the conference, there
22 was training and in-depth planning about how to approach the
23 conference, about how -- what to say once they got to the
24 conference, about how to be able to present to the people who
25 were at the conference that they were something -- some people

OPENING STATEMENT / TROTTER

1 other than what they said they were.

2 And in fact, Mr. Daleiden gave Ms. Merritt and Ms. Baxter
3 a three-page document I'll show to you now.

4 (Document displayed)

5 **MS. TROTTER:** It is entitled, you'll see there,
6 "CONFIDENTIAL FIELD WORKER VOCABULARY." And this three-page
7 document has a number of sections to it, but it's all designed
8 to provide background information to Ms. Merritt and Ms. Baxter
9 about, for example, the names and locations and history of
10 legitimate tissue procurement organizations who are involved in
11 obtaining fetal tissue for medical research.

12 It identified some individuals who were with abortion
13 service providers. And in fact, even contained a section about
14 the words that Ms. Merritt and Ms. Baxter should use and not
15 use when they actually went to the conference.

16 (Document displayed)

17 **MS. TROTTER:** And so you will see this section of
18 this document that says "Words That Will Raise Red Flags You
19 Are an Anti," meaning anti-abortion activist.

20 And so Mr. Daleiden instructed them definitely: Don't use
21 the term "unborn child" or even the term "abortion doctor"
22 because that will send red flags to the people who are
23 attending this conference that you are not who you say you are.

24 Now, because at least Ms. Merritt had a previous history I
25 mentioned to you with Live Action, the anti-abortion

OPENING STATEMENT / TROTTER

1 organization where Mr. Daleiden had also previously worked,
2 because she had been there, and used her name, Sandra Merritt,
3 in connection with Live Action, they decided that she would, in
4 fact, adopt a fake name before going to ARHP. And so she
5 adopted the name Susan Tennenbaum. And Ms. Baxter adopted the
6 name Brianna Allen.

7 And both of them went to the conference of ARHP, and they
8 posed as representatives of this purported company called
9 BioMax Procurement Services. And they told all of the people
10 that they came into contact with at the conference that they
11 were interested in obtaining fetal tissue for medical research.

12 Both Ms. Baxter and the defendant Ms. Merritt wore hidden
13 cameras and hidden microphones to that conference, and they
14 recorded numerous conversations with people in attendance at
15 that conference, including some Planned Parenthood staff. They
16 did all of that recording without those persons' knowledge or
17 consent.

18 Perhaps most importantly, though, at this conference in
19 September of 2013, Ms. Merritt was able to meet representatives
20 of an organization called the National Abortion Foundation.
21 His Honor actually read to you some things about NAF in the
22 preliminary instructions.

23 NAF is a professional association of abortion providers in
24 North America. It's a wide-ranging group so it includes some
25 Planned Parenthood affiliates, it includes private hospitals,

OPENING STATEMENT / TROTTER

1 private physicians' offices, a variety of people who are
2 involved in providing abortion-related services. And you will
3 hear a bit more about NAF in a few minutes.

4 After Ms. Merritt and Ms. Baxter, using their fake names,
5 went to the ARHP conference, just a couple of weeks later,
6 Mr. Daleiden filed formal articles of organization for BioMax
7 Procurement Services.

8 Now, you will recall Ms. Merritt and Ms. Baxter went to
9 ARHP as if BioMax was already formed as an entity. But it was
10 actually two weeks later that Mr. Daleiden actually filed
11 articles of organization for BioMax.

12 Ladies and gentlemen, the evidence will show during the
13 trial that BioMax was a sham. That in the defendants' own
14 words, that it was a front organization. That there was never
15 any intention that it do any legitimate business. It was
16 simply an entity behind which the defendants could hide as they
17 were making inroads within the community of abortion service
18 providers.

19 As I mentioned to you, Ms. Merritt and Ms. Baxter used
20 fake names. Mr. Daleiden also adopted a fake name, Robert
21 Sarkis. And not only did the defendants adopt fake names. As
22 I mentioned to you earlier, they actually produced fake
23 California driver's licenses.

24 (Document displayed)

25 **MS. TROTTER:** There's Ms. Merritt's fake California

OPENING STATEMENT / TROTTER

1 driver's license with the fake name, Susan Sarah Tennenbaum.

2 (Document displayed)

3 **MS. TROTTER:** Here's Mr. Daleiden's fake driver's
4 license with the fake name Robert Sarkis.

5 They developed fake professional backgrounds, where they
6 went to school.

7 (Document displayed)

8 **MS. TROTTER:** What jobs they had had. And fake
9 BioMax job titles. And they created fake marketing materials
10 for BioMax.

11 This is a brochure that they used when they approached
12 various people at conferences and outside conferences.

13 You will see there on the brochure it says that:

14 "BioMax is providing quality biospecimens for
15 paradigm-shifting medical research."

16 That's a lie.

17 "BioMax is a biological specimen procurement
18 organization."

19 That's not true. BioMax provides tissue and specimen
20 procurement for academic and private researchers. Again, not
21 true.

22 You will see Ms. Merritt's fake name, Susan Tennenbaum,
23 listed there as the CEO of BioMax. That's a lie.

24 If you go to the other page of the brochure, there's a
25 list here of so-called procurement services.

OPENING STATEMENT / TROTTER

1 (Document displayed)

2 **MS. TROTTER:** And none of those things listed did
3 BioMax engage in. It was, in the defendants' own words, a
4 front organization.

5 Along with the brochures, they created fake business cards
6 to pass out.

7 (Document displayed)

8 **MS. TROTTER:** This is Ms. Merritt's business card
9 with the fake name Susan Tennenbaum. And Mr. Daleiden's fake
10 business card, Robert Sarkis.

11 Having created the fake company and created the fake IDs
12 and having built up some trust with people that they met at
13 ARHP at that conference, including people from NAF, defendants
14 then decided: Let's use all that, the fake IDs and the fake
15 materials and the trust that we have developed with certain
16 people, to gain access and start to record more Planned
17 Parenthood personnel without consent. And so the next target
18 was actually the NAF annual meeting in April of 2014.

19 Now, as I mentioned, NAF is a membership organization. It
20 hosts an annual meeting at different venues each year. And the
21 NAF annual meeting, you will hear in evidence in the case, is
22 viewed by the attendees as a private and safe space where
23 attendees can interact with other abortion-service providers,
24 and with legitimate vendors who are offering legitimate
25 products and services to those providers.

OPENING STATEMENT / TROTTER

1 Defendants used their fake company, BioMax, and their fake
2 IDs with their fake names and the fake brochures to gain access
3 to the NAF conference that in fact was April, 2014, right here
4 in San Francisco.

5 They then lied to numerous Planned Parenthood staff who
6 were in attendance at the NAF meeting about who they really
7 were, and what their purposes were. And they recorded those
8 Planned Parenthood staff without their knowledge and without
9 their consent.

10 (Document displayed)

11 **MS. TROTTER:** Now, prior to the time that the
12 defendants actually came to the conference here in
13 San Francisco in April of 2014, they actually had to do a
14 number of things in order to be able to get access. And one of
15 the things they had to do was that they had to actually sign an
16 exhibitor agreement.

17 So the defendants again had the company, BioMax, that they
18 had created as the front organization that supposedly was a
19 tissue procurement organization. And they were going to be a
20 vendor, exhibiting at NAF. And so they did all of this online
21 and in emails between the defendants and NAF.

22 They received this exhibitor agreement from NAF. And they
23 signed it. And you will see that signature line there, it says
24 "BioMax Procurement Services." There is a signature for Susan
25 Tennenbaum, which was the fake name of the defendant,

OPENING STATEMENT / TROTTER

1 Ms. Merritt, signing as CEO in February of 2014.

2 Now, this exhibitor agreement you will see it is entitled
3 "EXHIBIT RULES AND REGULATIONS." It has a number of important
4 provisions. Paragraph 5, it provides that exhibitors must only
5 show products provided by them in the, quote, "regular course
6 of their business."

7 At Paragraph 15 (As read):

8 "The exhibitor agrees to identify, display, and/or
9 represent their businesses, products and/or services
10 truthfully, and accurately..."

11 (Document displayed)

12 **MS. TROTTER:** Paragraph 17 provides that the
13 exhibitor agrees that all written information provided by NAF
14 or any information which is disclosed orally or visually to the
15 exhibitor, will be used solely in conjunction with the
16 exhibitor's business. And unless authorized in writing by NAF,
17 all information is to be confidential and not be disclosed to
18 third parties.

19 Paragraph 19, which they signed, said by signing this
20 agreement, the exhibitor affirms that all of the information
21 contained is truthful, accurate, complete, and not misleading.

22 And then just above the signature line, there's a
23 paragraph that has a line that reads (As read):

24 "I also agree to hold in trust and confidence, and
25 agree not to reproduce or disclose confidential

OPENING STATEMENT / TROTTER

1 information without express permission from NAF."

2 Now, members of the jury, the evidence will show that
3 Mr. Daleiden -- actually, before I go there, they actually had
4 to fill in on this exhibitor agreement who the individuals were
5 of BioMax, who were going to attend NAF.

6 (Document displayed)

7 **MS. TROTTER:** And you will see in there they filled
8 in the fake name for Ms. Baxter and for Ms. Merritt and for
9 Mr. Daleiden, with their fake titles for BioMax.

10 Now, members of the jury, the evidence will show that in
11 fact when they were doing the registration process to exhibit
12 at the NAF meeting, Mr. Daleiden paid for the conference by
13 forging a signature of a man by the name of Phil Cronin.
14 Mr. Cronin had been the agent for service of process on the
15 official documents that were submitted to the State of
16 California when BioMax was formed. That was sort of his role,
17 just serving as agent for service of process.

18 Mr. Daleiden used this bank card that is reflected there
19 in the name of Phil Cronin to pay for the conference. And
20 Mr. Daleiden signed Mr. Cronin's name without his knowledge and
21 without his authorization.

22 And indeed, Mr. Cronin didn't even know that the
23 defendants had opened up a bank card in his name until after
24 this lawsuit was filed.

25 Now, in addition to the exhibitor agreements for NAF, the

OPENING STATEMENT / TROTTER

1 individual people associated with this front company BioMax
2 also had to sign separate agreements in order to attend.

3 (Document displayed)

4 **MS. TROTTER:** And those were confidentiality
5 agreements.

6 Here's one signed by Ms. Baxter in her fake name, Brianna
7 Allen. And there's the one for Ms. Merritt with her fake name,
8 Susan Tennenbaum. And then finally, the one signed by
9 Mr. Daleiden, in his name Robert Sarkis.

10 And these confidentiality agreements were required to be
11 signed by absolutely anyone who came to the NAF annual meeting.
12 So if you went to the registration desk and you wanted to get
13 your badge, you had to sign one of these confidentiality
14 agreements.

15 And this confidentiality agreement has some important
16 paragraphs. The very first paragraph says, quote:

17 "Attendees are prohibited from making video,
18 audio..."

19 And it goes on to say:

20 "...or other recordings of the meetings or discussion
21 at this conference."

22 Very first paragraph.

23 Paragraph 2 talks about the attendees not disclosing what
24 is defined as, quote, NAF conference information (Indicating
25 quotation marks). And that's defined in Paragraph 2:

OPENING STATEMENT / TROTTER

1 "NAF conference information includes all information
2 distributed or otherwise made available at this
3 conference by NAF or any conference participants,
4 through written materials, discussions...or any other
5 means." (sic)

6 Now, you will hear in the trial from witnesses from NAF,
7 about the purposes of these -- the exhibitor agreements and the
8 confidentiality agreements. And you will hear from NAF
9 witnesses that NAF intends that all attendees who come to its
10 annual meetings are actually beneficiaries of these agreements.

11 That is, that NAF expects and its attendees at the annual
12 meetings expect that everyone who is there, since they've all
13 had to sign confidentiality agreements, everyone has agreed to
14 be bound by them. And they've agreed to be bound to not
15 disclose confidential information, and to not record or
16 videotape.

17 Now, the NAF contracts were actually put in place for a
18 very good reason. And the evidence will show that NAF
19 understood that abortion providers in particular are uniquely
20 targeted by certain individuals and organizations who are
21 anti-abortion. And so NAF took precautions in order to protect
22 its members who were attending the annual meeting. And those
23 precautions included if you come to the annual meeting, you've
24 got to show a photo ID. And that's why there were the fake IDs
25 created by the defendants. You've got to have references.

OPENING STATEMENT / TROTTER

1 You've got to preregister. The IDs are checked.

2 All of the attendees at NAF have to wear a badge in order
3 to be let in to the conference generally, to the exhibition
4 area, to the receptions at the conference, at all of the
5 meetings and seminars at the conference.

6 And most importantly, each and every person that attends
7 has to sign this confidentiality agreement.

8 But despite signing these agreements, the defendants,
9 before they ever approached the NAF registration table that
10 first day in April in 2014, here in San Francisco, they had
11 already pushed "record" on those hidden cameras and the hidden
12 microphones. And they went into the conference, and they
13 circulated throughout the exhibition area and all of the other
14 areas of the conference. And they literally recorded each and
15 every person that they came into contact with.

16 Now, His Honor read to you earlier this morning just
17 before I got up, preliminary instructions. And you may recall
18 this part of one of the instructions that he gave you --

19 (Document displayed)

20 **MS. TROTTER:** -- which says that (As read):

21 "The defendants contend their recording of plaintiffs
22 was permitted under California law because they
23 sought to obtain evidence of a violent felony against
24 a person."

25 To establish this defense, defendants must prove that

OPENING STATEMENT / TROTTER

1 before the first time they recorded in California, they had a
2 reasonable belief the persons being recorded committed or
3 intended to commit a violent felony against a person, and that
4 was their purpose in making the recording.

5 The evidence will show, as I said, that the defendants
6 pushed "record" before they even got to the registration area
7 of the NAF conference. And they didn't stop; they didn't turn
8 the "record" button off. And they literally recorded each and
9 every person that they came into contact with.

10 The evidence will show that the defendants were not
11 recording persons who they reasonably believed had committed or
12 intended to commit a violent felony. Among the persons that
13 the defendants recorded at the NAF 2014 meeting here in
14 San Francisco was a Planned Parenthood physician by the name of
15 Dr. Deborah Nucatola. Now, Dr. Nucatola at that time was
16 serving as PPFA's senior director of medical services.

17 And the defendants approached her, and they introduced
18 themselves as being associated with BioMax. And that they were
19 interested in establishing relationships so they could get
20 fetal tissue to be donated for medical research. And then
21 requested Dr. Nucatola's help in helping them be introduced to
22 Planned Parenthood affiliates who may be interested in having a
23 fetal tissue donation program.

24 And so they made that contact with Dr. Nucatola at NAF.
25 And after NAF, they then contacted her to set up a followup

OPENING STATEMENT / TROTTER

1 meeting.

2 That meeting occurred July of 2014 at a restaurant in
3 Los Angeles. Mr. Daleiden and Ms. Merritt posing as Robert
4 Sarkis and Susan Tennenbaum of BioMax attended. Again, with
5 their hidden cameras and their hidden microphones, pushed to
6 "record."

7 Ms. Merritt, posing as Ms. Tennenbaum, in fact met
8 Dr. Nucatola at the entryway of the restaurant and sort of
9 walked with her towards the rear of the restaurant where
10 Mr. Daleiden, posing as Mr. Sarkis, was already seated.
11 Dr. Nucatola sat down in the booth where Mr. Daleiden was.
12 With her back against the wall towards the rear of the
13 restaurant, she could look and see the rest of the restaurant
14 all the way to the front. And so she could see if there were
15 other folks who were approaching the table.

16 But unbeknownst to Dr. Nucatola, in the almost three-hour
17 lunch meeting that she had with Mr. Daleiden and Ms. Merritt,
18 they recorded each and every word that was said.

19 **MS. TROTTER:** Now, the defendant's lies and deception
20 continued with their attendance at another conference in
21 October of 2014. That was at PPFA's what's called the North
22 American Forum, and that was held in Miami Florida.

23 And the defendants, Mr. Daleiden and this time Mr. Lopez,
24 attended that conference, again, as representatives of the fake
25 company, front company, BioMax. Mr. Daleiden used his fake

OPENING STATEMENT / TROTTER

1 name, Robert Sarkis. Mr. Lopez, who had had no previous
2 involvement with anti-abortion organizations, actually used his
3 real name.

4 They both went with their hidden cameras and hidden
5 microphones, and they met and they surreptitiously recorded a
6 number of Planned Parenthood staff who were in attendance at
7 that meeting, including a doctor by the name of Dr. Mary
8 Gatter, who was the medical director of the Planned Parenthood
9 affiliate of Pasadena/San Gabriel Valley.

10 After the forum, after having met Dr. Gatter at that
11 event, they contacted her and just as they had done with
12 Dr. Nucatola, they arranged a follow-up lunch meeting, which
13 occurred February 26, 2015.

14 Just as they had done with Dr. Nucatola, Mr. Daleiden and
15 Ms. Merritt, using their fake names and donning their hidden
16 cameras and microphones, met Dr. Gatter and a women who was a
17 clinician at the Planned Parenthood San Gabriel Valley, Laurel
18 Felczer. They met in a restaurant in Pasadena called a/k/a
19 Bistro. They continued posing as representatives of BioMax,
20 and they continued recording, and they used their fake
21 identities, and they videotaped again the entire lunch.

22 Just weeks later, February 26th through 28th, 2015,
23 Mr. Daleiden and Mr. Lopez, using their fake BioMax identities,
24 attended PFFA's Medical Director's Council meeting in Orlando,
25 Florida. This event is also known for shorthand as MeDC. And

OPENING STATEMENT / TROTTER

1 the defendants attended MeDC as supposed exhibitors, legitimate
2 exhibitors. And just as they had done at the NAF annual
3 meeting, at all of these meetings they signed Exhibitor
4 Agreements.

5 And, in fact, His Honor, read to you as part of the
6 preliminary instructions, which you'll get in your notebooks,
7 instruction number five, which says:

8 "In pretrial proceedings it has been determined
9 that defendants Daleiden and BioMax breached the PPFA
10 Exhibitor Agreements."

11 Again, at MeDC Mr. Daleiden and Mr. Merritt -- I'm sorry,
12 Mr. Lopez, wore their hidden cameras and recorded various
13 Planned Parenthood personnel.

14 Weeks later, March 2015, Mr. Daleiden used his fake I.D.
15 again, and he and Mr. Lopez went to the PPFA's National
16 Conference in Washington D.C. Again, they signed Exhibitor
17 Agreements for BioMax, and again they surreptitiously
18 videotaped Planned Parenthood personnel without their knowledge
19 and without their consent.

20 You'll recall that in preliminary instruction number four
21 His Honor already instructed you that, quote:

22 "In pretrial proceedings it has been determined
23 that defendants BioMax, Daleiden, Lopez and Merritt
24 are directly liable for trespass."

25 Now, at each of the meetings and lunches we've talked

OPENING STATEMENT / TROTTER

1 about the evidence will show that the Planned Parenthood staff
2 who were recorded, they thought that the defendants were who
3 they said they were. They thought that they were with the
4 legitimate company BioMax that was interested in a relationship
5 that would allow for fetal tissue donation for medical
6 research.

7 The conferences, all of these conferences that are
8 reflected on the timeline before you were private events. They
9 weren't open to the general public. You had to register. And
10 the attendees believed that all of the other people, who all
11 had conference I.D. badges that you get when you go to a
12 conference or seminar, were there for legitimate business
13 purposes.

14 And while the two lunches that I described, the one with
15 Dr. Nucatola in Los Angeles and Dr. Gatter in Pasadena, were at
16 restaurants, the evidence will show that they were actually in
17 booths at -- a booth in each case, and the evidence will show
18 that no one else was listening in. It's just Ms. Merritt and
19 Mr. Daleiden and the respective doctors at the two lunches.

20 But the defendants didn't stop at going to the conferences
21 and recording, or setting up these lunch meetings with the
22 doctors and recording. They actually used all of these
23 contacts that they had made over this course of time at the
24 conferences and at these lunches to get access to Planned
25 Parenthood clinics.

OPENING STATEMENT / TROTTER

1 First, they met a doctor by the name of Savita Gindi, who
2 was with Planned Parenthood of the Rocky Mountains. They met
3 her at the forum conference. And they used that contact to
4 then arrange a meeting at Planned Parenthood Rocky Mountains
5 Stapleton Health Center. That meeting was April 7th, 2015.

6 Mr. Daleiden and Ms. Merritt, using their fake identities,
7 Robert Sarkis and Susan Tennenbaum, went to that healthcare
8 facility with their hidden video cameras and their microphones
9 and all of the equipment was on and running the entire time,
10 and they taped multiple Planned Parenthood staff members at
11 that clinic without their knowledge and without their consent.

12 Just two days later Mr. Daleiden and Ms. Merritt, with
13 their fake identities, went to Planned Parenthood Gulf Coast
14 Health Center in Houston, Texas, and they again recorded
15 multiple Planned Parenthood staff without their knowledge and
16 without their consent at that clinic.

17 Importantly, before they went to Gulf Coast, in order to
18 get access to that clinic they actually signed another
19 agreement. And this is that agreement, which we'll see during
20 the trial.

21 (Document displayed)

22 And you'll see the opening paragraph, the parties to this
23 agreement are Planned Parenthood Gulf Coast, defined as the
24 Disclosing Party, and BioMax, the Recipient. And you'll see on
25 the last page this was signed with the fake name Susan

OPENING STATEMENT / TROTTER

1 Tennenbaum, BioMax Procurement Services.

2 And in the opening paragraph it says what the purpose of
3 the agreement is. Quote (as read):

4 "To assure the protection and preservation of the
5 confidential and/or proprietary nature of information
6 to be disclosed by the Disclosing Party" -- that's
7 Planned Parenthood -- "to the Recipients," at BioMax.

8 In Paragraph 1 of the agreement it provides that (as
9 read):

10 "All information disclosed by the Disclosing
11 Party to the Recipient shall be deemed to be
12 confidential information."

13 It goes on to say that (as read):

14 "Confidential information includes all oral
15 information of the Disclosing Party," that's Planned
16 Parenthood, "which is, quote, reasonably understood by
17 the recipient," that's BioMax, "to be confidential
18 under the circumstances of the disclosure."

19 They signed this agreement. They send it in to Planned
20 Parenthood Gulf Coast and they show up and they are given a
21 meeting. And they are, in fact, taken to the office of a woman
22 by the name of Melissa Farrell. And Ms. Farrell was PP Gulf
23 Coast director of research.

24 Because Ms. Farrell believed that the defendants were who
25 they said they were, that they were there legitimately as a

OPENING STATEMENT / TROTTER

1 tissue procurement organization, interested in perhaps
2 establishing some sort of relationship with Planned Parenthood
3 Gulf Coast so that they could get fetal tissue for medical
4 research purposes, she spoke with them at length about a
5 variety of proprietary matters; such as, Planned Parenthood's
6 contracts with other research related organizations and
7 partners, its consent forms with patients, those consent forms.
8 She read them portions of Planned Parenthood's proprietary
9 internal guidelines.

10 What Ms. Farrell didn't know, the defendants had signed
11 this agreement. She didn't know they were wearing those hidden
12 video cameras and the hidden microphones, and they had them on
13 record the entire time. And they later, having made those
14 recordings, released that information on their website and on
15 YouTube.

16 Finally, a year after the defendants had come here to
17 San Francisco for that NAF annual meeting in 2014, they were
18 still doing their activity a year later, and so they went to
19 the NAF annual meeting in 2015. This time it was held in
20 Baltimore, Maryland.

21 They again signed the NAF Exhibitor Agreement -- it's the
22 same agreement, just the different date than we saw from
23 2014 -- and the NAF confidentiality agreements. But this time
24 there were actually four BioMax representatives: Mr. Daleiden,
25 in the persona Mr. Sarkis; Ms. Merritt, using the name

OPENING STATEMENT / TROTTER

1 Tennenbaum; and a woman names Anna Bettisworth Davin, who was
2 using a fake name Rebecca Wagner; and Mr. Lopez. All of them
3 used fake titles, job titles for BioMax, and all of them wore
4 hidden video cameras and microphones and recorded multiple
5 Planned Parenthood personnel without their knowledge and
6 without their consent at that NAF conference.

7 (Document displayed)

8 Here are just some of the people who were Planned
9 Parenthood staff who were taped by the defendants without their
10 knowledge or consent at these various events and meetings over
11 the course of this two-year period.

12 In all, members of the jury, the defendants took over 500
13 hours of video recordings. They then created 14 6- to
14 15-minute video recordings and they placed those videos on
15 their website and on YouTube. The first seven or eight of
16 those 15 videos they released one each week for several weeks
17 in a row, and the remaining ones they released on their website
18 and on YouTube over the course of the next 18 months.

19 The defendants released the first video on July 14th of
20 2015. You'll see that date as the last date there on the
21 timeline.

22 What happened in the wake of that release of that first
23 video, July 14th of 2015? As you can imagine, Planned
24 Parenthood was shocked when that first video was released. It
25 contained recordings of Dr. Deborah Nucatola. It appeared to

OPENING STATEMENT / TROTTER

1 have some recordings from these private conferences that we've
2 talked about on the timeline.

3 Immediately Planned Parenthood launched an investigation,
4 wanted to find out who's behind these videos? How did they get
5 these recordings? How were these recordings made? Who else
6 might have been recorded? What is going on here?

7 As Planned Parenthood was conducting this investigation,
8 the defendants were putting up a new video each week, every
9 week, for several weeks.

10 This series of video releases each week, every week, for
11 several weeks caused incredible anxiety within Planned
12 Parenthood. The staff members wondered: Was I there at that
13 meeting? Did I meet these people? Was I recorded? What's
14 going to happen next?

15 Ultimately Planned Parenthood, through its investigation,
16 discovered that the defendants had used these fake identities
17 and fake IDs and a fake company, BioMax, to gain access. There
18 was apprehension and fear across Planned Parenthood upon
19 learning that private conferences and even clinics had been
20 infiltrated and not knowing what's going to happen next.

21 And this was particularly concerning to those Planned
22 Parenthood staff members who regularly went to meetings like
23 the NAF annual meeting. And so Planned Parenthood had to
24 design and adopt a whole new set of procedures for vetting
25 people who would come to events and meetings to ensure that the

OPENING STATEMENT / TROTTER

1 defendants or others who may have been working with them, or
2 copycats for that matter, couldn't do the same thing, couldn't
3 use fake IDs and fake names and a fake company in order to get
4 access and record Planned Parenthood personnel without their
5 consent. And Planned Parenthood had to spend hundreds of
6 thousands of dollars to adopt these new procedures for its
7 meetings and for its clinics and for its conferences.

8 Next, members of the jury, the evidence will show that the
9 defendants targeted certain Planned Parenthood staff. They
10 identified them ahead of time. They purposely approached them,
11 some of them, at conferences and arranged meetings with them.
12 They featured these staff members prominently in the videos,
13 and their names and work locations were disclosed, and there
14 was tremendous anxiety and an increase in threats to those
15 staff members' safety and security.

16 You will hear evidence during the trial about the history
17 of violence and harassment of abortion service providers in
18 this country. Planned Parenthood had to hire private security
19 staff for those targeted individuals, and even in some cases
20 had to relocate their residences for a period of time.

21 At the end of this case we will come back to you after you
22 have heard all of the evidence and we will ask you to render a
23 just verdict in this case, and that is to make the defendants
24 restore to Planned Parenthood the money that it had to expend
25 because of the defendants' using their fake identities and

OPENING STATEMENT / DHILLON

1 their fake names to access Planned Parenthood's private
2 conferences and meetings and clinics.

3 Thank you for your time.

4 Thank you, Your Honor.

5 **THE COURT:** Thank you Ms. Trotter.

6 Okay. Ladies and gentlemen, we'll take our first break of
7 the morning, ten minutes, and then we'll be back in to hear the
8 defendants' opening statement.

9 (Whereupon there was a recess in the proceedings
10 from 9:24 a.m. until 9:37 a.m.)

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

12 Ms. Dhillon.

13 **OPENING STATEMENT**

14 **MS. DHILLON:** Good morning, ladies and gentlemen of
15 the jury. My name is Harmeet Dhillon, and I'm one of the
16 attorneys representing the defendants. Specifically I
17 represent the corporate defendants, Center for Medical
18 Progress, its affiliate BioMax, Inc., and their founder David
19 Daleiden.

20 After I speak, you're going to hear from these other
21 attorneys who represent the other defendants in this action,
22 and they are seated over here behind me: Charles LiMandri,
23 Paul Jonna, Vladimir Kozina, Catherine Short, and Horation
24 Mihet.

25 I also want to introduce our trial technician for the

OPENING STATEMENT / DHILLON

1 defendants, Steven Nielsen, who is sitting at the end of that
2 table where the defendants' counsel are sitting. We may refer
3 to him at times as Steven.

4 I'm going to start by telling you some of the good news.
5 It will not surprise you that the defendants have a different
6 view of the evidence that you're going to hear than the
7 plaintiffs. I think that's to be anticipated.

8 Whatever your opinion is about abortion, you're going to
9 get to keep it at the end of this. This case is not about
10 abortion. Your opinion on that topic is yours, and will remain
11 yours when you leave this trial.

12 But regardless of your opinion on abortion, you can still
13 find that the evidence in this case, which you're going to
14 hear, does not support the plaintiffs' claims.

15 This case isn't even about what you've just been told
16 about supposed breaches of contracts and trespass. Plaintiffs
17 know it and the evidence will show it.

18 What this case is really about is the story of what
19 happens when a powerful, large corporation gets a little
20 negative publicity that it doesn't like and responds by hitting
21 back at a small start-up company and a handful of individuals,
22 who are the defendants in this case.

23 Now, I'm sure you would all agree that nobody likes to be
24 criticized or have their flaws pointed out. Naturally. Nobody
25 likes to spend money upgrading security to prevent future

OPENING STATEMENT / DHILLON

1 negative publicity, which is what the evidence will show is the
2 damages alleged in this case. But not liking something does
3 not make it a compensable harm that the defendants have to pay
4 for.

5 Plaintiffs are going after the defendants like someone
6 going after a caterpillar with a cannon. You're going to hear
7 that plaintiffs were financially harmed by the defendants.
8 Plaintiffs are saying they were harmed because they spent money
9 upgrading their security. That will be the evidence you hear.
10 But the chronology of facts will not support that.

11 Let's go over the basic chronology of the facts in this
12 case.

13 (Document displayed)

14 You have heard Mr. David Daleiden, a young man, founded
15 CMP and BioMax, and that he hired and recruited a handful of
16 other individuals to investigate reports of fetal tissue being
17 unlawfully procured. You're going to hear evidence in detail
18 about how he came to start this project and why.

19 During the timeline of events in this case, BioMax
20 investigated its concerns by attending five conferences over a
21 period of about a year. Ms. Trotter went over those with you.
22 And we all agree those are the conferences. That's not
23 disputed.

24 BioMax also attended two lunches with abortion providers
25 in restaurants that were open to the public at the time. And

OPENING STATEMENT / DHILLON

1 you're going to hear a lot about the circumstances surrounding
2 those lunches, as well as what was discussed.

3 Finally, BioMax visited and toured two Planned Parenthood
4 clinics. Ms. Trotter told you about that. Videos were
5 obtained at all of these events.

6 The slide in front of you shows you that during the course
7 of these different events, different defendants attended them
8 and participated in those -- in those conferences or those
9 lunches or those visits to clinics.

10 A few months after the end of that investigative phase,
11 the Center for Medical Progress released a series of videos to
12 the public. Following the release of these videos, the
13 evidence will show you that many members of the public were
14 critical of plaintiffs, so plaintiffs upgraded their security
15 systems in response to that criticism. Plaintiffs then went on
16 to file this lawsuit, which brings all of you here today.

17 Now, the next slide is going to show you a series of
18 claims at issue in this case.

19 (Document displayed)

20 There are a number of different claims and, as I
21 mentioned, a number of different defendants. Some of the
22 claims relate to some of the defendants. Some of the claims
23 relate to the other defendants. You're going to hear evidence
24 about which is which in this case.

25 But throughout this case you're going to hear a common

OPENING STATEMENT / DHILLON

1 theme in the evidence; that the evidence will fall short of
2 showing what plaintiffs must show to prove each of these
3 claims.

4 We'll start with fraud. Judge Orrick told us that there
5 are three different types of fraud that are under consideration
6 here: Intentional misrepresentation, concealment, and false
7 promise. The elements of each of these types of fraud include
8 that plaintiffs reasonably relied on defendants'
9 representations of who they were. And "reasonably" is a
10 critical word.

11 The evidence will show you in this case that the
12 defendants [sic] did not diligently research any of the
13 defendants prior to letting them into all of these events.
14 Plaintiffs did not visit any of the defendant's offices.
15 Plaintiffs did not confirm that the business BioMax had any
16 clients or what its operations were. Plaintiffs did not look
17 up the individual's social media accounts to see if they even
18 existed or what they did. Plaintiffs will admit this in
19 testimony in this case.

20 The plaintiffs, you will learn, took no further steps to
21 verify any of the defendant's identities even though they had
22 never heard of this company before and even though in
23 plaintiffs' own words, as you just heard, there was a known
24 concern about unwanted attention towards Planned Parenthood and
25 its activities that preceded this entire project.

OPENING STATEMENT / DHILLON

1 With respect to trespass, you'll hear plaintiffs testify
2 under oath that the defendants did not vandalize any property
3 at the conferences or clinics that they attended. Defendants
4 did not break anything during any of these visits. Defendants
5 did not steal anything during any of these visits.

6 To summarize, with respect to trespass, the evidence will
7 show you that nothing happened with respect to entering the
8 property that actually caused any of the plaintiffs any actual
9 harm.

10 With respect to the recording claims that you're going to
11 hear about in this case, plaintiffs have asserted that the
12 defendants violated laws prohibiting unlawful recording. As
13 you heard from the Court this morning, a key element to this
14 claim is whether the person being recorded and complaining
15 about it later had a reasonable expectation of privacy.

16 There is that word again "reasonable." It's a critical
17 word that is relevant to your consideration of the evidence
18 that will come in.

19 The evidence you're going to hear and see in this case
20 will include that the recorded conversations that are being
21 complained about in this lawsuit occurred in large rooms, such
22 as hotel ballrooms, large conference rooms, very crowded
23 restaurants with dozens of people or even hundreds of people
24 there, some of whom had no connection to the events at issue.
25 There were waiters. There were passers-by in the hallways.

OPENING STATEMENT / DHILLON

1 There were people overlooking a swimming pool. All kinds of
2 people, random people, not wearing badges were able to
3 participate, pass by, and overhear what was happening. So that
4 goes to the reasonableness issue.

5 You will also see that everyone in these conversations,
6 who Planned Parenthood is complaining were taped without their
7 knowledge, were aware of all these other individuals that I
8 mentioned. You're going to see this with your own two eyes.
9 And you will see that all of the recorded individuals, despite
10 the presence of many other people around, were still perfectly
11 willing to say what they said, despite knowing that others were
12 nearby, including hotel staff, restaurant staff, other members
13 of the public, other guests at a hotel.

14 It's going to be your job to decide whether the evidence
15 you see reasonably conveys a sense of privacy.

16 Now, another element of the claims in this case is RICO.
17 Judge Orrick described to you what the RICO statute is,
18 Racketeering Influenced Corrupt Organizations Act. The RICO
19 statute was created to address criminal activities for the
20 purpose of making a profit, such as drug cartels.

21 You will see here, the evidence before you, that the
22 defendants did not care about profit. In fact, they made
23 anything but profit.

24 You will also hear from the Court that a RICO claim has
25 some special requirements. Had the defendants engaged in a

OPENING STATEMENT / DHILLON

1 continuing pattern of committing federal crimes that project
2 into the future? That's one of the things that the judge
3 mentioned this morning. That is, committing two or more
4 federal crimes within ten years of each other into the future.

5 The evidence you're going to see here is that we had one
6 set of driver's licenses made for one project in the past, and
7 that's it. You're going to hear evidence that defendants never
8 engaged in this type of project before and are, frankly, not
9 likely and probably cannot engage in it again in the future
10 given the nature of this project. These facts that you're
11 going to hear do not fit the activity that the RICO law was
12 intended to target.

13 Finally, with respect to breach of contract, which is a
14 very complicated topic, there are a lot of contracts here. No
15 one likes paperwork. There is a lot of paperwork to look at in
16 this case. I'll be honest with you. But it is critical to
17 understand the paperwork in this case to understand which
18 contract is at issue during any given point in time for any
19 particular type of claim.

20 As I mentioned, BioMax attended five different
21 conferences. Plaintiffs hosted some of the conferences and the
22 National Abortion Federation, which is not a party to this
23 lawsuit, sponsored some of those conferences. At each of these
24 conferences BioMax had to sign one or sometimes two contracts.
25 So that's a lot of contracts.

OPENING STATEMENT / DHILLON

1 I want to run the contracts through again with you at a
2 high level, but you don't need to worry about reading what's on
3 the screen now. You're going to get plenty of time to spend
4 with these contracts. I promise. But for now I just want to
5 show you that these contracts can be split into three different
6 categories of contracts.

7 (Document displayed)

8 Category one is the National Abortion Federation
9 contracts. Ms. Trotter spent a great deal of time talking to
10 you about those contracts. Those contracts which we -- a party
11 that's not a party to this lawsuit, and some of my clients.

12 The National Abortion Federation of America Exhibitor
13 Agreements and NAF Nondisclosure Agreement are agreements
14 between some of the defendants and the National Abortion
15 Federation. The contract on the right of the screen is called
16 a Confidentiality Agreement. The contract on the left is
17 called Exhibit Rules And Regulations.

18 You will see that Planned Parenthood is not a party to
19 either of these contracts and none of these contracts even
20 mentioning Planned Parenthood anywhere. You will see instead,
21 just to give you one example of one of these contracts, NAF is
22 repeated about a dozen times on the one slide that I mentioned
23 right there. And this is the case throughout these contracts.

24 Nowhere in these contracts are you going to see any
25 evidence that the National Abortion Federation had the consent

OPENING STATEMENT / DHILLON

1 of the other parties to this contract to bind them to
2 obligations to the plaintiffs in this case, the Planned
3 Parenthood and its affiliates. This is critical.

4 You will also hear that the only contract in this case
5 that specifically prohibits recordings, which are at issue in
6 this case, is one of these NAF contracts. Again, NAF is not a
7 party to this lawsuit, and Planned Parenthood is not mentioned
8 in these contracts. And the contract I just mentioned that
9 prohibits recording was not given to defendants until the day
10 of the conference, although they had been promised a slot at
11 this conference two months earlier.

12 You will see evidence that NAF employees informed the
13 defendants that they only had to do two things to attend a NAF
14 conference.

15 First, pay a \$3,000 exhibitor fee.

16 And, second, complete the registration forms.

17 They did both of those things. There was no screening
18 involved. There was no muss and no fuss. Pay the money and
19 come on in. No mention of recording obligations or this
20 Nondisclosure Agreement.

21 The defendants paid the fee. Received confirmation to
22 attend the conference two months in advance. And only on the
23 date of the conference, long after their \$3,000 deposit had
24 become non-refundable and they had no way of getting that money
25 back, did they attend the conference and they were told that

OPENING STATEMENT / DHILLON

1 they could not physically enter the conference without signing
2 this agreement on the spot, Confidentiality Agreement.

3 That's the first category of contracts at issue in this
4 case, contracts that my clients are not parties to.

5 Moving on to the second category. These are contracts
6 between defendants Planned Parenthood and BioMax. As mentioned
7 before in this case, BioMax attended a total of three Planned
8 Parenthood Federation of America conferences and signed a total
9 of three Planned Parenthood Federation of America Exhibitor
10 Agreements.

11 Each of these agreements is a separate contract and each
12 of them is virtually identical, so I'm going to talk about them
13 all together. All of them have similar sections. There is a
14 section entitled "Exhibit Space." Another section called
15 "Legal and Compliance Matters."

16 Some of these contracts also have an introductory section
17 called "Exhibitor/Sponsor/Advertising Package," an advertising
18 section.

19 The content in each these three contracts, the sections I
20 mentioned that apply to my clients, are virtually identical.

21 The evidence is going to show you in this case that none
22 of these three contracts prohibits photography, recording or
23 publication of information heard at the conference.

24 You will also see that BioMax only attended the Planned
25 Parenthood Federation conferences as exhibitors. The evidence

OPENING STATEMENT / DHILLON

1 will show you that they were not there as sponsors or
2 advertisers or any of the other parts of those contracts. Only
3 there as exhibitors. Only certain sections of these contracts
4 apply to different groups depending whether there were
5 advertisers, sponsors or exhibitors.

6 The contractual obligations for exhibitors, which are the
7 ones that applied to my clients, stated things like the
8 following.

9 (Document displayed)

10 Something similar that you might have seen if you,
11 yourself, were ever an exhibitor at a conference. That
12 exhibits must be staffed at all times. Okay. Display
13 materials must be flameproof.

14 The Medical Director Council annual meeting reserved the
15 right to restrict glaring lights on the conference displays,
16 and that there must be sufficient space there for purposes of
17 people being able to pass easily.

18 Ms. Trotter took you through all of that. The evidence
19 will show you that the remaining defendants in this case did
20 not violate any of these rules in a way that caused the
21 plaintiffs harm.

22 The plaintiffs also will not be able to prove that the
23 damages they allege for security upgrades way after the fact
24 were because of any contractual or breach of these contracts
25 caused by my clients. That causal connection is a critical

OPENING STATEMENT / DHILLON

1 part not just of this claim, but of all the claims. Damages.

2 Before you get to that the final category of the three
3 categories of contracts I mentioned is an agreement that BioMax
4 signed when they visited the Planned Parenthood Gulf Coast
5 Clinic in Texas in 2015. That contract in question, which
6 Ms. Trotter took you through, I want to focus on some parts of
7 it.

8 The evidence will show you that that contract only
9 protected actual trade secrets or statements that the Planned
10 Parenthood staff labeled as confidential. The plaintiffs will
11 testify here that none of them labeled any of the conversations
12 as confidential. Without this piece of evidence, that's a
13 critical issue that you should be listening to in this case.

14 Now, my final topic here is I want to reiterate a key
15 element that plaintiffs must prove for each of their causes of
16 action, which is damages.

17 There are going to be two different buckets of damages.
18 I'm oversimplifying here, but two different buckets of damages
19 in this case. There will be damages caused by third-party
20 reactions to the published videos; i.e., people who are angry
21 after they saw those videos and saw what was in those videos
22 and they reacted negatively toward Planned Parenthood and
23 Planned Parenthood staff, versus damages caused directly by the
24 defendants' actions, leading up to the publication of the
25 videos. Some of those damages are going to be theoretically

OPENING STATEMENT / DHILLON

1 compensable, if the plaintiffs can prove them, and some of them
2 are off limits.

3 The evidence will show you that the plaintiffs felt like
4 they had to pay for upgraded security in this case many months
5 or sometimes years after these events at issue because of the
6 negative publicity and not because of the defendants' actions.

7 What you're going to see in this case in the evidence is
8 that while third parties and random people who saw these videos
9 online may have spooked the plaintiffs into spending money on
10 security upgrades of security systems they already had, these
11 expenses were not due to the actions of the defendants.

12 Looking at the Exhibitor Agreement category of contracts,
13 for example, nobody is alleging that the use of glaring lights
14 or flammable materials by my clients created a need to increase
15 the security costs.

16 Also, the mere act of recording somebody without the
17 publication part you will learn did not cause the plaintiffs to
18 upgrade their security.

19 If those singular acts alone had caused plaintiffs'
20 damages, the timeline would reflect that, but it doesn't.

21 (Document displayed)

22 You will see in this case that the damages that the
23 plaintiffs suffered, shown on this calendar, are significantly
24 removed in time from the events that plaintiffs are complaining
25 about in this case, many months or sometimes years later. This

OPENING STATEMENT / LIMANDRI

1 is a critical fact.

2 In this trial you will hear the plaintiffs testify that
3 they sustained damages only after the videos were released in
4 July 2015. That's when they began to investigate and began to
5 enhance their existing security.

6 Now, the critical task for you is to decide whether
7 despite this timeline that you're seeing, if plaintiffs have
8 met their burden to show that defendants' acts alone, and not
9 the acts of third parties who are not here in this courtroom,
10 who are not sued and are not before you, caused financial harm
11 to the plaintiffs.

12 Again, the evidence is going to show you this case is not
13 about your or mine or the defendants' or the plaintiffs'
14 opinions about abortion; nor the contracts, nor the conference
15 rooms, nor the confidentiality agreements. As in all cases
16 where, as you will hear, the defendants are citizen reporters
17 and independent filmmakers, discover a newsworthy story, and
18 the plaintiffs are angry about the resulting criticism from the
19 content of the videos and not the method that defendants'
20 utilized, that's really what this case is about.

21 Thank you for your time and attention, ladies and
22 gentlemen. I now turn the podium over to my colleague,
23 Mr. Charles LiMandri.

OPENING STATEMENT

24
25 **MR. LIMANDRI:** Your Honor, ladies and gentlemen. I

OPENING STATEMENT / LIMANDRI

1 had the pleasure of meeting you yesterday. I'm Charles
2 LiMandri. I represent some of the same parties that
3 Ms. Dhillon does, Center for Medical Progress, BioMax, David
4 Daleiden, who you met yesterday, and Adrian Lopez, who my
5 partner Paul Jonna will be addressing the issues concerning
6 Mr. Lopez after I speak to you this morning.

7 Who is David Daleiden? He's a caring and compassionate
8 person whose compassion is to stop cruelty toward all human
9 life. He worked for Live Action and other organizations for
10 approximately five years, 2008 through 2013, at which time he
11 was investigating the cruelty involved in the trafficking of
12 human fetal tissue and organs, such as hearts and livers and
13 other organs.

14 He then started the Center for Medical Progress in 2013
15 and began what we call the Human Capital Project to further
16 this investigation, and the purpose was to try to stop the
17 unlawful practices in organizations profiting from the sale of
18 fetal tissue, because our laws recognize that we don't want to
19 create a market where people can purchase human organs, be it
20 from adults or infants or from fetuses. And he considered it a
21 civic duty to pursue this investigation based on what he had
22 already learned.

23 In the course of the Human Capital Project investigation,
24 even prior to the taking of the first undercover videos that
25 are at issue in this case, which was in April 2014,

OPENING STATEMENT / LIMANDRI

1 Mr. Daleiden learned through, again, that investigation of the
2 following criminal actions on the part of the plaintiffs, which
3 are factually documented in the videos we expect that the
4 evidence will show that you'll see in this case. And those
5 include basically three major types of criminal activity.

6 One, again, the selling of human fetal tissue and organs
7 for a profit. You heard Ms. Trotter talk about its tissue
8 donation program. The donation part applied to the women who
9 agreed to donate the fetal tissue, but not to Planned
10 Parenthood or what we call these TPOs, third-party
11 organizations, who purchased it from Planned Parenthood.

12 The second major type of activity that Mr. Daleiden was
13 investigating involved alternative abortion procedures, so they
14 could obtain more marketable fetal tissue and organs, including
15 in some cases the performance of illegal partial-birth
16 abortions. Because if you want to have --

17 **THE COURT:** Excuse me, Mr. LiMandri.

18 **MS. TROTTER:** I'm sorry, Your Honor. Objection, 403.

19 **MR. LIMANDRI:** Goes to motive and purpose, Your
20 Honor.

21 **THE COURT:** So, ladies and gentlemen, a couple of
22 things.

23 First, remember that what lawyers say is not evidence.

24 Second, as I told you at the outset of this case, this
25 case is not about the truth of the -- of any of the

OPENING STATEMENT / LIMANDRI

1 abortion-related issues that Mr. LiMandri was just describing.
2 However, it is relevant for your purposes, and you will hear
3 Mr. Daleiden testify concerning the reasons that he did what he
4 did in this case.

5 So I'm sure Mr. LiMandri is almost done with this
6 particular set of descriptions. And I'll allow him to
7 continue.

8 **MR. LIMANDRI:** Thank you, Your Honor. I appreciate
9 that. I am almost done.

10 There was just one final category, which is a major part
11 of the purpose of the investigation that was done by
12 Mr. Daleiden and the other defendants that motivated their
13 actions in this case and their strategies, which as the Court,
14 Judge Orrick, instructed you is a part of the consideration.

15 And that third major area he investigated involving
16 wrongful acts by the plaintiffs is whether or not fetuses were
17 actually born alive, after which time their tissue and organs
18 were harvested.

19 Now, again, Ms. Trotter talked about the purpose of the
20 defendants was to somehow ignite public outrage. Well,
21 obviously, the types of activities I'm talking about would be
22 considered outrageous by many people and then the natural
23 response to learning of those would evoke criticism.

24 But the intent of the defendants, ladies and gentlemen,
25 was not to ignite outrage in terms of provoking any type of

OPENING STATEMENT / LIMANDRI

1 criminal action by the part of third parties, but to bring
2 about change through legitimate legal and political channels.

3 So create public outrage does not mean create uncontrolled
4 anger in people that would hear this message. It means to
5 create controlled pressure on authorities who are responsible
6 for creating the type of change that Mr. Daleiden and his
7 co-defendants wanted to bring about as what they considered,
8 and in fact is, we believe, a protected exercise of their First
9 Amendment rights.

10 Now, what sources did they rely on for the purposes of
11 this investigation? There is basically five major categories
12 of sources of information that they researched for the purpose
13 of their investigation, and you'll see those on the slide in
14 front of you.

15 (Document displayed)

16 And Ms. Trotter did point out a slide that His Honor read
17 to you with respect to when you can record someone without
18 their permission or consent.

19 First of all, if it's not really a private conversation.
20 And, again, you heard Ms. Dhillon talk about the fact that
21 these were recorded in public places where there would be no
22 reasonable expectation of privacy.

23 But there is also a second exception to recording people
24 without their consent; that is, if you're going to do so in
25 order to prevent a person from committing a violent felony

OPENING STATEMENT / LIMANDRI

1 against another person.

2 And His Honor did read to you the preliminary instruction
3 number six again, which Ms. Trotter read, which said precisely
4 that. That was -- when you get your notebook at the end of the
5 day from the Court, that will be preliminary instruction number
6 six regarding unlawful recordings. So it's also preliminary
7 instruction, His Honor read to you, number 11 regarding what a
8 corporation is. A corporation is a person.

9 And, of course, as the instruction reads, as you'll see it
10 in your booklet and as His Honor read it to you, a corporation
11 can only act through its employees and people that represent
12 that corporation. So if you're going to be recording
13 corporations involved in these activities, you do so through
14 the persons that would actually be conducting those activities,
15 and that's what my clients did.

16 So the evidence was that David -- will be that David
17 Daleiden gathered evidence in support of each of these
18 categories. I'm going to briefly try to go through them with
19 you now.

20 The first one, sworn testimony. And you'll see from the
21 pull-down that he became aware of testimony. All of this was
22 before he did his first undercover video in April 2014. So
23 please keep that in mind.

24 In 2010 Mr. Daleiden became aware of prior sworn testimony
25 of a Mr. Dean Alberty, who was a whistleblower. He testified

OPENING STATEMENT / LIMANDRI

1 before Congress in 2000. And Mr. Daleiden did read his sworn
2 testimony before Congress and he testified that, in fact, even
3 then infants were born alive. And he said he did harvest body
4 parts from them and that they did have beating hearts.

5 Again, that informed Mr. Daleiden's reasonable belief that
6 this activity had, in fact, happened and despite the fact that
7 there was Congressional hearings in 2000, it was continuing to
8 happen.

9 He also considered the prior testimony in court of a
10 Planned Parenthood medical director from Planned Parenthood
11 Pacific Southwest in San Diego and Riverside counties.
12 Katharine Sheehan testified in that prior case -- again,
13 testimony under oath -- that a certain percentage, low
14 percentage, but nonetheless when you consider the number of
15 abortions performed, it would be a significant number of
16 fetuses were born alive at a certain -- or at least she said
17 born intact. I want to be as accurate as possible. "Intact"
18 meaning that the -- the reasonable belief the fetus would be
19 born alive at a certain gestational age, a more mature fetus.

20 The second category of information that Mr. Daleiden would
21 have considered was eye witness testimony. He interviewed a
22 Perrin Larton, who was a tissue procurement manager for one of
23 these third-party organizations, that would come into Planned
24 Parenthood and obtain the material from the abortions. And she
25 told him on video that sometimes a woman is far enough along

OPENING STATEMENT / LIMANDRI

1 and sufficiently dilated to put her in the stirrups and the
2 fetus would just fall out. The fetus will fall out before they
3 had an opportunity to do what's necessary to have a success
4 abortion, which is to terminate the fetus. And she was there
5 to procure the tissue and organs, which means --

6 **THE COURT:** Let me interrupt you, Mr. LiMandri, I'm
7 sorry, and just to remind the jury that the truth of the
8 matters that are being described here are hotly disputed and
9 they are not issues in this case.

10 The defendants will put on testimony with respect to what
11 things that Mr. Daleiden was aware of and what his -- and one
12 of the issues for you will be what his reasonable beliefs were
13 from there, but it is not the primary -- I think it would be
14 useful, Mr. LiMandri, if you went through the people, but not
15 in great detail of what each person is going to say. We'll be
16 dealing with some of that during Mr. Daleiden's testimony.

17 **MR. LIMANDRI:** Okay. Okay. I will try to be more
18 brief in covering those issues, Your Honor. Be mindful of what
19 you said.

20 **THE COURT:** Thank you.

21 **MR. LIMANDRI:** The second set of eye witness accounts
22 would have been through the ARHP interviews that Mr. Daleiden
23 and other defendants would have conducted at that early
24 conference that he attended. And he did learn there that there
25 were certain things done in order to obtain tissue that led him

OPENING STATEMENT / LIMANDRI

1 to have a reasonable belief that, again, infants were born
2 alive, using certain drugs, altering procedures, things of that
3 nature. Confirmed in his mind that there was a high likelihood
4 that fetuses would be born alive.

5 The third person he interviewed was a tissue procurement
6 person named Holly O'Donnell, and his discussions with her
7 confirmed what he had learned from the others. It basically
8 confirmed his findings.

9 And the third major source of information was literature
10 that he reviewed. That literature included a Stanford
11 University study published in a circulation journal in 2012,
12 and it referenced the fact that human fetal hearts had been
13 procured from a tissue procurement organization called
14 StemExpress. And Mr. Daleiden learned through his
15 investigation that StemExpress was only procuring fetal tissue
16 and organs at that time from Planned Parenthood in Northern
17 California.

18 And in that particular fetal tissue study in 2012, he
19 learned the only way they could have done that study was if the
20 hearts were still beating when the hearts were harvested,
21 because they put them on a machine that kept them beating.
22 It's called a Langendorff perfusion --

23 **MS. TROTTER:** Objection.

24 **THE COURT:** Sustained.

25 Mr. LiMandri, please focus on events as opposed to the

OPENING STATEMENT / LIMANDRI

1 extra description that you are providing for each of these
2 things, because I want to be consistent with the orders that
3 I've previously made. All right?

4 **MR. LIMANDRI:** Okay.

5 **THE COURT:** Thank you.

6 **MR. LIMANDRI:** So I will do my best to do that, Your
7 Honor.

8 **BY MR. LIMANDRI**

9 **Q.** In order to be able to explain to you, ladies and
10 gentlemen, why Mr. Daleiden had a reasonable belief, this is
11 the information that he learned. But I will, due to shortness
12 of time, and, of course, your Honor's admonitions, try to get
13 through this more quickly and expeditiously.

14 He also became aware of a study of a Dr. Ronald Berman,
15 who worked both for Planned Parenthood and as medical director
16 for StemExpress. So he would have wanted to get the fetal
17 tissue and organs for that purpose as well.

18 Finally for the literature he was aware of statistics from
19 the Center for Disease Control, a federal government agency
20 that would track and did track statistics of fetuses that
21 survived failed abortions.

22 So these are all his sources of information that he
23 believed that there were persons that were victims of, as well
24 as the statute reads and as Your Honor instructed you, a
25 violent felony.

OPENING STATEMENT / LIMANDRI

1 And finally the -- well, the fourth category, prior
2 journalism, he was aware of ABC did a 20/20 report. He
3 actually saw that in 2010. And in that report there was
4 someone who did the same type of undercover operation he and
5 the other defendants did in this case and documented that fetal
6 tissue was being sold for a profit. He was aware of that. He
7 was aware there was no action taken against those undercover
8 reporters for doing basically exactly what he did and obtaining
9 information, but, again, he learned that since 2010 this is
10 still continuing. So he felt the need to have a more in-depth
11 investigation at that point, which is what motivated my client
12 and the other co-defendants to do such an investigation.

13 He was also aware of "Beyond Abortion," which was a book
14 called "A Chronicle of Fetal Experimentation." It was by
15 someone named Suzanne Rini. Again, it documented multiple
16 cases of fetuses that were born alive. Again, helping to form
17 his reasonable belief that this was happening.

18 Also showed a Grantham collection of video. Showed a born
19 alive fetus moving after a failed abortion.

20 And the fifth prior journalism was a Live Action, "The
21 Human Project" it was called, that he himself participated in
22 while he was at Live Action in the years 2012 and 2013 in which
23 through that investigation he, again, became personally aware
24 of cases where fetuses were born alive and then their parts
25 were harvested.

OPENING STATEMENT / LIMANDRI

1 The last category of expert interviews, and I'll deal with
2 this quickly. I believe that Dr. Theresa Deisher -- she will
3 not be testifying, but David Daleiden will testify that he did
4 speak with her. She's a preeminent stem cell researcher.
5 Published numerous studies in prestigious journals. And she
6 confirmed to him, particularly with regard to the Stanford
7 study, that the fetuses had to be born alive for their hearts
8 to be used in that study.

9 So he had all of this knowledge, but before he actually
10 did the first undercover video that's at issue in this case,
11 ladies and gentlemen, he spoke to a preeminent ethicist, or a
12 moral theologian, Janet Smith, who we believe will testify in
13 this case, and asked her not just about the legality, because
14 he had already researched for himself the legality of recording
15 in a public place and to do research in this manner, to
16 determine whether it's a violent felony against a person. But
17 beyond that, he wanted to ask her about the morality of lying;
18 using a fake driver's license and an assumed name.

19 And he had in-depth discussions with her and concluded
20 that since this involved life-and-death issues, that it did
21 justify using these means and techniques, which had been used
22 repeatedly in the past by an undercover investigator, including
23 on this very issue with the 20/20 report and the further Live
24 Action reports that he had -- investigations that he had been
25 involved in.

OPENING STATEMENT / LIMANDRI

1 So with that the last slide you see a light bulb going on
2 there. Basically for him that means that there is now more
3 than sufficient evidence to confirm his reasonable belief and
4 to go forward with the undercover videos, which he had not done
5 up to this point in time.

6 He founded BioMax in October 2013. That's, again, after
7 having approximately one dozen credible sources of information
8 to support the conclusions of the Human Capital Project, many
9 of which I've gone through with you, but by no means is that an
10 exhaustive list. There are more items in all of those
11 categories, which time does not allow me to go through.

12 So what did he do with this information? Did Mr. Daleiden
13 rush to the media, try to get a huge public sensation and
14 response? No, he did not do that.

15 We know that the first NAF video from the timelines you've
16 seen was in April 2014, after he did this investigation. But
17 before he went to the public with this information, he took it
18 to law enforcement, or ten separate contacts with law
19 enforcement and public officials within a one-year-period --

20 **MS. TROTTER:** Your Honor, objection. 403.

21 **MR. LIMANDRI:** My understanding is this goes to the
22 motive and purpose as before the videos were released, Your
23 Honor. It shows that he did what he said he was going to do.

24 **THE COURT:** Okay. So I will overrule the objection.
25 And I think you've now said that, so now you can move on to the

OPENING STATEMENT / LIMANDRI

1 next thing.

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

3 So before the first video was released, that's what he had
4 done. I'm not going to go through each of those ten contacts
5 over that 12-year period in light of His Honor's admonition,
6 but basically inasmuch as he took those videos to law
7 enforcement, obviously, he did not think he was violating the
8 law. You would not go to law enforcement if you said: Look
9 what I did. I violated the law.

10 He was bringing what he believed was necessary to the
11 appropriate law enforcement officials and government officials
12 so they can take appropriate action against the culpable
13 parties.

14 The Human Capital Project videos were intended to generate
15 accurate information so as to stop what he perceived to be
16 criminal actions and to bring about necessary change. There
17 was no other way to facilitate this purpose and to bring public
18 attention to bear on the issue.

19 The only way that my client and his co-defendants could
20 have gotten this information and to have the plaintiffs reveal
21 it to them was to let them believe that they were, in fact,
22 willing to participate in these activities with the plaintiffs,
23 which is why the plaintiffs, with basically no checking at all
24 as to who these people were -- I believe, if I understood
25 Ms. Trotter's opening statement, my clients didn't even have

OPENING STATEMENT / LIMANDRI

1 the fake BioMax company set up before they attended one of the
2 first conferences. With no checking at all, they're happy to
3 have them there because they wanted to be in the position to do
4 business with them in this -- in this manner.

5 The Human Capital Project videos, you'll hear from the
6 evidence, were in no way altered to change any of the
7 statements that were actually made on the videos by the
8 plaintiffs. The videos do speak for themselves.

9 We do have an expert video technician who will testify
10 that the videos were not altered. They were not dubbed in such
11 a way to change what anybody had said. Not spliced together.
12 Nothing like that. There will be no testimony to suggest
13 otherwise.

14 There was no call for violence on any of the videos.
15 There was no intent to incite violence on any of the videos.
16 And there will be no evidence that there was any violence
17 resulting from the videos.

18 As Ms. Dhillon said, my clients did not enter property,
19 break property. Didn't have to break any locks. They were
20 invited in. They did not do any injury to any person. There
21 will be no evidence to suggest that they themselves engaged in
22 any type of activity that was personally a harmful to the
23 plaintiffs or injured their property.

24 Ms. Trotter referred to a history of violence in the
25 anti-abortion movement over the 50-plus past years. I expect

OPENING STATEMENT / LIMANDRI

1 you'll hear some of that, but I also expect you'll hear from a
2 defense security expert, Jonathan Perkins, that official
3 government data he consulted involving law enforcement in
4 California will indicate there has been no violent crimes at
5 any abortion clinics in California either the two years before
6 or after the videos. And that would be my understanding of his
7 testimony with respect to the official government data that he
8 testified about.

9 So there are, unfortunately, as you know, ladies and
10 gentlemen, in our country the extremists on both sides of
11 issues. Mr. Daleiden himself will say he's gotten death
12 threats over this. That's unfortunate and that should not
13 happen. But my clients were not responsible for any threats or
14 any activity that the plaintiffs may complain of and that we
15 believe the evidence will show of any action that should have
16 been taken by Planned Parenthood plaintiffs. It should be
17 against people who caused them to take the security measures
18 because of any type of threats or criticism or whatever they
19 perceived justified it.

20 But in the last analysis what we're talking about is not
21 only did my clients not destroy Planned Parenthood, as repeated
22 at the beginning of Ms. Trotter's opening statement. Yes, they
23 had legitimate legal and political roles and they did that
24 investigation with that in mind, as is their First Amendment
25 right to do so.

OPENING STATEMENT / LIMANDRI

1 But the result has not been the destruction of Planned
2 Parenthood, obviously, but, indeed, as Ms. Trotter indicated,
3 they purchased upgrades, which obviously they needed. If they
4 didn't want infiltration like that at their conferences, now
5 they have taken steps, purchasing scanners, make sure people
6 had authorized IDs instead of that, you know, funny looking
7 I.D. of David Daleiden as a teenager that they accepted and
8 call a RICO violation, because he made a fake I.D. for himself
9 and showed it to them. They have now taken steps to prevent
10 that in the future.

11 So they are a safer and secure -- more secure
12 organization, even though my clients didn't damage anything or
13 injury any person, they are more safer and secure and
14 presumably more responsible acting as a result of what
15 occurred.

16 So whatever damages they have are business upgrades
17 resulting from the publication of the videos and their attempt
18 to salvage. And they even have, the evidence will show, some
19 of their damages is using something called Reputation.com to
20 try to improve their reputation. That is not recoverable
21 damages, we believe, and we can address that more directly in
22 closing arguments.

23 But at this point in conclusion, ladies and gentlemen, let
24 me just say the plaintiffs' arguments failed on multiple
25 grounds, including that they have no actual harm caused by the

OPENING STATEMENT / JONNA

1 defendants and no legally recoverable damages.

2 Thank you very much, ladies and gentlemen, for listening
3 to my opening statement.

4 Thank you, Your Honor.

5 **THE COURT:** Mr. Jonna.

6 **OPENING STATEMENT**

7 **MS. SHORT:** Thank you, Your Honor.

8 Good morning, ladies and gentlemen of the jury. My name
9 is Paul Jonna and I work with Charles LiMandri. I represent
10 several of the defendants in this case, including Gerardo
11 Adrian Lopez.

12 As others have already said, this case is not about
13 Planned Parenthood services or the moral issues surrounding
14 abortion. The Court has said this case is about the strategies
15 employed by the defendants.

16 But I want you to keep in mind that there are several
17 different defendants who are not all alike and who played
18 different roles in this project and come from different
19 backgrounds.

20 I want to tell you a story of one of them, Adrian Lopez.
21 Mr. Lopez is 29 years old. He's currently serving in the U.S.
22 Navy and has been since 2017. He's stationed at Balboa
23 Hospital in San Diego and works in the neonatal ICU as a
24 hospital corpsman. He regrets that he can't be here today. He
25 won't be here for most of the trial because of his obligations

OPENING STATEMENT / JONNA

1 to the U.S. Navy, but please know that this case is important
2 to him.

3 Mr. Lopez is a regular guy. He's not a pro-life activist.
4 He doesn't even identify as pro-life. He doesn't identify as
5 pro-choice either. He used to work at Starbucks. That's where
6 he met David Daleiden. David Daleiden was a customer there,
7 and they got to know each other. He got to know many of the
8 customers there. He's a friendly and personable guy.

9 David Daleiden and Adrian Lopez became friends, and then
10 Mr. Daleiden asked if he would be interested in working as a
11 contractor for CMP. Mr. Lopez agreed and started by doing
12 hourly jobs, like transcribing videos, and later he helped with
13 discrete tasks like helping create a logo and summarizing
14 literature.

15 But David Daleiden also thought that Mr. Lopez would be a
16 convincing undercover actor. So he told him more about the
17 project to see if he would be interested in attending
18 conferences undercover.

19 Mr. Lopez understood from David Daleiden that the people
20 that they were going to record were illegally selling and
21 collecting fetal tissue from abortions. But Mr. Lopez didn't
22 just take David Daleiden's word for it. He did his own
23 research and determined that it was likely that Planned
24 Parenthood was engaging in illegal activity with its fetal
25 tissue programs, and that troubled him, and that's what

OPENING STATEMENT / JONNA

1 motivated him to get involved. He thought it was wrong, that
2 Planned Parenthood was profiting from the sale of fetal tissue,
3 and he was concerned that the fetal tissue programs --

4 **MS. TROTTER:** Excuse me, Your Honor. I'm sorry.
5 This is argumentative.

6 **THE COURT:** Overruled at this point.

7 **MR. JONNA:** He was concerned that Planned
8 Parenthood's fetal tissue program was creating a market for
9 fetal tissue. So he agreed to do the work for those reasons.
10 And, plus, he could use the extra income, since he was taking
11 care of his family and he had a lot going on in his life.

12 Ultimately, though, the evidence will show that Adrian
13 Lopez was convinced that what Planned Parenthood was doing was
14 wrong and, in fact, it was illegal and worthy of being reported
15 and shared with the public. That's what motivated him. He
16 didn't have a political agenda. He was a good citizen that
17 wanted to help expose illegal conduct.

18 He doesn't have anything against Planned Parenthood. In
19 fact, you will hear him testify that he has used their
20 services.

21 Adrian Lopez attended four conferences with David Daleiden
22 in order to help gather evidence of wrongdoing and improper
23 activity in the fetal tissue trade. His role was primarily to
24 facilitate networking and introduce people to David Daleiden.

25 He left most of the substantive conversations to David

OPENING STATEMENT / JONNA

1 Daleiden, but make no mistake about it. He played his part in
2 the project and he's proud of the work that he's done.

3 He knew this was an undercover operation and that David
4 Daleiden had to use a different name, like undercover
5 journalists routinely do.

6 Another major distinction that I want you to keep in mind
7 with respect to Adrian Lopez is that he always used his real
8 name at the conferences. He used his real I.D. He never used
9 a fake I.D. He never spoke to anyone in the project about
10 getting or using a fake I.D., and he certainly never helped
11 produce or transfer a fake I.D. as the plaintiffs allege.
12 There will be no evidence to the contrary.

13 The evidence will show that he qualified as an exhibitor
14 using the same standards that Planned Parenthood and NAF set
15 for everybody else. He attended three Planned Parenthood
16 conferences and one NAF conference. The conferences took place
17 in Florida, D.C. and Maryland. He didn't record anybody in
18 California, Texas or Colorado.

19 He signed an agreement with NAF, which you looked at
20 earlier today, before he entered the NAF 2015 conference, but
21 he didn't sign any Planned Parenthood agreements. He'll
22 testify that he signed the NAF agreement and didn't think the
23 terms were enforceable against him because he was investigating
24 potential criminal activity. And as you heard, NAF is not a
25 party to this case.

OPENING STATEMENT / JONNA

1 Mr. Lopez was an effective amateur actor. The evidence
2 will show that he wasn't part of any conspiracy. He didn't
3 intend to further a conspiracy. And he was -- all he was being
4 paid was his regular wages. He wasn't in this for any improper
5 financial advantage or gain. CMP paid him less than \$10,000
6 for his work in the entire project, which is a meaningful
7 amount to Mr. Lopez, but clearly not enough to make someone
8 rich.

9 The evidence will show that he was copied on many emails
10 by David Daleiden, but he rarely responded, rarely read the
11 emails. He did what he was told in his limited role and acted
12 based on his best judgment, reasonably believing that he was
13 helping to expose criminal conduct.

14 As far as reporting the findings to law enforcement, David
15 Daleiden did that, but Adrian Lopez knew he was doing that and
16 he was happy he was doing that.

17 He did what David Daleiden told him to do. He didn't
18 participate in big picture planning for the project. As I
19 said, he was a contractor with a limited role taking direction
20 from Mr. Daleiden.

21 He doesn't really know the other co-defendants. He never
22 met Albin Rhomberg or Troy Newman during the project. And the
23 first and only time he met Susan Merritt was at the 2015 NAF
24 conference, which was at the very last part of the project.

25 He'll testify that he only recorded conversations that he

OPENING STATEMENT / JONNA

1 was part of. He didn't eavesdrop on other conversations. He
2 never forcefully entered these conferences. He was always able
3 to walk in simply based on the fact that he was with David
4 Daleiden, registering and using his real I.D.

5 He'll also testify that he never had private conversations
6 with people at the conferences. The evidence will show these
7 conversations were in public, with people around able to listen
8 in, including presenters, exhibitors and hotel staff. Some of
9 the conversations were in public bars and hotel lobbies.

10 The evidence will show that Adrian Lopez didn't have any
11 of the conversations in private quarters. He didn't go in any
12 rooms or offices with closed doors to have his conversations.
13 He didn't meet in any area set aside for Planned Parenthood's
14 corporate representatives, like hotel rooms or areas that were
15 designed to exclude other conference attendees from
16 overhearing.

17 He'll testify that the people he spoke to took no actions
18 to exclude others from overhearing the conversations.
19 Mr. Lopez will testify, and the evidence will show, that the
20 people he spoke to didn't say they had an expectation of
21 privacy and they didn't act like it either.

22 Adrian Lopez looks forward to telling you a story when he
23 testifies in court next week and explaining why he believes he
24 did nothing wrong, but that actually he contributed to a great
25 good by bringing illegal and unethical practices to light.

OPENING STATEMENT / KOZINA

1 here, Mr. Ed White, we represent Troy Newman, one of the
2 defendants in this case. A colleague, a colleague, not a
3 conspirator. That is what the evidence is going to show you.

4 Mr. Newman, the evidence is going to show, is a family
5 man. He is married, a lovely wife, five children, three
6 grandchildren. But he's also a pro-life icon. Mr. Newman,
7 dedicated to stopping what he believes is an act against the
8 sacredness of human life. That's abortion. And this, as the
9 evidence is going to show, is a reason, a motivation why he's
10 in this lawsuit.

11 Mr. Newman, even the plaintiff's counsel admitted in
12 opening statement, was very effective in what he did. He used
13 proper means to shut down a number of abortion clinics. And
14 it's going to be the reason, the motive why he's included in
15 this lawsuit.

16 The evidence is going to show that the motive for Planned
17 Parenthood to include him in this lawsuit was not only to
18 impede his First Amendment rights, but it was also to try to
19 stop his further pro-life activities.

20 It was also motivated to make him an example, so as to
21 prevent others from exposing what they believe is wrongdoing in
22 the abortion industry.

23 Now, Mr. Newman is human. We're all human. And he
24 sometimes engages, the evidence is going to show, in some
25 puffery. He did give some statements, the evidence is going to

OPENING STATEMENT / KOZINA

1 show, where he made some claim as to being involved with this
2 project more so than he actually was. Because the evidence is
3 going to show you that this particular project was First
4 Amendment undercover investigative journalism that was put
5 together, as you've already heard, by Mr. Daleiden after years
6 of investigation, consultation with multiple experts in legal
7 areas, in medical areas, scientific and moral. It wasn't
8 launched until he finished consulting with people.

9 And that's what Mr. Newman was. He was someone, the
10 evidence is going to show, that was consulted by Mr. Daleiden.
11 You're going to see the names of many, many other people with
12 whom he consulted. And the evidence is going show you they are
13 not defendants in this case.

14 Now, was Mr. Newman a member of CMP? But of course. He
15 was asked to be a member by Mr. Daleiden, and he did that.

16 But the evidence is going to show he had nothing to do
17 with BioMax. That was created without his knowledge.

18 The evidence is also going to show that he had no
19 knowledge of the identifications that were created, the
20 undercover videotaping. Did not participate in the execution
21 of any of the contracts. You'll never see his name there. He
22 had literally nothing to do with this project beyond what I
23 told you the evidence is going to show.

24 Now, the evidence is also going to show as well that
25 Planned Parenthood developed talking points, talking points in

OPENING STATEMENT / KOZINA

1 reaction to what they believed was going to occur as a result
2 of the videos, harm to the reputation. And these talking
3 points used scare words to try to portray the pro-life
4 undercover journalists as extremists. They use words saying
5 that the videos were a sham. And as you heard Mr. LiMandri
6 explain to you, there will be evidence presented that they were
7 not. They were accurate. What was portrayed was exactly what
8 was said. And that is what the evidence is going to show you.

9 The evidence is going to show you as well that Planned
10 Parenthood, prior to any of these occurrences, had already been
11 criticized for not having appropriate security protocols. And
12 they utilized these videos as an excuse to go ahead and do what
13 they should have done in the first place. And that is, to
14 implement appropriate security protocols. They used what we
15 call a faux reason -- a false reason -- by claiming, again
16 through their talking points, that this set of videos was the
17 reason why they had to incur security costs. And as you'll
18 find out, that they used all manner of reasons, most of which
19 the evidence will show is unsupported. For purposes of
20 purchasing equipment, obtaining services from IT individuals,
21 and security personnel.

22 In the end, the evidence is going to show you that
23 Mr. Newman did nothing wrong. It's going to show you that he
24 is being targeted, as I indicated before, because he is an
25 effective pro-life advocate. And was brought into this lawsuit

OPENING STATEMENT / SHORT

1 because of his effectiveness. The evidence is going to show
2 this is nothing more than a very veiled, perhaps unveiled
3 attempt on the part of Planned Parenthood to keep Mr. Newman
4 from doing what is, in his belief, the right to think, to keep
5 him from exercising his First-Amendment rights, to keep him
6 from going forward and pointing out the wrongdoing in the
7 abortion industry.

8 Thank you, ladies and gentlemen.

9 **THE COURT:** Thank you.

10 Ms. Short.

11 **OPENING STATEMENT**

12 **BY MS. SHORT**

13 Good morning, everyone. My name is Katherine Short and I
14 represent Albin Rhomberg.

15 Right up front, let me say the evidence in this case is
16 going to leave you with one burning question about my client
17 who is back there in the corner (Indicating): Why is
18 what's-his-name in this case? Why is Planned Parenthood trying
19 to bill him for their expenses?

20 The evidence is going to show that he had virtually
21 nothing to do with Planned Parenthood's deciding to spend its
22 money in the ways it did. You're going to see evidence that
23 Mr. Rhomberg's pulled into this lawsuit basically because of
24 thought crimes. Mr. Rhomberg was, at most, an adviser to the
25 Center for Medical Progress and David Daleiden. Nothing more.

OPENING STATEMENT / SHORT

1 He didn't do anything to Planned Parenthood.

2 Mr. Rhomberg -- by way of background, Mr. Rhomberg is a
3 man of science. He is also a man of conscience and conviction.
4 He first became aware of the practice of abortion in the 1970s
5 while he was a graduate student at UCSD, in applied physics.
6 Specifically, astrophysics. This was following graduate
7 studies in high-energy particle physics, teaching physics at
8 the University of Wisconsin, and working in the space program
9 at Caltech Jet Propulsion Laboratory, and at the Johnson Space
10 Flight Center in Texas. Yes, he is a rocket scientist.

11 As a scientist, Mr. Rhomberg took a scientific approach to
12 learning about abortion. He looked at books in the university
13 medical school library. What he learned there -- since that
14 first look at abortion 40 years ago, he has devoted his life to
15 studying the medical practices involved in abortion, as well as
16 the abortion industry, itself, and the conduct of workers in
17 that industry.

18 You saw in plaintiffs' opening graphic there, there was an
19 image of Mr. Daleiden's 2013 project proposal for investigating
20 fetal tissue trafficking. And I really hope when you get a
21 better chance, you will really study that exhibit. It is
22 really very important.

23 On Page 12 of that exhibit, it says:

24 "Albin is a veteran of the pro-life movement in
25 California and is an expert at acquiring hidden and

OPENING STATEMENT / SHORT

1 hard-to-access documentation about the abortion
2 industry."

3 That is 100 percent true. I'm just going to give you one
4 example of Mr. Rhomberg's expertise in legally gathering
5 information. An example you'll hear some more about.

6 In the early 1980s, Mr. Rhomberg learned of the discovery
7 of around 16,000 aborted fetuses, some of very advanced
8 gestation, in a repossessed shipping container in southern
9 California. The container company called the Los Angeles
10 County sheriffs, who brought in the District Attorney and the
11 health department. And soon, many other folks and groups were
12 involved.

13 As you might imagine, the event made the news. Abortion
14 advocates wanted the bodies to be incinerated as medical waste.
15 And they actually sued, brought a lawsuit to make sure that
16 that happened.

17 Meanwhile, Mr. Rhomberg and a few associates worked to
18 ensure that this particular body of evidence about the practice
19 of abortion was not hidden or destroyed before it could be
20 documented and made available to the public. As you will hear,
21 he met with public officials, including officials from the
22 District Attorney's Office, and from the County Board of
23 Supervisors. He gathered information from many sources. He
24 lobbied for an official resolution from the Board of
25 Supervisors, calling for an autopsy.

OPENING STATEMENT / SHORT

1 He listened here, he talked there. He finally ended up in
2 the Los Angeles County Coroner's Office, documenting this
3 discovery with his own camera. The photos he took that day
4 have been published and republished in books and pamphlets and
5 newspapers, distributed in the U.S. and Europe, Central and
6 South America.

7 Obtaining and publishing those photos was a milestone in
8 Mr. Rhomberg's lifelong work of investigating, documenting and
9 exposing the practices surrounding abortion.

10 As with that first investigation, Mr. Rhomberg's primary
11 mode of investigating is simply talking to people who know
12 things. It's simple, but effective. Visit someone in the
13 District Attorney's Office. Interview a business professional
14 at a conference. Attend a public lecture at a university.
15 Chat with the speaker afterwards. Ask questions; remember the
16 answers. Better yet, take notes. Better still, record and
17 take photos. Be there. Because it's hard to get at the truth
18 from a distance. Because those who are closest to the action
19 have the most accurate and up-to-date information. And they
20 make the most credible witnesses, whether they realize it at
21 the time or not.

22 Ironically, it wasn't Planned Parenthood in particular
23 that Mr. Rhomberg was thinking about when Mr. Daleiden
24 approached him in 2013. As you will hear, Mr. Rhomberg had
25 already been investigating fetal tissue trafficking. He was

OPENING STATEMENT / SHORT

1 tipped off in a small way. He was tipped off that Fed Ex
2 packages were being shipped from a particular abortion clinic
3 on their surgical abortion day. And by the way, this was not a
4 Planned Parenthood clinic. It was a for-profit abortion
5 clinic, independent abortion clinic.

6 So, Mr. Rhomberg did what he does. He went there. He
7 took photographs. He spoke to the Fed Ex driver. He -- he and
8 other investigators found out that these boxes were being
9 shipped all over the country, to be used in research into
10 conditions such as hair loss.

11 Mr. Rhomberg knew that laws had been passed in the 1990s
12 to prohibit anyone from exchanging human fetal tissue or organs
13 for money. Democrat or Republican, pro-choice or pro-life,
14 there was widespread agreement that this was a line that should
15 not be crossed.

16 David Daleiden approached Mr. Rhomberg with some of the
17 information that you just heard about from Mr. LiMandri. And
18 the outline of a plan for investigating further.

19 Mr. Daleiden's original plan as the plaintiffs' exhibit
20 showed you, involved infiltrating fetal tissue procurement
21 companies, the middlemen between the abortion clinics and the
22 end users of the fetal tissue. It would also involve getting
23 tissue procurement middlemen, researchers and abortion
24 providers to open up, and talk frankly. Obviously, that's
25 going to mean that they would not know that the people they

OPENING STATEMENT / SHORT

1 were talking to wanted to expose these practices in order to
2 create a demand from the public or from the government or from
3 both to end those practices.

4 Mr. Rhomberg was familiar with many examples of undercover
5 investigation carried out by major TV networks, exposing
6 various injustices, exposing sex trafficking; advocacy
7 organizations such as PETA, exposing animal cruelty; and civil
8 rights lawyers. Even lawyers do this, when they want to prove
9 up a discrimination claim.

10 So Mr. Rhomberg agreed to advise. As it turns out, the
11 help he provided, always in the form of simple advice, was very
12 limited. And only Mr. Daleiden knows how much of that advice
13 was actually even ever implemented.

14 Mr. Rhomberg suggested the names of a few people who might
15 be interested in helping to fund the investigation. He offered
16 some technical tips about getting good background footage at a
17 conference.

18 Based on plaintiffs' exhibit list, during the course of
19 this trial, you will see probably most of the emails, a handful
20 of emails, that Mr. Rhomberg sent to Mr. Daleiden over the
21 entire two and a half years of this investigation. He had
22 sporadic phone calls with Mr. Daleiden. But all that
23 Mr. Rhomberg ever furnished to the project was words. Not
24 money, not equipment, not recordings, not investigators.

25 And almost everything you hear about Mr. Rhomberg during

OPENING STATEMENT / SHORT

1 this trial will be coming from Mr. Rhomberg, himself. Why?
2 Because other than his emails with Mr. Daleiden, there is
3 virtually no trace of his involvement in this project.

4 For example, you are going to see that some of the other
5 defendants used assumed names, and signed agreements. And
6 you're going to hear testimony and see videos of some of the
7 other defendants going to clinics and conferences and recording
8 their conversations, as you've heard discussed already. But
9 not Mr. Rhomberg.

10 Even the plaintiffs -- Mr. Rhomberg, he didn't enter into
11 any of their clinics or conferences or sign anything that
12 they're complaining about here. Mr. Rhomberg didn't file any
13 papers with the state or the federal government. He didn't
14 make any of these novelty IDs. Indeed, he never even heard
15 about the IDs that the plaintiff showed you until after this
16 lawsuit was filed.

17 Mr. Rhomberg didn't sign any checks, charge any expenses,
18 review or even see any bank statements or credit card
19 statements for BioMax or the Center for Medical Progress. He
20 didn't sign any agreements, or he didn't know about any of the
21 agreements that were signed.

22 Mr. Rhomberg didn't train any of Mr. Daleiden's fellow
23 investigators about how to go undercover. He never even met
24 any of them until long after the videos were released.
25 Mr. Rhomberg didn't make any of the recordings. He wasn't even

OPENING STATEMENT / MIHET

1 present when they were made. Mr. Rhomberg didn't make any
2 false statements or go by a different name. He didn't send any
3 emails to the plaintiffs.

4 So, why is Planned Parenthood suing what's his name
5 (Indicating)? Because he agreed with Mr. Daleiden that someone
6 need to get to the bottom of whether abortion providers,
7 including Planned Parenthood abortion providers, were violating
8 the law, and making money off aborted fetal tissue and organs.
9 Crossing that line that both sides in the abortion debate had
10 decided should not be crossed. That's it.

11 Not only was Mr. Rhomberg not a contractor, he wasn't even
12 the architect of the plan. He's like the guy who says to the
13 architect: You know what? You could use another window on the
14 front.

15 He didn't do anything to Planned Parenthood. And for that
16 reason, you're going to see in the evidence that he should not
17 have to pay anything to Planned Parenthood. The plaintiffs
18 can't prove a link because there isn't a link. The plaintiffs
19 cannot meet their burden of proof.

20 Thank you.

21 **THE COURT:** Mr. Mihet.

22 **OPENING STATEMENT**

23 **BY MR. MIHET**

24 "I want the Lamborghini." Those were words that Mary
25 Gatter, a Planned Parenthood doctor, said to my client, Sandra

OPENING STATEMENT / MIHET

1 Merritt, as they were dining in a very public restaurant in
2 Pasadena. And as they were negotiating the prices that Planned
3 Parenthood would pay Ms. Merritt for human livers and hearts
4 and other parts.

5 Ladies and gentlemen --

6 **MS. TROTTER:** Objection.

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

8 **MS. TROTTER:** 403.

9 **THE COURT:** I don't think we are going beyond what's
10 just been said.

11 And so ladies and gentlemen, I will remind you again that
12 the evidence in this case is what's going to be coming in
13 through the witness stand. This is the perspective of the
14 lawyers. They have very different perspectives, you've already
15 seen.

16 Mr. Mihet, please go ahead.

17 **MR. MIHET:** Ladies and gentlemen of the jury, good
18 morning. My name is Horatio Mihet. And I have the privilege
19 today not only of going last, but also of representing Sandra
20 Susan Merritt, whom you already met yesterday. Ms. Merritt
21 (Indicating) is a 66 year-old grandmother.

22 And the question that you might have at the outset of this
23 trial is: What in the world would compel a 66-year-old
24 grandmother to leave her cozy couch, to leave her crochet kit,
25 her comfortable community, her cherished children? What would

OPENING STATEMENT / MIHET

1 compel her to put on a hidden camera, get on a plane, assume an
2 undercover identity, and record Planned Parenthood doctors
3 discussing the fetal tissue donation program? That's certainly
4 not my idea of a restful retirement. And it probably isn't
5 yours, either.

6 Well, you won't have to wait very long for an answer to
7 that question, because Ms. Merritt is going to take the stand
8 perhaps later today or perhaps tomorrow, and she's going to
9 answer that question for you. She'll tell you exactly why she
10 did what she did.

11 Ms. Merritt will tell you that she received information
12 and evidence that led her (Indicating) to believe that Planned
13 Parenthood was engaged in some very serious criminal acts.
14 Including changing abortion procedures in order to maximize the
15 number and the value of human organs, for profiting. And even
16 harvesting organs from human beings born alive during abortion
17 proceedings. Mr. LiMandri previewed some of that evidence.
18 And you're certainly going to hear a lot of it.

19 And you know, as difficult as it was for Ms. Merritt to
20 hear that evidence, she will tell you that she just couldn't
21 ignore it. She believed that the public had a right to know
22 what Planned Parenthood and others in the abortion industry
23 were doing. And so that's how a previously private person, a
24 grandmother like Ms. Merritt (Indicating), accepted
25 Mr. Daleiden's invitation or request to become an undercover

OPENING STATEMENT / MIHET

1 investigator, and to record the videos that you are going to
2 see a lot of in this trial.

3 Now, Planned Parenthood will argue and has argued to you
4 already that these videos were illegally recorded because
5 Ms. Merritt didn't tell Planned Parenthood that she was going
6 to record them.

7 But the evidence will show that is just not how undercover
8 investigations work. I mean, Planned Parenthood's own
9 witnesses are going to take the stand (Indicating). And
10 they're going to tell you, they're going to admit that if they
11 had known that Ms. Merritt was recording, they would have never
12 told her the things that they told her.

13 Dr. Gatter will tell you on the stand that she would have
14 never discussed her willingness to investigate and use less
15 crunchy techniques to obtain better, more valuable human
16 organs. And she will tell you that she would have never asked
17 for a Lamborghini deal while negotiating over the prices of
18 those organs if she had known that she was being recorded.
19 That's just not how undercover investigations work.

20 Planned Parenthood will also argue that the videos were
21 illegally recorded because its doctors thought that the
22 conversations were private or confidential. And they may show
23 you a few selectively-chosen clips to try to support that
24 claim.

25 I'll ask you to keep an open mind, ladies and gentlemen of

OPENING STATEMENT / MIHET

1 the jury, because when it's our turn, we are going to show you
2 the parts of those videos that they're going to leave out when
3 they show them to you. We'll show you the parts where numerous
4 waiters and other complete strangers to these conversations
5 either stand right next to them or walk right by them, where
6 they could certainly overhear what was being said in these
7 conversations.

8 Among the many examples that you're going to see of this,
9 you'll see there is a part in the restaurant conversation in
10 that restaurant in Pasadena where Dr. Gatter and her colleague,
11 Laurel Felczer, are talking to Ms. Merritt and Mr. Daleiden.
12 And at one point, the waiter comes next to their table. And
13 you're going to see this waiter reaching over to service the
14 drinks and to service the table. He's inches away from
15 Dr. Gatter and Laurel Felczer. Inches away, you're going to
16 see. And what do they do? Do they stop talking? Do they
17 change the subject?

18 You're going to see the evidence. They keep talking about
19 the same subject, in the same tone of voice, without any worry
20 that a complete stranger to that conversation is right there,
21 literally on top of them.

22 And you know, ladies and gentlemen, none of this was
23 accidental. Mr. Daleiden and Ms. Merritt will both tell you
24 that they were keenly aware of the recording laws in California
25 and elsewhere. And they knew that the law allows for the

OPENING STATEMENT / MIHET

1 recording of conversations in public places where there's a
2 reasonable expectations that the conversations could be
3 overheard by others who are not participating in those
4 conversations. And they'll tell you that they went out of
5 their way to ensure that they were only recording those kind of
6 conversations in California, in public places, where bystanders
7 could overhear what they were saying.

8 They don't even tell you that they had invitations to
9 visit private facilities of Planned Parenthood in California,
10 where they would have expected to gather even more evidence of
11 wrongdoing for their undercover investigation. But they'll
12 tell you that they did not take advantage of those
13 opportunities. They did not accept those invitations in
14 California. Because they wanted to comply with the law.

15 Those other recordings that were talked about by
16 Ms. Trotter at Planned Parenthood facilities, those were in
17 Colorado and in Texas, where you're going to hear the law is
18 completely different. Where one party's consent is sufficient
19 for the recording of a conversation. But in California, they
20 only recorded conversations in public places where others were
21 nearby, and where others could overhear them.

22 And so ladies and gentlemen, every time you watch a video
23 and you see non-participants come within earshot of the
24 conversations -- and you'll see this a lot -- I would ask you
25 to ask yourselves whether it's reasonable to think that those

OPENING STATEMENT / MIHET

1 strangers could overhear those conversations.

2 And I also ask you to remember that the presence of those
3 bystanders is not accidental.

4 Now, ladies and gentlemen, on the issue of so-called
5 damages (indicating quotation marks), you are going to hear
6 evidence -- well, Ms. Trotter made you a promise in her opening
7 statement. She said she's going to show you that Planned
8 Parenthood was shocked when these videos came out, and it was
9 that shock that supposedly led Planned Parenthood to incur all
10 these expenses.

11 Ladies and gentlemen, you're going to hear evidence from
12 Dr. Deborah Nucatola, a Planned Parenthood doctor, who was
13 featured in the very first video that was released. And she's
14 going to take the stand and tell you that her reaction when she
15 first saw the video of herself publicly released was actually
16 the exact opposite of shock. She will tell you that she didn't
17 see what the big deal was. She will tell you that she didn't
18 care if those videos were publicly released. And she will tell
19 you that she wasn't damaged by the videos. Those are going to
20 be her words. And you are going to hear that.

21 And so you will hear evidence that the so-called damages
22 that Planned Parenthood claims are actually nothing more than
23 damage-control expenses, by Planned Parenthood, to deal with
24 the public's reaction to the videos that were recorded by the
25 Center for Medical Progress. Videos that exposed the

PROCEEDINGS

1 wrongdoing.

2 So if Planned Parenthood wasn't damaged by Ms. Merritt,
3 the question that you may be asking yourself along this
4 six-week or so trial is: Why is she here (Indicating)? Why
5 are we here?

6 We are going to answer that question for you ladies and
7 gentlemen as we go along, and as the evidence come in. And the
8 answer that you will find is that Planned Parenthood still
9 wants that Lamborghini. In fact, the whole fleet of them. And
10 she wants you to make a 66-year-old grandmother (Indicating)
11 pay for them.

12 Ladies and gentlemen, when the evidence is closed in this
13 case, we will ask you to return that just verdict. And that
14 verdict will be one for the defendants, including for
15 Ms. Merritt, and one for zero damages to the plaintiffs.

16 We appreciate the opportunity that you are giving us to
17 present our case, we appreciate your open mind, and we
18 appreciate that you will give us a fair shake. Thank you.

19 **THE COURT:** All right.

20 Ladies and gentlemen, those were the opening statements.
21 When we return from the recess we are going to take, at 11:15,
22 we will start with the evidence.

23 So, we will be in recess between now and then.

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

TOSH - DIRECT / BOMSE

1 A. Good morning.

2 Q. Just to start off making things clear, I introduced you to
3 the jury as "Dr. Tosh." You are not medical director -- you
4 are not a medical doctor, are you?

5 A. That's correct.

6 Q. Okay. But do you have a Ph.D.?

7 A. Yes.

8 Q. Because this is a case involving a lot of medical doctors,
9 I'm going to refer to you as "Ms. Tosh," just so we don't get
10 confusion. Is that okay with you?

11 A. Yes.

12 Q. Thank you. All right.

13 So, Ms. Tosh, where are you employed?

14 A. I'm president and chief executive officer of Planned
15 Parenthood California Central Coast.

16 Q. Okay. And how long have you had that position?

17 A. Almost five years.

18 Q. And can you tell the jury a little bit about your
19 educational background?

20 A. Yes. I have a bachelor's degree in political science from
21 the University of Florida. I have a master's degree in
22 political science with a focus on public policy analysis from
23 the University of Central Florida. And I have a Ph.D. in
24 public affairs with a focus on governance and policy research
25 from the University of Central Florida.

TOSH - DIRECT / BOMSE

1 Q. Thank you. Did you have to do a dissertation thesis to
2 get your Ph.D.?

3 A. I did.

4 Q. And what was the topic of your Ph.D. thesis?

5 A. It was on the impact of state reproductive health policies
6 on teen birth outcomes.

7 Q. And did that focus on the state of Florida?

8 A. It was all 50 states.

9 Q. And were there findings that you reached in your studies?

10 A. There were, yeah. The finding -- the main findings were
11 that states that have restrictive policies that make it harder
12 for minors to access reproductive healthcare services have
13 higher rates of teen births. And that those impacts are seen
14 primarily among minors of color.

15 Q. Thank you. And during the time you were getting your
16 master's degree and your studies, were you also working?

17 A. I was.

18 Q. Okay. And would you tell me and the jury about where you
19 started working?

20 A. Yeah. So I was working as a social worker for an
21 organization called Kids Hope United.

22 Q. Let me stop you there.

23 A. Yes.

24 Q. So what is Kids Hope United?

25 A. Kids Hope United is a nonprofit organization that is

TOSH - DIRECT / BOMSE

1 contracted by the State of Florida to oversee dependency court
2 cases and provide services to families. And so, and so what
3 that really means is cases for minors who have been abused or
4 neglected. And have been removed from the custody of their
5 parents.

6 **Q.** Thank you. And what -- were you a caseworker?

7 **A.** Yes.

8 **Q.** And what ages were the children that were dependents?

9 **A.** Babies through 17 years old.

10 **Q.** And what did your work involve?

11 **A.** Yeah. So the work involved attending to the wellbeing of
12 the children. So things like conducting home visits, making
13 sure that children had access to medical care, therapy, and --
14 and that someone was attending to the needs of the children
15 through the court case that was pending with their parents.

16 And so most commonly the goal in those cases was to
17 reunify the parents and the children. And so there were
18 supervised visits and things like that. But sometimes that was
19 not possible. And so that also involved, you know, considering
20 foster placement, adoption, things like that.

21 **Q.** Okay. And so why -- as a general matter, with respect to
22 the children that you supervised, what were the reasons that
23 they had been separated from their parents?

24 **A.** Anything from neglect, medical neglect, malnutrition,
25 through really egregious forms of child abuse, sexual abuse,

TOSH - DIRECT / BOMSE

1 et cetera.

2 **Q.** Thank you. And at a certain point, did you take a
3 different job? What was your next job?

4 **A.** I did, yes. So my next role was at Planned Parenthood of
5 Greater Orlando, which is in Florida. I was the director of
6 education.

7 **Q.** And when did you start that job?

8 **A.** I was -- that was 2006.

9 **Q.** Okay. And what was your role and responsibilities as the
10 director of education and advocacy for Planned Parenthood of
11 Greater Orlando?

12 **A.** Uh-huh. So much of the work that we did was with the
13 public schools, Orange County Public Schools, Orange County,
14 Florida. We had a partnership with the public school system to
15 provide sex education in the classroom.

16 **Q.** Great. And was there -- so this was a contract that the
17 Planned Parenthood of Greater Orlando had with whom?

18 **A.** With Orange County Public Schools. And it was a
19 partnership that was funded by the Centers for Disease Control
20 and Prevention.

21 **Q.** And was there a particular focus to the education that
22 Planned Parenthood of Greater Orlando was providing to those
23 students?

24 **A.** Yes. The focus was primarily around HIV prevention. And
25 that was in response to the high rates of HIV in that

TOSH - DIRECT / BOMSE

1 community.

2 **Q.** Okay. So did Orlando have a significant -- significantly
3 higher rates of HIV than other cities in the country?

4 **A.** Yes. Florida has one of the highest rates of HIV in the
5 country. And Orange County, Florida, has the third highest
6 rate of HIV in Florida.

7 **MS. BOMSE:** Okay.

8 **MS. DHILLON:** Your Honor, I want to object on
9 relevance here.

10 **THE COURT:** Okay, I'm hoping that we are getting to
11 the end of the background.

12 **MS. BOMSE:** We are.

13 **THE COURT:** And moving on.

14 **MS. BOMSE:** Yes, thank you.

15 **THE COURT:** Thank you.

16 **BY MS. BOMSE**

17 **Q.** And what did you do next after your work as the director
18 of education?

19 **A.** Well, I took a little bit of time away from work to pursue
20 my Ph.D. And -- after I'd had a baby.

21 **Q.** So, so you have a child?

22 **A.** I have three children.

23 **Q.** Okay. What ages are your children?

24 **A.** My son [Name Redacted] is ten, and my twin girls are
25 turning four this month.

TOSH - DIRECT / BOMSE

1 Q. Thank you. And in addition to taking care of your son and
2 working on your Ph.D., were you doing any other work at that
3 time?

4 A. Yes. My husband had founded a startup software company,
5 and I was doing some work writing proposals. And at one point
6 we had been funded to do some work on a project called Small
7 Business Innovation Research Project, where I was writing a
8 program evaluation.

9 Q. And at a certain point did you take a different job, not
10 with your husband's startup company?

11 A. Yes. I became the CEO of Planned Parenthood of Greater
12 Orlando in 2012.

13 Q. So that was the same organization that you were working
14 with as the director of education?

15 A. That's correct.

16 Q. And how old were you when you were appointed the CEO of
17 Planned Parenthood of Greater Orlando?

18 A. I was 28.

19 Q. So, thanks. I want to have us take a step back, and have
20 you, as the CEO of -- formerly of the Orlando affiliate and now
21 of Central Coast, explain to the jury, if you would, what a
22 Planned Parenthood affiliate is.

23 A. Yeah. So Planned Parenthood affiliates operate in all 50
24 states. We are nonprofit healthcare providers. And every
25 Planned Parenthood affiliate serves a specific geography. And

TOSH - DIRECT / BOMSE

1 so the responsibility of every independent local affiliate is
2 to attend to the needs of the communities in that geography.

3 **Q.** And you used the phrase in there that they are nonprofits.
4 Can you explain what means?

5 **A.** Yes. A nonprofit organization under IRS Code 501(c)(3) is
6 tax-exempt. Can accept tax -- tax-exempt donations. They have
7 a volunteer board of directors.

8 And, and really, I think what is the defining feature
9 about a nonprofit is that all of the resources of the
10 organization are dedicated to a charitable mission. And so any
11 -- sorry.

12 **Q.** Let me stop you there. Thank you.

13 So if there are, at the end of the year, after all of your
14 expenses, additional revenues received or other monies, what
15 happens to those monies?

16 **A.** Right. So those funds are redirected to more mission.

17 **Q.** Okay. And by "mission," what do you mean?

18 **A.** Well, for Planned Parenthood, our mission is to provide
19 healthcare, education, and advocacy.

20 **Q.** Okay. And you mentioned a board. Are board members
21 compensated for their service?

22 **A.** No. All board members of nonprofit organizations and all
23 board members of Planned Parenthood are volunteers.

24 **Q.** And what is the role of the board? What role do they play
25 in a nonprofit like yours?

TOSH - DIRECT / BOMSE

1 **A.** Yeah. So the board really exists to represent the
2 community. And to make sure that the organization is using its
3 resources in accordance with its mission, that there's --
4 there's a fiduciary responsibility, which means just financial
5 oversight. Things like ensuring there's an annual audit; that
6 the organization abides by the high standards of transparency
7 for nonprofit organizations. And at a big-picture level,
8 ensures that the organization is appropriately serving the
9 community and meeting the needs of the community that's served.

10 **Q.** Thank you. Now, the jury's already heard this morning the
11 mention of the Planned Parenthood Federation of America. And
12 would you explain for us the relationship between PPFA, the
13 national organization, and the local affiliates.

14 **A.** Yes. So "PPFA" is the acronym that's commonly ascribed to
15 the national office. And so the national office does things
16 like has a national media presence, has communications
17 guidance. Does marketing, manages social media, things like
18 that. Also has a healthcare division that directly provides
19 support to affiliates in healthcare work.

20 And one of the most important aspects of the national
21 office is oversight and accountability for the affiliates.
22 They are our accrediting entity.

23 **Q.** And you used another word that we need to explain. What
24 is -- what does that mean that they are your accrediting
25 entity?

TOSH - DIRECT / BOMSE

1 **A.** What it means is that every several years, really, three
2 to four years, a group of surveyors come into the affiliates
3 and conduct a comprehensive review of all of the services,
4 policies, procedures, at every affiliate. And really, the goal
5 of that is to ensure that all Planned Parenthood affiliates
6 abide by the high standards set by the national organization.

7 **Q.** Thank you. And does PPFA also hold conferences?

8 **A.** Yes.

9 **Q.** And do you, on occasion, attend those conferences?

10 **A.** I do.

11 **Q.** Okay. So I know that you -- you've had experience at two
12 different affiliates?

13 **A.** Yes.

14 **Q.** In your experience -- well, you mentioned that, that they
15 reflect the local community. In your experience, do they have
16 different characteristics, the various affiliates?

17 **A.** Yes. Yes. Every affiliate looks a little bit different.

18 **Q.** So with respect to Orlando, where you began, can you tell
19 us a little bit about the Orlando affiliate?

20 **A.** Yeah. So the Orlando affiliate was a small affiliate,
21 just had two health centers. Was founded in 1994, so at the
22 time I was there, it was less than 20 years old.

23 And Orlando, Florida, is a very young community. When I
24 was there, the median age was only 31. It was really a
25 function of college students and lots of young families who

TOSH - DIRECT / BOMSE

1 live in the area. Also a very diverse community, racially and
2 ethnically.

3 And, another feature of Orange County/Orlando is it's a
4 medically under-served community, which just really means that
5 very few people, relative to the overall population, have
6 access to health insurance. There are few providers that
7 really attend to the needs of the uninsured. So the health
8 needs are quite great.

9 **Q.** Thank you, Ms. Tosh. Would you like some water?

10 **A.** Sure. I would not say no to water. Thank you.

11 (Off-the-Record discussion)

12 **BY MS. BOMSE**

13 **Q.** I know because of your CEO position, you are often doing
14 public speaking. And so I know you are used to speaking and
15 giving a lot of information at once. But I'm going to ask you
16 to let me ask you some questions so the jury can have enough
17 time to absorb it all, since it's all new to most of us.

18 **A.** Okay.

19 **Q.** Okay. So you mentioned that in Orlando, at your affiliate
20 in Orlando -- or the population there was significantly a
21 population of uninsured? Did I get that correct?

22 **A.** That's correct.

23 **Q.** Okay. And does -- do Planned Parenthood affiliates
24 provide care to the uninsured?

25 **A.** Yes.

TOSH - DIRECT / BOMSE

1 Q. So if you go to Planned Parenthood and you don't have
2 insurance, you won't be turned away?

3 A. That's correct. We are there for everyone.

4 Q. And you mentioned that that was a particularly diverse
5 community that you were serving. Can you describe that in a
6 little more detail?

7 A. Yeah. There were hundreds of languages spoken in the
8 public schools. Folks from all over the world live in Orlando.

9 Q. And did that have some kind of impact on how you provided
10 service?

11 A. Yeah. At Planned Parenthood we are very attending --
12 attendant to the needs of different cultural communities. We
13 do a lot of cultural competency training. We work with many
14 interpreters to make sure that regardless of the language a
15 patient speaks, that the care that they receive is accessible.

16 Q. And so, so we referenced the fact that you started before
17 you reached 30, as a CEO. Can you describe generally what your
18 experience was like as the CEO of Planned Parenthood of Greater
19 Orlando?

20 A. Yes. I would say it was an incredibly rewarding job. We
21 had a lot of really important work that we were doing in a
22 community that really needed the services.

23 I would also acknowledge, it was a hard -- it was a very
24 hard job, in a community that -- you know, there's not state
25 support, certainly in Florida. There's, you know, hostile

TOSH - DIRECT / BOMSE

1 policies that are introduced every year. And there was a very
2 organized and challenging opposition presence.

3 Q. Okay. Did you have protests at your centers?

4 A. We did, yes.

5 Q. And I want to shift now out west to where we are. And at
6 what point did you move from Florida to California?

7 A. It was February of 2015.

8 Q. And PCCCC, did that entity used to have a different name?

9 A. It did.

10 Q. And what was that name?

11 A. It was Planned Parenthood of Santa Barbara, Ventura and
12 San Luis Obispo Counties.

13 Q. And at some point you changed the name?

14 A. We did.

15 Q. Because it didn't just roll off the tongue?

16 A. That's correct.

17 Q. And I mean, the old name had the virtue of identifying
18 where you were, but where is PCCCC? What area do you cover?

19 A. Right. Well, as the old name references, we serve Santa
20 Barbara, Ventura and San Luis Obispo Counties, which is most of
21 the Central Coast of California. Much of the Central Coast of
22 California.

23 Q. And next to you, you see you have a little binder there?

24 A. Yes.

25 Q. And if you could open that. And it's tabbed with the

TOSH - DIRECT / BOMSE

1 numbers of certain documents that which have marked as
2 exhibits, with exhibit numbers. And if you could look at
3 what's Exhibit 870.

4 **A.** Okay.

5 **Q.** Do you have that in front of you?

6 **A.** I do.

7 **Q.** And do you -- is that a document that you have seen
8 before?

9 **A.** It is.

10 **Q.** And what is that document?

11 **A.** So this is a map of the state of California. And it shows
12 where all of the health centers in California -- Planned
13 Parenthood health centers -- are located. And it also shows
14 the Planned Parenthood affiliates that operate those health
15 centers.

16 **Q.** And do you, in your position of CEO at PPCCC, do you work
17 with the other affiliates in the State of California?

18 **A.** Yes.

19 **Q.** You do.

20 **A.** Yes.

21 **Q.** Can you tell me a little bit about that?

22 **A.** Yes. We work very closely, as a state. There's a state
23 office that convenes meetings for staff. The state office, the
24 board of directors for the state office is comprised of the
25 CEOs from the seven affiliates in the state. I was most

TOSH - DIRECT / BOMSE

1 recently the chair of that organization, until June.

2 And, many other staff members in California -- patient
3 services folks, medical directors, education directors -- get
4 together on a regular basis to talk about issues of statewide
5 importance.

6 **Q.** Okay. And looking at that Exhibit 870, is it an accurate
7 representation of the locations of the different California
8 affiliates, and where their health centers are?

9 **A.** It is.

10 **MS. BOMSE:** Plaintiffs offer Exhibit 870.

11 **THE COURT:** Any objection?

12 **MS. DHILLON:** No, Your Honor.

13 **THE COURT:** All right, it's admitted.

14 (Trial Exhibit 870 received in evidence)

15 **THE COURT:** You may publish.

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

17 (Document displayed)

18 **BY MS. BOMSE**

19 **Q.** So, now, with the -- with some visual aid, can you
20 describe for the jury the area that your organization serves?

21 **A.** Sure. We are that little purple sliver on the left.

22 **Q.** And what is the geography like where you are?

23 **A.** Yeah, it's -- it's interesting, because of the mountains,
24 right, so Santa Barbara in particular is really sort of right
25 between the mountains and the Pacific Ocean.

TOSH - DIRECT / BOMSE

1 And then as you go further north in our service area it
2 gets quite rural in north Santa Barbara County. All the way up
3 through San Luis Obispo County. It's -- it's what I would
4 consider a pretty rural, or suburban area, in some places.

5 **Q.** Can I --

6 **A.** Yeah, uh-huh.

7 **Q.** Thanks. So how many health centers comprise PPCCC?

8 **A.** We operate five health centers.

9 **Q.** Okay. And are they -- you mentioned that the geography,
10 some of it's quite rural, and some of it's more urban.

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

12 **Q.** And do you have health centers in the urban areas?

13 **A.** We do. So Ventura County is closer to Los Angeles. And
14 so it tends -- you know, there's a larger population. And then
15 our Thousand Oaks Health Center is really sort of serving more
16 of what I would consider a suburb of Los Angeles.

17 **Q.** And do you also have health centers located in rural
18 areas?

19 **A.** We do. We do. We operate a health center in Santa Maria.
20 That's really our most rural community that's served. And it's
21 largely an agricultural community. And so many, if not most,
22 of our patients are farm workers in Santa Maria.

23 **Q.** The Santa Maria center, does that -- are there particular
24 unique characteristics or challenges that -- as a result of it
25 being in that community?

TOSH - DIRECT / BOMSE

1 **A.** Well, one of the sort of unique aspects of the Santa Maria
2 Health Center is that we serve a large Mixteco community, and
3 that's an indigenous Mexican community. Mixteco is not a
4 written language, and so -- and it's challenging to find
5 interpretation.

6 So that's one of the largest challenges, really, that we
7 focus on, to ensure that services are accessible to those who
8 need them, and that we're culturally competent.

9 **Q.** And how many employees overall does PCCC employee?

10 **A.** We employ about 150 people.

11 **Q.** And that's across your five centers?

12 **A.** That's correct.

13 **Q.** Okay. And is there a medical director for PCCC?

14 **A.** Yes.

15 **Q.** Does every Planned Parenthood affiliate have a medical
16 director?

17 **A.** Yes.

18 **Q.** And can you explain to the jury what a medical director
19 is, and their function?

20 **A.** Yes. A medical director is a physician, a licensed
21 physician. In Planned Parenthood, more commonly than not,
22 they're OB/GYNs. Some of them are primary care, family
23 practice physicians. And their responsibility is to provide
24 medical leadership at the affiliate, which means implementing
25 protocols -- medical protocols, overseeing the care,

TOSH - DIRECT / BOMSE

1 supervising the team of licensed staff. And so that means, you
2 know, things like performance reviews, chart reviews, being
3 accessible. Serving as the medical license -- medical doctor
4 on all licenses, and things like that. And also caring for
5 patients. Sorry.

6 **Q.** Thank you. I'm sorry to interrupt you.

7 And so you mentioned licensing. Are there particular
8 licenses that an affiliate needs to have?

9 **A.** Yes, yes. Well, it depends in -- in on the state that
10 they're operating.

11 **Q.** Yes. So I'll ask you about PPCCC.

12 **A.** Sure, yeah.

13 **Q.** What are they?

14 **A.** Right. So we have a clinic license from the State of
15 California. There's also a pharmacy license. And then we also
16 are accredited through Planned Parenthood Federation of
17 America.

18 **Q.** And in your position as CEO, do you have responsibility
19 for setting salaries for your employees?

20 **A.** Yes.

21 **Q.** Okay. And in the course of doing that, with respect to
22 medical directors, do you gather any information about
23 comparative compensation in the area?

24 **A.** Yes.

25 **Q.** And how does the salary that PPCCC can offer a medical

TOSH - DIRECT / BOMSE

1 director compare to what that medical director might be able to
2 make working in some other environment?

3 **A.** Yeah. So, as a nonprofit organization, I would say that
4 our salaries are a bit lower than you would find in private
5 practice. And so, you know, what we find is just that the
6 medical directors who come to work for Planned Parenthood are
7 incredibly mission-driven.

8 **Q.** I would like to have you turn to Exhibit 871 in that same
9 binder. And, if you can tell me whether that's a document that
10 you have seen before.

11 (Witness examines document)

12 **A.** Yes.

13 **Q.** It's three pages, so you can flip through it. And what is
14 it?

15 **A.** This is the annual report for my affiliate for the fiscal
16 year that spanned 2017 and 2018.

17 **Q.** Okay. And what is an annual report?

18 **A.** So an annual report is mostly a report to donors that is
19 intended to show sources of funds that came into a nonprofit
20 organization, and how the funds were spent. As well as the
21 impact of the organization.

22 **THE COURT:** Excuse me just a second.

23 So for the trial, if you have communications that you need
24 to make while people are testifying, pass notes, please.

25 Thank you.

TOSH - DIRECT / BOMSE

1 **MS. BOMSE:** Thank Your Honor.

2 **BY MS. BOMSE**

3 **Q.** Okay. I'm sorry. I lost you there.

4 I think you said that the function was -- the last thing
5 you said was it was -- was to show how the funds are used, and
6 who they serve? Is that right?

7 **A.** Right. So it's -- it's mostly sources of funds, use of
8 funds, how they were spent. And then, the impact of the
9 organization.

10 **Q.** Okay. And do you have a role in creating an annual report
11 like this?

12 **A.** Yes.

13 **Q.** And more specifically, did you have a role in creating
14 this annual report?

15 **A.** I did, yes.

16 **Q.** Okay.

17 **THE WITNESS:** Could I have a napkin? I think this
18 cup is punctured.

19 **MS. BOMSE:** That's a trick we play on all first
20 witnesses.

21 **THE WITNESS:** Yeah.

22 (A pause in the proceedings)

23 **THE COURT:** We're a full-service court.

24 **THE WITNESS:** I appreciate it.

25 **THE COURT:** Provide water that spills, and -- so

TOSH - DIRECT / BOMSE

1 please go ahead.

2 **MS. BOMSE:** Yes. Thank you.

3 Plaintiffs offer 871.

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

5 **MR. MILLEN:** Objection, relevance.

6 **MS. SHORT:** And -- I'm sorry -- possibly violation of
7 the stipulation.

8 **THE COURT:** Okay. As I indicated before, I'll -- I'm
9 going to allow this as background information. It's admitted.

10 (Trial Exhibit 871 received in evidence)

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

12 (Document displayed)

13 **BY MS. BOMSE**

14 **Q.** So the front page, what's that?

15 **A.** The cover.

16 **Q.** Okay. All right. So maybe let's skip to the second page
17 so we can get to some substance.

18 (Document displayed)

19 **Q.** All right. Ms. Tosh, can you describe generally what
20 we're looking at here?

21 What is the information?

22 **A.** Yeah. So this is really just about who we serve at
23 Planned Parenthood California Central Coast. And with what
24 health services.

25 **Q.** Okay. So in the far left corner I see a graphic with some

TOSH - DIRECT / BOMSE

1 people. And what is -- what is that graphic? What are we --
2 what is the information there?

3 **A.** Yes. So the total number of patients that were served in
4 this year, the '17-'18 fiscal year, was 31,579. And 86 percent
5 of them were female; 14 percent were male.

6 **Q.** Okay. Is that a typical ratio, gender-wise, for PPCCC?

7 **A.** It is. And male patients continue to grow as a percentage
8 of patients served. But mostly, we serve women.

9 **Q.** And what's the reason you serve mainly women?

10 **A.** Well, for a lot of our patients, Planned Parenthood is
11 their primary source of healthcare in their early years,
12 twenties, thirties. We operate much like a gynecologist's
13 office. So, you know, routine well-woman exams, birth control,
14 sexually-transmitted-infection testing and treatment. Those
15 are the services that are most commonly needed by the patients
16 of the age that we serve.

17 **Q.** Okay. And if we could shift a little over, I see
18 there's -- the patients by age is the next graphic that you've
19 got there.

20 **A.** Yeah.

21 **Q.** And what's that graphic reflecting?

22 **A.** Yeah. So what that shows is that the vast majority of
23 Planned Parenthood Central Coast patients are in their
24 twenties. And that's pretty typical for Planned Parenthood.
25 And what that includes is a lot of young women, women raising

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1 young families, as well as college students. Younger women.

2 Uh-huh.

3 **Q.** And below that, there's another graphic that shows cancer
4 prevention and detection. Are those services that you provide
5 at PCCCC?

6 **A.** Yes.

7 **Q.** And, and are those important services for your patients?

8 **A.** Yes. Very. Because so many of our patients don't see
9 another doctor during the years that they are coming to Planned
10 Parenthood, these are critical primary preventive care
11 services.

12 **Q.** Okay. And do you -- does PCCCC offer mammograms?

13 **A.** We don't.

14 **Q.** Why is that?

15 **A.** The reason is that mammography is not clinically indicated
16 for women under the age of 40. And as you can see, the vast
17 majority of our patients are under the age of 40.

18 But what we do see under breast cancer screenings is that
19 we provide thousands of breast exams. Those are clinical or
20 manual breast exams, the purpose of which is to identify any
21 irregularities that need followup.

22 It's very rare for younger women to have breast cancer.
23 But when they do, it's often the most aggressive forms of
24 cancer. So it's very important that young women undergo these
25 screenings.

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1 And then right next to it, the "566" are referrals for
2 mammography, breast ultrasound. Sometimes that leads to
3 biopsy. The goal is really for a young woman to have followup
4 care and diagnosis as quickly as possible.

5 **Q.** And then on the right-hand side, there's another graphic
6 that lists "by the numbers." Can you describe to the jury what
7 that's showing?

8 **A.** Yeah. So, so what that shows is the total number of
9 health center visits, which was 58,544 in this year.

10 **Q.** So that's different from the total number of patients
11 served. Is that because some patients are coming back more
12 than once?

13 **A.** Exactly.

14 **Q.** Okay.

15 **A.** Yeah.

16 **Q.** Okay.

17 **A.** And then when you go down, you can just sort of see some
18 of what happens during those visits. So at 25,739 of those
19 visits, the patient received a test for a sexually-transmitted
20 infection, or an STD, which is what a lot of folks call it. At
21 19,060 of those visits, the patient left with birth control,
22 et cetera.

23 And you can kind of go down and find out what happened at
24 those visits.

25 **Q.** If you would turn to the second actual page of the annual

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1 report.

2 (Request complied with by the Witness)

3 (Document displayed)

4 **Q.** What is this page showing, at a high level?

5 **A.** Right. So all the way on the left, that's where you will
6 see the source-of-funds and the use-of-funds slide. And then
7 in the middle, you can get some more information about the
8 types of birth control provided by Planned Parenthood. And
9 then all the way on the right, the total units dispensed and
10 the numbers of condoms provided.

11 **Q.** Okay. And on the -- if we could focus you, if I could
12 focus your attention on the source of funds.

13 **A.** Yes.

14 **Q.** What are the source of funds for PCCCC?

15 **A.** Right. So Planned Parenthood is primarily a healthcare
16 provider. And so like any healthcare provider, the vast
17 majority of the funds are from patient services.

18 And so, you know, what that means is that patients come to
19 us with different payors. Insurance, Medicaid. We provide a
20 service, and then we bill for those services. So that's the
21 vast majority of the revenue at Planned Parenthood.

22 **Q.** Okay. And what portion of your patients are coming in
23 with Medicaid as their provider, or as their insurer?

24 **A.** Right. So if you look at where it says "Patient
25 services," so total for the organization, 75 percent of that

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1 pie chart is revenue from patient services.

2 The two top payors underneath that, Family Pact and
3 Medi-Cal, those are government insurance programs. And what
4 that means is that they provide care to patients who qualify
5 for government insurance, which is a function of their income
6 relative to the federal poverty level.

7 **Q.** So does that mean that people who qualify for either of
8 those, the Family Pact or Medi-Cal, they have a low income
9 level?

10 **A.** Right. So to qualify for Family Pact, you have to be at
11 200 percent of the federal poverty level. To qualify for
12 Medi-Cal, you have to be at 138 percent of the federal poverty
13 level.

14 And what that means, just to give you an example, is for a
15 family of four, to be at 100 percent of the federal poverty
16 level, you would have to have an income, total household income
17 of \$25,000 or less. So 138 percent of that would be, you know,
18 roughly \$32,000. 200 percent of that would be \$50,000. So
19 really, both of those programs are a function of need for --
20 for your family.

21 **Q.** And so when the insurer is some form of government, you're
22 receiving funds from either the state or the federal
23 government? Is that right?

24 **A.** Right. So, so it comes through the state. But there is
25 some federal reimbursement as part of that Medi-Cal or Family

TOSH - DIRECT / BOMSE

1 Pact program.

2 **Q.** Okay. Does PPCCC receive any government funding other
3 than reimbursement for medical services?

4 **A.** Yes. From time to time, yes. We receive grants from
5 state and local government, and the federal government.

6 **Q.** All right. Thank you, Ms. Tosh. I want to move now, I
7 want to shift topics a little bit.

8 (Document taken off display)

9 **Q.** And I want to ask you something about the events in this
10 case.

11 So you came -- you testified you -- you started at PPCCC
12 in 2015. Correct?

13 **A.** Correct.

14 **Q.** And do you recall learning at some point that there had
15 been a secret recording of a Planned Parenthood doctor?

16 **A.** Yes.

17 **Q.** And was that reasonably early in your tenure at the new
18 organization?

19 **A.** Yes.

20 **Q.** Okay. How did you learn about that?

21 **A.** I learned about it because I got an email from a
22 colleague, just sort of without context, that included, if I
23 recall, a link to an article that was describing a video.

24 **Q.** Okay. Did you -- what did you do next?

25 **A.** Well, I tried to find more information.

TOSH - DIRECT / BOMSE

1 Q. Did you look at the video?

2 A. Um, I did. Yes, I did look at the video. Yeah.

3 Q. Okay. Do you remember any reaction that you had to that
4 video?

5 A. Yeah. I was confused. Shocked. I didn't understand -- I
6 didn't understand really the content of it. And I was -- was
7 pretty frightened, actually, that the video had been made and
8 was being distributed.

9 Q. Did it -- and that video, do you recall who was -- who the
10 doctor was in that video?

11 A. Yeah.

12 Q. And who was that?

13 A. It was Dr. Nucatola.

14 Q. Can you recall what it was like at your affiliate in the
15 days after that first video came out?

16 MR. MILLEN: Objection, Your Honor. 403, prejudicial
17 and relevancy.

18 THE COURT: And what is the relevance, Ms. Bomse?

19 MS. BOMSE: The relevance is the impact on Planned
20 Parenthood staff of learning that there was an undercover
21 video.

22 THE COURT: All right. I'll overrule the objection.
23 You can proceed.

24 MS. BOMSE: Thank you.

25

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1 **BY MS. BOMSE**

2 **Q.** Let me ask you the question again. There was one, one
3 video at that the point, right?

4 **A.** Right.

5 **Q.** And it was of a Dr. Deborah Nucatola?

6 **A.** Correct.

7 **Q.** Is she someone that is generally known to people in the
8 organization?

9 **A.** Yes.

10 **Q.** Why is that?

11 **A.** She held a leadership position in Planned Parenthood
12 Federation of America for a long time. So a lot of people knew
13 her from conferences. She did a lot of visits to health
14 centers. So, yeah, she was well-known.

15 **Q.** And is Dr. Nucatola, herself, an abortion provider?

16 **A.** Yes.

17 **Q.** And so I was asking you whether there was internally at
18 your organization, or within the Federation, in the first few
19 days -- what was the reaction to that video coming out?

20 **A.** A lot of concern, a lot of fear. Concern about
21 Dr. Nucatola. Concern about the types of, you know,
22 anti-abortion violence and activity that could face our
23 organizations. Concern for the, you know, safety and
24 well-being of our staff and our patients.

25 **Q.** Okay. And did you -- as a leader of PPCCC, did you feel

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1 that you had any particular responsibilities to take any kind
2 of actions?

3 **A.** Yes.

4 **Q.** And can you tell me what you felt you needed to do?

5 **A.** Yeah. I think mostly in the early days I felt like I
6 needed to really reassure staff, to share information with our
7 Board of Directors, and to attend to any security needs of our
8 organization, as well as just find out more information about
9 what had happened.

10 **Q.** Right. You said you needed to provide information to your
11 Board, but initially when you got that email and watched that
12 video, did you have any information?

13 **A.** No.

14 **Q.** Okay. Did you know who -- who made this video?

15 **A.** No.

16 **Q.** Okay. Did you take part in doing research to find out who
17 had made the video?

18 **A.** Yes.

19 **Q.** Okay. And do you recall what you learned?

20 **A.** Well, very early on, I want to say the next day or pretty
21 soon after that, we learned that Board members for the Center
22 for Medical Progress included very well known anti-abortion
23 activists. And so it was -- it was evident immediately that
24 this was part of an anti-Planned Parenthood campaign.

25 **Q.** Okay. Who were -- who did you find out was involved with

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1 the organization that made the video?

2 **A.** Troy Newman.

3 **MR. KOZINA:** Objection. Hearsay, Your Honor. It
4 will obviously speak for itself.

5 **THE COURT:** This goes to state of mind.

6 So, ladies and gentlemen, this is admitted not for the
7 truth, but for the information that Ms. Tosh believed that she
8 had uncovered.

9 **MS. BOMSE:** Thank you.

10 **BY MR. BOMSE**

11 **Q.** So, I'm sorry. Who were the individuals that you learned
12 in those first few days were involved with the creation of the
13 video?

14 **A.** So if I recall, it was Albin Rhomberg, I believe Cate
15 Short and Troy Newman.

16 **Q.** And Troy Newman, was that someone you knew, you had heard
17 of?

18 **A.** Yes.

19 **Q.** And how is that?

20 **A.** Troy Newman was the head of Operation Rescue, maybe still
21 is, a very well known anti-abortion activist who spent many
22 years targeting Dr. George Tiller.

23 **MR. KOZINA:** Objection, Your Honor, (inaudible).

24 (Court reporter clarification.)

25 **THE COURT:** Mr. Kozina said: Objection because of

TOSH - DIRECT / BOMSE

1 the Court's prior ruling.

2 At this point no line has been crossed, so overruled.

3 **MS. BOMSE:** Thank you.

4 **BY MR. BOMSE**

5 **Q.** I'm sorry. Did you say that Mr. Newman and his
6 organization Operation Rescue were involved in protests where?

7 **A.** Well, if I recall, Operation Rescue moved from California
8 to Wichita, Kansas, with the goal of targeting George Tiller.

9 **MR. KOZINA:** Objection. Lack of personal knowledge.

10 **THE COURT:** Sustained.

11 **MS. BOMSE:** Okay. That's fine.

12 **BY MR. BOMSE**

13 **Q.** You were aware of --

14 **A.** Mr. Newman.

15 **Q.** Thank you.

16 Okay. And did you also have any familiarity or knowledge
17 about Mr. Rhomberg?

18 **A.** Yeah, some. I --

19 **MS. SHORT:** Objection. Hearsay, Your Honor.

20 **THE COURT:** Overruled for the same reason.

21 **BY MS. BOMSE**

22 **Q.** I'm sorry. Had you also heard anything? Did you know
23 anything about a gentleman named Albin Rhomberg who was

24 identified as being connected to the organization that made the
25 video?

TOSH - DIRECT / BOMSE

1 **A.** I learned at the time that he was very well known in
2 anti-abortion policy work in California. That was new to me.

3 **THE COURT:** I'm sorry. Ms. Short.

4 **MS. SHORT:** Objection. This is clearly hearsay, Your
5 Honor. "I learned." "I heard."

6 **THE COURT:** This is going to her state of mind.

7 And, again, this is not offered for the truth of the
8 matter, but it is offered for -- for what she understood at the
9 time.

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

11 **BY MS. BOMSE**

12 **Q.** So what was -- what was -- learning that information about
13 who was involved in creating the videos, did that -- what did
14 that cause -- what did that cause you to think and do vis-a-vis
15 your staff?

16 **A.** Well, you know, this country has a long history of
17 anti-abortion opposition and violence.

18 **MS. SHORT:** Objection, Your Honor. Lacks foundation.

19 **THE COURT:** Again, this -- this information goes to
20 the state of mind and it's not offered for the truth.

21 You may proceed. Overruled.

22 **MS. BOMSE:** Thank you.

23 **A.** And so staff who work for Planned Parenthood are very
24 highly trained, deal with opposition activity on a daily basis
25 sometimes, and are very mission driven and, also, quite aware

TOSH - DIRECT / BOMSE

1 of the risks of working at a Planned Parenthood organization
2 where there is that type of opposition.

3 And so as a leader of a Planned Parenthood organization
4 during a time like this, my first priority and concern was to
5 ensure that the needs of my staff and my patients were met.
6 And so at that time, you know, what that really meant was --
7 was talking to staff, reassuring staff, ensuring that if there
8 were any vulnerabilities or perceived vulnerabilities in our
9 security, that they were attended to because the staff was
10 fearful.

11 **Q.** Okay. Now, if you could return to your binder and look,
12 there is another exhibit there I'd like you to have a look at,
13 which is Exhibit 1309.

14 **A.** Yes.

15 **Q.** All right. And is that -- what is 1309?

16 **A.** So this is an email thread between me and our medical
17 director, Dr. Virginia Siegfried.

18 **Q.** Okay. And this is an email that you sent to
19 Dr. Siegfried; is that right? Correct?

20 **A.** That's part of it.

21 **Q.** Part of it.

22 And before the email that you sent to Dr. Siegfried, what
23 -- what were you doing in sending the email to Dr. Siegfried?

24 **A.** What I was primarily doing was sharing photographs of
25 individuals who were operating as BioMax to see if she

TOSH - DIRECT / BOMSE

1 identified anyone or remembered having a conversation with any
2 of them at a meeting.

3 **Q.** Okay. So by this point had you learned that there had
4 been more than one -- than just the recording of Dr. Nucatola?

5 **A.** Yes.

6 **Q.** Okay. And if --

7 **MS. BOMSE:** Plaintiffs offer 1309.

8 **THE COURT:** Any objection?

9 **MR. LIMANDRI:** No objection.

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

11 **MS. BOMSE:** Thank you.

12 (Trial Exhibit 1309 received in evidence)

13 **BY MS. BOMSE**

14 **Q.** So let's go to the second page of that email.

15 (Document displayed)

16 **Q.** All right. And this email, what's the date when you
17 received this email?

18 **A.** Thursday, July 30th.

19 **Q.** Okay. So is that -- that was maybe a couple weeks after
20 the first video had come out?

21 **A.** Yes.

22 **Q.** Okay. And this video -- this email is sent to all chief
23 executive officers?

24 **A.** That's correct.

25 **Q.** And that's how you received it?

TOSH - DIRECT / BOMSE

1 A. Right.

2 Q. Okay. And what is the information that's being conveyed
3 to all the CEOs of Planned Parenthood in this email?

4 A. So what's being conveyed is that there were a number of
5 individuals who were using aliases and operating as an
6 organization that they were calling BioMax Procurement
7 Services.

8 Q. Okay. Let me just stop you there. So initially when the
9 first video of Dr. Nucatola that we've talked about came out,
10 you found out who was involved in the organization; correct?

11 A. Correct.

12 Q. And then was there further research done to learn how that
13 video was obtained?

14 A. Yes.

15 Q. Okay. And so is what's in this email a reflection of some
16 of the information that the organization gathered in the weeks
17 after the first video came out?

18 A. Yes, exactly.

19 Q. Okay. And actually if we could, instead of --

20 MR. BOMSE: Ken, if you could pull up the list of the
21 conferences?

22 (Document displayed)

23 BY MS. BOMSE

24 Q. Okay. And so, Ms. Tosh, what was your understanding of
25 what that list represented?

TOSH - DIRECT / BOMSE

1 **A.** My understanding was that these were the conferences that
2 that these individuals had attended and had likely been
3 recording Planned Parenthood individuals at.

4 **Q.** Okay. And what was your reaction to learning that there
5 were -- was an anti-abortion organization that had infiltrated
6 these conferences?

7 **A.** I felt sick. Really, just scared and violated.

8 **Q.** And then were there individuals that were identified as
9 having -- that the organization identified who had been at the
10 conferences?

11 **A.** Yes.

12 **Q.** Okay. Let's look at that.

13 (Document displayed)

14 **Q.** It looks like at this point the investigation is not
15 complete; right? At this point the organization doesn't know
16 everyone?

17 **A.** Right. Exactly.

18 **Q.** Right?

19 **A.** Right.

20 **Q.** And were you -- was the name David Daleiden familiar to
21 you at all?

22 **A.** No, but I was told that --

23 **Q.** I'm not -- we'll get to that with other people. Thanks.
24 We're going to stick to what you knew.

25 So you didn't know that name before seeing it there?

TOSH - DIRECT / BOMSE

1 **A.** I did not.

2 **Q.** Okay. And attached to this, to the email that you
3 received, you said that there was some -- some -- actually
4 some -- let's see what there was.

5 **A.** Yes.

6 (Document displayed)

7 **Q.** So what are we looking at here?

8 **A.** So that is a photograph of David Daleiden and a fake I.D.
9 used by David Daleiden.

10 **Q.** Okay. And just to be clear, what was your understanding
11 of the purpose of this email going out to all the CEOs of the
12 Planned Parenthood affiliates?

13 **A.** Right. So this email was sent out when PPFA was still
14 conducting research to get a sense of how widespread this
15 infiltration had been, how many people may have had
16 conversations; to identify those people proactively and work
17 with them, you know, in advance on, you know, attending to
18 their concerns, their security, et cetera.

19 So the purpose was share this with anyone in your
20 organization who thinks they may have been at one of these
21 conferences and spoken with one of these people. See if they
22 recognize anyone. Get more information.

23 **Q.** Okay. And what did you do when you received this email?

24 **A.** So I forwarded it to Dr. Siegfried.

25 **Q.** Let me stop you right there. Who is Dr. Siegfried?

TOSH - DIRECT / BOMSE

1 **A.** Dr. Siegfried is an OB/GYN. She was the medical director
2 at Planned Parenthood California Central Coast for over ten
3 years.

4 **Q.** Okay.

5 **MS. BOMSE:** Ken, if we could go to Ms. Tosh's email
6 there at the bottom? Okay.

7 (Document displayed)

8 **BY MS. BOMSE**

9 **Q.** So your email, as you said, is -- you referred to someone
10 name Ginny. Is that how Virginia is known to you?

11 **A.** That's correct.

12 **Q.** Okay. And what was -- and what was your purpose in
13 sending this email to Ginny?

14 **A.** The purpose was to see if she recalled having
15 conversations with any of these people.

16 **Q.** Okay. Had you had any conversations before this email
17 with Dr. Siegfried about whether or not she had been taped?

18 **A.** I had, yes.

19 **Q.** Okay. And what did she express to you?

20 **A.** She sort of vaguely remembered that she had a
21 conversation, yeah.

22 **Q.** Okay. And then did she respond to your email?

23 **A.** She did.

24 **Q.** What did she will she say?

25 **MR. MILLEN:** Objection. Hearsay.

TOSH - DIRECT / BOMSE

1 **THE COURT:** The document speaks for itself.

2 Sustained.

3 **MS. BOMSE:** Okay. All right.

4 **BY MS. BOMSE**

5 **Q.** Is that her response?

6 **A.** Yes.

7 **Q.** Okay. And so did you and she conclude at that point --
8 what did you and she conclude after getting the information
9 about who had been at the conferences?

10 **A.** Well, we concluded that she was probably one of the
11 doctors who had been taped.

12 **Q.** Okay. What was Dr. Siegfried's reaction to learning that
13 she had probably been undercover taped?

14 **MR. KOZINA:** Objection, Your Honor --

15 (Court reporter clarification.)

16 **THE COURT:** It is hard for the court reporter to
17 hear. If you would stand up, Mr. Kozina. Thank you.

18 **MR. KOZINA:** Hearsay. Lacks foundation.

19 **MS. BOMSE:** I believe I've laid the foundation, Your
20 Honor. It is hearsay, but it does go to Ms. Tosh as
21 Ms. Siegfried's -- the CEO of this entity's actions.

22 **THE COURT:** Ms. Tosh can testify about what she did
23 and reaction --

24 **MS. BOMSE:** Sure.

25 **THE COURT:** -- to what she learned, but she can't

TOSH - DIRECT / BOMSE

1 testify to the reaction itself. That would be hearsay.

2 **MS. BOMSE:** That's fine. Okay. Thank you, Your
3 Honor.

4 **BY MS. BOMSE**

5 **Q.** All right. So did you -- what did you do after learning
6 that your medical director had likely been recorded by these
7 individuals?

8 **A.** Well, I had a number of additional conversations with her.
9 I was worried about her. I wanted to understand more about
10 what the conversations were and, you know, the extent to which
11 it was likely that this video would become one of these videos
12 that was made public and --

13 **Q.** Let me stop you right there.

14 **A.** Yeah.

15 **Q.** Why were you worried about Dr. Siegfried?

16 **A.** Well, again, this country has a long history of
17 anti-abortion violence and about doctors being targeted for
18 that violence.

19 So my priority was making sure that she was safe, just --
20 and making sure that she felt safe and supported.

21 **Q.** Okay.

22 **MR. MILLEN:** Your Honor, I have perhaps a continuing
23 objection to this entire line. If the state of mind is
24 relevant to her -- for her actions later --

25 **THE COURT:** I'm not interested in a speaking

TOSH - DIRECT / BOMSE

1 objection, Mr. Millen. I can give you a continuing objection
2 and it's -- at this point, what she said, your objection is
3 overruled.

4 **BY MS. BOMSE**

5 **Q.** Ms. Tosh, I'm going to ask Ken to show some video, and I'm
6 just going to ask you a couple questions about it.

7 **MR. BOMSE:** So, Ken, if you could please start the
8 video of Exhibit 1590?

9 **THE COURT:** This is going to be shown only to the
10 witness and to counsel.

11 **MS. BOMSE:** Well, that's fine, Your Honor. However,
12 we do -- this is not an objected to exhibit. This is a joint
13 exhibit, and there's -- there is --

14 **THE COURT:** If there is no objection, then we can
15 show it. Otherwise, if you don't know what's coming, then we
16 will show it.

17 **MS. SHORT:** Which exhibit is it?

18 **MS. BOMSE:** I spoke with Ms. Dhillon this morning.

19 **MS. DHILLON:** Your Honor, it's a joint exhibit.
20 We're not sure what's going to be shown.

21 **MS. BOMSE:** That's fine. Let's just show it to
22 counsel.

23 Ken, if you could just show a little bit of this video to
24 counsel?

25 (Brief pause.)

TOSH - DIRECT / BOMSE

1 **MR. BOMSE:** Perhaps I can move this process along
2 more quickly.

3 Ms. Tosh was not at this conference. I'm going to ask her
4 questions only about her personal knowledge, and I'm going to
5 show maybe ten seconds of this video.

6 We're not interested in the content of what was said. I
7 want her to be able to tell the jury, you know, who it is and a
8 few things about what she sees in the video as it relates to
9 confidentiality.

10 **THE COURT:** Well, let's see what it is, and then
11 we'll see what objections it draws.

12 **MR. KOTARSKI:** Ms. Bomse, do you want audio or no
13 audio?

14 **MS. BOMSE:** We don't need audio.

15 **THE COURT:** No audio.

16 (Videotape played for counsel and the witness.)

17 **MS. DHILLON:** She has no personal knowledge because
18 she didn't witness it.

19 **MS. BOMSE:** She only witnessed it after. She wasn't
20 there; correct.

21 **MS. DHILLON:** That's fine, Your Honor, for purposes
22 of (inaudible).

23 **MR. BOMSE:** Thank you.

24 **BY MS. BOMSE**

25 **Q.** So if we could now just --

TOSH - DIRECT / BOMSE

1 **MR. BOMSE:** Ken, if you could keep it rolling from
2 where you stopped? I think you should put the sound on now.
3 We're only going to listen to a couple -- you know, ten
4 seconds.

5 If you don't want the sound, we won't have the sound.

6 **MS. DHILLON:** That's fine.

7 **THE COURT:** Okay. So are we showing the jury from
8 the beginning?

9 **MS. BOMSE:** No. This is fine.

10 **THE COURT:** Okay.

11 **MS. BOMSE:** Okay. So where we stopped is just fine.
12 Ken, you can start the video where you just stopped it.

13 **MR. KOTARSKI:** I'm sorry. I missed the ruling on
14 sound or no sound.

15 **MS. BOMSE:** I don't know.

16 **THE COURT:** No sound.

17 **MS. BOMSE:** Okay. That's fine.

18 (Videotape played in open court.)

19 **MR. BOMSE:** You can stop it.

20 **BY MR. BOMSE**

21 **Q.** Ms. Tosh, who is that in the video?

22 **A.** That's Dr. Virginia Siegfried.

23 **Q.** And do you -- do you know where she is in that video?

24 **A.** Yes.

25 **MS. SHORT:** Objection. Lacks foundation.

TOSH - DIRECT / BOMSE

1 **THE COURT:** Could you lay the foundation?

2 **MS. BOMSE:** Sure, sure. Okay.

3 **BY MS. BOMSE**

4 **Q.** Looking at that, do you have any ability to identify where
5 she is based on what you're seeing?

6 **A.** She's wearing a lanyard that says "North American Forum on
7 Family Planning."

8 **Q.** Okay. And so what does that indicate to you as to where
9 she is?

10 **A.** It indicates that she is at the National Medical
11 Conference in Miami, Florida.

12 **Q.** Okay. And you mentioned that the reason that you know
13 where she is is that she's wearing a lanyard?

14 **A.** That's correct.

15 **Q.** Is that common at a conference?

16 **A.** Yes.

17 **Q.** And conferences that you attend, are you provided with a
18 lanyard or some sort of an identification badge?

19 **A.** Yes.

20 **Q.** Is that true at every Planned Parenthood conference you
21 have been to?

22 **A.** Yes.

23 **Q.** Okay. And is that -- does that have any importance?

24 **A.** It does. The significance is that the lanyard is what
25 provides access to conference meetings and events.

TOSH - DIRECT / BOMSE

1 Q. And does the lanyard have -- well, the lanyard is just the
2 thing that holds it, right, but the thing that's on the
3 lanyard, what is that?

4 A. Right. So that's the badge that's associated with your
5 attendance at that conference.

6 Q. Okay. And does it provide any other function aside from
7 gaining -- allowing you access?

8 A. Identification to other conference guests that you're part
9 of the same conference.

10 Q. And why is that important?

11 A. Well, at Planned Parenthood conferences, we are very
12 disciplined. We are trained to be very mindful of our
13 surroundings, to only have conversations with other conference
14 attendees in areas that are designated for the conference, and
15 you know, to real be cognizant of our surroundings.

16 Q. And so I asked you whether or not when you attend
17 conferences you wear such a badge, but I didn't ask you the
18 question before, which is: Do you go to Planned Parenthood
19 conferences?

20 A. I do.

21 Q. And do you do that on a regular basis?

22 A. Yes.

23 Q. And do you consider it something that's important for your
24 work?

25 A. Yes.

TOSH - DIRECT / BOMSE

1 Q. And why is that?

2 A. Well, I think conferences are a great opportunity to have
3 conversations with colleagues from across the country, to
4 develop stronger relationships and network, and also bring back
5 to my organization different knowledge, insights, programs,
6 things like that.

7 Q. And does some of your staff also attend conferences,
8 Planned Parenthood sponsored conferences?

9 A. Yes.

10 Q. Is that true also on a regular basis?

11 A. It is.

12 Q. Okay. And are they paid and given time off in order to
13 attend conferences?

14 A. They are paid. It's part of their job and we pay for them
15 to attend conferences.

16 Q. Okay. Does that include the airfare and everything that
17 it costs?

18 A. That's correct.

19 Q. After it was learned that there had been this infiltration
20 of three Planned Parenthood sponsored conferences, did your
21 staff who attend conferences express concerns about attending
22 Planned Parenthood conferences in the future?

23 A. There was a lot of sensitivity around conferences after
24 this happened. PPFA was very proactive right after this all
25 happened about informing the greater Federation and affiliate

TOSH - DIRECT / BOMSE

1 staff about steps they were taking to secure future conferences
2 and prevent this from happening again.

3 But I will definitely acknowledge that there was a lot
4 of -- a lot of concern.

5 **THE COURT:** Ms. Short.

6 **MS. SHORT:** I would move to strike the part of the
7 answer beginning about what PPFA did. There doesn't seem to be
8 any foundation for her knowledge about what PPFA did.

9 **THE COURT:** Why don't you lay that foundation?

10 **MS. BOMSE:** Sure, sure.

11 **THE COURT:** Thank you.

12 **BY MS. BOMSE**

13 **Q.** Did you discuss -- did your staff attend PPFA conferences
14 after this infiltration was discovered?

15 **A.** Yes.

16 **Q.** And did you attend PPFA conferences after it was
17 discovered that there had been this series of infiltrations?

18 **A.** Yes.

19 **Q.** And why did you feel comfortable attending PPFA
20 conferences even though you knew that in the past there had
21 been individuals who managed to infiltrate the conference and
22 claimed to be people that they actually were not?

23 **A.** I felt comfortable because I had heard from PPFA and
24 received a lot of reassurance that appropriate steps had been
25 taken to mitigate the possibility that that would happen again

1 in the future.

2 **Q.** Thank you.

3 Can you describe what impact, in your view, the campaign
4 of secret taping that you learned about had on you and your
5 staff at PPCC?

6 **A.** Uh-huh. The whole time period after the videos came out
7 was -- it was just extraordinarily stressful, I guess is the
8 best way to explain it. It was confusing. There was a
9 tremendous amount of anxiety about who was going to be exposed
10 next, the types of risks that those individuals would face.
11 And so I -- I think I would just characterize it as scary.

12 And as a leader, I think, you know, my primary concern
13 during that time period really was just around the safety of my
14 staff and my patients and providers.

15 **Q.** Thank you, Ms. Tosh. No further questions.

16 **THE COURT:** All right.

17 Ms. Dhillon.

18 **CROSS-EXAMINATION**

19 **BY MS. DHILLON**

20 **Q.** Good afternoon, Ms. Tosh. I'm Harmeet Dhillon. I'm one
21 of the defense lawyers in this case.

22 Ms. Bomse showed you a video clip. Have you seen that
23 video clip before today?

24 **A.** Yes.

25 **Q.** And can you identify the two people who are speaking in

1 the video clip?

2 **A.** I was only able to see Dr. Siegfried.

3 **Q.** Okay. So you have no idea who the other person was?

4 **A.** I -- I don't recall if it was David Daleiden or his
5 counterpart.

6 **Q.** You have no personal knowledge of that; correct?

7 **A.** No.

8 **Q.** You didn't attend the conference in question, correct?

9 **A.** I did not.

10 **Q.** In fact, during 2014 and 2015 were you, in fact, getting
11 your PhD during that time?

12 **A.** I completed my PhD in -- I defended any dissertation in
13 December of 2014.

14 **Q.** Okay. Do you know whether you were employed by any
15 Planned Parenthood affiliate during the time of any of the
16 video clips or any of the tapings that are at issue in this
17 case?

18 **A.** I'm certain that I was. Do you want to go through them?

19 **Q.** Which ones do you believe you were -- you were at? We can
20 take a look at Exhibit 1309.

21 **A.** I attended the Planned Parenthood National Conference in
22 March of 2015.

23 **Q.** Any others?

24 **A.** I was -- I did not attend any of the others.

25 **Q.** Okay. Do you believe you were videotaped at any of these

TOSH - CROSS / DHILLON

1 conferences?

2 **A.** No.

3 **Q.** Okay. Ms. Tosh, you spoke about the services that Planned
4 Parenthood offers. What percentage of the services of the
5 affiliate that you had are abortion services?

6 **A.** You're talking about California Central Coast?

7 **Q.** The one you're currently employed by.

8 **A.** Yeah. So in an average year it's between four and
9 six percent.

10 **Q.** Okay. And what percentage of the revenue generated by
11 your affiliate come from abortion services?

12 **A.** I would say about 10 percent.

13 **Q.** Okay. You testified that when you were employed in
14 Florida with a Planned Parenthood affiliate, there was a fear
15 of protests and opposition and violence?

16 **A.** Yes.

17 **Q.** And is that something that was already there at Planned
18 Parenthood prior to your being employed?

19 **A.** Yes, although I became a target personally during that
20 time period.

21 **Q.** So you became a target while you were employed in Florida,
22 having nothing to do with the disputes at issue here in this
23 trial; correct?

24 **A.** That's correct.

25 **Q.** So is it fair to say that throughout your employment at

TOSH - CROSS / DHILLON

1 Planned Parenthood affiliates, there have always been threats
2 because of the abortion activity that Planned Parenthood
3 affiliates offer; is that correct?

4 **A.** There have always been threats by those who are opposed to
5 abortion.

6 **Q.** Can you quantify how much the threats increased as a
7 result of the videos?

8 **A.** Yes.

9 **Q.** How would you quantify the immediate increase in threats?

10 **A.** After the videos came out, for the three-month period
11 after the videos there was a ten-fold increase in security
12 incidents at my affiliate.

13 **Q.** And how do you describe security incidents?

14 **A.** So typically what we look at when we're looking at
15 security incidents are any security incidents that really are
16 outside of the normal course of what we would expect.

17 So it's not unusual for Planned Parenthood to have
18 protestors. It's very unusual for us to have protestors that
19 trespass or act in a way that requires we call the police, for
20 example.

21 So the way that we track incidents is that when something
22 really is unusual, police have to be called, there is an
23 altercation that we want to track and manage, we go into our
24 system and we track that. And so those reportable incidents
25 that we are tracking internally, the incidents of those

1 increased quite significantly.

2 **Q.** Okay. You mentioned a three-month period. What happened
3 after that three-month period?

4 **A.** Yeah. So I think we have sort of normalized a bit.
5 Although I would say that there are individuals who were --
6 appeared to be quite inspired by the videos who have stayed
7 involved and have created a different security environment for
8 us than before the videos across the board.

9 **MR. KOZINA:** Objection. Move to strike. Relevance.

10 **THE COURT:** Overruled. That's the answer to the
11 question?

12 **BY MS. DHILLON**

13 **Q.** So the question that I have regarding the clip, going back
14 to the clip that you saw, was that clip taking in a swimming
15 pool area outdoors in a hotel?

16 **A.** I don't know if there was a swimming pool, but it does
17 appear to be outdoors.

18 **Q.** Okay. And were you able to see from that clip whether
19 there were people in the background who didn't have badges for
20 the conference?

21 **A.** The only people that I could identify did have badges.

22 **Q.** And that's only the one person that we have spoken about
23 so far?

24 **A.** No. There are a number of people who you can see in the
25 background who are also wearing conference lanyards.

1 Q. Okay. And we'll be showing you a different clip in a
2 moment, but going forward to some of the other questions that I
3 have.

4 Let's see here. Did you first become aware of any videos
5 with respect to that exhibit we saw, 1309, I believe a day
6 after a video came out? Did you have reason to believe before
7 that email exchange on July 30th, 2015, that some taping had
8 occurred?

9 A. So July 30th, I think that's the date of the email. Is
10 that what you're referencing?

11 Q. Yes. That's correct.

12 A. And I believe the first video came out earlier in the
13 month. So I think that that email was about -- about two weeks
14 or so after the video came out.

15 Q. What caused Planned Parenthood affiliates to believe that
16 videos were about to come out?

17 A. We had no advanced knowledge that video was going to come
18 out before the first video came out.

19 Q. Okay. Given the -- given the threats that you've
20 testified already occurred against Planned Parenthood when you
21 were employed in Florida and in California, what type of
22 security measures do you believe Planned Parenthood could have
23 taken to prevent the taping?

24 MS. BOMSE: Objection. Calls for speculation.

25 THE COURT: Overruled.

TOSH - CROSS / DHILLON

1 At what point? Give us a point in time.

2 **BY MS. DHILLON**

3 **Q.** Let's start in Florida. During the time that you were
4 employed in Florida as a Planned Parenthood executive, what
5 security measures were in place that you believe could have
6 been improved on to prevent this taping?

7 **A.** So I am not an expert on security measures taken by PPFA.
8 However, I have been to a number of conferences where the
9 security measures that PPFA has taken are quite extensive and
10 impressive.

11 So I think that's part of the reason why this was so
12 alarming, is to know that those very stringent and tight
13 security guidelines had been violated. Because if you're in
14 Planned Parenthood, you know that individuals would have to
15 take extraordinary means to gain access in light of the
16 protections that we have in place at Planned Parenthood.

17 **Q.** But you have no personal knowledge of what protections
18 Planned Parenthood has in place to screen people prior to their
19 being allowed to attend conferences?

20 **A.** I have some knowledge about that.

21 **Q.** What personal knowledge do you have about the screening in
22 place before the release of these videos, if any?

23 **A.** So anyone who is not in the Planned Parenthood world, not
24 employed by a Planned Parenthood, there has to be a legitimate
25 reason for them to attend a conference. Either they are an

1 invited guest, they are a speaker, they are a vendor.

2 In all of those circumstances PPFA would insure that IDs
3 were collected; that there were agreements in place to
4 stipulate the terms of attendance.

5 And so they have -- they have taken steps to ensure that,
6 you know, there was, in fact, a legitimate reason for anyone
7 who is outside of the Planned Parenthood world to attend one of
8 those conferences.

9 **Q.** Okay. And how did those security measures change since
10 the videos were released?

11 **A.** They have changed in the sense that there is more security
12 personnel at any given Planned Parenthood conference. The
13 badges are scannable and are scanned, in fact, to verify that
14 they are authentic prior to admitting anyone into a conference
15 setting.

16 So they have really sort of taken, I think, what was sort
17 of an impressive foundation and made it much more difficult to
18 penetrate, from what I can tell.

19 **Q.** Does Planned Parenthood still hold conferences in public
20 places where -- for example, cocktail lounges, other places
21 where congregants can gather?

22 **A.** I disagree that Planned Parenthood ever holds conferences
23 in public places.

24 **Q.** Did the video clip that Ms. Bomse showed you represent a
25 hotel which was open to the public?

TOSH - CROSS / DHILLON

1 **A.** For the purposes of that conference, that lounge was not
2 open to the public. It was open only to conference guests.

3 **Q.** She showed you a video of an outdoor space. Are you
4 saying that the entire outdoor space, including the hotel
5 balconies and other spaces that were shown there, were barred
6 from anybody occupying them other than Planned Parenthood
7 personnel or attendees at the conference?

8 **A.** The reception was for Planned Parenthood attendees only.

9 **Q.** Were you able to see hotel balconies in the background
10 which were for guests of the hotel?

11 **A.** I did see that, yes.

12 **Q.** Okay. And do you know whether people at the hotel
13 included people who were not attendees at the conference? Do
14 you have any knowledge of that?

15 **A.** I'm confident there must have been people at the hotel who
16 were not part of the conference.

17 **Q.** Does Planned Parenthood still hold events in hotels where
18 non-attendees are permitted to register as guests?

19 **A.** Are you saying the whole hotel?

20 **Q.** That is what I'm asking you.

21 **A.** Yes.

22 **Q.** Okay. Do you believe that an attendee, such as Ms. --
23 such as Dr. Siegfried would have a reasonable expectation of
24 privacy in discussing medical issues in a hotel lobby at a
25 Planned Parenthood conference?

TOSH - CROSS / DHILLON

1 **A.** In a hotel lobby, if it's not explicitly reserved for a
2 Planned Parenthood conference, Dr. Siegfried would have
3 received guidance in advance not to have those conversations in
4 that setting.

5 **Q.** Okay. Did she receive guidance in advance prior to
6 discussing the issues in question next to a swimming pool in a
7 hotel?

8 **A.** I can't comment on any guidance she received about a pool
9 area.

10 **Q.** Do you have any knowledge of whether she received any
11 guidance about the privacy and security concerns that she
12 should have been following prior to holding that type of
13 conversation that was in the video?

14 **MS. BOMSE:** Objection. Lacks foundation.

15 **THE COURT:** I'm not sure what that type of
16 conversation is.

17 **MS. DHILLON:** Okay. The conversation we saw in the
18 video.

19 **MS. BOMSE:** Same objection.

20 **THE COURT:** Same problem.

21 **MS. DHILLON:** Okay.

22 **THE COURT:** I didn't allow any sound, so I don't know
23 what the conversation is. She couldn't either.

24 **MS. DHILLON:** I see.

25

1 **BY MS. DHILLON**

2 **Q.** Ms. Tosh, have you seen that video with the sound on it?

3 **A.** Yes.

4 **Q.** You've heard the sound; correct?

5 **A.** Yes.

6 **Q.** Okay. And so having heard the sound of the video that we
7 saw, only the video portion of, do you know whether
8 Dr. Siegfried received any direction from Planned Parenthood
9 about whether she should be discreet in public settings prior
10 to that type of -- that conversation that we saw?

11 **MS. BOMSE:** Objection. Misstates the record.

12 **THE COURT:** Overruled. You can answer if you know.

13 **A.** Dr. Siegfried and all attendees of Planned Parenthood
14 conferences are provided with guidance not to have sensitive
15 conversations outside of conference settings that are reserved
16 exclusively for members of the conference, which that setting
17 was.

18 So my opinion and response is that Dr. Siegfried was
19 abiding by that guidance when she was having that conversation.

20 **Q.** So it's your testimony, not having been there, that the
21 area that was depicted in that video was exclusively reserved
22 for Planned Parenthood conference attendees; is that your
23 testimony?

24 **A.** It is.

25 **Q.** Okay. Now you mentioned that you had concern on behalf of

TOSH - CROSS / DHILLON

1 Dr. Siegfried. Did Dr. Siegfried ask for any extra security
2 after it emerged that she had been videotaped?

3 **A.** She did not.

4 **Q.** Okay. And so is it fair to say that she did not share the
5 concern that you felt and the fear that you felt regarding
6 being videotaped?

7 **A.** I don't think that's fair.

8 **Q.** Okay. So, but you're clear that she never asked for any
9 security, to your knowledge, following that?

10 **A.** She didn't. She and I agreed that we would sort of watch
11 what was happening and get a sense of threats that were coming
12 in and if we received an inordinate number of threats targeting
13 her or if a video featuring her were made public, then we would
14 stay in conversation and make a decision to add additional
15 security if needed. That did not happen. But she and I were
16 in constant dialogue about her state of mind and about her
17 sense of safety.

18 **Q.** Okay. And, in fact, she was the -- was she the only
19 person from the -- from the affiliate that you currently
20 represent, the California Central Coast affiliate, who was
21 videotaped as part of the Human Capital Project, to your
22 knowledge?

23 **A.** Yes.

24 **Q.** Okay. Did you -- withdraw that.

25 Did -- excuse me.

TOSH - CROSS / DHILLON

1 (Brief pause.)

2 **MS. DHILLON:** I want to show a portion of another
3 video, Your Honor. I think it may be a different video than
4 the one we discussed that we just saw here with Ms. Bomse.

5 So I'm just looking for the number here. I believe it is
6 Exhibit 5990.

7 Are you familiar with Trial Exhibit 5990?

8 **MS. BOMSE:** I believe it's the same one that I
9 showed. I still want to know what portion you're showing.

10 **MS. DHILLON:** Okay. So our trial tech can pull up
11 the segment in question.

12 Steven?

13 **MR. NEILSEN:** 5990?

14 **THE COURT:** Again, let's show it only to counsel and
15 to the witness.

16 (Videotape played for counsel and the witness.)

17 **MS. DHILLON:** Do you have any objection to any part
18 that?

19 **MS. BOMSE:** I don't have any objection to the
20 visuals.

21 **THE COURT:** Okay.

22 **BY MS. DHILLON**

23 **Q.** Okay. Ms. Tosh, showing a larger portion of the video
24 clip that Ms. Bomse showed you, isn't it true that there were
25 several people walking around there without the badges on?

TOSH - CROSS / DHILLON

1 **A.** I actually didn't see any.

2 **Q.** Okay. We'll have to pull it back to the beginning of that
3 video if we can.

4 (Videotape played for counsel and the witness.)

5 **Q.** And, for example, there is a gentleman wearing a blue
6 shirt walking in the background there; do you see that?

7 **A.** Yeah. I see the man with the blue shirt.

8 **Q.** Okay. Not the one now, but there was a man walking
9 before.

10 There is a lady there wearing a blue shirt. Do you not
11 see a number of people there who are not wearing badges?

12 **A.** I do not see a number of people --

13 **Q.** In the background? Do you see any?

14 **A.** I don't see anybody who is not wearing a badge.

15 **Q.** Okay.

16 **MS. DHILLON:** I'm going to ask if we can show Trial
17 Exhibit 5218.

18 And, again, if counsel wants to look at it without the
19 audio, but the audio is actually important in this clip.

20 **MS. BOMSE:** In that case I think I would ask whether
21 there is a transcript or any other way for me to preview that.

22 **THE COURT:** Indeed.

23 **MS. DHILLON:** Do we have a transcript handy for that?

24 (Brief pause.)

25 **THE COURT:** Again, this shouldn't be shown to the

TOSH - CROSS / DHILLON

1 jury and no sound at the moment.

2 **THE CLERK:** Do you want the witness to be able to see
3 it?

4 **THE COURT:** I want the witness to be able to see it.

5 **MS. DHILLON:** We don't have a transcript with us at
6 this point.

7 **THE COURT:** Let's pass it over.

8 **MS. DHILLON:** I will pass that one, Your Honor.

9 **THE COURT:** Do you know what this video is?
10 Okay. Let's pass it for the moment.

11 **MS. DHILLON:** Pass it for the moment, Your Honor.

12 I'd like to show the witness Trial Exhibit 1910. Do we
13 have a copy we can hand up?

14 **MS. BOMSE:** I haven't seen 1910. If I could just
15 have a copy?

16 (Document was shown to counsel.)

17 **MS. BOMSE:** Yes, of course.

18 **MS. DHILLON:** Thank you.

19 **BY MS. DHILLON**

20 **Q.** Ms. Bomse, can you -- not Ms. Bomse.

21 Ms. Tosh, can you identify Exhibit 1910, which is in front
22 of you?

23 **A.** Just give me a minute. I haven't seen it.

24 (Brief pause.)

25 **MS. BOMSE:** Could you please -- I hate to interrupt,

TOSH - CROSS / DHILLON

1 but do you have a copy of that for me?

2 **MS. DHILLON:** I can give you my copy of it, but I
3 don't have a copy for you. I'm sorry.

4 **MS. BOMSE:** That's fine.

5 **MS. DHILLON:** I'm scrambling here, but...

6 (Whereupon document was tendered to counsel.)

7 **THE WITNESS:** Okay. So is the question --

8 **THE COURT:** Wait for the question.

9 **THE WITNESS:** Okay.

10 **BY MS. DHILLON**

11 **Q.** The question is: Are you familiar with this document,
12 Trial Exhibit 1910?

13 **A.** No.

14 **Q.** Okay. Is this a document that you've ever seen before?
15 It's entitled "Sponsor/Exhibitor/Advertisement Package Terms
16 and Conditions"?

17 **A.** No.

18 **Q.** Okay. I will not ask you a question about it in that
19 case.

20 **MS. DHILLON:** Your Honor, in the interests of time,
21 I'm going to pass to other defense counsel, if they have
22 questions, while I identify that video exhibit that I wanted to
23 show.

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

25

CROSS-EXAMINATION

1
2 **BY MR. JONNA**

3 **Q.** Good afternoon, Ms. Tosh. My name is Paul Jonna.

4 You testified earlier that when you saw the first video of
5 Dr. Nucatola, that you were concerned, shocked and confused.
6 Do you recall that testimony?

7 **A.** Yes.

8 **Q.** Do you remember what Dr. Nucatola discussed on that video?

9 **A.** Yes.

10 **Q.** What do you remember?

11 **A.** I remember a conversation about fetal tissue programs and
12 abortion procedures.

13 **Q.** Do you remember her discussing how she would change
14 abortion procedures by crushing above and below to get more
15 intact tissue?

16 **A.** I remember that there was a conversation about abortion
17 procedures.

18 **Q.** Do you remember Dr. Nucatola saying she would crush above
19 and below to get more intact tissue?

20 **MS. BOMSE:** Objection, Your Honor. She answered that
21 question.

22 **MR. JONNA:** It's a "yes" or "no."

23 **THE COURT:** And she did answer that. So go to the
24 next one.

25 **MR. JONNA:** Okay.

1 **BY MR. JONNA**

2 **Q.** And did that concern you?

3 **A.** Again, I didn't understand what was being discussed. It
4 was -- it was confusing to me because it did not align with
5 anything that I understood about abortion care.

6 **Q.** So if she had made those statements, that would concern
7 you?

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

9 **Q.** Do you remember her discussing how she would change the
10 presentation of the fetus to get more intact tissue?

11 **A.** I don't remember that, no.

12 **Q.** And if she had made those statements, would that concern
13 you?

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

15 **MR. JONNA:** Your Honor, she testified that the video
16 concerned her. We're allowed to probe further.

17 **THE COURT:** You are. I don't want to go into each
18 statement, but you certainly can ask her what it is that was
19 concerning to her.

20 **MR. JONNA:** Sure.

21 **BY MR. JONNA**

22 **Q.** So the statement of changing the presentation of the
23 fetus, do you remember how she would -- how she discussed how
24 she would convert the presentation of the fetus during an
25 abortion procedure?

TOSH - CROSS / JONNA

1 **MS. BOMSE:** Same objection, your Honor.

2 **THE COURT:** Overruled.

3 You can answer, if you remember that. If you don't
4 remember that, just say that.

5 **A.** Again, I'm not a medical doctor. And so perhaps I should
6 clarify my earlier statement when I said I was confused.

7 I was confused because the headline was about Planned
8 Parenthood receiving compensation for fetal tissue donation.
9 That was something that I didn't understand. And the video
10 presented without context from Planned Parenthood, it didn't
11 make sense to me. I didn't understand it.

12 **Q.** So is it fair to say that your testimony today is that
13 nothing Dr. Nucatola said concerned you?

14 **A.** Again, I don't understand or I'm not an expert in specific
15 abortion methods. My concern was primarily around the fact
16 that Planned Parenthood had been targeted; that there was a
17 narrative that was being introduced that did not align with
18 Planned Parenthood's mission and my understanding of any work
19 Planned Parenthood was involved with, and I was concerned for
20 her safety and the safety of others.

21 **MR. JONNA:** I'm going to move to strike, Your Honor,
22 as nonresponsive. I just asked the witness if any of the
23 statements made by Dr. Nucatola concerned her.

24 **THE COURT:** And she responded to that question.

25 **MR. JONNA:** Okay.

1 **BY MR. JONNA**

2 **Q.** You also testified about conferences, Planned Parenthood
3 conferences and your views on security at these conferences.

4 My question for you is: If a conference attendee
5 discusses being engaged in criminal activity at a conference,
6 do you think they should be able to keep that secret?

7 **A.** I'm sorry. Could you say that again?

8 **Q.** If a conference attendee discusses being engaged in
9 criminal activity at a conference, do you think they should be
10 able to keep that secret?

11 **A.** It sounds like the premise is that criminal activity is
12 being discussed at Planned Parenthood conferences, and I don't
13 agree with that. So I'm not sure how to respond.

14 **Q.** Well, the question is: If a conference attendee discusses
15 being engaged in criminal activity, do you think they should be
16 able to keep it a secret?

17 **A.** I think that if criminal activity was being discussed at a
18 Planned Parenthood conference, it would be incumbent on whoever
19 heard it to deal with it appropriately. And Planned Parenthood
20 has very high standards for dealing with any type of
21 wrongdoing.

22 **Q.** You also testified that PPFA purchased I.D. scanners after
23 the CMP videos were released.

24 **A.** I didn't say that, no.

25 **Q.** When did they purchase the I.D. scanners?

TOSH - CROSS / SHORT

1 **A.** I cannot say that they have purchased I.D. scanners. I
2 think what I said was that there are I.D. scanners present at
3 conferences. I don't know. I don't know whether that's
4 contracted or what the arrangement is for those. I've seen
5 them.

6 **Q.** And when did you first see them?

7 **A.** It was the first conference that I attended after the
8 videos.

9 **Q.** And you never saw them before the videos were released;
10 correct?

11 **A.** That's correct.

12 **Q.** And they existed before the videos were released; correct?

13 **A.** I don't know. I presume so.

14 **Q.** Okay. Thank you.

15 **THE COURT:** Ms. Short.

16 **CROSS-EXAMINATION**

17 **BY MS. SHORT**

18 **Q.** Now, Ms. Tosh, I believe you testified that you had not
19 seen the Exhibitor Agreements that were shown to you in Exhibit
20 1390? The exhibit that was just handed to you, the most recent
21 one, is that correct, you had not seen those?

22 **A.** Yeah. I don't recall having seen that.

23 **Q.** All right. Do you have any reason to believe that
24 Dr. Siegfried had ever seen those Exhibitor Agreements?

25 **A.** I don't think so.

TOSH - CROSS / SHORT

1 Q. Now, isn't it true that as early as July 14th, 2015, the
2 very day the videos were released, you, as a CEO, received an
3 email from Eric Ferraro at PPFA Nashville which laid out who
4 had done this project, about, you know, who BioMax was, all the
5 conferences they had attended that pretty much gave the -- most
6 of the framework of what had happened?

7 A. I don't recall that specifically, receiving that email.
8 It sounds like something that would have happened. We would
9 have gotten an email from Eric, but I don't remember that
10 specifically.

11 Q. Okay. And so you say you -- is it your recollection that
12 the pieces fell into place pretty quickly after the videos were
13 released?

14 A. It took a few days. I would say yes, but it was early
15 days. So we understood that this was a coordinated
16 anti-abortion infiltration with the intent of harming Planned
17 Parenthood.

18 Q. And --

19 MR. KOZINA: Objection. Calls for speculation. Ask
20 that the last portion be stricken.

21 THE COURT: She was answering the question.
22 Overruled.

23 MR. KOZINA: Thank you.

24 BY MS. SHORT

25 Q. And when you say "early," would you say two days, three

TOSH - CROSS / SHORT

1 days? How long would you estimate, two or three days?

2 **A.** That's about right.

3 **Q.** And so this was -- the investigation wasn't just you as an
4 affiliate director, but this was being done by the whole
5 national organization; is that correct?

6 **A.** Yes.

7 **Q.** And now you also mentioned -- I believe you described
8 security incidents that had increased in the wake of the
9 videos. And I believe you described security incidents as
10 incidents that sort of arose above the normal and would maybe
11 involve calling the police or something like that.

12 **A.** Yes.

13 **Q.** Isn't it true that the security incidents that your
14 affiliate recorded also included things like a Twitter message
15 that was perceived as being unfriendly?

16 **A.** I would not agree with the term "unfriendly." I would say
17 harassing or intimidating.

18 So, yes, it did include some social media messages that we
19 had received.

20 **Q.** Okay. They were received -- that's part of your -- the
21 increase in security incidents that you're referring to; is
22 that correct?

23 **A.** I believe there was one incident that is part of it, but
24 yes.

25 **Q.** And angry phone calls, the same thing?

TOSH - CROSS / SHORT

1 **A.** I would not again say "angry." I would say threatening,
2 intimidating, harassing.

3 The purpose of tracking the incidents is to establish a
4 record of any activity that is concerning, that rises above
5 what's normal, so that there is a record should it escalate.

6 **Q.** Now, you -- Planned Parenthood, your affiliate, had an
7 arson, didn't it, at the end of September 2015; is that
8 correct?

9 **A.** That is correct.

10 **Q.** And that arson was not in any way related to CMP --

11 **MS. BOMSE:** It's 402.

12 **THE COURT:** I'm sorry, Ms. Bomse?

13 **MS. BOMSE:** I object on 402 grounds, Your Honor.

14 **THE COURT:** Overruled. You can answer the question.

15 **A.** That arson in particular turned out -- we identified who
16 had committed that arson, and it was related to a domestic
17 violence situation that one of our staff was experiencing.

18 **Q.** And a few days after that arson your affiliate received
19 a letter from someone apologizing for the arson and basically
20 offering prayers for PCCCC; isn't that correct?

21 **A.** That sounds correct.

22 **Q.** And that letter offering prayers and apology was also
23 marked as a security incident; wasn't it?

24 **A.** It was recorded, yes, in the system. I recall that one.

25 **Q.** And so all those -- and did Planned Parenthood Central

TOSH - CROSS / SHORT

1 Coast ever -- you report incidents to PPFA National; isn't that
2 correct?

3 **A.** Well, the system is run by affiliate Risk Management
4 Services, which is an organization that exists alongside PPFA.
5 It's not the same organization. It's Risk Management, an
6 insurance entity. We report to them.

7 **Q.** And do you, as part of that system, ever note the
8 suspected motives of any particular security incident?

9 **A.** I'm not sure I understand the question.

10 **Q.** In reporting, for instance, this arson, was it part of the
11 report that it was unrelated to opposition to abortion?

12 **A.** We didn't know at the time of the arson, when it first
13 happened, who had done it.

14 **Q.** Did you ever follow up to make sure that it was noted that
15 this was not related to opposition to abortion?

16 **A.** Did we go back in and revise? No. But I don't -- I don't
17 know that the initial report claimed that we had any
18 information about who had done it. It was a factual entry.

19 **Q.** Are you aware of PPFA ever claiming that that arson was,
20 in fact, the result of anti-abortion motivation?

21 **A.** I'm not aware of Planned Parenthood claiming it. However,
22 it happened pretty shortly after the videos, during a time that
23 there was a lot of anti-abortion activity directed at Planned
24 Parenthood.

25 Many members of the media assumed that it was likely

TOSH - CROSS / SHORT

1 related to the videos. We had no knowledge of that, but I do
2 not recall Planned Parenthood claiming that we knew who had
3 done it before we knew.

4 Q. About a month prior to that there was a window vandalism,
5 at your -- the same exact clinic; wasn't there?

6 A. There was.

7 Q. And the police informed you after the subsequent arson
8 that they believed it was the same person; isn't that correct?

9 A. They suspected it could have been. There was never any
10 evidence that it was. So we still don't know who was
11 responsible for that act of vandalism.

12 Q. And the staff member whose domestic partner was
13 responsible for the arson, she was unable to rule out that it
14 was, in fact -- by reviewing the video that it was, in fact,
15 her ex-partner who had committed that --

16 A. She was not able to identify that as her partner. So
17 we -- again, we don't know. We don't know who committed the
18 first vandalism.

19 Q. But, again, did the police tell you they believed it was
20 the same person?

21 A. They thought it could have been. It was a theory.

22 Q. Okay.

23 A. We have no evidence that it was or it wasn't.

24 Q. Okay. Thank you.

25 THE COURT: All right. Thank you. I think this is a

TOSH - CROSS / SHORT

1 good time to take a break until tomorrow.

2 So, ladies and gentlemen, remember the admonition. I will
3 try to remind you ever evening before we're done, but it's very
4 important that everything you learn about this case you learn
5 from the witnesses and from the exhibits that are admitted into
6 evidence. So don't communicate about the case. Don't do any
7 research about the case. And come back tomorrow morning, as
8 you came today, promptly so that we can continue this case
9 along.

10 So have a good afternoon and the rest of the day.

11 (Jury exits the courtroom at 1:00 p.m.)

12 **THE COURT:** You can step down, Ms. Tosh.

13 (Witness steps down.)

14 **THE COURT:** Ladies and gentlemen, I'll see you
15 tomorrow morning at 7:30.

16 Know that every afternoon, in about half an hour, I'm
17 going to have a lot of other people in here doing a lot of
18 different things. So make sure that you have all of your
19 important papers with you. See you in the morning.

20 (Whereupon at 1:01 p.m. further proceedings were
21 adjourned until Friday, October 4, 2019 at 7:30 a.m.)

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I N D E X

Thursday, October 3, 2019 - Volume 2

	<u>PAGE</u>	<u>VOL.</u>
Jury Instructions	194	2
Opening Statement by Ms. Trotter	211	2
Opening Statement by Ms. Dhillon	241	2
Opening Statement by Mr. LiMandri	255	2
Opening Statement by Mr. Jonna	272	2
Opening Statement by Mr. Kozina	278	2
Opening Statement by Ms. Short	282	2
Opening Statement by Mr. Mihet	289	2

PLAINTIFF'S WITNESSESTOSH, PH.D., JENNA

	<u>PAGE</u>	<u>VOL.</u>
(SWORN)	297	2
Direct Examination by Ms. Bomse	297	2
Cross-Examination by Ms. Dhillon	345	2
Cross-Examination by Mr. Jonna	361	2
Cross-Examination by Ms. Short	365	2

- - -

E X H I B I T S

<u>TRIAL EXHIBITS</u>	<u>IDEN</u>	<u>EVID</u>	<u>VOL.</u>
870		311	2
871		317	2
1309		331	2

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CERTIFICATE OF REPORTER

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Debra L. Pas

Debra L. Pas, CSR 11916, CRR, RMR, RPR

Belle Ball

Belle Ball, CSR 8785, CRR, RMR, RPR

Thursday, October 3, 2019